

D.B. Bhandari Vs. State of Mysore

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Court : Karnataka

Decided On : Feb-15-1967

Reported in : [1967]20STC25(Kar)

Judge : A. Narayana Pai and ;B. Venkataswami, JJ.

Acts : Mysore Sales Tax Act, 1957 - Sections 5(1)

Appeal No. : S.T.A. 280 to 285 of 1965-66 and S.T.R.P. Nos. 23, 24, 25, 26, 27 and 28 of 1966

Appellant : D.B. Bhandari

Respondent : State of Mysore

Advocate for Def. : G.V. Shanta Raju, Adv. for the Advocate-General

Advocate for Pet/Ap. : K. Sreenivasan, Adv.

Judgement :

ORDER

Narayana Pai, J.

1. The only question for consideration which is common to these six petitions is whether the Sales Tax Appellate Tribunal is right in taking the view that handlooms are machinery and that parts thereof sold in the course of business are

liable to sales tax as falling within entry 20 of Schedule II of the Mysore Sales Tax Act, 1957.

2. During the six assessment years concerned in these petitions, the petitioner had sold certain items which are prescribed as spare parts of handlooms. It is stated, however, that some of the items may not fall accurately within the description of spare parts or parts of the machinery itself, but may fall within the description of or more appropriately be described as 'accessories'. During the period relevant to these assessments, entry 20 of Schedule II brought under tax only spare parts but not accessories. The word 'accessories' was subsequently added by an amendment. Hence the additional argument on behalf of the petitioner is that even if we should agree with the opinion of the Tribunal that handlooms may be regarded as machinery, the question still remains whether some of the items are not mere accessories and therefore outside the said entry but liable to tax only under sub-section (1) of section 5 of the Act.

3. On the question whether handlooms may be regarded as machinery, the approach to be made to the question is now clearly indicated in a decision of this Court reported in *State of Mysore v. M. N. V. Rao* ([1964] 15 S.T.C. 540; 1964 Kar. L.J. 101.).

4. After pointing out that the statute itself does not contain a definition of the expression 'machinery' and that therefore ordinary dictionary meaning will have to be assigned to the same, their Lordships considered the argument that an item called 'cottage basin' used as a part of machinery for spinning silk thread from cocoons cannot be regarded as a machine part for the reason that it is operated by manual power. This Court pointed out that the mere fact that an item was operated by manual labour was not sufficient to remove it from the nomenclature of machinery part.

5. According to the dictionary meaning, 'machinery' is a mechanical contrivance containing several parts, each expected to make a certain operation. The matter was put in more expressive language by Lord Atkinson in the judgment of the Privy Council in *Corporation of Calcutta v. Cossipore Municipality* (A.I.R. 1922 P.C. 27.). His Lordship stated :

'The word 'machinery' when used in ordinary language, prima facie, means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting a definite and specific result.'

In simpler language 'machinery' is a contrivance whereby several things are put together to work in such a way that force may be applied at a most convenient point in a most convenient way to get a particular work or an item of work done or to produce a specific article or manufactured goods.

6. If this is the essential feature of a machinery which distinguishes it from other things, the mode or the manner in which power is fed into it or force is applied, need not and should not make any difference. It is conceded, for example, that a machinery would be a machinery whether it is fed by electrical power or other form of power applied by steam or generated by burning combustible oils. If the mode or the manner in which the power is applied makes no difference in these specified cases, it should make no difference either if the source of power is either human or animal.

7. We therefore see no reason to disagree with the view taken by the Sales Tax Appellate Tribunal.

8. But the second argument appears to us to be more reasonable and acceptable. It may be as the learned Government Pleader points out that what is now described as 'accessories' may in fact be machinery parts themselves. But that is a matter which has not been decided, and because the liability under the taxing statute is limited to the express meaning and effect of the words used, the contention of the assessee cannot be lightly brushed aside as the Tribunal appears to have done.

9. In the result, therefore, while accepting the opinion of the Tribunal that handlooms fall within the description of 'machinery,' and parts thereof would be liable to tax as falling within entry 20 of Schedule II to the Mysore Sales Tax Act,

1957, we remit the matter to the original assessing authority with a direction that he may examine the petitioner's contention regarding the exact nature of these items, classify them as machine parts and accessories and impose tax on the former under entry 20 of Schedule II and on the latter under sub-section (1) of section 5 of the Act. No costs.

10. Ordered accordingly.

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