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The State of Tamil Nadu Vs. Binny's Engineering Works Ltd.

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Court : Chennai

Decided On : Jul-09-1973

Reported in : [1975]35STC260(Mad)

Judge : Ramanujam and ;V. Ramaswami, JJ.

Appeal No. : Tax Case No. 432 of 1969 (Revision No. 306 of 1969)

Appellant : The State of Tamil Nadu

Respondent : Binny's Engineering Works Ltd.

Advocate for Def. : V. Nataraj and ; S. Ramasubramaniam, Advs. ;for King and ; Partridge, Advs.

Advocate for Pet/Ap. : K. Venkataswami, the First Assistant Government Pleader (Tax)

Judgement :

Ramanujam, J.

1. The assessees in this case had effected sales of refreshments in the canteen run by them for the benefit of their employees in discharge of their obligation under the Factories Act, in the assessment year 1965-66. They had also manufactured and sold switch boxes with the inscription '60 amps. 660 volts (English Electrical) combination fuse switch' to the English Electric Company to the extent of Rs.

6,64,155.18. In respect of the canteen sales, the assessees disputed their liability to tax on the ground that the running of canteen is not with a view to earn profit and that, therefore, the sales effected in the canteen are not taxable sales. As regards the sales turnover of fuse switches, the assessees claimed concessional rate of tax under Section 3(3) of the Madras General Sales Tax Act and they have also filed a declaration form in form No. XVII in respect of their said claim. The assessing authority did not accept the assessees' claim for exemption of canteen sales. He also held that the sales turnover of switch boxes are liable to be taxed at multi-point and not at the concessional rate of 1 per cent or 11/2 per cent, as the case may be, under Section 3(3). This view of the assessing authority was upheld by the Appellate Assistant Commissioner. But on a further appeal to the Tribunal, the assessees have succeeded in respect of both the claims. Aggrieved against the decision of the Tribunal, the revenue has come before us.

2. It is contended on behalf of the revenue that the decision of the Tribunal that sales of refreshments of the canteen are not taxable is no longer legally tenable in view of the decision of the Supreme Court in State of Tamil Nadu v. Burmah Shell Company Ltd. [1973] 31 S.T.C. 426 We have to accept the contention of the revenue in this regard. The Supreme Court in the above decision has categorically laid down that after the amendment of the definition of 'business' in Section 2(d) by Madras Act 15 of 1964, such sales could legally be taxed. It is however contended by the learned counsel for the assessees that the Government has exempted canteen sales by G. O. No. 2238 dated 1st September, 1964, subject to certain terms and conditions and that the question of applicability of the said G. 0. to the assessees' canteen sales has not been gone into by the Tribunal and, therefore, even on the basis of the decision of the Supreme Court in State of Tamil Nadu v. Burmah Shell Company Ltd. [1973] 31 S.T.C. 426 that aspect has to be considered. We therefore set aside the order of the Tribunal in this respect with a direction to consider the applicability of the said G. O. granting exemption in relation to canteen sales in the assessees' case.

3. As regards the turnover relating to sales of switch boxes, it is pointed out by the revenue that the applicability of Section 3(3) will arise only when three conditions are satisfied, that is, (1) the goods should be those mentioned in the First

Schedule, (2) the sale must be to another dealer, and (3) the goods sold should be for the use by the purchaser as component parts of any other goods mentioned in the First Schedule which he intends to manufacture inside the State for sale, and that in this case, the first condition has not been satisfied. It is pointed out by the learned Government Pleader that the switch boxes manufactured and sold by the assessees have not been specifically shown as one of the items coming within the First Schedule. The switch box in question though not specifically mentioned in item 41 of the First Schedule as an independent article, it can be taken to come within the words 'component parts' occurring in the first part of item No. 41, which is as follows :

All electrical goods, machinery, instruments, apparatus, appliances, accessories and component parts (either sold as a whole or in parts), including fans, lighting bulbs, electrical earthernwares, porcelain.

4. It is true that the fuse switch boxes have not been specifically referred to in that item. But it cannot be disputed that it forms component part of electrical goods. We have to therefore take the switch boxes sold by the assessees as falling under the first part of item No. 41. The learned Government Pleader does not dispute the fact that the other two factors necessary for the application of Section 3(3) are satisfied in this case. The sale has been to a registered dealer and the fuse switch boxes have been used by the purchasing dealer as component parts of the electrical goods manufactured by them. We have to therefore uphold the view of the Tribunal as regards this item.

5. The result is that the tax case is partly allowed and the order of the Tribunal is partly set aside as regards the canteen sales. The matter is remitted for the limited purpose of considering whether the assessees are entitled to the benefit of the G. O. referred to above. There will be no order as to costs.

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