
(1984) 03 BOM CK 0028

In the Bombay High Court

Case No : Reference Application No. 3 of 1978

Koel Sales and Service

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 30-03-1984

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52, 61

Citation : (1984) 56 STC 151

Hon'ble Judges : Shah, J;M.H. Kania, J

Bench : Division Bench

Judgement

Shah, J.—This is a reference u/s 61 of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the Act"), made at the instance of the applicant and the short question which arises is whether oil engine is agricultural machinery or constitutes only a component or part of agricultural machinery ?

2. The facts leading to this reference are these :

The applicant is a manufacturer of diesel oil engines which are used as prime movers of pumping sets. On 26th April, 1974, the applicant filed an application u/s 52 of the Act for determining the question as to whether the sale of prime mover oil engine of the description given in Invoice No. E/01/40803 to M/s. Kelkar Bros., Poona, will fall in entry No. 22 of Schedule E, or whether the said prime mover oil engine is covered by entry No. 12 of Schedule C to the Bombay Sales Tax Act, 1959. For our purpose it is not necessary to refer to the detailed description of the oil engine in the said invoice. All that is to be borne in mind is that oil engine in question acts as a prime mover for the pumping sets used by agriculturists. The Commissioner of Sales Tax rejected the case of the applicant that the oil engine was not agricultural machinery by itself but it was only a component of the agricultural machinery and therefore, attracted the levy of tax under entry No. 12 of Schedule C and not under the residuary entry No. 22 of Schedule E. The applicant then filed an appeal before the Tribunal. However, the Tribunal upheld the view taken by the Commissioner and dismissed the appeal.

On the application of the applicant, the Tribunal has framed the following question of law for our determination :

"Whether the Honourable Tribunal was justified and right in holding that an oil engine of the type of Kirloskar AV1, 5 HP, 1500 RPM complete with standard tools and accessories is not covered by entry No. 12 as amended with effect from 11th May, 1973, of Schedule C, but is covered by entry No. 22 of Schedule E appended to the Bombay Sales Tax Act, 1959 ?"

3. Entry No. 12 stood amended with effect from 11th May, 1973, by the Bombay Sales Tax (Amendment) Ordinance, 1973, which was replaced with effect from the said date by the Bombay Sales Tax (Amendment) Act, 1973. Prior to the amendment, right from the date when the Act of 1959 came into force, viz., 1st January, 1960, to 10th May, 1973, entry No. 12 of Schedule C provides as under :

----- "Entry
Description of goods Rate of Rate of Period of No. sales tax purchase tax
operation ----- 12.
Agricultural machinery Three Three 1.1.1960 and implements (other paise in
paise in to than implements a rupee. a rupee. 10.5.1973." specified in entry 1 in
Schedule A) and parts of such machinery and implements.
----- The amended
entry No. 12 which became effective from 11th May, 1973, and which is relevant
for our purpose, runs thus :

----- "Entry
Description of goods Rate of Rate of Period of No. sales tax purchase tax
operation ----- 12.
Agricultural machinery Three Three 11.5.1973 and implements (other paise in
paise in to than tractors, oil a rupee. a rupee. 30.6.1981." engines and electric
motors and implements specified in entry 1 in Schedule A) and components,
parts and accessories thereof.

----- 4. In this case
we are concerned with entry No. 12 as amended and which became effective
from 11th May, 1973. The contention urged by Mr. Dwarkadas, learned counsel
appearing for the applicant, is that oil engine is only a part or a component of a
pumping set and a pumping set as a whole alone constitutes agricultural
machinery as contemplated by entry No. 12 as amended. According to the
learned counsel, it is only a pumping set which can be used for agricultural
purpose and oil engine by itself cannot be used for that purpose. It was
contended that a pumping set consists of three different components, viz., (1)
base plate (platform), (2) the pump and (3) the oil engine, and it is only the
combination of the three into a pumping set that can be used for agricultural
purpose. It was urged that oil engine being a component of agricultural machine,
it will still attract levy of tax under entry No. 12 and not under the residuary
entry No. 22.

5. It may be noticed that in the original entry No. 12 as it stood prior to the amendment, there was no specific reference to tractors, oil engines and electric motors. However, even parts of agricultural machinery attracted levy under entry No. 12 and therefore if oil engine is considered as a part of agricultural machinery it was liable to tax under entry No. 12 and not under the residuary entry. If that was the position, there was no point in amending entry No. 12 so as to exclude oil engine from agricultural machinery, because though it did not constitute agricultural machinery by itself still being part of agricultural machinery it continued to fall under entry No. 12. If oil engine was a part or component, the original entry No. 12 before amendment by itself would have covered the oil engine as being part of such machinery and there was no need to amend the entry so as to specifically exclude oil engine from agricultural machinery, but in fact included it to retain its original position as a component or a part of agricultural machinery falling under the same entry. On a plain reading of the amended entry, it is clear that the legislature treated the three items, viz., oil engines, electric motors and tractors, as agricultural machinery as contemplated by entry No. 12. Assuming that oil engine could be treated as merely a part or component of agricultural machinery as contended by the learned counsel, still there is no doubt that the legislature intended to exclude these three items from the purview of entry No. 12. Otherwise the amendment would make no sense and would become nugatory as far as oil engines are concerned.

6. It is also to be noted that the question as to what is not machinery to a large extent must depend on the facts of each case. In this connection, we may usefully refer to the decision in *Corporation of Calcutta v. Chairman of Cossipore and Chitpore Municipality* AIR 1922 PC 27. After agreeing with Lord Davey in thinking that there is great danger in attempting to give a definition of the word "machinery" which would be applicable in all cases, their Lordships stated that the word "machinery" when used in ordinary language, *prima facie*, means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts, generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific result. These observations of their Lordships of the Privy Council were cited with approval by the Supreme Court in *COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER.,* . If this meaning of the word "machinery" is borne in mind then an oil engine which is used as a prime mover in a pumping set, which is admittedly used as agricultural machinery, would by itself constitute machinery and since it is not disputed that it is used for agricultural purpose it would also constitute agricultural machinery.

7. A reference may also be made to a decision of a Division Bench of this Court, to which my learned brother was a party, in *Commissioner of Sales Tax v. Shetkari Sahakari Sangh Ltd.* [1975] 35 STC 554, where the court was required

to consider entry No. 12 as it stood before the amendment of 1973. In that case also oil engines commonly used by agriculturists for working pump sets for drawing out water and sold to agriculturists for such purposes were held to be agricultural machinery within the meaning of entry No. 12 of Schedule C, as it stood before the amendment. Although the entry is differently worded it is significant that oil engine was treated as an agricultural machine and not as a part of agricultural machinery.

8. In the result, the question referred to us is answered in the affirmative and against the applicant-dealer.

9. The applicant to pay costs.