

(2009) 02 SC CK 0188

In the Supreme Court Of India

Case No : Civil Appeal No. 1311 of 2009 (Arising out of S.L.P. (C) No. 5190 of 2008)

Addison and Co. Ltd.

APPELLANT

Vs

State of Karnataka rep. by Commr., Com. Taxes

RESPONDENT

Date of Decision : 26-02-2009

Acts Referred:

Citation : (2009) 13 SCC 368 : (2009) 11 Vat Reporter 97 : (2009) 23 VST 5

Hon'ble Judges : S. H. Kapadia, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. The short question which arises for determination in this Civil Appeal is: Whether the subject tools are in the nature of accessories to machines and, therefore, liable to entry tax?

3. The main submission of the appellant before us was that the said tools are consumables and, therefore, they cannot be part(s) of the machine nor can they be termed as "accessories". It was submitted that machines like lathe machines and drilling machines are not capable of performing any functions without the subject tools. Before us, it was further submitted that the subject tools are rendered useless after they are used for certain number of times. It is also pointed out that in the past, prior to Assessment Year 2000-2001, the Department has accepted that the test of whether the subject tools constituted consumables was applied by the Department as the relevant test in interpreting Entry 52 of the First Schedule to the Karnataka Tax on Entry of Goods Act, 1979.

4. On the other hand, it is argued on behalf of the Department that the subject tools are part of the machine and that, in any event, they are accessories. It is also contended that the test of an item being consumable is not relevant in interpreting the said Entry 52.

5. We quote herein-below Entry 52 of the First Schedule to the 1979 Act:

52. Machinery (all kinds) and parts and accessories thereof but excluding agricultural machinery.

6. On going through the pleadings, particularly at pages 51, 59 and 105 of the SLP paper book, we find that all throughout it was argued before the Authorities below, in this case, that without subject tools the lathe and drilling machines are non- functional.

7. As repeatedly stated in our earlier judgments, in matters of interpretation of taxing laws, this Court must first find out whether a proper foundation is established by the assessee/Department before the adjudicating authority. This test has not been complied with by the assessee in the present case. For example, assessee has stated at page 59 of the SLP paper book that "the subject tools cannot be termed as parts of the machine since the machine can very well function without the said tools, though the machine may not be in a position to carry out the specific jobs for which these tools would be necessary. It is further stated that the subject tools are necessary for a machine to carry out specific jobs but that fact would not make them parts of the machine."

8. As stated, what was argued before us was that lathe and drilling machines are non-functional without subject tools whereas in the above paras before the Authorities below, the assessee submitted that lathe and drilling machines can function without the subject tools. We may also note that the assessee has not led evidence before the adjudicating authority to show whether the lathe and drilling machines were non-functional in the absence of the subject tools.

9. For the aforestated reasons, we find no infirmity in the impugned judgment of the High Court and the Tribunal and, accordingly, we dismiss this Civil Appeal which, as stated above, relates to Assessment Year 2000-2001.

10. Be that as it may, we are of the view that it would be open to the assessee herein to raise the contention as to whether the subject tools are consumables and not accessories/parts of machine in an appropriate case(s). The reason being that Authorities need to decide as to what distinguishes a consumable from an accessory. If the assessee raises such a contention as is raised before us in this Appeal, the authority shall consider the contention in accordance with law, uninfluenced by the observations made in the impugned judgment of the High Court and the Tribunal in this case. We also make it clear that in such an event, it would be open to the assessee herein and to the Department to raise all such contentions which are necessary for deciding this dispute, including the contentions mentioned hereinabove.

11. Subject to above, Civil Appeal is dismissed. No order as to costs.