A. NAGARAJU BROS., VISAKHAPATNAM

v.

THE STATE OF ANDHRA PRADESH

JULY 19, 1994

[B.P. JEEVAN REDDY AND B.L. HANSARIA, JJ.]

Andhra Pradesh General Sales Tax Act, 1957 : Section 5(1). Schedule I—Entry 113 (as it stood before amendment in 1985)—'Plastic Sheets and Articles'—Suit cases made of plastic and fitted with steel bands, locks and ancillaries of other materials—Held Plastic articles covered by Entry 113.

The appellant was dealing in 'VIP' suit cases made of plastic and fitted with steel bands, locks and ancillaries made of other materials. Prior to 1st July 1985, there was no entry dealing specifically with suit cases in Scheduled-I of the Andhra Pradesh General Sales Tax Act, 1957. However, relying on Entry 113 (As it stood before its amendment in July, 1985) of Schedule- I, which read "Plastic Sheets and Articles" the appellant made a claim that the said suit cases were plastic articles within the meaning of Entry 113 and therefore taxable only at the first point of sale; since the sales effected were second sales its turn-over-relating to assessment year 1981-82 he submitted, they were not taxable. The Assessing Authority allowed the claim but the Deputy Commissioner revised the assessment order holding that the suit cases are not 'plastic articles' and are therefore liable to multi-point as general goods under section 5(1) of the Act. The Sales Tax Appellate Tribunal dismissed the appellant's appeal and the revision application filed by appellant under section 22 was also dismissed by the High Court. The appellant preferred appeal in this Court.

Allowing the appeal and setting aside the order of the High Court, this Court

HELD : 1. Suit cases are plastic articles. Admittedly the main raw material which goes into manufacture of suit cases is plastic. Even in common parlance suit cases are understood to be plastic goods. It is true that certain other materials are also used in manufacturing the said suit cases and it may also be that their value is substantial and in some cases more than the value of plastic. But, merely because the value of the steel including the locks and other materials used in the suit cases is more than

the value of plastic, they cannot be called articles made of steel or of such other materials. [787-G-H; 788-E-F]

2. There is no one single universal test in these matters. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more appropriate test, though not the only one. There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight or value or on some other basis may have to be applied. It is indeed not possible, nor desirable to lay down any hard and fast rules of universal application. But so far as the goods concerned herein are concerned, these are undoubtedly plastic goods. Applying the common parlance test and the test of usage in trade circles, these goods must be called 'plastic articles'. [788-C-D-E; A]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2020 (NT) of 1989.

From the Judgment and Order dated 2.3.88 of the Andhra Pradesh High Court in T.R.C. No. 317 of 1987.

A. Subbha Rao for the appellant.

C. Sitaramiah and T.V.S.N. Chari for the Respondent.

The Judgment of the Court was delivered by

B.P. JEEVAN REEDY, J. The question in this appeal is whether 'V.I.P.' suit cases are plastic articles within the meaning of Entry 113 of Schedule-I to the Andhra Pradesh General Sales Tax Act. The question arises with reference to the assessment year 1981-82. With effect from July 1, 1985 a new entry, viz., Entry 163 was introduced in Schedule-I expressly taking in all kind of suit cases and simultaneously amending Entry 113. Prior to July 1, 1985, there was no entry dealing specifically with suit cases. Entry 113 read as follows : "Plastic sheets and articles" and the rate of tax was 6%. In the year 1983, the rate of tax was increased to 9%. The amended Entry 113 (w.e.f. July 1, 1985) reads as follows: "plastic sheets and articles excluding those allied goods falling under any other item" whereas Entry 163 reads : "all kinds of suit cases, brief cases and vanity bags."

A The appellant is a dealer *inter alia* in 'V.I.P.' suit cases. Suit cases are made of leather , cloth, rexine and other material. We are concerned herein with suit cases made of plastic by the method known as 'injection-moulding' and fitted with steel bands locks and ancillaries made of other materials. The appellant submitted that the said suit cases are plastic articles within the meaning of Entry 113 of Schedule-1 to the Act and, B therefore, taxable only at the first point of sale. Inasmuch as the sales effected by him were second sales, he submitted, the turn-over relating to said suit cases was not taxable in his hands. Though the assessing authority agreed with him, the Deputy Commissioner revised the assessment order, holding that the said suit cases are not 'plastic articles' and must, therefore, C be taxed as general goods under Section 5(1) of the Act - which means multi-point tax. The Sales Tax Appellate Tribunal dismissed the dealer's appeal following its own earlier decision in T.A. No. 566 of 1984 disposed of on March 12, 1987. The Tax Revision filed by the appellant-dealer under Section 22 of the Act was also dismissed by the High Court.

D It is brought to our notice that this very question arose in the case of certain other dealers as well and the decisions of the tribunal are not uniform. In T.A. No. 1357 of 1988 and 1400 of 1988 *M/s. Blow Plast Ltd., Hyderabad* v. *State of Andhra Pradesh*, the Tribunal took the view that 'V.I.P.' suit cases are plastic articles. Same view was taken in T.A. No. 83 E of 1989 and batch disposed of on 21st February, 1991 in the case of *Safari Suit Cases (Private) Limited.* Indeed in the case of this very dealer relating to the assessment year 1983-84, the Tribunal held following the decision in T.A. No. 1357 of 1988 that these suit cases are plastic articles. Contrary view was expressed in T.A. No. 566 of 1984 and in this very matter. In T.A. F No. 1357 of 1988, the Tribunal has set out the following circumstances in support of its opinion that the said suit cases are plastic articles:

> "1. That when licencing the industry for production of these suit cases, the Government of India described the articles to be manufactured as injection moulded plastic goods;
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> G
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> 2. For exporting the said injection moulded plastic goods they are registered with the Plastics and Linoleum Export Promotion Council and they are described as plastic goods in the Certificate of Registration given by the Plastics and Linoleums Export Promotion H Council.

3. Organisation of Plastics Processors of India has issued Certificate stating that V.I.P. suit cases and brief cases are classified as suit cases and brief cases made predominently of plastic and are charged 31.5% excise duty as against 26.25% chargeable for suit cases, brief cases etc., not being of predominantly of plastic. A

4. Even in regard to the monthly production statements by the V.I.P. Industries these goods are mentioned as injection moulded plastic goods only. B

5. The Plastic and Linoleums Export Promotion Council selected the V.I.P. manufacturers as the Top-Exporters for Plastic moulded Luggage for 1985-86 and given the award of top exporter of Plastic Moulded Luggage. C

6. They also filed affidavits of three persons one of Bombay by name Manilal Maru, one of Bangalore by name Fazlul Rahiman another of Bangalore by name Giridhar stating that this luggage are treated as plastic suit cases and brief cases in the trade circles and in common parlance. D

7. Certificate from the Plastic and Linoleums Export Promotion Council, that plastic moulded luggage like V.I.P. brief cases, suit cases are regarded as articles made of plastic and duty draw back benefits and other allowances are accorded to them treating them as articles of plastic. E

8. The particulars of plastic component furnished clearly indicate that it is a major component in all brief cases and is more than 50% in all suit cases except small suit cases where it is about 45%" F

Having set out the above circumstances, the Tribunal applied the test predominance as well as the test of common parlance or commercial understanding, as it may be called, and arrived at the conclusion in favour of the dealer. In our opinion, the circumstances mentioned as items 1, 2, 5, 7 and 8 read with the affidavits referred to in item-6 are strong circumstances in favour of the view that these suit cases are plastic articles. G It is not disputed that the main raw material which goes into manufacture of the said suit cases is plastic. Even in common parlance these suit cases are understood to be plastic goods. It is true that certain other materials are also used in manufacturing the said suit cases and it may also be that their value is substantial - and in some cases more than the value of the H

A plastics - but having regard to the several circumstances aforementioned and applying the common parlance test and the test of usage in trade circles, these goods must be called 'plastic articles'.

In its order T.A.No. 566 of 1984, followed in the present case, the Tribunal has given more importance to the respective value of the plastic
B and the other materials (like steel including locks and other fixtures) and opined that since the value of other components is more than the value of plastics used therein, they cannot be called 'plastic articles'. It gave certain illustrations to emphasise that value is the determining factor. The Tribunal pointed out that in the case of a diamond ring, the major component may
C be gold or silver and the diamond may represent a small portion of it, yet nobody would call it gold or silver ring; it would be called a diamond ring, it is undoubtedly so. But this only shows that there is no one single universal test in these matters. The several decided cases drive home this truth quite eloquently. It is for this reason probably that the common parlance test or commercial usage test, as it is called, is treated as the more
D appropriate test, though not the only one. There may be cases, particularly in the case of new products, where this test may not be appropriate. In such cases, other tests like the test of predominance, either by weight of value or on some other basis may have to be applied. It is indeed not possible, nor desirable, to lay down any hard and fast rules of universal application. But so far as the goods concerned herein are concerned, these
E are undoubtedly plastic goods. Indeed, we put a straight question to Sri C. Sitaramiah, how would he characterise these goods? The answer could not be anything else than that they are plastic goods. Merely because in value of the steel including the locks and other materials used in the suit cases is more than the value of plastics, they cannot be called articles made of
F steel or of such other materials. Of course, on and after July 1, 1985 this issue will not arise, since Entry 163 specifically speaks of suit cases of all kinds. These suit cases too would fall under that entry. The present controversy arose because there was no specific entry relating to or covering the suit cases.

G Sri C. Sitaramiah, the learned counsel for Revenue submitted that, in this case, the dealer did not produce any material in support of his submission and that it would not be permissible to rely upon the material produced in another case by another dealer to give relief to the appellant-dealer. Counsel stressed the fact that in tax law, each assessment year is a
H separate unit and hence, the fact that this very appellant got a decision in

his favour in a subsequent assessment year is no ground for giving relief in this assessment year. The issue relating to this assessment year must be decided on the material adduced in these proceedings alone, submitted the counsel. There can be no quarrel with the aforesaid propositions. This is not a case where a concluded assessment is being re-opened. The correctness of assessment is still under consideration in this appeal. Since this very assessee's appeal for a subsequent assessment year was allowed following the decision of the Tribunal in T.A. No. 1357 of 1988 and also because the goods are identical, we have referred to the material referred to in the judgment in T.A. No. 1357 of 1988. The said orders have been filed as material in this appeal with the permission of the Court. In the circumstances, it cannot be said that material in another case is being relied upon in this case to determine the question at issue.

For the above reasons, the appeal is allowed. The orders of the High Court, the Tribunal and the Deputy Commissioner are set aside and the order of the Assessing Authority granting exemption with respect to the turn-over relating to the said suit cases is affirmed. There shall be no order as to costs.

T.N.A. Appeal allowed.