

(1989) 12 KAR CK 0022

In the Karnataka High Court

Case No : S.T.R.P. No's. 61 and 77 of 1985 and S.T.A. No. 9 of 1985

Shankar Vijay Saw Mill and Others

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 13-12-1989

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22 A

Citation : (1991) 80 STC 192

Hon'ble Judges : S. Rajendra Babu, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : S.G. Shivaram, for the Appellant; M.R. Achar, High Court Government Advocate, for the Respondent

Judgement

S. Rajendra Babu, J.—In these three matters, the question that falls for consideration is whether rollers and flanges sold by the dealers in question fall under entry 20 of the Second Schedule to the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act").

2. The assessing officer, in the case of the dealer in S.T.R.P. No. 61 of 1985, for the period from October 22, 1979 to November 7, 1980, assessed the turnover of sales of the rollers and flanges as accessories for machinery falling under entry 20 of the Second Schedule to the Act and brought to tax at 8 per cent. Aggrieved by that order, the dealer filed an appeal and thereafter second appeal to the Tribunal, of course, unsuccessfully.

3. In S.T.A. No. 9 of 1985 for the assessment period between April 15, 1979 to December 31, 1979, the assessing officer, brought the turnover of sales of rollers and flanges under entry 20 of the Second Schedule to the Act. On appeal, the Assistant Commissioner of Commercial Taxes (Appeals) held that the said turnover is liable to tax as packing material, at 4 per cent. The Joint Commissioner of Commercial Taxes in exercise of his powers u/s 22-A of the Act, revised the said order made by the appellate authority setting aside the same and restored that of the assessing officer.

4. In S.T.R.P. No. 77 of 1985, the Commercial Tax Officer, for the assessment period between November 1, 1978 to October 21, 1979, brought to tax the turnover at Rs. 2,36,000 on the sales of rollers and flanges calculated at the rate of 4 per cent as general goods. The Deputy Commissioner of Commercial Taxes in exercise of powers of revision, set aside that order and brought the same under entry 20 of the Second Schedule to the Act and assessed to tax at 8 per cent. Aggrieved by that order, the dealer filed an appeal before the Appellate Tribunal. The Tribunal following its earlier decision held that they are accessories to machinery coming under entry 20 of the Second Schedule to the Act.

Thus the dealers in all the three cases have approached this Court raising a common question set forth earlier.

5. Entry 20 of the Second Schedule to the Act reads as follows :

"20. All machinery and spare parts and accessories thereof."

6. It is not the case of the department that these rollers and flanges fall under the category of machinery or spare parts. Therefore, the only question to be considered is, whether the rollers and flanges fall under the category of accessories of machinery. The Supreme Court has elaborately considered what an accessory means in a statute dealing with sales tax.

In Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, , it was held thus :

"A sense in which the word "accessory" is used is given in Webster's Third New International Dictionary as follows : "an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else". Other meanings given there are : "supplementary or secondary to something of greater or primary importance"; "additional"; "any of several mechanical devices that assist in operating or controlling the tone resources of an organ". "Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument."

7. The Tribunal while dealing with this matter took the view that the materials in question will have to be classed as accessories for the reason that the tyre chord fabric is rolled or wound automatically into the roller to prevent the fabric from being easily removed as and when they are produced, thus increasing the efficiency of the manufacturing machinery; the fact that the roller/rollers would be wound with the fabrics has the function of putting the tyre chord fabric into a deliverable state besides improving the efficiency of the machinery manufacturing the fabric as the accumulation of the fabric inside the premises would affect the manufacturing operation; and, therefore, held that the roller and flanges are accessories to the machinery manufacturing the tyre chord fabric. The Joint Commissioner who dealt with the matter in revision, after referring the decision of the Supreme Court in Annapurna Carbon Industries case [1976] 37

STC 378(Kar), did not elaborate as to how they come under the categories of accessory, but merely relied upon a decision of the Tribunal in N. S. Dhangadi v. State of Karnataka reported in (1979) Kar LJ 141 and held that wooden rollers and flanges for winding the cloth woven on the machine, form accessory to those machines.

8. The learned counsel for the dealers in these three cases, submitted that by no stretch of imagination, the rollers and flanges which are concerned could be brought within entry 20 of the Second Schedule to the Act. Sri Achar, the learned High Court Government Advocate for the Revenue, supported the reasoning adopted by the Tribunal and the Joint Commissioner.

9. Entry 20 of the Second Schedule to the Act does not merely refer to a machinery or its accessory. It also states that "all machinery and spare parts and accessories "thereof"". Thus it does not merely refer to accessory but to one which is an accessory to the machine to come within the entry; it is only the "accessory of a machinery thereof" that comes under entry 20. It is not brought out either before the assessing authority or before the Tribunal that the rollers and flanges are used as parts of any machinery in the manufacture of tyre chord fabric. All that is stated is, after the same is manufactured, it is rolled into these flanges or rollers. Therefore, it is clear that the rolling is done only for the purpose of making the delivery easy and not in the manufacture as such nor do these rollers increase the efficiency of the machinery, as stated by the Tribunal. These rollers are not used as parts or as accessories of the machinery at all. Therefore, we are clearly of the opinion that the Tribunal as well as the revisional authority in these cases were plainly wrong in holding that the rollers and flanges are accessories to the machinery that fall under entry 20 of the Second Schedule to the Act.

Therefore, we have no hesitation in setting aside the order made by the Tribunal in S.T.R.P. No. 61 of 1985 and of the revisional authority in S.T.A. No. 9 of 1985 and in the latter case, the order of Assistant Commissioner in appeal is restored.

The concerned assessing authorities shall accordingly now give effect to this order by modifying their assessment order in the light of this order.

Petitions allowed.