

The State of Gujarat Vs. Gujarat Engineering Company

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Court : Gujarat

Decided On : Jun-25-1973

Reported in : [1974]33STC302(Guj)

Judge : A.D. Desai and; B.K. Mehta, JJ.

Acts : Bombay Sales Tax Act, 1959

Appeal No. : Sales Tax Reference No. 15 of 1970

Appellant : The State of Gujarat

Respondent : Gujarat Engineering Company

Advocate for Def. : Ghanshyam Pandit, Adv.

Advocate for Pet/Ap. : G.N. Desai, Govt. Pleader, i/b.,; H.V. Chhatrapati, Adv. of Bhaishanker Kanga & Girdharlal, Govt.

Judgement :

Mehta, J.

1. The following question has been referred to us for our opinion by the Gujarat Sales Tax Tribunal :

'Whether, on the facts and in the circumstances of the case, for the purpose of levy of tax, oil engines prior to 14th March, 1960, and spare parts thereof prior to

27th September, 1960, fall under entry 15 of Schedule C to the Bombay Sales Tax Act, 1959, or fall under entry 22 of Schedule E to the said Act ?'

2. The question arises in the following circumstances :

The opponent-firm is a partnership firm dealing in manufacture and sale of oil engines and spare parts thereof. It is registered under the Bombay Sales Tax Act, 1959. It was assessed for two periods, viz., (i) 1st January, 1960, to 31st March, 1960, and (ii) 1st April, 1960, to 31st March, 1961, by separate assessment orders passed by the Sales Tax Officer, holding that oil engines and spare parts therefore are covered by entry No. 15 of Schedule C to the Act. The Assistant Commissioner of Sales Tax initiated suo motu revision proceedings against this assessment and held that the oil engines and spare parts thereof prior to the aforesaid respective dates were covered by the residuary entry No. 22 of Schedule E to the Act.

3. Being aggrieved with the said order of assessment, the opponent-firm took the matter in revision before the Gujarat Sales Tax Tribunal, which, following the ratio of the decision of this court in *Industrial Machinery Manufacturers Private Limited v. State of Gujarat* ([1965] 16 S.T.C. 380), held that the goods in question would be liable to pay tax under entry No. 15 of Schedule C. At the instance of the State, the above question is referred to us for our opinion.

4. At the relevant time of assessment, entry No. 15 read as under :

'15. Machinery used in the manufacture of goods, and spare parts and accessories thereof, but not machinery and spare parts and accessories thereof specified in any other entry in this or any other schedule.'

5. It was contended on behalf of the State that the entry in question presupposes that there must be actual user of the machinery for purposes of manufacturing goods, as the machinery may be put to different uses according to the exigencies of the case. In the particular case before the Tribunal, it was urged on behalf of the revenue that the oil engines would not necessarily be required to be used for purposes of manufacturing goods, but should be as well be put to uses other than

manufacturing of goods, namely, lifting of water from the well, etc. On behalf of the assessee-opponent-firm herein, it was contended that there is no warrant for reading the entry in the manner in which it has been urged on behalf of the State. If the machinery is one, which could be used for the manufacturing of goods, it should be considered sufficient to attract the tax under entry No. 15.

6. The particular entry, in our opinion, covers those cases of machinery and accessories and spare parts, which are not specified in any other entry in Schedule C or those in any other schedule to the aforesaid Act. It is, therefore, a residuary entry for the purpose of these goods. However, it was contended on behalf of the revenue that though this is a residuary entry, none the less it has been circumscribed, inasmuch as all and every kind of machinery are not contemplated but those machineries which are used for purposes of manufacturing of goods are only envisaged to be covered under entry No. 15. It was, therefore, urged that unless the machinery is actually used for the manufacturing of goods, entry No. 15 is not attracted and, consequently, there being no other provision to tax such goods, entry No. 22 to Schedule E will apply. We are not inclined to accept this contention on behalf of the State as, in our opinion, there is no warrant to equate the word 'use' in entry No. 15 to the actual user. The question of the width and scope of entry No. 15 had arisen in *Industrial Machinery . v. The State of Gujarat* ([1965] 16 S.T.C. 380), wherein the Division Bench of this Court, consisting of J. M. Shelat, C.J. (as he then was), and Bhagwati, J. (as he then was), was called upon to decide, whether humidifiers used in textile mills are machinery used in manufacturing goods within the terms of entry 15 of Schedule C. This court, in that case, observed after referring to the decision of the Privy Council in *Corporation of Calcutta v. Cossipore Municipality* ([A.I.R. 1922 P.C. 27]), as under :

'..... on a plain and natural construction of the words 'machinery used in the manufacture of goods' what is comprehended within entry 15 of Schedule C is machinery which is used in the actual process of manufacture of goods. But we cannot agree with him when he says that humidifiers are not used in the actual process of manufacture of cloth. Manufacture of goods means the process of converting raw materials into finished goods and whatever machinery is required

for converting raw materials into finished goods would be machinery used in the manufacture of such goods. Every item of machinery which has a use in the manufacture of finished goods, which plays some role in the process of manufacture of finished goods and without which manufacture of finished goods would not be possible would be machinery used in the manufacture of such goods. Such machinery would be an essential and integral part of the plant which manufactures finished goods and would certainly satisfy the description that it is machinery used in the manufacture of finished goods. If this test be applied, it is clear that humidifiers are machinery used in the manufacture of cloth'

7. There is no doubt, in our mind, that the oil engines are machinery.

8. The next question is, whether they are such, that they can be used in manufacturing goods. The Division Bench in *Industrial Machinery . v. The State of Gujarat* ([1965] 16 S.T.C. 380), clearly rejected the contention that the machinery must be such that they are meant for actual process of manufacturing goods. The Division Bench has clearly ruled that every item of machinery which has a use in the manufacture of finished goods, which plays some role in the process of manufacture of finished goods, and without which manufacture of finished goods would not be possible, would be machinery used in the manufacture of such goods. There cannot be any doubt on the question that without oil engines the energy cannot be generated, and which energy would be necessary in the process of manufacture; in other words, the Division Bench has held that the actual user is not contemplated as contended by the revenue.

9. On behalf of the revenue, three decisions have been cited in support of its contention. The first is of *Madhya Pradesh State Co-operative Marketing Society, Jabalpur v. Commissioner of Sales Tax, M.P., Indore* ([1971] 27 S.T.C. 45). The second decision is of this court in *Vicas Tractors v. Commissioner of Sales Tax* ([1971] 27 S.T.C. 203), and the third decision is of the *Maharashtra High Court in Pashabhai Patel & Co. v. Collector of Sales Tax* ([1964] 15. S.T.C. 32). In our opinion, as all these three decisions are concerned with the respective questions arising in these cases under the specific entry of agricultural implements, they are not useful for the purposes of construing the width and scope of entry No. 15 of

Schedule C to the aforesaid Act, with which we are concerned here and which is, as stated, more or less a residuary entry as far as the case of machinery and other spare parts and accessories are concerned. The Tribunal was also right when it considered the development of this entry for purposes of appreciating the legislative intent. By subsequent amendment, the State Legislature by way of a greater caution clarified by inserting sub-entry (2) under entry No. 15 and making the original entry No. 15 as sub-entry (1) and covered also the oil engines and electrical motors other than those adapted for use in motor vehicles. In this state of affairs, therefore, we answer the question raised as under :

'On the facts and in the circumstances of the case, oil engines prior to 14th March, 1960, and spare parts thereof prior to 27th September, 1960, fall under entry 15 of Schedule C to the Bombay Sales Tax Act, 1959, for purposes of levy of tax.'

10. There should be no order as to costs in this reference.

11. Reference answered accordingly.

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