
(2007) 09 KAR CK 0087
In the Karnataka High Court
Case No : C.R.P. No. 457 of 2006

Addison and Co. Ltd. represented herein by its Company
Secretary, Mr. T. Sampath Kumar

APPELLANT

Vs

State of Karnataka represented by the Commissioner of
Commercial Taxes

RESPONDENT

Date of Decision : 14-09-2007

Acts Referred:

Citation : (2007) 09 KAR CK 0087

Hon'ble Judges : Arali Nagaraj, J.;V. Gopala Gowda, J.

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This revision petition is filed by the assessee questioning the correctness of the order dated 31.8.2005 passed in STA No. 2375/2004 in dismissing the appeal and confirming the order of the Assessing Authority by framing the following three questions of law and urging various grounds in support of the same and prayed to answer the questions of law in favour of the assessee:

Whether on the facts, in the circumstances and on the contentions taken, the Tribunal was right in:

(1) Holding that the subject tools were in the nature of accessories to machinery and therefore liable to entry-tax?

(2) Differing from its previous order rendered in the petitioner's case for the earlier assessment years on "ex facie" wrong premise and in any case, in violation of Regulation 54 of the Regulations? And

(3) Altogether ignoring the settled position of law that if a particular practice or position had been accepted by the Revenue for a long number of years, the same cannot be departed from - more so when there is no change in the legal position or classification of goods and the Tribunal's later order for 1997-98 and 1998-99

has been accepted by the Revenue?

2. The brief facts are stated in this order for the purpose of appreciating the rival legal contentions urged by me learned Sr. counsel and AGA for the parties with a view to answer the questions of law raised in this revision petition. The assessee is engaged in the manufacture of Engineer's Cutting Tools like twist drills, reamers, cutters, taps etc. (small tools or cutting tools for short). Its factory is located in Madras with sales offices in some cities including Bangalore. The assessee gets goods on stock transfer for sale in Karnataka. According to the assessee the goods are commercially understood as consumable by their very nature as they need frequent replacement due to wear and tear and breakage and their life is very short and the goods are used for turning out specific jobs like drilling a hole or enlarging an existing hole or to give a specific shape or form to any metal etc. These are independent finished goods by themselves and depending upon the requirement or nature of the job a particular tool has to be temporarily fixed to a machine so that the machine turns out the required job with the aid of the tool fixed. These tools are commercially regarded as consumables and normally charged off at the point of issue and not taken to stores or stock account. The petitioner's regular customers are BEML, GTRE, NGEF, MICO, MEI, BFW and others who have regarded the tools as consumables.

2A. The respondent in relation to the past assessment years 1982-83 to 1996-97 has not considered these goods as machinery parts or accessories in order to levy entry-tax. But after due consideration, the respondent, in the course of assessment held that the small machine tools dealt by the assessee are not parts and accessories of machinery and not liable to entry-tax. Therefore, the assessee has not effected any purchases of scheduled goods liable to tax under the KTEG Act. It is further stated that the Commissioner of Commercial Taxes clarified through its circulars with regard to the above factual position. It is the further case of the assessee that contrary to the assessment orders passed by various Assessing Officers for the years 1982-83 and 1996-97, the Assessing Officer proposed to record the goods of the assessee as machinery parts or accessories and levied tax at 2% under the provisions of the KTEG Act, which was objected by the assessee by producing aforesaid earlier assessment orders, the same was not taken into consideration by them at the time of passing assessment order. Aggrieved by the said order, the assessee filed appeals before the Joint Commissioner of Commercial Taxes (Appeals) which was dismissed by order dated 21.7.2004. Therefore, it had filed second appeal before the Karnataka Appellate Tribunal ("KAT" for short) in STA No. 2375/2004. The said appeal was dismissed by the KAT by its order dated 31.8.2005. It is its case that the Tribunal after discussing the legal contentions raised in appeals, the finding of the Assessing Officer and the First Appellate Authority who have held that the tools in question are parts of machinery falling under Entry 52 of 1 Schedule of KTEG Act. The Tribunal passed the judgment dt. 13/8/2002 in Appeal Nos. 1258 and 1259/2001, against the common order dt. 25/9/2001 passed by Joint Commissioner of Commercial Taxes (Appeals), Bangalore City Division No. 1, in

KTEG Appeal Nos. 16 and 23/2001-2002 by confirming the assessment orders for the years 1997-98 and 1998-99 dt. 3/4/2001 and 9/4/2001 by the Deputy Commissioner of Commercial Taxes (Assessments-14) placing reliance upon Entry No. 1 (III)(e) of part M of II Schedule of KST Act, which defined as parts of machinery and the same would be the meaning for the purpose of the Entry 52 of 1 schedule of the KTEG Act. He further stated that the description of the goods given in the schedules grouping the same goods in one Entry with special entries could not be held as definition of goods. Therefore, the Tribunal held that the machinery tools are specifically covered by sub-entry (III)(e) of Entry No. 1 of Part M of II Schedule of KST Act and not covered by sub-entry (III)(a) itself. There was no necessity to cover them under another special entry. It is further contended by the learned Sr. counsel that the revenue accepted the aforesaid legal position for 15 years. Therefore, there was no logic much less merit to depart from the practice by me Revenue, particularly when there is no change in the legal position or classification of goods. Further, the Tribunal in the above judgment in respect of earlier assessment orders has distinguished the terms "consumables" and "parts and accessories" while answering the legal contention raised in the aforesaid appeals of the Assessee and held that the tools in question are independent finished goods and having regard to the nature of the tools and use for specific purpose, it has rightly held that they are consumables and not parts of machinery as per Entry No. 52 of the KTEG Act and therefore, they are not liable to pay entry tax to the department.

2B. It is further contended that, that being the legal position, again the Assessing Officer for the assessment years 2000-01 proposed to refer me same goods as machinery parts and levied tax at 2%. The petitioner filed their objection statements to the proposed Entry Tax on 27.9.2002 vide its letter dated 26.9.2002 raising the aforesaid legal contentions and they requested the respondent not to levy the entry tax in respect of the goods in question and requested to drop the proceedings. It is the case of the assessee that despite the order of the Tribunal and objections filed by the assessee the Assessing Officer, without application of mind confirmed the proposal for levy of tax by 2% in respect of the goods vide its order 31.10.2002 for the assessment year 2000-01. The same is contrary to the law and practice adopted by the Revenue for a long number of years. Therefore, it had filed an appeal before the Joint Commissioner of Appeals. He has also affirmed the order without referring to the Tribunal's earlier order vide its order dated 21.7.2004 by dismissing the appeal, which order was challenged by the petitioner before the Tribunal. The Tribunal by passing the impugned order choose to differ from its earlier order which is contrary to regulation 54(a)(i) of the Karnataka Appellate Tribunal Regulations, 1979 (hereinafter referred to as the "Regulations") without referring the Appeal to the larger Bench as required under the aforesaid Regulation, if, the same co-ordination bench has intended to differ with its earlier decision on the same point. Therefore, aggrieved by the said order, the present revision is filed by the petitioner framing the aforesaid questions of law.

3. In support of the said legal questions of law, learned Senior counsel Mr. K.P. Kumar placed reliance upon the following decisions in support of the question of law framed in this petition and contended that if it is settled position of law, that if a position or practice which has been adopted by me revenue for a long number of years, the revenue cannot be permitted to detract from it, more so when there is no change in me legal position and classification of goods:

1. Pioneer Enterprises Vs. Joint Commissioner of Commercial Taxes (Appeals) and Another,

2. 2001 (50) Kar. L.J. 92 in the case of Commercial Tax Officer (Intelligence) No. IV, Enforcement Wing, Hyderabad v. Ki-Hi-Tech Secure Print Limited.

3. Commissioner of Wealth Tax Vs. Allied Finance Pvt. Ltd.,

4. Merind Ltd. Vs. State of Maharashtra,

2001 ITR 251 5. 50 in the case of Lalludas Children Trust v. Commissioner of Income-Tax

6. 2001 122 STC 316 in the case of Shri Binayendra Lal Roy and Ors. v. State of Tripura and Ors.

It is urged by him that in such a situation, the revenue cannot take separate view that this assessment is an independent unit and the principle of *res judicata* is not applicable. Therefore, the learned Sr. counsel for the assessee has submitted that question Nos. 1 and 3 are required to be answered in favour of the assessee. In support of question No. 2, placing strong reliance upon Regulation 54(a) of the Regulations, it is contended by the learned Senior counsel that the Tribunal for the earlier assessment years 1982-83 to 1996-97 and 1998-99 having taken a particular view on the point that the goods of me assessee are not covered by words "accessories" mentioned in Entry 52 of the Schedule of the KTEG Act. He further contended that if the members of the Bench differ from the previous order of the Tribunal, the matter should have been referred to the Chairman of the KAT for placing it before a Full Bench and it is impermissible to the Bench to suo moto differ from the other Bench's order on the same legal question and decide any matter in a manner as to create a conflict between the orders of co-ordinate benches of the Tribunal. It is contended by the learned Sr. counsel that that has not been done by it in the instant case. Therefore, the learned Senior Counsel submits that question No. 2 also arises for our consideration and requires to be answered in favour of the assessee.

3A. The learned Senior counsel submits that having regard to the factual position that over a period of 20 years, the revenue has accepted that the goods in question are not accessories and they do not fall under Entry 52 of Schedule of the KTEG Act. Therefore, it did not collect tax from the purchasers for the assessment year in question. The Tribunal has taken a different view in the matter contrary to the well established practice adopted by the Revenue by not

following the view taken by the Tribunal for the earlier assessment orders wherein it had held that the goods in question are not accessories, Therefore, it is contended that they are not machineries as mentioned in Entry No. 52 of the KTEG Act and therefore it has challenged the assessment order, This aspect of the matter is not considered by the Tribunal and the same is contrary to the decisions of the Supreme Court and various High Courts referred to supra upon which strong reliance is placed by the learned Senior counsel and submits that great hardship would be caused if the questions of law framed in mis case are not answered in favour of the assessee.

4. Smt. S. Sujatha, the learned Additional Government Advocate has sought to justify the order of the Tribunal by placing reliance upon the entry mentioned at Sl. No. 52 of the Schedule of the KTEG Act and submits that the Assessing Officer having regard to the legal position laid down by the Division Bench of this Court on the basis of various decisions of the Apex Court in support of her legal contentions would submit that the accessories after interpretation of the aforesaid phrase and also considering Webster's Comprehensive Dictionary International Volume -1 the meaning of "accessory", this court has held that the accessory or accessories is a machinery as mentioned in the schedule. Therefore, she submits that the goods in question are not consumable as erroneously held by the Tribunal in its earlier order 13.8.2002 in KTEG 1258 and 1259/2001 for the assessment year 1997-98 and 98-99 placing reliance upon the entry No. 1(iii) (a) and (iii)(e) of part M to the Second Schedule to the KST Act without referring to the specific Entry No. 52 of the 1 Schedule of KTEG Act, which entry is comprehensive entry and it is a machinery of all kinds and parts and accessories including agricultural machinery. It is further contended by her that the Tribunal has mis-directed itself by placing strong reliance upon the Entry No. 1 of part M to the II Schedule of the KST Act when there is a specific entry in relation to the goods in question under the KTEG Act. Therefore, me order of the KAT for me earlier assessment years 1997-98 and 1998-99 is vitiated in law. That order of the KAT should have been challenged earlier by the revenue. No doubt, the same has not been challenged by it, but that cannot be used as a res judicata by the assessee as it causes prejudice and loss to the revenue. Therefore, she submits that the question Nos. 1 and 3 framed in this revision petition has to be answered against the revenue.

4A. Learned A.G.A. has elaborated her submissions by placing strong reliance upon the observations made by this Court in the unreported decision in the Writ Petition Nos. 12450-453/88 and 7046/89 disposed of on 23.7.1992, wherein this Court while examining the demand notice and assessment order for the assessment years 1982-83, 83-84 and 84-85, granting the relief in favour of the assessee, who is the petitioner in the said Writ Petitions after referring to the legal contentions as has been urged in this case that the goods are not accessories as they did not form part of machinery. With reference to the above said contention this Court made observations at para 3 which relevant portion will be referred to in the reasoning portion. Placing strong reliance by the same,

the learned AGA contends that the Assessing Officer after the matter was remanded did not comply with the observations made by this Court and passed an order of assessment in favour of the assessee holding that the goods in question are not machineries and accessories of the machine. Thereafter, a different view was taken by the Assessing Officer and the First Appellate Authority in the assessment orders for the assessment year 1998-99. In relation to the assessment orders for the above period, the KAT has passed the order on 13.8.2002 which is referred to supra by accepting the case pleaded by the assessee holding that the goods in question are not machineries by placing reliance on Entry 1(III)(e) of part M under the KST Act ignoring entry 52 of Schedule to KTEG Act which entry should have been considered and interpreted by the Tribunal. In this regard, the Commissioner was directed to file an affidavit and explain under what circumstances the assessment orders were passed and the order dated 13.8.2002 passed by the Tribunal was not challenged. Therefore, she submits that the question Nos. 1 and 3 do not arise for our consideration and the same are not required to be answered in favour of the assessee.

4B. The learned AGA rebutted the learned Senior counsel's submission in support of question No. 2 with reference to Regulation 54 Clause(1) of the Regulations contending that in view of the specific entry in the schedule to the KTEG Act and the decisions of the Supreme Court upon which strong reliance is placed by the two Division Bench decisions of this Court in the case of Pioneer Enterprises Vs. Joint Commissioner of Commercial Taxes (Appeals) and Another, and in the case of Premier Irrigation Equipments Pvt. Ltd. Vs. Assistant Commissioner of Commercial Taxes (Assessment-II), Bangalore and another, in which decisions various decisions of the Supreme Court and earlier decisions of this Court are referred to and held that the goods in question are accessories and therefore, the questions framed at 1 and 3 in this revision petition do not arise and therefore she has requested this court to answer the same against the assessee. She further submitted that the decisions upon which the learned Sr. counsel on behalf of the petitioner placed reliance with reference to the question No. 2 to place the matter before the Chairman of the KAT, by the members of the Bench with a request to refer the matter to a larger bench as they have substantially departed from previous decisions of the Tribunal in appeal Nos. 1258-1259/2001 dated 13.8.2002, in view of the Division Bench decisions of this Court wherein this Court followed the decision of the Supreme Court and held that the accessories in those goods are held to be the machinery which decisions are applicable to the facts and circumstances of the case. Therefore, she submits that on the basis of the judgment of the Supreme Court and this Court the earlier order of KAT is bad in law. Therefore, reliance placed upon Regulation 54-A Clause (1) of the Regulations, the contention urged on behalf of the petitioner that the question of law framed at "2" in this revision petition would arise for our consideration is only untenable in law.

5. After hearing the learned Sr. counsel and AGA on behalf of the parties at length, we have carefully examined the above rival legal contentions urged on

behalf of the parties with a view to consider and answer the above questions and we answer the same against the assessee for the following reasons:

5A. The learned AGA Smt. Sujatha has rightly placed strong reliance upon the observation made by this Court in the order passed by it in the aforesaid earlier Writ Petitions filed by the very same assessee challenging correctness of the assessment orders of years 1982-83, 83-84 and 84-85 and also the demand notice and similar legal contentions were urged in those petitions. With reference to the said contentions, this Court while granting the relief in favour of the assessee has made observation, which relevant portion is extracted as hereunder:

The contention advanced on behalf of the petitioner whether the goods in question form part of the machinery or not, require a due consideration by referring to the fact whether the machinery in question could be operated or is complete in itself without these small tools; or whether when the machinery is put to a particular use, it is absolutely necessary to use these small tools and without which, such operation cannot be carried out, or whether these small tools are used as consumables and whether that fact has any relevance to the question in issue, will have to be considered with reference to the factual situation. 5B. The contention advanced on behalf of the petitioner whether the goods in question form part of the machinery or not requires due consideration by referring to the fact whether the machinery in question could be operated without the goods in question or is complete in itself without these small tools or when the machinery are to put to a particular use, it is absolutely necessary to use these small tools and without which such operation cannot be carried out or whether these small tools are used as consumables and whether that fact has any relevance to the question in issue, will have to be considered with reference to the factual situation. It is an undisputed fact that after the order of remand passed by this Court in the writ petitions filed by the assessee, the Assessing Officer has accepted the factual and legal submissions made contending that the goods in question are not accessories and they are not machineries and this is the factual position till 1996-97 assessment years. The Assessing Officer and the First Appellate Authority has taken a different and contrary view to the view taken by the earlier Assessing Officers of the revenue for the assessment years 1997-98 and 1998-99 which was the subject matter of the appeals before the Karnataka Appellate Tribunal. The KAT has considered the rival legal contentions urged on behalf of the parties with reference to the entry No. 1 Clause (iii)(a) and (iii)(c) of the KST Act, without placing reliance upon the specific entry in relation to the goods in question in the Schedule to the KTEG Act and passed the judgment in favour of the assessee holding small tools are not machineries as they are consumables. That judgment is not challenged by the revenue before this court is an undisputed fact. In this regard, the Commissioner has filed an affidavit as per our direction. The relevant paragraphs 5, 6 and 7 are extracted as under as they are very relevant for our purpose:

5. The order passed by the Tribunal in S.T.A. NOS. 1258-59/2001 dated

13.8.2002 was reviewed by the then Joint Commissioner (Legal) Sri. Venkataswamy (retired) who opined on 28.3.2003 that the findings given by the K.A.T. are in order and no interference is justified. This file along with the opinion of the then Joint Commissioner of Commercial Taxes (Legal) (retired) was submitted to Sri. D.V. Shivaram, the then Addl. Commissioner of Commercial Taxes (Vig.), Bangalore on 29.3.2003 for perusal. Hence, no Revision petition was filed by the State challenging the order passed by me K.A.T. in STA NOS. 1258-59/2001 dated 13.8.2002.

6. It is respectfully submitted that the regular procedure followed in the Commissioner's office is that after receipt of the certified copies of the orders passed by the Karnataka Appellate Tribunal, the same are reviewed in the Legal Section headed by the Joint Commissioner of Commercial Taxes (Legal). The Joint Commissioner of Commercial Taxes (Legal) examines the KAT orders for filing of Sales Tax Revision Petition/Civil Revision Petition before this Hon'ble court and submits the file to the Addl. Commissioner of Commercial Taxes (Policy and Law). The Addl. Commissioner of Commercial Taxes (Policy and Law) records his opinion and in turn submits the file to the commissioner who takes a decision about filing the Sales Tax Revision Petition/Civil Revision Petition etc.

7. It is respectfully submitted that Entry No. III (e) of Entry 1 (iii)(c) of part M to II schedule to KST Act, is not applicable for interpreting the entry under KTEG Act. Entry No. 52 of I schedule to the KTEG Act, 1979 and the relevant entries as they stood during the relevant assessment years are very clear and unambiguous. For the assessment year 2000-01, the assessing authority Sri.S.A.Manvi had held that the cutting tools dealt by the assessee were parts and accessories of machinery and subjected the same to tax liability. This was confirmed by the first Appellate Authority vide order dated 21.7.2004 {S.Nataraj, Joint Commissioner of Commercial Taxes (Appeals) (retired)}. The same was challenged by the assessee before the Karnataka Appellate Tribunal in STA No. 2375/2004 and the Karnataka Appellate Tribunal vide order dated 31.8.2005 was pleased to dismiss the appeal filed by the assessee confirming the orders passed by the Assessing Authority and the First Appellate Authority. The interpretation placed by the Tribunal in STA No. 2375/04 with reference to the entries under the KTEG Act and the non-applicability of the entries under the KST Act is correct and justifiable. For the subsequent assessment years, the assessing authorities have treated the cutting tools as non-scheduled goods following the earlier decision of the Tribunal, which is erroneous and prejudicial to the interest of revenue.

6. In the back drop of the factual aspects of this case and the legal position laid down by the Apex Court and this Court in the cases referred to supra, we have examined the rival legal contentions urged on behalf of the parties to answer the aforesaid question Nos. A and C with reference to the decisions cited by both learned Sr. counsel and AGA in support of their respective submissions. For this purpose it is necessary for us to extract the Entry 52 of the I Schedule of KTEG

ACT which reads thus:

52. Machinery (all kinds) and parts and accessories thereof but excluding agricultural machinery 7. The Division Bench of this Court in Pioneer Enterprises's case with reference to the phrase "accessories", examining the entries in the KST Act, 1957 and notifications dated 26.3.1996 and 29.3.1997 has examined the factual aspect regarding whether T.V. antenna is an accessory for the purpose of sales tax under the provisions of the KST Act, with reference to the decisions of the Supreme Court in the case of Annapurna Carbon Industries Co. v. State of Andhra Pradesh reported in [1976] 37 STC 378 AP, Star Paper Mills Ltd v. Collector of Central Excise reported in [1990] 76 STC 312 and other decisions referred to at paragraph 5 in the above said decision of the Pioneer Enterprises and answered the questions framed in the said case are worthwhile to be extracted herein to examine the questions framed in this case which reads thus.

(1) Whether the T.V. antenna is an inseparable component of T.V. or an accessory?

(2) Whether the assessing Officer was right in levying sales tax at six per cent based on the Notification No. FD 32 CSL 87(V) March 28, 1987?

8. Accepting the above legal proposition laid down in the aforesaid case by the Supreme Court and various decisions of High Courts at paragraph 6, the Division Bench of this Court has held thus

6. As could be seen from the aforesaid decisions in order to categorise the product as an accessory or component it is essential to see, whether the product is an essential integral part of the final product and without which the final product is not capable of use, then the item is held to be an accessory, when it is used only for obtaining enhanced efficiency of performance of the main product and does not form an essential integral part of the main product it is an accessory. In the light of the said proposition, if, we consider the case on hand, a T.V. antenna can be considered only an accessory not a component of T.V. set, since the T.V. set has multi-purpose use. For the reasons recorded in paragraphs 4 and 6 in the above Division Bench decision of this Court the aforesaid questions are answered by this Court against the assessee.

9. In another decision of this Court in Premier Irrigation Equipments Pvt. Ltd. v. Assistant Commissioner of Commercial Taxes (Assessment-II), Bangalore and Anr. reported in 1993 88 STC 468 discussed the meaning of "Accessory" and held that pipes, pumps, engines, motor are sold as part of Sprinkler systems as certified by the Commissioner of Commercial Taxes, who clarified that the articles in question had independent use and were not accessories to sprinkler system, fell for consideration before the Division Bench of this Court. This Court again with reference to the decisions of the Supreme Court in Annapurna Carbon Industries Co. v. State of Andhra Pradesh reported in [1976] 37 STC 373 and Mehra Brothers v. Joint Commercial Tax Officer reported in [1991] 80 STC 233

has examined the question whether the ear seat covers are articles adapted generally as parts and accessories of the motor vehicle" and after referring to the Webster's Comprehensive Dictionary International, the word "accessory" is part of sprinkler system after referring to the judgments of the Supreme Court in Annapurna Carbon Industries Company's case and Mehra Brothers' case, the Division Bench of this Court has with reference to the relevant portions of Mehra Brothers' case extracted the meaning of accessory from Webster's Comprehensive Dictionary International, which relevant portion extracted in the Division Bench in the case of Premier Irrigation Equipments Pvt Ltd is extracted in this judgment which reads as hereunder:

In Webster's Comprehensive Dictionary International, Vol. 1, the word "accessory" has been defined as a thing that aids subordinately; an adjunct; appurtenance; accompaniment such items of apparel as complete an outfit, (2) aiding the principal design, or assisting subordinately the chief agent and (3) contributory; supplemental; additional. In view of the aforesaid decision of the Supreme Court upon which the learned AGA has rightly placed strong reliance in support of her submissions to show that the conclusions arrived at by the KAT in the instant case with reference to the Entry No. 52, machinery and accessories was examined and rightly answered against the assessee after considering the rival legal contentions and also its earlier decisions dated 13.8.2002 in relation to the very same assessee for the assessment years 1997-98, 1998-99 and proceeded to accept the case pleaded by the revenue by assigning valid and cogent reasons in the impugned judgment. The said finding and reason recorded by the KAT in the impugned judgment are in conformity with the Entry 52 of Schedule of the KTEG Act and the two Division Bench decisions of this Court referred to supra wherein this Court has followed various decisions of the Supreme Court and other High Courts, which are extensively discussed and recorded its reasons by following the decisions. The relevant paragraphs of the same court are extracted in the said judgment which are sufficient for us to accept the legal submissions made on behalf of the revenue and we are not inclined to accept the submissions made by the learned Sr. counsel Mr. Kumar on behalf of the assessee, though it is contended by him placing reliance upon the aforesaid decisions, which are referred to in the earlier paragraphs of this judgment. We cannot accept the submissions made on behalf of the assessee which are referred to in the earlier paragraphs of this judgment where the submissions the learned Senior counsel on behalf of the assessee are indeed in support of the proposition that it would be unreasonable to accept the view taken by the department in relation to the previous years holding that goods in question are not machinery and accessories of the machinery and the same has been followed for more than two decades and accepted by practice placing reliance upon the earlier assessment orders, though it is not res-judicata, it is the principle in tax law that though the doctrine of res-judicata not applicable to the tax proceedings where an issue had been considered and decided in the earlier assessment order in a particular manner, men for the sake of consistency

the same shall prevail in the subsequent years unless there is some material change in the facts. The said principle is not applicable to the fact situation. The Officers of the revenue did not interpret the word "accessory" whether it is a machinery as mentioned in Entry 52 of the First Schedule to the Act as directed by this Court in Writ Petition orders referred to supra, which order was passed in the case of the assessee and further, as could be seen from the two Division Bench decisions referred to supra of this Court, the word "accessory" used in the schedule to the KST Act was examined by the KAT with reference to the interpretation made by the Supreme Court way back in the year 1976 and 1990. The Division Bench of this Court in the case of Pioneer Enterprises has held accessory or a component, is essential for us to see whether the product is essential ingredient or part of the final product and without which the final product is not capable to use and further with reference to the car seat covers in the case of Mehra Brothers, the Supreme Court has held that the Articles are adapted generally as parts and accessories of the motor vehicles and the meaning of the word "accessory" in Websters' Comprehensive Dictionary International Volume -1, the Supreme Court has clearly held accessory is a component of the machinery without which it cannot be used. When there was a settled legal principle laid down in the judgment of the Supreme Court, it is most unfortunate that the Assessing Officer who was required to apply his mind to the legal positions did not apply the ratio laid down by the Supreme Court in the cases referred to supra. In the back drop of the observations made by this Court in the order referred to supra passed in the Writ Petitions filed by the assessee, the assessing officer should have recorded a finding whether the accessories are goods manufactured by the assessee would fall within the Entry. No. 52 machinery of the KTEG Act and that has not been done by the Assessing Officers. Therefore, the orders passed by the Assessing Officers for the years 1982-83 to 1996-97 is not only erroneous but the same are prejudicial to the revenue as held by the Supreme Court in catena of cases. Reliance placed by the learned Sr. counsel upon the decision of the Supreme Court with reference to the earlier assessment orders and the order of KAT had not been followed by the Revenue. Therefore questions at "A" and "C" do not arise to answer the same in favour of the assessee. In view of the aforesaid reasons recorded in this judgment on the basis of the decisions of the Supreme Court and two decisions of this Court referred to supra, we answer the questions referred to supra against the assessee.

Therefore, the revision petition must fail. Accordingly the same is dismissed.