

Engineering Traders Vs. the State of Uttar Pradesh and anr.

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Court : Allahabad

Decided On : Nov-21-1972

Reported in : [1973]31STC456(All)

Judge : D.S. Mathur, A.C.J., ;R.L. Gulati and ;C.S.P. Singh, JJ.

Appeal No. : Civil Misc. Writ Nos. 7196 and 7197 of 1971

Appellant : Engineering Traders

Respondent : The State of Uttar Pradesh and anr.

Advocate for Def. : Standing Counsel

Advocate for Pet/Ap. : R.R. Agarwal and ;Bhartji Agarwal, Advs.

Disposition : Petition allowed

Judgement :

R.L. Gulati, J.

1. This is a petition under Article 226 of the Constitution. The petitioner is a dealer in water pumping sets. It has been urged by the petitioners that these pumping sets are agricultural implements and, as such, are liable to tax under the U. P. Sales Tax Act at 2 per cent. The sales tax department, on the other hand, treats these pumping sets as machinery and has taxed their turnover at 6 per cent. In

Delta Engineering Co. v. Commissioner of Sales Tax [1963] 14 S.T.C. 515, a Division Bench of this court has held that centrifugal pumps fixed in tube-wells are not agricultural implements. Another Division Bench in Chandra Metal Co. v. Commissioner of Sales Tax Sales Tax Reference No. 273 of 1963 decided on 23rd December, 1965 has held that pumping sets are not agricultural implements. The Division Bench, before whom this petition came up for hearing, thought that the aforesaid two decisions of this court might require reconsideration and hence referred the case to a larger Bench. That is how this and the connected writ petition have now come up before us.

2. Before we examine the main question, it is necessary to dispose of a preliminary point raised by the learned standing counsel. He urges that the petitioner has an alternative remedy by way of appeal under the Act, which he has already availed of and, as such, the writ petition is not maintainable. It is true that against the assessment for the year 1966-67 the petitioner has preferred an appeal, which is still pending on remand by the revising authority. In the meantime, the Sales Tax Officer has passed an assessment order for the assessment year 1967-68 creating a huge tax demand of Rs. 83,000, which is three times the amount which would be payable according to the petitioner. Assessment proceedings for the year 1968-69 have also been started and, according to the petitioner, the Sales Tax Officer intends to levy tax at 6 per cent. Then there are two decisions of this court, referred to above, where it has been held that centrifugal pumps and other pumping sets are not agricultural implements. So long as these decisions stand, no sales tax authority is likely to take a contrary view. Even if the matter comes before this court by way of a reference, the same is bound to be decided against the assessee unless a Full Bench is constituted to reconsider the aforesaid two decisions. All this is bound to take a long time and tax being recurring one, the petitioner is likely to be subjected to a huge liability, which might impair his business. In these circumstances, we are of the opinion that the alternative remedy under the Act is not efficacious and speedy. Moreover, the petitioner has challenged the vires of Section 3-AB of the Act. Such a question cannot be decided by the authorities under the Sales Tax Act. We, accordingly, reject the preliminary objection.

3. The notification with which we are concerned is No. ST-1365/X-990-1956, dated 1st April, 1960, issued under Section 3-A of the Act and so far as material for our purposes, reads :

In exercise of the powers conferred by Section 3-A of the Uttar Pradesh Sales Tax Act, 1948 (U. P. Act No. 15 of 1948), as amended from time to time, the Governor of Uttar Pradesh is pleased to-

Supersede, with effect from April 1, 1960, all the previous notifications so far as they relate to the goods mentioned in column 2 of the schedule hereto and the rates of sales tax given in such notifications and

Declare that, with effect from April 1, 1960, the turnover in respect of the goods mentioned in column 2 of the schedule hereto shall be liable to tax only at the point of sale specified in column 4 thereof and under the circumstances specified in column 3 thereof.

2. The Governor is further pleased to declare that as from April 1, 1960, the rate of tax in respect of the turnover of individual goods mentioned in the aforesaid column 2 shall be as mentioned against each goods in column 5 of the schedule hereto,

Schedule	Sl. No.	Name of goods	Circumstances under which to be taxed	Point of sale	Rate of tax
1	2	3	4	5	
5	38	Agricultural implements (a) Imported from outside Uttar Pradesh. If manufactured in Uttar Pradesh other than by the manufacturer.	(a) Sale by importer. (b) Sale by parts and accessories, other than tubes.	(a) Sale by human or animal power, including their (b) other than	2 paise per rupee.

4. The entry No. 38 of the schedule reproduced above was modified with retrospective effect (from 1st April, 1960) by Notification No. ST-6552-X-900(31)-1965 dated 1st September, 1965. The modified entry reads :

Agricultural implements other than those worked by human or animal power and tractor including their parts and accessories other than tyres and tubes.

5. The contention of the petitioner is that the turnover of water pump is taxable at 2 per cent. according to this notification. The Sales Tax Officer, on the other hand, has relied upon Notification No. ST-7098/X-1012-1965 dated 1st October, 1965. This notification has also been issued under Section 3-A of the Act and reads:

In exercise of the powers under Section 3-A of the U. P. Sales Tax Act, 1948 (U. P. Act No. 15 of 1948), the Governor of Uttar Pradesh is pleased to declare that, with effect from October 1, 1965, the turnover in respect of machinery and spare parts of machinery, not being such machinery or spare parts thereof as are taxable under any other notification issued under the aforesaid section, shall not be liable to tax except-

(a) in the case of the aforesaid goods imported from outside Uttar Pradesh, at the point of sale by importer ; and

(b) in the case of the aforesaid goods manufactured in Uttar Pradesh, at the point of sale by the manufacturer ;

and the Governor is further pleased to declare that the turnover in respect of aforesaid goods shall, with effect from October 1, 1965, be liable to tax at the rate of six paise per rupee.

6. The notification reproduced above relates to machinery and its spare parts. Machinery, according to dictionary meaning, means 'a machine in general or a functioning unit'. The word 'machine' is a well-known term and according to Webster's Dictionary means 'an instrument (as a lever) designed to transmit and modify the application of power, force and motion'. Thus machinery in generic sense, would include all appliances and instruments whereby energy or force is transmitted and transformed from one point to another. In that sense it will include simple appliance like a lever to complicated machinery employed in mills and factories. In the generic sense, a pumping set would undoubtedly be a machinery, because energy is applied at one point through electric or oil combustion and is

transmitted to another part, which pumps out the water. But every kind of machinery is not covered by the aforesaid notification. It applies only to machinery 'not being machinery or spare parts thereof as are taxable under any other notification issued under Section 3-A'. Thus, if a pumping set is an agricultural implement, its turnover would be taxable under the notification of 1st April, 1960, quoted above.

7. Thus the only question to be determined is as to whether pumping set is an agricultural implement. The term 'agriculture' is a well-known term and according to dictionary meaning (Webster's) means 'the science or art of cultivating soil, producing crop and raising live-stock'. Now raising of crop would necessarily require the tilling of soil, sowing of seeds and watering the fields. Thus watering of fields or irrigation is one of the essential processes of agriculture. Any appliance or aid employed to achieve irrigation would be an agricultural implement. It is a matter of common knowledge that in recent times farmers are pressing into aid engine pumps in order to draw water from sub-soil, ponds, tanks and streams.

8. It has been further stressed that even the Government regards pumping sets as an important aid to irrigation. In a book called 'India 1961', published by the Publications Division, Ministry of Information and Broadcasting, Government of India, while discussing the development programmes, it has been stated :

The development programmes cover two types of schemes, viz., works schemes and supply schemes. The former include the construction and repair of wells, tanks, small dams, channels and tube-wells, the installation of water-lifting appliances such as pumps....

9. In the same book, while discussing the total outlay on the implementation of minor irrigation schemes, it has been stated:

In addition, about 40,000 open wells are expected to be bored or deepened for augmenting their water supplies and about 50,000 pumping sets and 20,000 persian wheels distributed for lift irrigation.

10. In a booklet called 'Agricultural Production Manual', issued by the Indian Council of Agricultural Research Institute, New Delhi (1963 Edition), at page 31, the topic of minor irrigation has been dealt with. Minor irrigation, according to that booklet, includes the following types of schemes:

I. Ground-water scheme.

1. Construction of additional open wells.

2. Improvement of existing open wells through :

(a)...

(b)...

(c) Installing improved water-lifting appliances.

3. Construction of tube-wells, artesian wells and filter points. A pump has been mentioned as one of the appliances for water-lifting.

11. In another book called 'A new Strategy in Agriculture', published by the Indian Council of Agricultural Research Institute, New Delhi (1972 Edition), there is a chapter called 'Machinery the farmers need'. At page 101, it has been stated :

The manually operated and bullock-driven implements are now almost entirely manufactured in India and many of the firms have also undertaken manufacture of power-driven equipment, such as power threshers, power chaff-cutters, pumps, etc. There is, however, need for increasing the capacity of manufacture of pumps and pumping sets. A number of States have already placed orders for oil engines and pumping sets and the demand is likely to increase.

12. Lastly, reference may be made to a booklet called 'Towards Self-Reliance in Agriculture', issued by the Indian Council of Agricultural Research Institute, New Delhi. Here also tube-wells and pumps have been described as being used in lift irrigation.

13. There can be no manner of doubt that in recent times lift irrigation is being largely employed by farmers to irrigate their fields. Lift irrigation is mainly employed to lift water from wells, tanks, ponds, rivulets and streams and the main appliance used is a pumping set. The Government is laying more and more emphasis on this modern irrigational aid so that the farmer is less and less dependent on natural irrigation by rain. Only recently the Government announced the grant of taqavi loans to farmers to enable them to purchase pumping sets to overcome the drought resulting from failure of the monsoon.

14. The contention of the petitioner is that the pumping sets sold by it are mainly used by the agriculturists for irrigating their fields. In paragraphs 2 and 3 of the writ petition, the petitioner has asserted that it sells engine pumps as agricultural implements and they are sold to agriculturists. The petitioner obtains a certificate from every purchaser of a pumping set certifying that the pumping set is being purchased for purposes of agricultural operations on the land of the purchaser. A sample copy of the form of certificate obtained from the purchaser is annexed as annexure I to the writ petition, which gives full particulars with regard to engine number and the name and the address of the purchaser so that the factum of sale can be easily verified. These averments have not been denied, although in the counter-affidavit it has been stated that the petitioner has sold pumping sets to certain persons who are not agriculturists. Three such names have been mentioned in the counter-affidavit. It is, however, clear that the bulk of the pumping sets have been sold by the petitioner to agriculturists. It is a matter of common knowledge and it has not been disputed, that in recent times farmers are pressing into aid water pumps in order to irrigate their fields. But it is said that a pumping set has a variety of other uses, besides being used as a water-lifting appliance for irrigation. It can be used for pumping water for industrial or drinking purposes. It is argued that unless something is exclusively used for agricultural purposes, it cannot be termed an agricultural implement. This line of reasoning. is not correct. There is hardly any appliance or equipment which is not capable of being put to more than one use. A simple appliance like a spade or a shovel can be cited to illustrate this point. No one can dispute that shovels and spades are agricultural implements but they are used quite extensively in building operations also. In order that an appliance may be an agricultural implement, the real test is not that it

should be exclusively used for agricultural purposes but that it should be commonly so used and it should be intimately and directly connected with agricultural operations. That an exclusive user is not the test for determining whether an appliance is an agricultural implement is clear from entry No. 38 of the notification of 1st April, 1960, as modified by notification of 1st September, 1965. A tractor is included in agricultural implements. Now it is a matter of common knowledge that a tractor is ordinarily used for tilling land but it is also used in urban areas as a transport for lifting garbage, etc.

15. In *Imperial Surgico Industries, Lucknow v. Commissioner of Sales Tax, U. P., Lucknow* [1969] 23 S.T.C. 201, a Division Bench of this Court was called upon to interpret the expression 'hospital equipment'. Certain articles like fowler beds, bedside lockers, revolving stools, propelling chairs, etc., were sought to be included by the department in the entry relating to 'furniture'. Repelling that contention, this is what the Bench said :

That in order to decide whether certain articles are furniture or not, the test is not whether the articles are capable of being used as furniture, but whether they are ordinarily so used and can be accepted as such according to the general or popular notion of what furniture is.

16. In a recent case decided by the Punjab and Haryana High Court in *Anil Traders v. The State of Haryana and Anr.* Civil Miscellaneous Writ No. 1552 of 1960 decided on 15th May, 1972 ; since reported at [1973] 31 S.T.C. 3, it has been held that pumping sets are agricultural implements.

17. In *Delta Engineering Co. v. Commissioner of Sales Tax* [1963] 14 S.T.C. 515, a Division Bench of this Court has held that centrifugal pumps used in tube-wells are not agricultural implements. The main reason which prevailed with the Bench was that in the case of a tube-well the water is first stored in a storage tank and afterwards it is taken from the storage tank to the fields to be irrigated. In the opinion of the Bench, the former process was not agricultural process although the latter would be. On this reasoning, the case of a persian wheel was differentiated where the water is taken to the fields direct without being stored or collected. In the instant case, it has been averred on behalf of the petitioner that in the case of

pumping sets sold by it no storage tank is required and water goes direct to the fields from the pump. Be that as it may, in our opinion, this distinction is not valid. So long as water is drawn for irrigation purposes, it does not matter that it is first stored in a storage tank or a reservoir. Water is stored obviously to avoid wastage. To us it appears that the question as to whether water is stored after it is pumped out or is taken direct to the field is not germane to the question as to whether the water-lifting appliance is an agricultural implement or not.

18. In the case of Chandra Metal Co. v. Commissioner of Sales Tax Sales Tax Reference No. 273 of 1963 decided on 23rd december, 1965, a Division Bench of this Court has merely followed the decision in Delta Engineering Company's case [1963]14 S.T.C.515 and has held that the pumping sets are not agricultural implements. For the reasons already indicated, this case also, in our opinion, does not lay down the law correctly. We are thus clearly of the opinion that pumping sets in question are connected intimately with agriculture and are commonly used and understood as agricultural implements.

19. As the petition succeeds on merits, it is not necessary to deal with the constitutional question as to whether Section 3-AB of the U. P. Sales Tax Act is ultra vires.

20. We, accordingly, allow this petition and quash the assessment order for the year 1966-67. The connected writ petition relates to the assessment year 1968-69, where no assessment has yet been made. We direct that the Sales Tax Officer shall pass the assessment order keeping in view the law as clarified by us in this Judgment.

21. The assessee is entitled to costs. There will be one set of costs only.