(1995) 01 BOM CK 0033

In the Bombay High Court

Case No : Sales Tax Reference No. 11 of 1986 in Reference Application No. 37 of 1985

Gadre Industries APPELLANT

Vs

State of Maharashtra RESPONDENT

Date of Decision : 12-01-1995

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 52(1), 61(1)

Citation : (1995) 01 BOM CK 0033

Hon'ble Judges : D.K. Trivedi, J;B.P. Saraf, J

Bench : Division Bench

Advocate : P.V. Surte and V.B. Joshi, for the Appellant; R.V. Desai, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 61(1) of the Bombay Sales Tax Act, 1959 made at the instance of the assessee, the Maharashtra Sales Tax Tribunal has referred the following question of law to this Court for opinion :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in holding that Gadre 5 h.p. R.P.M. vertical diesel oil engine 3" x 2 1/2" centrifugal pump sold by the applicant was covered by entry 102 of Part II of Schedule C and not by entry 18 of Part I, Schedule C of the Bombay Sales Tax Act, 1959 ?"

2. The assessee, M/s. Gadre Industries, is a partnership firm engaged in the business of manufacture of diesel engine pumping sets. The diesel engines required for the purpose are manufactured by the assessee itself and the pumps are purchased from registered dealers. Thereafter, the two are coupled and diesel engine pumping sets are manufactured and sold.

On January 12, 1982, the assessee filed an application u/s 52(1)(e) of the Bombay Sales Tax Act ("the Act") before the Commissioner of Sales Tax, Maharashtra State, Bombay, seeking determination of the question whether the diesel engine pumping sets sold by the assessee which were described by it as "Cadre 5 hp R.P.M. vertical diesel oil engine 3" x 2 1/2" centrifugal pump with M.S. base frame", were covered by entry 18(i) of Part I of Schedule "C" to the Act. According to the assessee, the above diesel engine pumping sets were designed by it for use in agricultural purposes and were, in fact, used by the purchasers predominantly for agricultural purposes, viz., watering the fields. In support of this contention, a copy of the sale invoice under which the diesel engine pumping set was sold was filed before the Commissioner. The assessee also filed a certificate from the customer in regard to its user for agricultural purposes. In addition, the assessee filed affidavits from two persons dealing with such goods wherein it was stated that "pumps" and "pumping sets" were commercially different commodities. On the basis of the above material, it was contended by the assessee that the diesel pumping sets sold by him were agricultural machinery falling under entry 18(i) of Part I of Schedule C. The Commissioner was not satisfied with the above contentions of the assessee. He therefore, rejected the same and, by his order dated October 12, 1982, passed u/s 52(1)(e) of the Act, held that the diesel engine pumping sets, sold by the assessee were not covered by entry 18(i) of Part I of Schedule "C" to the Act. Aggrieved by the above order of the Commissioner, the assessee appealed to the Maharashtra Sales Tax Tribunal ("the Tribunal"). The Tribunal held that though the diesel oil pumping sets sold by the assessee were agricultural machinery, they did not fall under entry 18(i) of Part I of Schedule C because the "pumping sets" were nothing but "pumps" which were excluded from the purview of the said entry. Hence, this reference at the instance of the assessee.

3. We have heard the learned counsel for the parties. There appears to be no dispute about the fact that the diesel engine pumping set sold by the assessee is agricultural machinery. The only controversy is whether it is "pump" which has been excluded from the definition of "agricultural machinery" under entry 18(i) of Part I of Schedule C to the Act. To appreciate the same, it is necessary to peruse the relevant entry, viz., entry 18(i). Part I, of Schedule C, which at the material time, read as follows :

It is clear from the above entry that all agricultural machinery and implements fall under the above item except the following : (a) tractors, (b) oil engines, (c) electric motors, (d) pumps, and (e) electric pumping sets and (f) implements specified in entry 1 of Schedule A. It may be pertinent to observe that Schedule A contains the list of goods, the sale or purchase of which is free from all taxes. Entry 1 thereof reads :

"Agricultural implements the value whereof does not exceed rupees three thousand, as may be specified from time to time, by the State Government by notification in the Official Gazette and components and parts of such implements."

There does not appear to be any controversy about the fact that diesel engine pumping sets are "agricultural machinery". In fact, in the instant case, even before the Tribunal, there was no controversy about the fact that the diesel oil pumping sets sold by the assessee are agricultural machinery. The sole ground on which it was held not to fall under entry 18(i) was that "pumps" have been excluded from the said entry and the "pumping sets" are nothing but "pumps". According to the Tribunal, "pumps" and "diesel oil pumping sets" were the same commodity and hence, the Legislature having excluded "pumps" from the ambit of "agricultural machinery" falling under entry 18(i), the diesel oil pumping sets sold by the assessee were also excluded therefrom. It is this interpretation given by the Tribunal to the word "pump" which is subject-matter of challenge in this reference. According to the assessee "pumps" and "pumping sets" are two different and distinct commodities and what is excluded from the purview of agricultural machinery is "pump" and not "pumping sets". If this contention is accepted, the diesel oil pumping sets sold by the assessee would be agricultural machinery falling under entry 18(i) of Part I of Schedule C to the Act, otherwise not.

4. We are, therefore, to decide whether "pumps" and "pumping sets" are inter-changeable expressions used to describe the same commercial commodity or they are two different expressions used to refer two different commodities. For that purpose, it is necessary to know the true meaning of expressions "pumps" and "diesel oil pumping sets". As stated earlier, diesel engine pumping sets manufactured and sold by the assessee comprise of two main components, viz., "diesel engine" and "pumps". Diesel engine is manufactured by the assessee himself and pumps are purchased from the market. The pumping set sold by the assessee thus consists of pump attached to a diesel engine. "Pumps" and "diesel oil pumping sets" are thus not one and the same. "Pump" is an essential component of the pumping set, the other equally important component being "diesel engine". The Legislature, while enacting entry 18(i) of Part I of Schedule C, has specifically excluded certain items which otherwise would have fallen within the expression "agricultural machinery" from the ambit of entry 18(i) by specifically excluding the same from its purview. These items are oil engines, electric motors, pumps and electrical pumping sets. It is evident that the Legislature itself has regarded "oil engines" and "pumps" as different commodity from "pumping sets". This is further clear from the fact that it has not only excluded diesel engines, electric motors and pumps but also pumping sets which are operated by electricity known as "electrical pumping sets". Obviously, pumping sets other than those operated by electrical power, such as "oil engine pumping sets" including "diesel oil pumping sets" are not excluded. These pumping sets, therefore, continue to be "agricultural machinery" under entry 18(i) of Part I of Schedule C. We are, therefore, of the clear opinion that "pumps" and "pumping'' sets" are two different and distinct commercial commodities. "Pump" is merely a component of "pumping set" which comprises of not only a "pump", but also an "oil engine" or "electrical motor" depending upon whether it is an oil engine pumping set or an electrical pumping set.

5. In view of the above, we are of the clear opinion that "diesel oil pumping sets"

sold by the assessee are covered by entry 18(i) of Part I of Schedule C to the Bombay Sales Tax Act, 1959 and not by the residuary entry 102 of Part II of the said Schedule.

6. Accordingly, we answer the question referred to us in the negative and in favour of the assessee.

7. In the facts and circumstances of the case, we make no order as to costs. Reference answered in the negative.