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STATE OF U.P. & OTHERS

v.

M/S. INDIAN HUME PIPE CO. LTD.

March 3, 1977

[P. N. BHAGWATI AND S. MURTAZA FAZAL ALI, JJ.]

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Constitution of India—Article 136—Practice of Supreme Court—Interference with discretionary orders of High Court—Article 226—Whether High Court should interfere—Alternative remedies.

Interpretation—Articles used for business purposes—Whether in commercial sense—U.P. Sales Tax Act—Meaning of sanitary fittings.

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The respondent manufactures and sells hume pipes and high quality and high pressure pipes. The pipes are reinforced concrete pipes. The U.P. Government issued a notification under the U.P. Sales Tax Act providing that "sanitary fittings" were to be taxed at 7 per cent instead of 2 per cent. The Sales Tax Officer treated hume pipes supplied by the respondent as sanitary fittings and imposed sales tax @ 7 per cent. The respondent filed a writ petition in the High Court assailing the order of the Sales Tax Officer on the ground that the hume pipes manufactured by the assessee could not by any stretch of imagination be construed to be sanitary fittings nor were they ever used as such. The High Court after perusing the materials on record and hearing counsel accepted the plea of the respondent and held that the hume pipes could not be treated as sanitary fittings. The High Court accordingly quashed the assessment made by the Sales Tax Officer. The respondent also filed certificates of Local Self Government Engineering Department, U.P. to show that the pipes supplied by the respondent were not used as sanitary fittings. The said certificate has been signed by the Executive Engineer on behalf of the Chief Engineer of the department.

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In an appeal by certificate the appellant contended :

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- (1) High Court should not have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the U.P. Sales Tax Act particularly when question of fact had to be determined.
- (2) On merits the conclusion of the High Court that hume pipes are not sanitary fittings is erroneous. Dismissing the appeal by certificate.

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Held : (1) The Court negatived the contention of the appellant that the High Court ought not to have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the U.P. Sales Tax Act. In the present case, whether the hume pipes manufactured and sold by the respondent were sanitary fittings was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and had pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. There is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion and if the discretion has not been exercised by the High Court unreasonably or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court. In these circumstances this Court would not be justified in the interest of justice to interfere under Article 136 of the Constitution to quash the order of the High Court merely on that ground after having found that the order was legally correct. [124 B-E]

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(2) It is well-settled that in construing the articles used for business purposes the terms must be interpreted in a purely commercial sense. [123 B-C]

Ramavatar Budhaiprasad etc. v. Assistant Sales Tax Officer, Akola (1962) 1 SCR 279, 282, followed. A

The King v. Planters Nut and Chocolate Company Ltd., (1951) Canada L.R. Ex. Court 122, 126 approved.

So construed, by sanitary fittings one only understands such pipes or materials as are used in lavatories, urinals or bath rooms of private houses or public buildings. In the present case there was absolutely no material before the Sales Tax Officer to show that any of the hume pipes manufactured and sold by the respondent were meant for use in lavatories, urinals or bath rooms and, in fact, the material was used entirely the other way, the Sales Tax Officer was not at all justified in holding that they were sanitary fittings. B

[123 F-H]

(3) The Sales Tax Officer does not appear to have applied his mind at all to the reasons as to how and why hume pipes could be treated as sanitary fittings. The respondent had filed an application before the Sales Tax Officer wherein he had clearly alleged substantial facts showing that the hume pipes could never be used as sanitary fittings; that it is only the G.I.P. Pipes or other kinds of pipes which are used in lavatories, urinals and bath rooms which could be termed as sanitary fittings. The respondent had placed a large catena of materials in the shape of certificates from technical experts, engineers and highly reputed dealers in sanitary fittings that hume pipes are never used as sanitary fittings. Even where a hume pipe is used for carrying the escrated material from the Commode to the Sceptic tank that may be treated as sanitary fittings. The appellant in his counter affidavit before the High Court did not controvert any of the facts mentioned by the respondent. The State produced no material to controvert the facts. [122 D-G—123A] C

(4) The Court observed that if at any time the material produced before the Sales Tax Authorities establishes that in a given case hume pipes were meant to be used in the bath rooms, urinals and lavatories etc., then the notification of the Government would be attracted. [124 A-B] D

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 784 of 1972. E

(From the Judgment and Order dated 29-9-1970 of the Allahabad High Court in Civil Misc. Writ No. 1111/70).

S. C. Manchanda and O. P. Rana, for the appellants.

S. V. Gupte, S. V. Vaidya, K. Rajendra Chaudhary and Mrs. Veena Devi Khanna, for the respondent. F

The Judgment of the Court was delivered by G

FAZAL ALI, J. This appeal by certificate raises a short question of law as to whether or not hume pipes which are the subject-matter of the present case amount to "sanitary fittings" as contemplated by a notification issued by the Government under the U.P. Sales Tax Act. The respondent is a dealer engaged in the manufacture and supply of hume pipes. The pipes manufactured by the respondent are reinforced with cement concrete pipes and the respondent also manufactures high quality and high pressure pipes like prestressed concrete pipes for water supply, R.C.C. pressure pipes, penstock pipes used in hydro-electric projects etc. The respondent was a supplier of pipes to various Governmental Departments both Central and State, such as Irrigation, Public Works, Local Self Government Engineering, Railways and Ministry of Petroleum etc. It appears that a dispute arose between the respondent and the Sales Tax Department with respect to the H

- A rate of tax for sale of pipes manufactured by the respondent for the assessment years 1962-63, 1963-64 and 1964-65. According to the notification issued by the Government in pursuance of the U.P. Sales Tax Act, items classed as "sanitary fittings" were to be taxed at 7% instead of 2%. The Sales Tax Officer treated the hume pipes supplied by the respondent as "sanitary fittings" and imposed sales tax at the rate of 7%. Instead of going in appeal to the Assistant Commissioner
- B (Judicial) the respondent filed a writ petition in the High Court assailing the order of the Sales Tax Officer on the ground that the hume pipes manufactured by the assessee could not, by any stretch of imagination, be construed to be "sanitary fittings", nor were they ever used as such. The High Court, after hearing counsel for the parties and after perusing the materials on the record, accepted the plea of the respondent and held that the hume pipes could not be treated as
- C "sanitary fittings" and the Sales Tax Officer was, therefore, not entitled to levy tax at the rate of 7%. The High Court accordingly quashed the assessments made by the Sales Tax Officer and hence this appeal by the Department after obtaining a certificate from the High Court.

- D In our opinion, the facts of this appeal lie within a very narrow compass. The only point which arises for consideration is whether or not the hume pipes manufactured by the respondent could be said to be "sanitary fittings". The notification dated September 1, 1966 amended the existing entry as "sanitary goods and fittings" but in these assessment years we are concerned with the entry as it stood un-amended. The Sales Tax Officer does not appear to have applied his mind at all to the reasons as to how and why hume pipes could be
- E treated as sanitary fittings. Apart from his *ipsi dixit* that hume pipes amounted to sanitary fittings, he based his order on no other material. The respondent had filed an application before the Sales Tax Officer wherein he had clearly alleged substantial facts showing that the hume pipes could never be used as "sanitary fittings". It is only the G.I. pipes or other kinds of pipes which are used in lavatories, urinals and bath-rooms which can be termed as "sanitary fittings". Neither the
- F contract nor the tender by the respondent show the exact use for which the hume pipes were meant. On the other hand the respondent had produced a large catena of materials in the shape of certificates from technical experts, Engineers and highly reputed dealers in sanitary fittings to show that hume pipes are never used as sanitary fittings. In spite of these materials, the State, when it filed its counter-affidavit before the High Court, did not controvert any of the facts mentioned
- G by the respondent, vide paragraphs 4, 5 and 6 of the counter-affidavit filed before the High Court. The materials consist of certificates by Local Self Government Engineering Department, U.P., to show that the pipes supplied by the respondent were not used as "sanitary fittings". This certificate appears at p. 34 of the Paper Book and shows that R.C.C./Pipes purchased from the respondent had not been used as sanitary fittings by the L.S.G.E. Department. This certificate is signed
- H by the Executive Engineer on behalf of the Chief Engineer of the Department. From pp. 36-39 and 41 of the Paper Book appear the certificates given by certain reputed dealers in sanitary goods and fittings, who have categorically certified that the hume pipes are never

recognised as sanitary-wares or sanitary fittings. As against this, the State produced no materials to controvert these facts, which could not be brushed aside. At p. 40 there is a certificate by the Ex. Special Engineer, Bombay Municipal Corporation and Ex. Director, Central Public Health Engineering Research Institute, Nagpur, in which he has clearly observed that sanitary-wares and sanitary fittings are applicable to fittings used in the household for W.Cs., wash-basins, traps, sinks etc. and, therefore, hume and R.C.C. pipes cannot be recognised as sanitary-wares or sanitary fittings. As against this, the State produced no material to controvert these facts.

It is well settled that when we are dealing with the articles used for business purposes, the terms must be interpreted in a purely commercial sense. In *Ramavatar Budhaiprasad etc. v. Assistant Sales Tax Officer, Akola*⁽¹⁾ this Court, while construing the import of the word "vegetables", observed as follows :

"But this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject matter with which the statute is dealing would attribute to it." It is to be construed as understood in common language;"

To the same effect is a decision of the Exchequer Court of Canada in *The King v. Planters Nut and Chocolate Company Limited*⁽²⁾, where the Court observed as follows :

"The words "fruit" and "vegetable" are not defined in the Act and so far as I am aware they are not defined in any other Act in *pari materia*. They are ordinary words in every-day use and are therefore to be construed according to their popular sense".

In these circumstances, therefore, we have to construe the expression "sanitary fittings" in the popular sense of the term as it is used in our every-day life. Thus construing, it would be manifest that there could be no question of use of R.C.C. or hume pipes which are generally laid underground and are extremely heavy, for the purpose of use in lavatories, urinals or bath-rooms etc. By "sanitary fittings" we only understand such pipes or materials as are used in lavatories, urinals or bath-rooms of private houses or public buildings. Even where a hume pipe is used for carrying the excreted material from the commode to the septic tank that may be treated as sanitary fittings. In the instant case as there was absolutely no material before the Sales Tax Officer to show that any of the hume pipes manufactured and sold by the respondent were meant for use in lavatories, urinals or bath-rooms and in fact the material was used entirely the other way, the Sales Tax Officer was not at all justified in holding that they were sanitary fittings.

(1) [1962] 1 S.C.R. 279, 282.

(2) (1951) Canada L.R. Ex. Court 122 126

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Of course, we must make it clear that if at any time the material produced before the Sales Tax authorities establishes that in a given case the hume pipes were meant for use in a bathroom, lavatory, urinal etc., then the notification of the Government would attract and the assessee must be liable to be taxed at the rate of 7%.

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Lastly, it was feebly argued by Mr. Manchanda that the High Court ought not to have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the U.P. Sales Tax Act, particularly when questions of fact had to be determined. In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. It is always a matter of discretion with the Court and if the discretion has been exercised by the High Court not unreasonably or perversely, it is the settled practice of this Court not to interfere with the exercise of discretion by the High Court. The High Court in the present case entertained the writ petition and decided the question of law arising in it and in our opinion rightly. In these circumstances, therefore, we would not be justified in the interest of justice in interfering in our jurisdiction under Art. 136 of the Constitution to quash the order of the High Court merely on this ground after having found that the order is legally correct. We are, therefore, unable to accept this contention.

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For these reasons, therefore, we find ourselves in complete agreement with the view taken by the High Court and affirm the same. The result is that the appeal fails and is accordingly dismissed with costs.

P.H.P.

Appeal dismissed.