(1972) 10 AHC CK 0010

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 346, 347 and 348 of 1970

Commissioner, Sales Tax APPELLANT

Vs

B.C.M. Franklin and Co. RESPONDENT

Date of Decision : 09-10-1972

Acts Referred:

Citation : (1973) 31 STC 251

Hon'ble Judges : R.L. Gulati, J;C.S.P. Singh, J

Bench : Division Bench

Advocate : R.R. Agarwal and Bhartji Agarwal, for the Respondent

Judgement

C.S.P. Singh, J.—The Additional Judge (Revisions), Sales Tax, Bareilly, has referred the following question for our answer :

Whether on the facts and in the circumstances of the case, welding electrodes are ''electrical goods'' or even ''electrical equipments, plants and their accessories required for generation, distribution and transmission of electrical energy or not'' ?

2. The assessee deals in a number of commodities including welding electrodes. The turnover of the assessee as disclosed in his account books was accepted by the Sales Tax Officer. The Sales Tax Officer, however, taxed the turnover in respect of electrodes at the rate of 7 per cent. for the year 1964-65 and at the rate of 10 per cent. for the years 1965-66 and 1966-67. The assessee filed an appeal against the order of the assessing authority, but the same was dismissed. One of the main reasons for the Assistant Commissioner in coming to the conclusion that electrodes were electrical equipments was the opinion of the Chief Electrical Inspector to the Government of U. P. contained in his letter No. 9543. The assessee, thereafter, went up in revision. It appears that the opinion of the Chief Electrical Inspector was not on the record of the case and in spite of various adjournments given by the revising authority for producing that opinion, the departmental authorities failed to produce it. The opinion was, however,

shown by the departmental counsel as contained in the Commissioner''s circular letter No. SA & R-1 (B)-1(67-68)-3651. The assessee in reply produced a technical expert, Sri R. K. Tharian, Welding Engineer, Advani-Oerlikon Private Ltd., Bombay, who deposed that welding rods were neither electrical goods nor electrical equipment or plant. The revising authority placed reliance on the evidence of Sri R. K. Tharian, who had been produced on behalf of the assessee. It found that electrodes were made of steel core wire, coated with a chemical paste called flux and on being melted either by the use of an electrical arc, or oxy-acetylene flame, or other source of heat, the electrodes melted and the molten material filled the gap between the two parts to be joined. It also found that it was not necessary that electrical energy only be used for melting the electrodes and that they can be melted by recourse to other source of energy also. Relying on two decisions of the Madras High Court and the testimony of Sri Tharian, the expert produced on behalf of the assessee, that electrodes do not generate, distribute or transmit electrical energy but only transmit welding metal, it came to the conclusion that the electrodes were neither electrical goods nor electrical equipments, etc.

3. Counsel for the department has strenuously contended that electrodes are either electrical goods or electrical equipments. This contention has to be answered, after taking into account the findings recorded by the revising authority, regarding the true nature and character of electrodes. Electrodes, as has been seen, are made out of steel core wire, which is coated with a chemical paste called flux. On being heated, the rod melts and the molten material is used to fill up the gap between two joints, which are sought to be welded. On these facts, it is difficult to see how electrodes can fall within the category of electrical goods or electrical equipment, plant, etc. So far as electrodes falling in the category of electrical equipment, the argument is futile for, in the collocation of the words in which the electrical equipment occurs in the notification, it is clear that electrical equipment must be such as are required for generation, distribution and transmission of electrical energy. Electrodes do not perform any of these functions. Neither can it be said that they are electrical goods on account of the mere fact that electrical energy is used for melting them. It has been seen that the Judge (Revisions) has found that electrodes can also be melted by use of other source of energy. If the argument of the department is accepted that on account of the fact that electrical energy is used for melting electrodes, as such they are to be classified as electrical goods, it will lead to the anomalous result that the character of electrodes will keep on changing with the source of energy used for melting them. This contention, as such, has to be rejected. The Madras High Court in the case of Deputy Commissioner of Commercial Taxes, Madurai Division v. Ravi Auto Stores [1968] 22 S.T.C. 172 has held that electrodes do not fall in the category of electrical goods and in the case of State of Madras v. Indian Oxygen Limited [1968] 22 S.T.C. 476 it has held that arc welding rods (which are of the same nature as electrodes) are not electrical goods. In the case of J. B. Advani-Oerlikon, Electrodes, Pvt. Ltd. v. Commissioner

of Sales Tax, M.P. [1972] 30 S.T.C. 337 the Madhya Pradesh High Court after a thorough examination of the matter, has likewise held that electrodes used for melting purposes cannot be treated as electrical goods. We are in respectful agreement with the view expressed by the Madras and the Madhya Pradesh High Courts and need not add anything further.

4. We therefore answer the question referred in the negative and against the department. The assessee is entitled to its costs which we assess at Rs. 100. This order shall govern S.T.R. No. 347 of 1970 and S.T.R. No. 348 of 1970 in which an identical question between the same parties arises.