

(1976) 01 MP CK 0008

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 346 of 1973

R.M.E. Works

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 28-01-1976

Acts Referred:

Essential Commodities Act, 1955 — Section 2

Citation : (1977) ILR (MP) 1039 : (1976) JLJ 355 : (1976) 21 MPLJ 244 :
(1976) 38 STC 310

Hon'ble Judges : Shiv Dayal Shrivastava, C.J.; S.S. Sharma, J.; G.P. Singh, J

Bench : Full Bench

Advocate : R.S. Dabir and O.P. Namdeo, for the Appellant; N.V. Tamaskar and K.K. Adhikari, for the Respondent

Judgement

Shiv Dayal, C.J. and S.S. Sharma, J.

This is a reference u/s 44 of the M.P. General Sales Tax Act. The Board of Revenue, Madhya Pradesh, Gwalior, has referred the following two questions for answer:

(1) On the facts and in the circumstances of the case, in view of the Tribunal's finding that the tractors sold by the assessee were designed and manufactured for agricultural purposes, but were used by the purchaser for non-agricultural purposes also, though only in a small fraction of cases of the total sales, whether the Tribunal was justified in holding that the tractors sold by the assessee were not entitled to be treated as agricultural machinery and, thus, excluded from entry 44 of Part II of Schedule II to the M.P. General Sales Tax Act, 1958 ?

(2) Whether the period of limitation for revision proceedings u/s 39(2) of the M.P. General Sales Tax Act, 1958, runs against the assessee up to the date of issue of the notice by the Commissioner or up to the date when the notice is served on the assessee ?

The same two questions have also been referred to us in M.C.C. No. 347 of 1973,

M.C.C. No. 348 of 1973 and M.C.C. No. 349 of 1973. The assessee in all these four cases is the same. The period of assessment in these four cases is 1961-62 to 1964-65. There is a fifth case also before us (M.C.C. No. 350 of 1973, *Modi Brothers v. Commissioner of Sales Tax*), in which only the first of the above two questions has been referred to us. All these five cases were heard by a Division Bench of Tare, C.J., and one of us (Sharma, J.). By its order dated 26th August, 1975, the Division Bench answered the second question thus:

The period of limitation for revision proceedings u/s 39(2) of the M.P. General Sales Tax Act, 1958, runs against the assessee up to the date of issue of the notice by the Commissioner and not up to the date when the notice is served on the assessee.

However, on the first question, the Division Bench referred to three decisions of different Division Benches of this Court and found that, according to it, the view expressed in those cases requires further examination. Consequently, the Division Bench placed all the five cases before the Honourable the Chief Justice for constituting of a Full Bench. It is thus that these matters have come before us. This order will govern all the five cases.

Entry 44 of Part II of Schedule II to the M.P. General Sales Tax Act, 1958, reads thus:

Entry 44. All machineries or machines worked by electricity, diesel or petrol and spare parts and accessories thereof excepting agricultural machinery and implements and parts thereof.

The assessee sells Ferguson Tractors. The sales tax authorities taxed the sales of the assessee under entry 44 of Part II of Schedule II. The rate for this entry was 7 per cent. However, if the assessee's tractors are considered to be "agricultural machinery", they would be excluded from this entry and since there is no other specific entry to cover tractors, they will have to be taxed under the residuary entry 1 in Part VI of Schedule II, the rate being 4 per cent till 31st July, 1962; thereafter, 5 per cent till 31st March, 1964; and thereafter 6 per cent till 30th June, 1967. It may be mentioned that the rate for the residuary entry also became fixed at 7 percent since 1st September, 1967. All the present five cases before us relate to the period prior to the last-mentioned date, 1st September, 1967.

Agricultural engineering has become an increasingly important part of the technical foundation for starting agricultural productivity. Mechanised farming became possible through the use of tractors. Not only has animal power been displaced and human effort reduced, but the greater power and versatility of tractors has also made possible the development and use of heavy-duty deep tillage, cultivating and planting equipment, more effective drainage and irrigation practices, and high capacity harvesting machines. "Tractor" is a self-propelled power unit, which is used to pull loads, to carry and operate tillage, cultivating and harvesting machinery, and to provide power through a suitable belt pulley,

power take-off, or other power outlet, to drive stationary and drawn implements and machines. Tractors are powered with internal combustion engines. The word "tractor" was coined by combining parts of the words "traction" and "motor". At its early growth in the United States in 1889, the Charter Gas Engine Company built six wheel-type tractors by mounting single cylinder horizontal gasoline engines on Rumely steam-powered traction engine running gears. Due largely to cold weather starting difficulties, these tractors never operated successfully. The first successful gasoline tractor was built in 1892 by John Froelich, an Iowa farmer and blacksmith. It was a 20 H.P., single cylinder vertical gasoline engine 14 "bore X 14" stroke (36 X 36m). In addition to propelling itself, its construction was the first to combine three other essential functions, viz., (1) Friction clutches to engage and disengage the power train and belt pulley. (2) Steering under control of operator. (3) Reverse gearing to permit rearward travel. During the following decade, no less than 18 separate attempts are known to have been made to design and build farm tractors powered with gasoline engines. In 1897, English tractors with oil burning engines were being produced. In 1901, following experimental work started in 1895, C.W. Hart and C.H. Parr of Charles City built the first tractor designed for drawbar rather than belt work. It was powered with a twin-cylinder horizontal gasoline engine, 9" bore X 13" stroke and developed 30 H.P. at 250 rpm. In 1902, the J.I. Case Threshing Machine Company built their first gasoline tractor using a horizontal two-cylinder opposed type engine. In 1905, Hart and Parr established the first factory in the United States devoted exclusively to tractor manufacture, which later became the tractor plant of the Oliver Corporation. In 1904, A.N. Calkins of Electric Wheel Company designed and built the first tractor of record to employ a four-cylinder vertical engine and automobile type (Akkerman) steering. In 1906, Henry Ford built an experimental tractor, using a 24 H, P. four-cylinder vertical automobile engine and a planetary transmission. In 1910, the M. Rumely Co. started to manufacture the first successful oil-cooled kerosene and distillate burning tractor. In 1917, the Electric Wheel Co. produced the first tractor engine designed to burn kerosene and other low cost fuels without the use of water introduced into the fuel-air mixture to control detonation. The same year, the Ford Motor Company undertook the manufacture of the Fordson tractor, which was the first to employ a cast-iron unit frame, which enclosed working parts of the engine, transmission gears and the main final drive, with all gears running in oil. In 1918, the most significant and important design development of the year was the introduction of the rear power take-off by International Harvester Company. This provided power for the operation of mounted and drawn implements, principally binders and grass mowers directly by the tractor engine -- a feature, which has since been universally accepted (Encyclopaedia Britannica, 1970, Vol. 22).

Tractors are classified according to whether wheels or tracks are used to provide traction, viz., two-wheel drive, four-wheel drive, tracklayers and half-tracks.

Tractors are of different varieties: (1) Farm or agricultural tractors, which are used on farms; (2) Industrial tractors, which are used in factories for handling

freight and baggage at the terminals and ware houses; (3) Road tractors used for road building and sometimes for carrying load (as a substitute of conventional lorry); and (4) Military tractors or tanks used in military operations and warfare.

In 1962, the Mysore High Court in *State of Mysore v. Santoomal Kishnomal* [1962] 13 S.T.C. 313 Mys, held that a "crow-bar" is an agricultural implement on the ground that it is "generally used" as an agricultural implement. It was also observed that the use of a crow-bar for agricultural purposes was "by no means a remote use" and it was further observed that a crow-bar is "extensively used" as an agricultural implement.

In 1963, the Bombay High Court in *Pashabhai Patel and Co. (P.) Ltd. Vs. Collector of Sales Tax, Maharashtra State*, found on the evidence discussed by the Tribunal in that particular case that the "principal and primary use" of a tractor was not for agriculture. That case is clearly distinguishable on facts, but the principle adopted for the decision of that case was the same as the one which we accept.

In 1965, *Dixit, C.J., and Pandey, J., of this court in Agrawal Bros., Satna v. Sales Tax Commissioner* [1965] 13 J.L.J. 895, observed as follows:

A tractor is no doubt a machine worked by diesel or petrol. It is a self-propelled vehicle for hauling other vehicles, farm machines, planes, etc. It is used on highways, in factories, at airfields and also on agricultural land as a source of power and motive force. On agricultural land it is used along with agricultural implements such as harrows, ploughs, tillers, blade-terracer, seed-drills, etc. But a tractor, which is nothing but a self-propelled vehicle capable of pulling a load, does not acquire the character of "agricultural machinery, or implement" merely because when used on agricultural land it "drives" certain agricultural implements....The facts found by the Sales Tax Tribunal in no way show that the tractors sold by the assessee were farm tractors and could be used only for purposes of agriculture. On the facts found by the Tribunal, it must be held that the tractors sold by the assessee were not "agricultural machinery or implement".

The Division Bench relied on the above Bombay decision *Pashabhai Patel and Co. (P.) Ltd. Vs. Collector of Sales Tax, Maharashtra State*, With the utmost respect, we are unable to see any justifiable basis for the employment of the word "only" in the above dictum. We are clearly of the view that "exclusive use" cannot be the criterion. It is, however, mark-worthy that in that case there was no evidence that the tractors sold by the assessee were farm tractors.

The above decision of the Division Bench of our Court was followed in 1966 by another Division Bench (*Dixit, C.J., and Bhawe, J.*) in *Commissioner of Sales Tax, M.P. v. Pathak Agricultural Machinery Corporation* Misc. Civil Case No. 55 of 1966 decided on 22nd November, 1966 (Madhya Pradesh High Court). In that case also, it was observed that there was no evidence brought on record by the assessee to prove that the tractors in which he was dealing were farm tractors. However, we cannot concur with the following observations in that case:

The very fact that one tractor was sold to the municipal committee clearly shows that the tractor is not a "farm tractor" exclusively used for agricultural purposes.

We say with great respect that this test is not correct.

The third case decided by another Division Bench of this Court is Commissioner of Sales Tax v. R.M.E. Works, Raipur (1969) 2 VK N 333. The Division Bench merely followed the earlier two decisions. For the reasons already stated, it must be held that in all the above three cases of this court, law was not correctly laid down.

In 1970, the Gujarat High Court in Vicas Tractors Vs. Commissioner of Sales Tax, . held that Massey-Ferguson farm tractor is an agricultural machinery within the meaning of entry 12 of Schedule C to the Bombay Sales Tax Act, 1959. This conclusion was reached on the "ample material by reference to which the question" could be answered, and it was by reference to the said material that they answered the question in the light of the test, which we have stated above and on which our answer to the present reference will be based. We respectfully concur with the learned Judges of the Gujarat High Court in the view that they have taken in the above case.

In 1972, the High Court of Punjab and Haryana in Karnal Machinery Store Vs. The Assessing Authority and Others, . held that it is the "intrinsic nature and purpose" for which a tool is used, which would determine its nature. It was further held that "only that implement will be an agricultural implement which has intimate connection with agriculture". It was held that "monoblock pumping sets", the main purpose of which is to pump water cannot be classed as electrical goods. They are agricultural implements when used by agriculturists for agricultural operations and, therefore, fall under entry 34 of Schedule B to the Punjab General Sales Tax Act, 1948.

Later, in the same year, a Full Bench of the Allahabad High Court in Engineering Traders v. State of Uttar Pradesh [1973] 31 S.T.C. 456 (F.B.) . held that water pumping sets are "connected intimately" with agriculture and are "commonly used and understood as agricultural implements" and, therefore, they are agricultural implements within the meaning of the sales tax law. The Full Bench referred to the Punjab and Haryana case Karnal Machinery Store Vs. The Assessing Authority and Others, . The Full Bench held that the earlier decisions of the Allahabad High Court in Delta Engineering Co. Private Ltd. Vs. Commissioner of Sales Tax, . and Chandra Metal Co. v. Commissioner of Sales Tax Sales Tax Reference No. 273 of 1963 decided on 23rd December, 1965 (Allahabad High Court). did not lay down the law correctly.

In 1975, the Bombay High Court in Commissioner of Sales Tax Vs. Shetkari Sahakari Sangh Limited, . held that oil-engines commonly used by agriculturists for working pump-sets for drawing out water and sold to agriculturists for such purposes are agricultural machinery within the meaning of entry 12 of Schedule C to the Bombay Sales Tax Act, 1959, as it stood during the period 1st January,

1960, to 10th May, 1973. The Division Bench held:

It is not necessary that a machinery, before it can be said to be agricultural machinery, must be used exclusively for agricultural purposes.

We respectfully agree with the learned Judges in that observation.

It is now necessary to advert to the facts of the present case. The finding of the Board of Revenue is that the tractors sold by the assessee were designed and manufactured for agricultural purposes, but were used by the purchasers for non-agricultural purposes also, though only in a small fraction of the total sales. It is on record that the tractors were manufactured under a licence to manufacture farm tractors and that they were designed and predominantly used as such. However, there was also evidence that they can be used and are being used in quite a few cases for purposes other than that of agriculture. Therefore, the learned Member of the Board of Revenue found himself compelled to hold against the assessee, when he observed thus:

In view of our High Court ruling in *Agrawal Brothers v. Commissioner of Sales Tax* [1965] 16 S.T.C. 860 Raj, and their decision in the case of the appellant himself in *Commissioner of Sales Tax v. R.M.E. Works, Raipur* (1969) 2 Vikraya Kar Nirnaya 333, both of which have adopted the criterion of exclusive use for agriculture, I cannot but reject these appeals.

The licence dated 15th June, 1960 (annexure I) is on record. It was granted to M/s. Amalgamations (Private) Ltd., Madras, in the name and style of M/s. Massey-Ferguson India Private Ltd., for the manufacture of "Ferguson Agricultural Tractors". Then in the licence of 6th March, 1965, also the expression used is "Ferguson Agricultural Tractors".

In the Tractors (Price Control) Order, 1967, published in the Gazette of India, Extraordinary, dated 30th March, 1967, by the Ministry of Industrial Development and Company Affairs (Department of Industrial Development), the word "tractor" has been defined in clause 3(e) as follows:

(e) "tractor" means an agricultural machinery known by that name and fitted with a diesel engine of a capacity not exceeding fifty horse power.

There is also on record the following notification published by the Ministry of Commerce, Government of India, and published in the Gazette of India, Extraordinary, Part II, Section 3, Sub-section (ii), dated 9th February, 1967:

S.O. 515. -- In exercise of powers conferred by Sub-clause (xi) of Clause (a) of Section 2 of the Essential Commodities Act, 1955 (10 of 1955), the Central Government hereby declares the following class of commodity, being an agricultural machinery, to be an essential commodity for the purposes of the said Act, namely:

"Tractors".

In his order dated 17th January, 1972, in Appeal No. 124-11/66, from which Miscellaneous Civil Case No. 350 of 1973 arises, the learned Member of the Board of Revenue has recorded a very clear finding in these words:

On a finding of fact it is clear that the Massey-Ferguson tractors sold by the assessee are designed and manufactured as farm tractors and commonly used as such. But, the tractor can be used also to pull the trolley to carry refuse, etc. Two out of eighteen tractors in the present case have been sold to Gwalior Municipal Corporation for a purpose, which obviously cannot be stretched to be called an agricultural purpose.... In view of the direct ruling of our High Court, that too, in the very make of tractor, which is sold by the appellant and the test of exclusive use for agriculture adopted by the High Court, I decide this appeal against the assessee.

It is obvious enough that the exemption from sales tax in entry 44 was for the benefit of an agriculturist, so that he may not have to pay any sales tax on agricultural machinery and implements. Tractors are commonly understood as agricultural machinery, because they are widely used as such in our country for the purposes of mechanised farming. That apart in the present case, there is ample and direct evidence to show that the principal and primary use for which Massey-Ferguson tractors are manufactured and sold by the assessee is agriculture. The Board of Revenue reached that conclusion, but was compelled by the decisions of this court to hold against the assessee, which decisions, as already stated, do not, in our view, lay down the correct law.

At the hearing, a printed illustrated catalogue of Massey-Ferguson tractors was placed before us to show how the tractor's various parts operate on the soil for the purposes of agriculture. We think it unnecessary to dwell upon it in view of the finding recorded by the Board of Revenue.

The result of the above discussion is that there is a variety of uses for which tractors are manufactured and there is a diversity of uses to which tractors are capable of being put. Therefore, the question whether a particular tractor is an agricultural machinery must necessarily be answered by reference to its design, mechanism, features and special adaptability to any particular use. The question cannot be answered in the abstract with out reference to the intrinsic character and design of the tractor in a given case. If, having regard to its design and distinct features, it is found that it is more suitable and advantageously used for agricultural purposes and that it is so adapted, it must be held to be a farm tractor even if it is capable of being used occasionally or incidentally for non-agricultural purposes. Such occasional or incidental user for a different purpose does not alter or affect its essential character as a farm tractor, A farm tractor is an agricultural machinery. The determining consideration is whether the "principal and primary" use of a particular tractor is for agriculture. It need not be shown that the tractor could be used "only" on agricultural land or ""exclusively" for agricultural purposes.

Accordingly, we answer the question referred to us (first question) in the negative. Parties shall bear their own costs.

Singh, J.

I agree with the conclusion reached by my Lord the Chief Justice. But, being associated in different capacities in two earlier cases of this court on the same point, I wish to state my reasons separately. In *Agrawal Brothers Vs. The Commissioner of Sales Tax*, I appeared as a counsel for the assessee and unsuccessfully contended that the tractors sold were farm tractors and, therefore, the sales were of agricultural machinery not taxable under entry 44, Part II, Schedule II, of the Madhya Pradesh General Sales Tax Act, 1959. The contention was negated by the Division Bench of this Court on the ground that the facts found by the Tribunal did not show that "the tractors sold by the assessee were farm tractors and could be used only for the purposes of agriculture". This case was followed by another Division Bench in *Commissioner of Sales Tax, M.P. v. Pathak Agricultural Machinery Corporation* M.C.C. No, 55 of 1966 decided on 22nd November, 1966 (Madhya Pradesh High Court). Both these cases and the test of "exclusive use" laid down in them was followed by another Division Bench of which I was a member, in *Commissioner of Sales Tax v. R.M.E. Works, Raipur* (1969) 2 *Vikraya Kar Nirnaya* 333, because the previous cases were binding and reference to a larger Bench was not invited by counsel.

Entry 44 refers to "all machineries or machines worked by electricity, diesel or petrol and spare parts excepting agricultural machinery and implements and parts thereof". There is no difficulty about the meaning of "machinery". As stated by the Privy Council, "machinery" prima facie means "some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances by the combined movement or 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 a result": see *Corporation of Calcutta v. Chairman of the Cossipore and Chitpore Municipality* A.I.R. 1922 P.C. 27; *COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER.*, "Tractor" is a machinery worked by diesel or petrol and will be covered by entry 44 unless it can be said to be "agricultural machinery" falling within the exception. The expression "agricultural machinery" is not defined in the Act. So it must be given its ordinary meaning of referring to a machinery used for farming work, e. g., ploughing, sowing, manuring, watering, reaping, thrashing, etc. In formulating this meaning, I have taken the assistance from the definition of "agricultural engine" suggested by counsel and accepted by Donovan, J., in the case of *Regina v. Berkshire County Council; Ex parte Berkshire Lime Co. (Childrey)* Ld [1953] 1 W.L.R. 1146 at 1149 (C.A.).

The meaning of agricultural machinery given above, however, requires further explanation. The Sales Tax Act is designed to tax sales of goods and not their uses. The Act is essentially addressed to dealers, who carry on business of sale

and are generally not concerned with the use made of the goods sold by them. The exigibility to tax and exemption from it relevant to entry 44 are attracted at the point of sale and are not affected by the subsequent use of the machinery sold. The exception in entry 44 is not restricted to sales made to agriculturists. For these reasons, in considering whether a machinery sold is an agricultural machinery within the exemption in entry 44, one will have to take into account the use of the machinery of that kind in general and not the particular use made by the purchaser. Now, in applying the meaning so understood of "agricultural machinery" to concrete cases, one is likely to be faced with machinery of three types: machinery used only in farming work; machinery used in farming work but also used in other trades or occupations; and machinery not at all used in farming work. It is clear that the first category of machinery is "agricultural machinery" and it is equally clear that the third category does not fall within that description. The difficulty arises only in the second category of cases. In the context of cases falling in this category, three views are possible: (1) That the exemption is limited to machinery exclusively used in farming work; (2) that a machinery primarily used in farming work qualifies for exemption even if it is occasionally used in other trades or occupations; and (3) that a machinery which is commonly used in farming work is within the exemption irrespective of whether it is used or not used in other trades or occupations. In construing an exemption in a taxing Act, it is sometimes said that exemptions from taxation have a tendency to increase the burden on other members of society and should, therefore, be deprecated and construed in case of doubt against the subjects: *Litman v. Barron* [1951] 2 All E.R. 393 at 398. The weight of authority is, however, in favour of the view that an exemption in case of ambiguity should be liberally construed in favour of the subject confining the operation of the tax: *Armytage v. Wilkinson* (1878) 3 A.C. 355 at 369, 370 (P.C.); *Burt v. Commissioner of Taxation* (1912) 15 C.L.R. 469 at 482; *Routledge v. Mackay* [1954] 1 All E.R. 855 at 857 (C.A.). Although equitable constructions are out of place in a taxing statute, consideration of object of the provision and recourse to *Reydon's* rule are not entirely ruled out: see *Ransom (Inspector of Taxes) v. Higgs* (1974) 3 All E.R. 949 at 970 (H.L.). Now, in construing the words "excepting agricultural machinery" in entry 44 we are not strictly dealing with a provision which grants exemption from taxation but only with a provision, which gives the benefit of reduced rate of tax. During the relevant period, sales of agricultural machinery fell under the residuary entry for which a lower rate of tax was provided as compared to the rate applicable to entry 44. The object in taking out the sales of agricultural machinery from entry 44 was obviously to benefit the consumers of this class of goods, i. e., the agriculturists, who have ultimately to bear the burden of sales tax by paying it as a part of price to the dealer. If that is the plain object of the words, which fall for our interpretation, that object would be better served by holding that a machinery, which is commonly used in farming work, is agricultural machinery within the words of exemption under entry 44 irrespective of whether it is used or not used in other trades or occupations and this is the meaning, which I adopt as best expressing the

intention of the legislature. It would be for the Tribunal of fact to find whether a machinery is commonly used in farming work and no hard and fast rule can be laid down in that behalf.

The application of the test of "exclusive use" or even "principal and primary use" will, in my opinion, lead us away from the ordinary meaning of the words "agricultural machinery" and will result in depriving many agriculturists of the benefit which the legislature intended to confer on them. Moreover, these tests create practical difficulties for the assessee and the sales tax authorities, as in the application of these tests the enquiry as to the use of the machinery is not limited to the field of agriculture alone but embraces other trades and occupations and the task of decision making becomes cumbersome and difficult. The test of "common use" adopted by me best harmonizes with the ordinary meaning of the relevant words and their object and is relatively easy in application. It is true that by adopting it some non-agriculturists may also get the benefit of the lower rate of tax, but that result cannot also be avoided by the application of the test of "principal and primary use". Moreover, this result is not that strange or obnoxious as to legitimately enable us to depart from the ordinary meaning and to deprive the agriculturists of the full benefit flowing from the exemption.

Further, the test of "common use" will bring us in line with the interpretation given by another Full Bench of this Court of entry 1, Schedule I, which reads: "agricultural implements worked or operated exclusively by human agency specified by the State Government by notification in the official Gazette". In dealing with hoes (phawadas) included in a notification, the court held that it is true that phawadas are also used by building contractors or public works department for spreading and mixing mortar, concrete or similar substances but that cannot negative the presumption arising from the notification that phawadas that are hoes are agricultural implements, for, such phawadas are also "commonly used by agriculturists in agricultural operations". "It is quite possible", said the court, "that an instrument may be commonly used in agriculture and also in some other trade": *Commissioner of Sales Tax, Madhya Pradesh v. Narang Industries*, Indore 1971 M.P.L.J. 403 at 406-407 (F.B.), The test of "principal and primary use" was expressly negated by the court and the test of "exclusive use" was negated by necessary implication.

The case of *Narang Industries* 1971 M.P.L.J. 403 at 406-407 (F.B.), will show that in the context of entry 1, Schedule I, there is no inevitable antithesis between agricultural implements and implements used in other trades or occupations. Entry 1, Schedule I, is an entry of complete exemption from tax. If, in the application of such an entry, the test of "common use" has prevailed, there is more reason and logic in adopting the same test for construing the words "agricultural machinery" in entry 44, which only have the effect of reducing the rate of tax. We are not here construing two competing entries such as "agricultural machinery" and "industrial machinery" requiring us to devise a test

of absolute exclusion, which may enable us to say that a particular machinery is one or the other. Here we are concerned with a broad category of "all machineries or machines worked by diesel or petrol" and the excepted category of "agricultural machinery". The words to be construed here, as in the case of entry I, Schedule I, do not require us to hold that there is necessarily an antithesis between agricultural machinery and machinery used in other trades or occupations. If a machinery is commonly used in agriculture or farming work, it will fall within the description of "agricultural machinery" irrespective of whether it is also used in other trades or occupations and can also be described by some other name.

In the cases before us, the Tribunal has found that the tractors sold were designed and manufactured for agricultural purposes and that they were commonly used in farming work, though in a small fraction of cases of the total sales, the purchasers used the tractors for non-agricultural purposes. The tractors sold were manufactured under a licence for manufacture of agricultural tractors. The Price Control Order, which statutorily fixed the price of tractors describes them as agricultural machinery. Applying the principles discussed above to the facts found by the Tribunal, it is clear that all sales of tractors in all these cases were sales of agricultural machinery falling within the words of exemption in entry 44. For these reasons, I agree that question No. (1), referred to us in all these cases, should be answered in the negative as proposed by my Lord the Chief Justice.

Question answered in the negative.