

Director of Entry Tax and ors. Vs. Mahindra and Mahindra and anr.

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Court : Supreme Court of India

Decided On : May-02-2001

Reported in : JT2001(5)SC544; (2003)11SCC749

Judge : S.P. Bharucha,; N. Santosh Hegde and; Y.K. Sabharwal, JJ.

Acts : Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 - Sections 19

Appeal No. : Civil Appeals Nos. 4164-4166 of 1996

Appellant : Director of Entry Tax and ors.

Respondent : Mahindra and Mahindra and anr.

Disposition : Appeal allowed

Judgement :

Acts/Rules/Orders:

Taxes on Entry of Goods into Calcutta Metropolitan Area Act, 1972 - Section 19

Disposition:

Appeal allowed

ORDER

1. The Taxes of Entry of Goods into Calcutta Metropolitan Area Act, 1972 imposes a levy on the entry of specified goods into the Calcutta Metropolitan Area 'for consumption, use or sale therein...'. Section 19 of the Act provides for refund of the tax where the prescribed authority is satisfied that any specified goods upon which the tax had been paid, had been exported or conveyed out of the Calcutta Metropolitan Area within a period of six months from the date of their entry therein 'without being consumed, used or sold therein'. Rule 14(4) deals with the exemption from the levy of the tax of goods brought into the Calcutta Metropolitan Area for the purposes of exhibitions organised by local authorities or organisations approved by the State Government, if the conditions therein stated are satisfied.

2. The respondents proposed to bring within the Calcutta Metropolitan Area an Heidelberg Four Colour Sheet-fed Offset Press, model MOV, for the purposes of exhibition. They applied for exemption from payment of the tax under Rule 14(4). The application was rejected. The tax was then paid. The said machine was exhibited and, in the words of the affidavit filed on behalf of the respondents in this Court: 'Those who were interested in these machines, wanted demonstration. It was demon strated'. The respondents then wanted to remove the said machine from the Calcutta Metropolitan Area within six months of its entry therein and applied for a refund of the tax paid thereon under the provisions of Section 19. The application ultimately came to be heard by the West Bengal Taxation Tribunal. By the order that is impugned in this appeal by special leave, the application was allowed. The Tribunal took the view that, for the purposes of Sections 6 and 19, a demonstration for promoting business interests but without charging any fees for such demonstration could not be treated as 'use'.

3. The conclusion of the Tribunal has been assailed on behalf of the appellants on two grounds but, having regard to the view that we take, it is necessary to refer only to one ground, namely, that the said machine had been used within the Calcutta Metropolitan Area and that, therefore, the refund under Section 19 was not available. Learned Counsel for the respondents submitted that the said machine had not been utilised for the purpose for which it was intended and that, therefore, there was no use within the meaning of Section 19.

4. We are unable to accept the submission on behalf of the respondents. This is not a case where a machine had only been displayed. As the affidavit on behalf of the respondents makes clear, a demonstration of the said machine was sought and it was given. In other words, the machine was started up and its working was shown. It was, therefore, used and it is of no consequence that the use was not for the purpose for which it was made. Its use being established, the provisions of Section 19 do not permit the refund. That the demonstration was free of charge does not make any difference to this position.

5. Accordingly, the appeals are allowed and the judgment and order under appeal is allowed.

6. No order as to cost.

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