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Court : Orissa

Decided On : Nov-06-1975

Reported in : [1976]37STC182(Orissa)

Judge : R.N. Misra and ;K.B. Panda, JJ.

Appeal No. : S.J.C. Nos. 52 to 54 of 1974.

Appellant : State of Orissa

Respondent : Rama Engineering and Manufacturing Works

Advocate for Def. : None

Advocate for Pet/Ap. : Standing Counsel (S.T.)

Judgement :

R.N. Misra, J.

1. The Member, Additional Sales Tax Tribunal, has stated a case and referred the following two questions for the opinion of the court on an application made by the State of Orissa under Section 24(1) of the Orissa Sales Tax Act, 1947 (hereinafter briefly referred to as the 'Act'):

(1) Whether, on the facts and in the circumstances of the case, this Tribunal is right in holding that tractor parts and electric motors are not machinery and are

exigible to tax at 5 per cent ?

(2) Whether, on the facts and in the circumstances of the case, the assessing officer was not justified in assessing tax on the turnover of sale of tractor parts and electric motors at 7 per cent ?

2. The assessee---a dealer under the Act--is a manufacturer of grills and different steel fabricated goods. The relevant periods of assessment are 1967-68, 1968-69 and 1969-70. The assessee had paid tax on its sales turnover of tractor parts and electric motors at 5 per cent. The Sales Tax Officer was of the view that sale of these items was liable to tax at 7 per cent having been covered by notified items in the notification of 30th December, 1957, issued under the first proviso to Section 5(1) of the Act.

The appellate authority sustained the additional demand. Before the Tribunal in second appeal, the assessee reiterated the same contention. The Additional Tribunal held:.The appellant is right in contending that tax is payable at 5 per cent on the sale of tractor parts, electric motors and grills and not at 7 per cent as they were not machinery....

No further reasons were given by the second appellate authority for acceptance of the assessee's contention.

3. Reliance is placed by the learned standing counsel on two entries in the notification dated 30th December, 1957, made in exercise of the powers under the first proviso to Sub-section (1) of Section 5 of the Act. Item 34 prescribes that electrical goods, instruments, apparatus and appliances including fans and lighting bulbs would be taxed at seven per cent. Similarly, entry 60 provides that all machinery and spare parts and accessories thereto shall be taxed at seven per cent. 'Electric motors' undoubtedly come under entry 34 and, therefore, there can be no doubt that sale of electric motors was liable to be taxed at seven per cent.

'Machinery' has not been defined under the Act. The Judicial Committee in the case of Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipality (1922) I.L.R. 49 Cal. 190 observed:.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 so definite and specific a result....

In the case of Commissioner of Income-tax v. Mir Mohammad Ali [1964] 53 I.T.R. 165 (S.C.) the Supreme Court indicated that 'machinery' is a word of common parlance and not a technical word. Therefore, the common parlance meaning should be accepted. In the case of Commissioner of Income-tax v. Raju and Mannar [1966] 60 I.T.R. 246 (S.C) the Supreme Court held that a diesel engine was 'machinery'.

A tractor would certainly be a 'machinery' in view of what has been stated above and tractor parts would be spare parts of machinery and, therefore, would come within the purview of entry 60.

4. Our answer to the first question, therefore, is:

On the facts and in the circumstances of the case, the Additional Sales Tax Tribunal was not right in holding that tractor parts and electric motors were exigible to tax at 5 per cent.

Our answer to the second question is:

On the facts and in the circumstances of the case, the assessing officer was justified in assessing the turnover of sale of tractor parts and electric motors at 7 per cent.

The assessee went unrepresented. We would accordingly direct parties to bear their own costs of the references.

Panda, J.

I agree.