(2008) 09 AHC CK 0038

In the Allahabad High Court

Abbot Forge (P) Ltd. APPELLANT

Vs

The Commissioner of Trade Tax RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:
Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2008) 09 AHC CK 0038

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Judgement

Prakash Krishna, J.—The applicant, a ''dealer'' under U.P. Trade Tax Act of ''boiler'', has filed the present revision u/s 11 of U.P. Trade Tax Act against the order passed by the Trade Tax Tribunal in second appeal No. 385 of 1997.

2. The dispute relates to the assessment year 1993-94. The only point mooted in the present revision is whether the ''boiler'' is taxable as "machinery and spare parts of the machinery" under notification No. ST- II-6562/x dated 22-9-1986 at the rate of 5% at the point of manufacturer or importer.

3. The case as set out by the applicant is that ''boiler'' falls under entry of ''machinery and spare parts of machinery...''and is liable to be taxed at the rate of 5%. The said case has not been found favour with any of the authorities below including the Tribunal. It has been held by them that main function of ''boiler'' is to generate steam energy so that a machine may be operated. By itself a ''boiler'' is not a ''machinery'' and, therefore, liable to be taxed as unclassified item.

4. In the memo of revision, the lone question which has been framed is as follows:

Whether in view of the facts and in the circumstances the Tribunal is legally justified in holding that the boiler is not machinery liable to tax as an unclassified item ?

5. Sri Nishant Misra, Advocate appearing on behalf of the applicant submits that in view of Full Bench decision of this Court in Engineering Traders v. State of U.P. (1973) 32 S.T.C. 456 : 1973 UPTC 91, a ''boiler'' is nothing but a ''machinery''. Further reliance has been placed on another decision of this Court in Commissioner, Sales Tax, U.P. v. Uma Shanker Persad and Co. 1980 (46) SCC 295 wherein it has been held that Bhathi (air blowing instrument) falls within the category of ''machinery'' taxable at the rate of 6% under notification dated 1-10-1965.

6. In contra, learned Standing Counsel submits that ''boiler'' is not a ''machinery'' as in it water is converted into steam by heating process and as such, it is liable to be taxed as unclassified item.

7. Considered the respective submissions of the learned Counsel for the parties and persued the record.

8. Before addressing the issue, it-is desirable to understand the import of word ''machinery'' as judicially held from time to time. So far as this Court is concerned, the word ''machinery'' has been defined in the afore stated Full Bench decision of this Court in Engineering Traders (supra) wherein it has been held as follows:

Machinery according to the dictionary meaning means a machinery in general or a functioning unit. The word ''machine'' is a well known term and according to Websters Dictionary means an instrument (as a lever) design to transmit and modify the application of power, force and motion. Thus machinery in generic sense would include all appliance 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.

9. In Cuttack Municipality V. Executive Engineer, S.E., Board ILR 1975 Cut 1365: 1975 C LR (Cri)346 it has been held that machine is an appliance and apparatus for applying mechanical powers, having several parts, each with definite functions. A machine is a device meant to convert a slow motion at some point into a more rapid motion at the other desired point or the device to convert rotatory motion into linear motion or the device to step down electricity of higher voltage into a lower voltage. An electrical transformer being a device to change voltage and current in the electrical circuit from one voltage to another is, therefore, a machine.

10. ''Machine'' means a mechanical device consisting of a planned and organised arrangement of a various parts, each part having definite functions and as a result of combined functioning some work, which may be impossible or difficult for human physical power to perform or even if it can be done, it cannot be done continuously for a long period or with the speed and with the same uniformity with which the machine does the same work. Supply of power to the machine could be either by the natural forces or by human or animal energy or electric

energy or any other type of energy (K.B. Dani v. State of Karnataka (1979)1 K LJ 286 (DB).

11. Machinery includes all the working parts of a machine, engine or instrument regulated by force. The term implies the applications of mechanical means to the attainments of some particular end by the help of natural forces. It also denotes machines, works of a machine, mechanism, contrivances, etc.

12. A diesel engine is machinery, and it continued to be machinery even after it is made an integral part of the bus.. Mir Mohamad Ali, Bus Owner, Vellore Vs. Commissioner of Income Tax, Madras,

13. The Privy Council in the case of Nemichand v. Radhakrishna AIR 1922 PC 27 has adopted following definition of ''machinery'':

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 to definite and specific result.

14. The aforestated definition of ''machinery'' has been adopted by the Apex Court in CIT Madras v. Mir Mohammad Ali AIR 1964 SC 1693. It has been noticed by the Apex Court that definition of ''machinery'' as given by the Privy Council in the aforestated case was in respect of a non fiscal statute.

15. Any mechanical contrivance where energy is transmitted from one point to another has been held to be ''machinery''.

16. In Om Engineering Co. (P) Ltd. v. C.S.T. U.P. (1976) 38 STC 553 it has been held that a hand pump used in lifting water is ''machinery''.

''Machinery'' denotes some mechanical contrivance which, by itself or in combination with other mechanical devices generate power or evoke, modify, apply or direct natural forces and effect a definite and a specific result as held in R.M.E. Works v. C.S.T. 1976 MPLJ 244.

17. In Commissioner of Trade Tax v. Elmech Engineers, Kanpur 2005 UPTC 1030 it has been held that the generators sold by the dealer will fall within the entry of ''machinery''.

18. In Strouds Judicial Dictionary, ''machinery'' has been defined as follows:

''Machinery'' implies the application of mechanical means to the attainment of some particular end by the help of natural forces; ''operative machinery'' means machinery with the potentiality of operating or doing work.

19. In Corpus Juris Secundum, the expressions ''machinery'' has been defined as under:

''Machinery'' is a work of common and everyday use. Primarily it may be defined as the works of a machine; the means and appliances by which anything is kept in action; the mechanism or works of a machine or machines; the working parts of a machine, engine, or instrument. Then it may also be defined as machines in general or collectively; the parts of a machine or engine, or a number of machines and kindred appliances, taken collectively; the combination of the several parts to put it in motion; any complex system of means and appliances; any combination of means working together.

20. In Encyclopedia Britannica, words ''machinery'' has been defined as under:

Machine'' The operation of machine may involve transformation of chemical, thermal. electrical or nuclear energy into mechanical energy. Its function may simply to modify and transmit forces and motions.

21. In Americana Encyclopedia, the words ''machinery'' and ''boiler'' have been defined as under:

''Machine'' A device for producing useful work, composed of combinations of rigid or resistant link formed and Connected in order to alter, transmit and direct the application of force in a predetermined way.

22. Now let us examine what a ''boiler'' is:

''Boiler1 has been defined under Indian Boiler Act, 1923 as a closed vessel exceeding specified capacity which is used expressly for generating steam under pressure and includes any mounting or other fitting attached to such vessel, which is wholly or partly under pressure when steam is shut off.

23. In Strouds Judicial Dictionary, ''boiler'' has been defined as follows:

''Boiler'' popularly means, in which steam is generated and also includes the conveying pipe and the receiver i.e. the whole machine in which the steam was held until liberated for some other purpose.

24. In Corpus Juris Secundum, the expressions ''boiler'' has been defined as under:

''Boiler'' -As commonly used, the word has been defined as meaning any vessel in which water or other liquids or semiliquids may be raised to ebullition by bead- In steam engineering, a vessel constructed to hold and sustain an internal pressure, in which, by the application of heat, steam is generated and raised to or above the pressure of the atmosphere, for the purpose of utilizing its intensive energy for the production of mechanical work, for supplying heat by conduction of the steam, and for a number of applications in the industrial arts. In particular connections, the term has been defined by statute or by contract as any vessel which is used for the generation of steam; and, depending on the context and circumstances of its use, it has been held to include, or to exclude, particular pipes and connections attached thereto.

25. In Encyclopedia Britannica, words ''boiler'' has been defined as under:

''Boiler'' called steam generator, apparatus designed to convert liquid to vapour. In a conventional steam plant, a boiler consists of furnace in which fuel is burnt surfaces to transmit heat from combustion products to the water and space where steam can form and collect.

26. In Americana Encyclopedia the word ''boiler'' has been defined as under:

''Boiler'' A pressure vessel in which water is converted to steam by the application of heat. A wooden boiler generally consists of a circuit of metal tubes supplied with water. The tubes are placed and arranged to present a maximum surface to a beat source, usually a combustion chamber where fuel is burnt.

27. The authorities below have refused to treat the ''boiler'' as ''machinery'' on the ground that ''boiler'' is not such appliance and instrument in which energy or force is applied on one point and such energy or force is transmitted or transformed to another point. In ''boiler'', according to them, only steam is generated and, therefore, it does not fall within the entry of ''machinery'' as held by the Tribunal.

28. ''Boiler'' as commonly understood means a vessel where water is heated and the water is converted into steam.

Conceptually, ''generator'' is different from ''machinery''. Various judicial meanings assigned to ''machinery'', as noticed above, show that it means an ''instrument''. An ''instalment'' is designed to transmit and modify the application of power, force and motion. As held by Full Bench of this Court in the case of Engineering Traders (supra), a lever'' is a ''machinery''. To construe an article as a ''machinery'', it is essential that there should be transmission or modification of the application of power, force and motion. This is not so in the case of a ''boiler''. Various definitions assigned to ''boiler'' imply that it is a ''vessel'' in which water or liquid or semi liquids arc heated and steam is generated. In other words, liquid is converted into vapour. The essential characteristic of machinery i.e. existence of lever or transmission and modification of application of power, force and motion lack in the case of a "boiler".

29. Apart from the above, as held by Privy Council in the case of Nemichand (supra), ''machinery'' prima facie means ''mechanical contrivances''. ''Boiler'' on the other hand, to simplify, may be equated with a ''pressure cooker'' used in household for cooking purposes. There is no mechanical contrivances nor there is any combination with one or more other mechanical contrivances in the case of a ''boiler''. ''Boiler'' in simple term is understood in the sense of a Vessel'' where liquid is converted into gas by the process of heating. In my considered view, a ''boiler'' by itself is not a ''machinery'' or ''machinery part''.

30. In view of the above, I concur with the view taken by the Tribunal that ''boiler'' is not a ''machinery''. It is held that ''boiler'' is liable to be taxed as unclassified item in the assessment year in question.

31. There is no merit in the revision.

32. It is dismissed but no order as to costs.

