

(2015) 03 KAR CK 0345
In the Karnataka High Court
Case No : STA No. 162 of 2013

Kollamogru Harihara C.A. Bank Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 02-03-2015

Acts Referred:

Karnataka Value Added Tax Act, 2003 — Section 4(1)(b)(iii), 4(i)(b)(iii), 5(1), 60

Citation : (2015) 2 AKR 653 : (2015) ILR Kar 2276

Hon'ble Judges : Vineet Saran, J;S. Sujatha, J

Bench : Division Bench

Advocate : O. Shivarama Bhat, for the Appellant; Shivayogiswamy K.M., AGA, Advocates for the Respondent

Judgement

S. Sujatha, J.—This appeal is filed by the assessee challenging the order dated 25.09.2013 passed by the Authority for Clarification and Advance Ruling constituted under Section 60 of the Karnataka Value Added Tax Act, 2003 (hereinafter referred to as "the Act" for brevity).

2. The brief facts of the case are:

"The appellant is a co-operative society registered under the provisions of the Act and is engaged in the business of supply of agricultural implements to various agriculturists besides carrying on other co-operative activities. The appellant sought for clarification from the Advance Ruling Authority on the rate of tax applicable on the following products:

- (a) Agricultural tree climbing apparatus - Unipole-manually operated
- (b) Agricultural tree climbing apparatus - Bipole -manually operated
- (c) Aluminum ladders - general purpose -manually operated."

3. The Authority for Clarification and Advance Ruling vide order dated 25.09.2013 clarified that all these products referred to above are exigible to levy of tax at the rate of 14.5% under Section 4(i)(b)(iii) of the Act. The appellant

being aggrieved by the said order of the Authority for Clarification and Advance Ruling is in appeal before this Court.

4. Learned counsel appearing for the appellant contended that these products are extensively used by the agriculturists in the coastal areas for climbing the trees to spray the pesticides and to harvest the crops viz., coconut, arecanut and pepper, the agriculturists use these agricultural implements for agricultural purpose and not for any other commercial purpose and thus these products fall under Sl. No. 1 of First Schedule to the Act as exempted goods. It was further contended that the Authority for Clarification without proper appreciation of the report of the Assistant Commissioner of Commercial Taxes, Puttur has wrongly clarified the rate of tax @ 14.5% on the products (a) and (b). The learned counsel appearing for the appellant has no dispute with the rate of tax @ 14.5% on the product (c) Aluminum ladders - general purpose - manually operated.

5. Learned counsel appearing for the revenue supported the order passed by the Advance Ruling Authority.

6. After hearing the learned counsel for the parties, the only question that arises for our consideration is:

"Whether the products (a) Agricultural tree climbing apparatus -Unipole-manually operated and (b) Agricultural tree climbing apparatus -Bipole - manually operated are to be construed as "agricultural implements manually operated" falling under Serial No. 1 of 1st Schedule to the Act?"

7. Serial Number 1 of the First Schedule to the Act reads thus:

"Agricultural implements manually operated or animal driven"

8. The expression "Agricultural implements" is not defined under the Act. As per New Webster's Dictionary "implement" means an instrument, tool or utensil; an article assisting in carrying on manual labors. As per Oxford Dictionary, "implements" means tools, instruments. Hence, it can be construed that "Agricultural implements" are apparatus or tools or instruments employed in agriculture.

9. Apex Court in the case of Porritts and Spencer (Asia) Ltd. Vs. State of Haryana, AIR 1979 SC 300 : (1980) CENCUS 397 : (1989) 25 ECR 443 : (1983) 13 ELT 1607 : (1979) 1 SCC 82 : (1979) 1 SCR 545 : (1978) 42 STC 433 : (1978) 10 UJ 697 held as follows:

"It was said by Holmes, J., in his inimitable style: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used." Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the legislature. The reason is that, as pointed

out by Story, J., in 200 Chests of Tea, the legislature does "not suppose our merchants to be naturalists, or geologists, or botanists". But here the word "textiles" is not sought by the assessee to be given a scientific or technical meaning in preference to its popular meaning. It has only one meaning, namely, a woven fabric and that is the meaning which it bears in ordinary parlance. It is true that our minds are conditioned by old and antiquated notions of what are textiles and, therefore, it may sound a little strange to regard "dryer felts" as "textiles". But it must be remembered that the concept of "textiles" is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as "textiles". Take for example rayon and nylon fabrics which have now become very popular for making wearing apparel."

10. As pointed out by the Apex Court, the word "Agricultural Implement" has to be construed according to its popular or common parlance meaning. A perusal of the photographs and the description of the product (a) provided by the appellant establishes that this product is used by the agriculturists to climb the trees by gripping with its short bottom grippers to the earth for the collection of crop harvest i.e., arecanut, pepper, coconut etc. and to spray the pesticides. In the modern technological era, these products are new inventions to suit the present day farming in view of the shortage of skilled agricultural labourers. The product (a) is a kind of commonly used agricultural implement, regarded in common parlance according to the sense of agriculturists, ordinary traders and merchants as agricultural implements.

11. The narrow interpretation of the expression "agricultural implement" given by the Authority for Clarification is not sustainable.

12. Accordingly, we hold that the product (a) is an agricultural implement falling under Serial No. 1 of First Schedule to the Act exempted from tax under Section 5(1) of the Act.

13. As regards Product No. 2 - "agricultural tree climbing apparatus - bipole - manually operated", the Authority for clarification has not applied its mind to examine the product according to common parlance or trade parlance. No reasons are assigned to classify the product under Section 4(1)(b)(iii) of the Act. Photographs of the product produced by the assessee before us also do not disclose the correct description of the product. A detailed examination of the product is required for classifying the commodity. No such exercise is done by the Authority for clarification before giving a finding. In the absence of adequate material on record and no valid reasons forthcoming from the order of the Authority for clarification, we deem it proper to refer the matter back to the Authority for clarification for proper adjudication.

14. Accordingly, we remand the matter back to the ACAR to examine the product in the light of the observations made herein above and to pass a speaking order

after providing an opportunity of hearing to the appellant. The appellant is at liberty to produce additional evidence, if any.

15. For the foregoing reasons, the order passed by the ACAR with respect to:

"1) Product (a) is set aside.

2) Product (b) is remanded back to the Authority for clarification.

3) Product (c) is confirmed."

16. Accordingly, appeal is partly allowed to the extent as indicated above.