(1998) 08 SC CK 0143

In the Supreme Court Of India

Case No : Civil Appeal No. 773 of 1995

Asstt. Commercial Taxes Officer APPELLANT

Vs

Mehta Opticians RESPONDENT

Date of Decision : 26-08-1998

Acts Referred:

Citation : (2001) 9 SCC 309

Hon'ble Judges : S. P. Bharucha, J;M. K. Mukherjee, J;G. T. Nanavati, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

S.P.BHARUCHA, J.-This is how Ground A(a) of the special leave petition reads:

"(A) Whether the High Court is justified in holding as under: ''It is not in dispute that frames and glasses are exempted from payment of tax. The spectacles being not a different commodity would not attract tax on their sale.'' Particularly, when there is no exemption notification exempting frames and glasses from payment of tax and both the frames and glasses are exigible to tax @ 8%."

When Mr S.K. Jain, learned counsel for the appellant, proceeded to so argue, we drew his attention to para 5 of the judgment of High Court under appeal, which is quoted in the ground above. Nonetheless, Mr Jain persisted in arguing that frames and glasses were not exempted from payment of tax. We pointed out to him that it was impermissible for him to so argue when the High Court had specifically recorded that "it is not in dispute" that frames and glasses were exempted from payment of tax and no application had been made by the appellant to the High Court to correct this statement. It was only when we commenced the dictation of an order to so record that Mr Jain said that he would not urge this contention.

2. All that an optician does, as the record suggests, is to fit lenses into a spectacle frame; he carries out no process of manufacture and no separate or distinct commodity emerges. The judgment under appeal is, therefore, upheld.

3. The appeal is dismissed, with costs.