

CASE NO.:
Appeal (civil) 6469-6470 of 2002

PETITIONER:
Hawkins Cookers Limited

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 29/04/2008

BENCH:
ASHOK BHAN & DALVEER BHANDARI

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NOS. 6469-6470 OF 2002

With
Civil Appeal No. 7169 of 2004
Talent Marketing AgenciesAppellant(s)

- Versus -
Additional Sales Tax Officer,
Ernakulam & Anr.Respondent(s)

Civil Appeal No. 1203 of 2008
Hawkins Cookers LimitedAppellant(s)

- Versus -
State of KeralaRespondent(s)

BHAN, J.

1. This order shall dispose of Civil Appeal Nos. 6469-6470 of 2002, 7169 of 2004 and 1203 of 2008.

Civil Appeal Nos. 6469-6470 of 2002 & 1203 of 2008

2. The issue which arises for consideration in these appeals is, whether the satilon brand cookware sold by the appellants is an "aluminium household utensil made of aluminum" and "aluminium alloys" classifiable under Entry 5 of the First Schedule under the Kerala General Sales Tax Act, 1963 (for short "the Act") or whether the said product would fall under Entry 104 which pertains to "pressure cooker, cook and serve ware to keep food warm, casseroles, water filters and similar home appliances not coming under any other entry".

3. The authority in original i.e. Assistant Commissioner (Assessment III), Ernakulam at the first instance accepted the appellant's case and held that the Hawkins Satilon Cookware manufactured by the appellant was classifiable under Entry 5 of the First Schedule to the Act. The Deputy Commissioner of Commercial Taxes in exercise of his suo motu powers of revision, sought to revise the assessment. A notice dated 10.9.1999 was issued under Section 35 of the Act. Appellant replied to the said notice. The Deputy Commissioner by an order dated 25.9.1999 set aside the earlier assessment and remanded the matter for fresh disposal. The Deputy Commissioner held that as the satilon coating made the goods non-stick, it would make it different from the aluminium household

utensils made of aluminium, covered under Entry 5 of the First Schedule. Aggrieved by the order passed by the Deputy Commissioner, the appellant filed an appeal before the Sales Tax Appellate Tribunal, Ernakulam (for short "the Tribunal"). The Tribunal by its order dated 18.4.2001 upheld the order of Deputy Commissioner.

4. Against the order of the Tribunal, the appellant filed Tax Revision case before the Kerala High Court, which has been disposed of by the impugned order. The High Court by a short order while agreeing with the findings recorded by the Tribunal, dismissed the revision and held that the products manufactured by the appellants were classifiable under the heading "similar home appliances" under Entry 104 of the Act. It was further held that the amendment to Entry 104 in the year 1999 by which the word "non-stick cookware" was added was only clarificatory in nature. The case of the appellant was that prior to the said amendment of 1.4.1999 the appellant's product would clearly fall under Entry 5 and not under Entry 104.

5. We are in agreement with the view taken by the Tribunal as well as the High Court that "satelon coated aluminium products" are not identical with "aluminium household utensils made of aluminium and aluminium alloys". The coating of satilon makes all the difference to the product. The Tribunal has further recorded a finding that in trade parlance, no one would describe satilon coated aluminium products as aluminium household utensils.

6. We do not agree with the submission made on behalf of the assessee that coating of satilon on the surface of the metal product does not bring about any change in the nature and utility of the product. By no stretch of imagination, satilon coated cookware can be treated as ordinary aluminium household utensils. Price of the satilon coated cookware is much more than the aluminium household utensils made of aluminium and its alloys. The Hawkins cookware sold by the assessee cannot be categorized as household utensils made of aluminium for the reasons that the satilon coating makes the goods non-sticky and hence different from the aluminium household utensils. In common parlance, Hawkins cookware with satilon coating is not understood as aluminium ware. We further agree with the view taken by the High Court that the amendment to Entry 104 of the First Schedule is clarificatory in nature.

7. Learned counsel for the appellant has relied upon the following three judgments:

(i) Gujarat Steel Tubes Ltd and others v. State of Kerala and others, 1989 (3) SCC 127

(ii) Metlex (I) (P) Ltd. v. Commissioner of Central Excise, New Delhi, 2005 (1) SCC 271

(iii) Commissioner of Central Excise, Cochin v. Apollo Tyres Ltd., 2005 (11) SCC 444

8. All these judgments are distinguishable on facts and would have no applicability to the facts of the present case. We have decided the point in issue on its own facts. Under the circumstances, we reject the plea of the

appellants without adverting to the facts of the said cases.

9. For the reasons stated above, the appeals are dismissed.

Civil Appeal No. 7169 of 2004

10. In this case the product is slightly different in the sense that the articles are coated with tuflon instead of satilon. Coating of tuflon also makes the article non-stick. Before the High Court the learned counsel, who had appeared for the assessee, conceded that the point in issue was squarely covered by the earlier decision of the High Court of Kerala in W.A. No. 1405 of 2004 dated 4.8.2004, which has been upheld by us today (Civil Appeal No. 6469-70 of 2002). No other point was urged.

11. Since we have upheld the order passed by the High Court in the connected Civil Appeal Nos. 6469-70 of 2002, we have no hesitation in dismissing this appeal as well. The Orders passed by the High Court and the Tribunal are upheld and the appeal filed by the appellant is dismissed. No costs.