

(2012) 06 KAR CK 0110
In the Karnataka High Court
Case No : C.R.P. No. 147 of 2011

State of Karnataka

APPELLANT

Vs

M/S R.K. Powergen Pvt. Ltd.

RESPONDENT

Date of Decision : 28-06-2012

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 8 A
Karnataka Tax on Entry of Goods Act, 1979 — Section 15 A, 2 B

Citation : (2012) 56 VST 193

Hon'ble Judges : D.V. Shylendra Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : S. Sujatha, AGA in all Appeals, for the Appellant; T.N. Keshavamurthy in C.R.P. No. 147/2011, Sri. G. Rabhinathan in C.R.P. No. 295/2010 and C.R.P. No. 333/2010, Sri. K.S. Suryanarayan in C.R.P. Nos. 294/2010 and 338/2010, Sri. G. Rabhinathan in C.R.P. No. 235/2010 and C.R.P. 289/2010, Smt. Radhika Shriranjani M.D. in C.R.P. No. 293/2010 and C.R.P. Nos. 334-337/2010 and Sri. K. Ramnath Nayak and Gurudatta Shenoy for Kamath and Kamath, C.R.P. Nos. 292/2010 and 308-309/2010 and C.R.P. Nos. 165/2011 and 166-167/2011, for the Respondent

Final Decision : Allowed

Judgement

D.V. Shylendra Kumar, J.

RE: CRP No. 293/2010 c/w CRP Nos. 334-337/2010:

1. State of Karnataka is in revision before us u/s 15-A of the Karnataka Tax on Entry of Goods Act 1979 (the Act" for brevity) questioning the correctness and legality of the order passed by the Karnataka Appellate Tribunal, Bangalore on 29-03-2012 in STA Nos. 1614-1618/2008. Under the impugned order by the Tribunal had allowed the appeals of the assessee and had opined that the respondent-assessee has no tax liability in respect of the goods such as twist drills, cutters, reamers, taps etc which the assessee had caused entry into the local area for use, consumption or sale. Tribunal so opined and reversed the

orders of the Assessing Authority and the First Appellate Authority, who had taken the view that these goods brought into the local area by the assessee for use, consumption or sale, attract the tax as goods covered under Entry-52 of the I Schedule to the Act. Five appeals before the Tribunal related to the assessment years 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06. This Court at the time of admission of these revision petitions had formulated the following questions of law for examination, which arise out of the order of the Tribunal questioning the correctness or otherwise are required to be examined:

(i) Whether the Tribunal was justified in allowing the appeal of the respondent particularly in the facts and circumstances of the case?

(ii) Whether the Tribunal is right in holding that the part and accessories are consumable contrary to the view taken by the Hon"ble Supreme Court in the case of Addison 6B Co.?

2. The assessee is a Company, engaged in manufacture and sale of machines and machine tools. It has its manufacturing Unit at Chennai and causes entry of the subject goods into local area by way of stock transfers from its manufacturing place/Head Office to its branches within the local area for sale and consumption.

3. It appears, the question of taxability of these goods as goods covered under Entry-52 of Schedule - I to the Act had been the bone of contention between the assessee and the revenue almost ever since the Act has been legislated and it also transpires that the assessee had experienced fluctuating fortunes in these matters and while the assessee was quite successful in avoiding liability if any under the Act for the assessment years prior to 2000-01. The question of taxability or otherwise of the very goods of the assessee under the provisions of the Act had engaged the attention of this Court in CRP No. 457/2006, a like revision petition for the assessment year 2000-01. But that revision petition was at the instance of the assessee as it transpires that the Tribunal had opined the assessee was liable to pay tax under the provisions of the Act. This revision petition was disposed of by this Court in terms of the order dated 14th September 2007 reported in 14 VST 182 affirming the view taken by the Tribunal and dismissing the revision petition filed by the assessee.

4. In doing so, this Court had an occasion to examine in some detail the meaning and scope of the words "Parts and Accessories" thereof to all kinds of machinery and had referred to and relied upon the judgments of the Hon"ble Supreme Court rendered in the case of Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, and also in the case of M/s. Mehra Bros Vs. The Joint Commercial Officer, Madras,

5. Judgment of this Court in the case of the assessee for the assessment year 2000-01 was the subject matter of other appeals before the Hon"ble Supreme Court and granting leave to the assessee against the judgment of this Court, it was numbered as Civil Appeal No. 1311/2009 and the revision petition came to

be dismissed in terms of the order dated 26th February 2009 and reported in Addison and Co. Ltd. Vs. State of Karnataka rep. by Commr., Com. Taxes,

6. However, while the view that subject tools are in the nature of accessories to machines and therefore are liable to entry tax, came to be affirmed by the Hon"ble Supreme Court in the order of 26th February 2009 ray of hope was left behind for the assessee by further observing that contention which was sought to be raised before the Supreme Court to the effect that subject goods are consumables and therefore not accessories/parts of machines, if it is so, could be raised before the Assessing Authority and if so raised the assessee has to examine it in accordance with law, has been pressed into service by the assessee for taking up such contentions based on the observations of the Supreme Court in the pending appeals before the Tribunal, relating to the assessment years 2001-02, 2002-03, 2003-04, 2004-05 and 2005-06.

7. The assessee had gone through the stages of the Assessing Authority and the first Appellate Authority which had opined that the assessee was liable in respect of the goods in question for payment of tax under the Act as they had opined so for the earlier assessment years and the assessee nevertheless had been pursuing the matter by way of further appeal before the Tribunal and such appeals were pending before the Tribunal. Judgment of the Hon"ble Supreme Court was rendered in the case of the very assessee for the assessment year 2000-01 and the assessee being inspired by this observation had taken up the other contentions before the Tribunal to contend that it was not liable to pay tax under the Act in respect of the subject goods as the subject goods are mainly in the nature of consumables and if one were to look into judgment of the Hon"ble Supreme Court rendered in the case of COMMISSIONER OF SALES TAX v/s REWA COAL FIELDS LTD., AND ANOTHER reported in (2002) 125 STC 212.

8. The Tribunal being of the opinion that the judgment of the Supreme Court in REWA COAL FIELDS case constitutes a binding decision in the case of the assessee for examining the questions before it and purporting to apply that judgment and having opined that the subject products of the assessee brought into the local area being in the nature of goods that are consumed in the process of drilling operation, it cannot be subjected to tax as a part or accessory of the machinery.

9. Therefore the tribunal having allowed the appeals of the assessee for all the assessment years in question, the revenue is before us in these revision petitions contending that the Tribunal has committed a grave error in law in allowing the appeals. It is contended that the Tribunal has not addressed the questions at issue before it, by applying relevant and binding judgment of this Court and the Hon"ble Supreme Court in the case of the very assessee but has gone astray by calling in aid a judgment of the Supreme Court, which is totally inapplicable to the present situation and rendered in a totally different context. The judgment rendered only on the question as to whether the subject goods to be regarded as raw materials or otherwise for the purpose of getting some concession or

benefits under the provisions of the Madhya Pradesh General Savings Tax Act, 1958 and applying the ratio of that case to the present case while was not correct is totally uncalled for. The State has urged that the Tribunal has disposed of the appeal on an irrelevant consideration and by misapplication of law, which was not germane to the facts and circumstances of the present case. It is in such background, the present revision petitions.

10. The petitions were admitted and the respondent is represented by the learned Counsel Smt. Radhika Sriranjani and the revision petitioner is represented by Smt. Sujatha, learned Additional Government Advocate.

11. These revision petitions have been heard together with other revision petitions involving the question of taxability or otherwise of items or goods which are similar in nature, like chipper knives, cutters, drill bits etc. in CRP No. 147/2011, machine tools like drill bits, reamers, cutters etc., in CRP No. 295/2010 & CRP No. 333/2010, drill bits, reamers, cutters, taps, etc., in CRP No. 294/2010 & CRP No. 338/2010, drill bits, reamers, taps and cutters, etc. in CRP No. 235/2010 and CRP No. 289/2010, twist drills, cutters, reamers, taps etc. in CRP No. 293/2010 & CRP Nos. 334-337/2010, drill bits, reamers, cutters etc. in CRP Nos. 292 & 308-309/2010 and in CRP Nos. 165 & 166/2011.

12. Learned Counsel appearing for the assessee have put forth several contentions calling in aid several judgments of the Hon''ble Supreme Court and this Court and also other High Courts.

13. Submissions of Smt. Sujatha, learned Additional Government Advocate appearing for the revision petitioner-State in all these petitions are firstly that the question is fully covered by the judgment of the Supreme Court in the case of present respondent-assessee in these revision petitions. The Supreme Court has affirmed the view taken by the Division Bench of this Court which was seized of the very question of taxability or otherwise of the very products of the assessee under the provisions of the Act for the Assessment year 2000-01 and having affirmed the view taken by the Tribunal and having held that these goods axe taxable within the scope of Entry-52 of the First Schedule to the Act, this view on merits was affirmed in the judgment of the Hon''ble Supreme Court referred to above. That concludes the issue without any further scope insofar as the present respondent in these revision petitions is concerned and therefore, the revision petitions have to be allowed following the earlier view expressed in the case of the very assessee by this Court and the very view having been affirmed by the Hon''ble Supreme Court. It is therefore vehemently urged that the first question should be answered in favour of the revision petitioner-State by holding that the Tribunal was in error in allowing the appeals of the assessee. So also the second question holding that the view taken by the Tribunal is clearly contrary to the law laid down by the Hon''ble Supreme Court in the case of the very assessee and therefore, the revision petitions are necessarily be allowed and the order of the Tribunal be set aside and the order passed by the Assessing Authority as affirmed by the Appellate Authority to be restored.

14. The learned Additional Government Advocate has elaborated her submissions even otherwise also by taking us through the provisions of the Act, definition of the words and phrases u/s 2 of the Act and also the charging section and the sections relating to levy of penalties. It is pointed out that the Tribunal has virtually gone wrong in resorting to the theory of legislation by way of incorporation, to understand the scope of Entry-52 of First Schedule to the Act. The Tribunal has totally gone astray to understand that the residuary definition clause of Section 2(B) of the Act indicating the words and expressions used in this Act, but not defined, are to be given the very meaning as is expressed in the Karnataka Sales Tax Act, 1957 [for short "KST Act"] have the meaning assigned in the KST Act; that this provision has been totally misunderstood by the Tribunal by calling in aid Entry-I, Part-M of II Schedule to the KST Act wherein also the contents of the Entry are similar or identical and with reference to this entry namely as it occurs in Entry-1 (f) (iii)(a) and (iii)(e) of Part-M to the Second Schedule reads as machinery (all kinds) and parts and accessories thereof except those fall under other items of same nature and those specified elsewhere and this in combination with sub-entry (iii)(e) of the very entry used in industrial machinery such as twisted drills, grinding wheels, etc., having been made separate entry and going out of the scope of generic entry (1) (iii-a) and this manner of understanding and interpreting Entry-52 of I Schedule to the Act should be applied. In view of this interpretation in that the Section 2(B) of the Act is an exercise totally uncalled for. The schedules in the two enactments are totally different that by process of incorporating or attributing the meaning of sub-entry cannot be created in the schedule to the Act by a reasoning of this nature to understand the scope of entry-52 of the I Schedule to the Act which is nothing but something very irrational and uncalled for. The Tribunal having accepted this argument addressed on behalf of the assessee has given discartion of the entry. The learned Additional Government Advocate has also submitted that the Tribunal placing reliance on the judgment of Supreme Court in the case of REWA COAL FIELDS and opining that it is the only binding judgment of the Supreme Court and therefore the judgment of the Supreme Court in the case of ANNAPOORNA CARBON INDUSTRIES COMPANY'S case cited supra cannot be permitted to be applied and observation made by the Supreme Court in the case of very assessee relating to the assessment year 2000-01 permitting the assessee to raise the contention as to whether the tools were consumables in which case the Authority had to consider that contention and this being for the purpose of distinguishing the consumables from the accessory and proceeding to hold that the judgment of the Supreme Court in the REWA COAL FIELDS was alone conclusive is a gross misunderstanding, misapplication or observations made by the Hon"ble Supreme Court in the case of the very assessee that the order of the Tribunal is legally not tenable, perversity and not sustainable in law. In support of her submission, learned Additional Government Advocate also submitted that the Tribunal has committed an error in posing the points for its consideration as it really did not arise in the context such as:

POINT-I: Whether the AA has committed an error by passing rectification order after the prescribed period of 5 years in respect of 2001-02, 2002-03, 2003-04, 2004-05 & 2005-06?

POINT-II: Whether the AA has committed an error by levying tax on tools like drill bits, reamers, cutters as machinery parts accessories for the years 2001-02, 2002-03, 2003-04, 2004-05 & 2005-06?

POINT-III: Whether the FAA has committed an error in confirming the order of AA?

POINT-IV: What order?

15. The question relating to points 2 and 3 have not been examined with reference to the orders of the Assessing Authority and the Appellate Authority but by misapplying relevant facts of the case and for this reason also the order passed by the Tribunal has tendered itself for setting aside.

16. Against such submissions made on behalf of the State-Revision petitioner, Smt. Radhika Sriranjani, learned Counsel appearing for the assessee has stoutly defended the case of the respondents. Learned Counsel has drawn our attention to the fact that in the wake of the observations made by Supreme Court enabling the assessee to raise contentions of the nature as to whether the goods in question were consumables. Therefore, whether it can be described as accessories or not being available to the assessee in the wake of the observations of the Supreme Court. In the order of the Supreme Court in the case of the very assessee that was fully demonstrated before the Tribunal and as can be seen from paragraph 28 of the order of the Tribunal, the Tribunal being fully satisfied with the demonstration made before the Bench of the Tribunal by displaying the goods in respect of which tax has been levied, such as drilling bits, cutter, sharp and wild edges and their longevity being very less when put into use and attributable to be answered as consumables and applying the judgment of the Hon"ble Supreme Court in the case of REWA COAL FIELDS, the question is necessarily to be answered in favour of the assessee and the Tribunal having done precisely that, order of the Tribunal does not call for interference.

17. However, the learned Additional Government Advocate and Smt. Radhika Sriranjani are in agreement that the second question as had been posed by the Tribunal was not very necessary and that is not in issue in these revision petitions.

18. Placing reliance and taking us through the judgment of the Hon"ble Supreme Court in the case of REWA COAL FIELDS [supra] as previously specified, the learned Counsel for the assessee has submitted that if any goods or item is to be described part of any machine, it can be so described only if the machine is no complete with that part and products of the assessee namely cutters, reamers, drill bits, taps etc., being not part or essential for the working of the drilling machine, it can never be described as a part. It is also submitted that they

cannot also be described as accessories. Attachments of the parts dealt with by the assessee does not in any manner enhance the appearance or utility of a drilling machine and therefore, it cannot also be described as accessory. On the other hand, based on the judgment of the Supreme Court in REWA COAL FIELDS, it is held that it is only consumable and therefore not taxable within the scope of Entry-52 and urged for dismissal of the revision petition affirming the order passed by the Tribunal.

19. It is also submitted on behalf of the assessee that in respect of five assessment years, namely, for the years 2001-02 to 2005-06, assessment orders came to be rectified to impose tax liability on the goods which were otherwise not brought to tax earlier as per the assessment orders purporting to follow the view taken by this Court in the case of very assessee for the assessment year 2000-01 which was the subject matter of CRP No. 457/2006 dated 14.9.2007.

20. The subject rectification orders having gone through the stage of first appeal, but without success, the assessee had preferred second appeal before the Tribunal and by the time the second appeals were ripe for hearing, the Judgment of the Supreme Court in the case of the assessee and in the appeal of the assessee relating to the assessment for the year 2000-01 being available, the observations contained in that Judgment of the Supreme Court were pressed into service and therefore the assessee contended that the goods which the assessee dealt with being in the nature of consumables, it cannot be brought to tax.

21. We have noticed that the question of legality of rectifying the assessment orders for five assessment years in question, is not an issue before us as the Tribunal having affirmed the correctness of the order of rectification and the assessee having not pursued the matter, the subject matter of revision petition is only the question relating to the taxability or otherwise of the goods of the assessee under the provisions of the Act corresponding to assessment years 2001-02 to 2005-06.

22. We have considered the submissions made at the Bar by Smt. S. Sujatha, learned Additional Government Advocate appearing for the petitioner - revenue and Smt. Radhika Sriranjini M.D., learned Counsel for the respondent - assessee.

23. In our considered opinion, the only aspect which if at all could be examined to determine the tax liability and in respect of the products for the subsequent assessment years is on the aspect of liability in respect of the goods which are in the nature of consumables as the Supreme Court observed that it was open to the assessee to take up such contention before the assessing authority.

24. We have noticed that this was not the stand of the assessee before the assessing authority nor even before the appellate authority, but as the assessing authority has rectified the orders for assessment for the years in question and the matter was at large before the Tribunal both on the aspect of legality of the rectification orders and taxability and the Tribunal having examined the question of taxability of the assessee's products based on the argument that it is a

consumable, we do not think it proper to examine the scope of these revision petitions only on the legality/justification or otherwise of the Tribunal having allowed such arguments to be addressed before it though the assessee had not laid proper foundation for the relevant assessment years.

25. We would rather examine the view taken by the Tribunal on the merits of the order and on the available legal position than to base the examination in these revision petitions as to whether the assessee had laid proper foundation to urge contention of this nature before the Tribunal and before this Court.

26. The revenue being in revision, we are required to examine the order on its merits and more so when the order is one allowing the appeal of the assessee on a particular premise.

27. We find that the Tribunal in terms of its observations contained in paragraph-28 of the order has heavily relied upon the out come of examination or inspection of the particular goods placed before it by the learned Counsel for the assessee to make good the argument that it is only a consumable and the Tribunal opining that as it is a consumable, the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] covers the issue.

28. The Tribunal has committed an error in first opining that the view taken by an outside agency such as HMT, BHEL which are Government of India undertakings and also Cutting Tools Manufacturers Association indicating that the products of the assessee are consumables and do not form part or accessory to a machinery is not binding on them, the Tribunal nevertheless has proceeded on the premise that the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra], definitely binds it and cannot be ignored etc. The Tribunal has committed a mistake in this regard in understanding the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] as an authority for the present purpose and for examination of taxability or otherwise of the product vis-?-vis Entry-52 of Schedule-I to the Act. The taxability of a particular product under a taxing enactment is dependent on the scope of the charging section, subject matter of charge and the event happening of which attracts the liability for payment of tax. Identification of the person responsible for payment of tax is yet another aspect of a fiscal statute.

29. There are different taxing enactments having different purposes and subjecting to tax different type of goods, events, transactions and the like. The Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] was a case arising in the context of examination of taxability or otherwise of a product and the product therein being described as raw material and as to whether particular tool bits or drilling bits used can be characterized as one within the scope of the phrase "raw material". The question arose in the context of levy of tax under the sales tax enactment as legislated by the state of Madhya Pradesh.

30. The present examination is in the context of levy of tax under the provisions of the Karnataka Tax on Entry of Goods Act, 1979 and as to whether the product

of the assessee, is one within the scope of Entry-52 of Schedule-I to the Act.

31. Insofar as this aspect is concerned, the matter is not *res integra* but concluded in the case of the very assessee, in terms of the Judgment of the Supreme Court referred to above. Therefore, the examination can only be if the product assuming that it is a consumable or in the nature of a raw material, whether it can be within the scope of Entry-52 or otherwise.

32. Insofar as the assessee's case is concerned, the product being the same and only assessment years being different, the events and the act under which it is subjected to tax all being the same, the Judgment of the Supreme Court in the case of the assessee relating to assessment year 2000-01, constitutes a binding precedent and is the law, to be followed and applied as insofar as this Court is concerned and a ratio which is required to be followed. We have noticed that the effort on the part of the assessee by describing a particular product as a consumable is nothing but an indirect way of convincing us that it is neither a part nor an accessory to a machinery and therefore not coming within the scope of Entry-52. The argument that it is not a part or accessory thereof is not an argument which is open for us to examine in the wake of the earlier Judgment of the Supreme Court wherein the view taken by this Court in CRP No. 457/2006 has come to be affirmed.

33. In the case of REWA COAL FIELDS [supra], the focus was on the phrase "raw materials" used as such in a coal mine. In fact, the Supreme Court was only concerned with the definition of "raw material" as it occurred in section 2[1] of the Madhya Pradesh General Sales Tax Act which was described as an article used as an ingredient in any manufactured goods, or article consumed in the process of manufacture and includes fuel and lubricants required for the process of manufacture.

34. In the present case, we are not at all concerned with the question of examination of what is raw material or as to the definition of this word as it occurs in the Karnataka Act. It is therefore we are of the view that the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] can never be considered as an authority for the purpose of deciding the question as to whether the product is one taxable under Entry-52 of the Schedule-I to the Act.

35. For the same reason, we also hold that the question as to whether it is a consumable or not is of no significance and the fact that the Supreme Court permitted the assessee to raise a contention of this nature, if so advised before the authority will not in any way alter the situation either on fact or in law insofar as the present assessee is concerned, particularly, as the very products were subject matter of decision of this Court and the Supreme Court. The products whether it also fits into description of raw material or a consumable does not make much difference insofar as the present examination is concerned. The Tribunal having heavily relied upon the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra], for reversing the view taken by the lower

authorities and going into great detail about the nature of the product and other things and a personal examination of the product which are all in our opinion not very germane as insofar as particular products are concerned, that question was concluded by the order of this Court affirmed in the Judgment of the Supreme Court. It was not even open to the Tribunal to have undertaken an examination of this nature in the case of the present respondent - assessee. We find other examinations undertaken by the Tribunal is also, not one, which was either warranted or relevant.

36. The very assumption of the Tribunal that the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] constitutes a binding authority on the Tribunal and therefore the orders of the lower authorities has to be reversed is in our opinion on a fallacious and incorrect assumption and therefore the order of the Tribunal is not sustainable.

37. In the result, we allow these revision petitions, set aside the order of the Tribunal, affirm the view taken by the assessing authority, which was affirmed by the first appellate authority.

38. No order as to costs in these revision petitions.

RE: CRP Nos. 294 & 338/2010:

39. These revision petitions are by the State relating to the respondent - assessee for the assessment years 2001-02 and 2002-03.

40. The State is in revision petitions before this Court against the order dated 29.3.2010 passed by the Tribunal allowing the appeals of the assessee for the two assessment years in question holding that tool bids and cutters which the assessee had brought into local area is a "consumable" and therefore either not a part or accessory of the machinery and not taxable.

41. The State has questioned the view taken by the Tribunal on the ground that the Tribunal has proceeded on a very erroneous assumption that consumable is not taxable within the scope of Entry-52 of Schedule-I to the Act and this view is supported by the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra].

42. We have heard submissions made at the Bar by Smt. S. Sujatha, learned Additional Government and Sri. K.S. Suryanarayana, learned Counsel for the respondent -assessee.

43. The decision of this Court in the case of "ADDISON & CO., LTD., v. STATE OF KARNATAKA" rendered by this Court in CRP No. 457/2006 and affirmed by the Supreme Court is relied upon by learned Additional Government Advocate to submit that this decision constitutes an authority for holding that tool bids, cutters, blades used along with other machinery forms part or accessory of the machinery and therefore is taxable under Entry-52 of the Schedule-I to the Act and the products in the case of ADDISON & CO., [supra] and in the present case

being of the like nature, of like use, it should be taken that the taxability of such goods in the hands of the assessee is concluded in terms of the Judgment of the Supreme Court.

44. That apart, learned Additional Government Advocate has also contended that the tribunal has committed an error in placing reliance on the Judgments of the Supreme Court to submit that the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] is not an authority for the present purpose; that the Tribunal has gone wrong in assuming that the Judgment constituted an authority and also in understanding that the order of this Court in the case of ADDISON & CO., [supra] as well as affirming Judgment of the Supreme Court in the case of very assessee may not lay down the correct law as the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] had not been brought to the notice of this Court and the Supreme Court; that the very assumption is fallacious etc.

45. By drawing our attention to the Judgment of the Supreme Court in the case of ANNAPURNA CARBON INDUSTRIES CO., [supra], and in particular to the view-expressed by the Supreme Court in the last paragraph of this Judgment for the purpose of understanding and interpreting the words "parts" as well as "accessories" constitute parts and accessories in projectors and other cinematographic equipment, submission is that are carbons can also be considered as a part or accessory of cinematography though they could be independently used in combination with other equipments and can also be used for light signaling, lighting wherever powerful lighting or photography may be required, but that would not in any way detract from the classification of products as part or accessory and submits that the mere fact products of the assessee would be a consumable that it may be consumed in the process of its application along with any other machinery or part in itself cannot be the criteria to hold that it is neither a part nor an accessory, but as it is a consumable it cannot be a part or accessory.

46. Reliance is also placed on the Judgment of the Supreme Court in the case of "MEHRA & BROS, [supra] and particular attention is drawn to the observation that the test as to whether product is a part or accessory, machinery or part cannot be one of mere part or accessory contributing for the convenience and effectiveness of the use of a product like a car as a whole, but accessory as to whether it is an air conditioner designed and manufactured for fitment in a motor car.

47. Based on this observation, submission is that a limited understanding of the word "accessory" is not to be admitted to, but comprehensive understanding depending upon the user and the purpose for which it is used and the accessory going as a part of the main with which it is used is the test etc.

48. Reliance is also placed by the learned government advocate on a Division Bench decision of this Court in the case of PIONEER ENTERPRISES vs. JOINT

COMMISSIONER OF COMMERCIAL TAXES ((2004) 134 STC 138). Distinction indicated in this judgment is as to whether a product can be termed as an accessory or component and the test being that without the component the final product being not of any real value makes it as a component and whereas even without a part if the main product of the machinery is functional and can be used and a combination used for other product, makes it an accessory, may be for enhancing the efficiency or performance or even for enhancement of the look and appearance or like. It was held in this case that television antenna is to be held as an accessory of TV set. This decision was, no doubt, rendered in the contest of the provisions of the KST Act and on the question as to whether TV antenna constitutes an accessory and therefore liable to tax or it was a component of a TV set and it cannot be taxed independently.

49. Appearing on behalf of the assessee, Sri K.S. Suryanarayan, learned Counsel, has urged several contentions. It is firstly contended that the assessee had claimed the subject goods as consumables and therefore nonscheduled and not taxable; that the assessing officer taking the view that it is a consumable tool and fitting into Entry 52 of first schedule to the Act in itself was not correct and this aberration on the part of the assessing officer and the appellate authority has been corrected by the tribunal and therefore no interference is warranted on this aspect. It is also submitted that the assessing officer and the first appellate authority have not identified the product of the assessee as to whether it is a part or an accessory, but holding that it is a part or accessory is an ambiguous view and therefore the tribunal has corrected that and no interference is warranted. In support of this submission, learned Counsel for the assessee has again called in aid of the judgment of the Supreme Court in the case of REWA COAL FIELDS LTD [supra].

50. One more contention urged by Sri Suryanarayan is that the words "part" and "accessories" having not been defined either in the main part of the Act or within the scope of the entry as it occurs in the schedule and that Section 2(B) of the Act providing for supplementing the meaning of word and phrases used in this Act, but not defined to be the same as defined/attribution in the Karnataka Sales Tax Act, 1957 and therefore it is an instance of referential legislation to borrow and supplement the meaning of words and expressions which are themselves not defined in this Act by the meaning assigned to them in the KST Act and for such purpose has drawn our attention to Entry 1(iii)(a) of Part-M of Second schedule to the KST Act, reading as under:

submits that such of those goods figuring in Entry 1 (iii)(e) getting excluded from entry 1(iii)(a), a like way exclusion should be attributed for understanding the scope of Entry 52 of first schedule to the Act. It is on this premise, the further argument that goods dealt with by the assessee being in the nature of tools and wear parts should also automatically be excluded from Entry 52 of first schedule to the Act etc.

51. In support of this submission, Sri Suryanarayan has placed reliance on the

decision of a single Bench of this Court in the case of M/S RAJA MOTORS vs. ADCETCT, BANGALORE (1997 (42) KAR LJ 57). Reliance is also placed on the judgment of this Court in the case of KENNAMETAL WIDIA INDIA LTD vs. STATE OF KARNATAKA (2010 (69) KAR LJ 284) to urge that small machine tools manufactured and sold to another dealer for use as component and raw material are consumable to manufacture of other goods and recognizing this position, a notification has been issued u/s 8-A of the KST Act providing for concessional rate of tax etc. This judgment is called in aid to submit that raw material or consumables are treated differently from parts and accessories thereof.

52. One another main argument urged on behalf of the assessee is that the test for taxability of a goods under the provisions of the Act is what the goods is at the point of entry into local area and subsequent manner of use or application of the goods is of no significance and therefore it is submitted that assuming that tools and wear parts are subsequently used either as a part of any other machinery or accessory to another machinery cannot render the subsequent use or application taxable under the provisions of the Act, as at the time of entry of the goods, it was not either as part of accessory to any machinery.

53. In support of this submission, learned Counsel for the assessee has placed reliance on the judgment of the Supreme Court in the case of NAGAR MAHAPALIKA, BAREILLY vs. STATE OF UTTAR PRADESH ((1988) 70 STC 97). Strong reliance is also placed on a Division Bench decision of this Court in the case of THE ASST COMMISSIONER OF COMMERCIAL TAXES-CUM ENTRY TAX vs. MYSORE INDUSTRIAL SUPPLIES (1997 (42) KLJ 150), to urge that mere possibility of a product can be used as a part of some other bigger machinery or goods after entry is caused cannot be a criterion for levying tax on the particular product and in that case examination was in the context of ball bearing as to whether it constitutes a part of industrial machinery and part and accessory thereof as occurs in Entry 7 of Second Schedule to the Act. Placing reliance on these two judgments, submission is that these are the circumstances to indicate that the taxable event is at the entry point to the local area and the nature of the goods is the criteria and not the subsequent user of the goods for a particular purpose.

54. This position has been distinguished by the learned government advocate by pointing out that the judgment in the case of M/S. RAJA MOTORS [supra] is not an authority for referential legislation; that the judgment in the case of KENNAMETAL WIDIA INDIA LTD [supra] has no relevance, as it was not considered the scope of a notification granting exemption u/s 8(A) of the Act and examination was in a totally different context and in so far as the decision in the case of NAGAR MAHAPALIKA, BAREILLY [supra] is concerned, it is submitted that examination was in the context as to whether the product fitted into Entry 7 of the very schedule as it stood at the relevant point of time and therefore all these decisions may not be of much use for the purpose of understanding the scope of Entry 52 of first schedule to the Act.

55. Learned government advocate has strongly urged that these are arguments sought to be urged before the court for the first time without any basis and it is not even proper on the part of the assessee to call in such arguments and supporting decisions and examination cannot be go beyond the taxability under Entry 52 of first schedule to the Act in the context of the facts of the case and in the light of the judgment of the Supreme Court in the case of ADDISON & CO LTD [supra].

56. Even otherwise, we find the argument of interpreting or understanding the scope of Entry 52 of first schedule to the Act by referential legislation fails on many counts. First of all, it is to be borne in mind that the understanding of a word or expression in the Act is not the same as interpreting a word or phrase which is used in a particular context in a different enactment, even when the words and expressions not specifically defined or sought to be understood in the context of definition given to such words and expressions in an analogous enactment, it cannot be totally taken out of context and it can only be in the context.

57. Scope of Entry 52 of first schedule to the Act cannot, in our understanding, be understood or explained with reference to an entry occurring in KST Act, assuming that it is a like entry or analogous to an entry in the KST Act, but even if the argument is to be accepted to this extent, condition or further condition which occurs in an entry in another enactment to be imported into the Act is, in our considered opinion, not permitted by any principle of law. In fact, the entry in the KST Act has, with reference to another entry in the very schedule, made certain provisions and such things which are not even found in the present Act cannot be extracted and planted into the present Act, in the name of understanding a word or expression in the Act as is assigned to that word or expression in the KST Act.

58. One should bear in mind that different taxing statutes have different understandings and meanings. The subject matter for levy of tax even as it occurs in the charging section and the event on the happening of which tax is to be levied attracted are all different. Therefore, for understanding the scope and object of levy in one enactment, calling in aid the principle of referential legislation or assigning a meaning which the word in particular context has in a different enactment be the same in the present Act, is virtually not merely doing violence to the existing provisions of the Act but legislating by theory of referential legislation or any other mode, which the legislature itself has not done.

59. It is, therefore, this argument does not appeal to us for the purpose of understanding or interpreting Entry 52 of first schedule to the Act on the premise that Section 2(B) of the Act permits so.

60. In so far as the argument of charge of levy being at the point of entry of goods at the border of the local area is concerned, we find that the judgment of the Supreme Court in the case of NAGAR MAHAPALIKA, BARELLY [supra] cannot

constitute an authority for understanding the same and in fact as indicated above, different enactments have different purposes and just because there are similarities in the nature of charge created under one enactment that in itself cannot be a criterion to hold that the charging section in another enactment should also be understood in a like manner.

61. In fiscal statutes, interpretation of provisions of one enactment definitely cannot constitute an authority for interpreting the provisions or for understanding the purpose or even words occurring in a different fiscal enactment. Mere fact that octroi was a tax at the entry point and levy of tax under the provisions of the Act is also only after entry of the goods into the local area in itself cannot be a conclusive factor to understand the scope of chargeability under the provisions of the Uttar Pradesh Nagar Mahapalika Adhiniyam, 1959 and its Rules and Regulations should be assigned in understanding the provisions of the present Act.

62. Yet another reason why the judgments of this nature cannot constitute an authority is that examination by courts was provisions of different enactments and if it is an examination by the Supreme Court and a decision is rendered in the context of a particular statutory provisions in an enactment, the judgment can constitute a law declared by the Supreme Court within the meaning of Article 141 of the Constitution of India, only with reference to that particular provisions under the particular enactment and is not a law declared vis-?-vis any other statutory provisions. This position combined with the fact that in taxing statutes, examination being with reference to a particular product and a particular assessment year, such examination undertaken in the context of one enactment cannot be the basis for examining the taxability of another product under a different enactment and with different nature of charging sections.

63. Apart from these aspects, we find that on occasion for interpreting the scope of an entry and its validity etc., arise either in the context of the validity of the very enactment or in the context of the question having directly arising for examining the scope of an entry and by way of interpretation. We find a question of this nature had not arisen directly for interpreting the entry as to the scope and examination in fact was not on such premise, but on the converse premise viz., that a particular product was in the nature of consumable and therefore it does not fit into Entry 52 of first schedule to the Act. In our considered opinion, such cannot be the kind of examination for understanding the scope of Entry 52 of first schedule to the Act. Even otherwise this entry is not very complicated and it only says that machinery of all kinds and parts and accessory thereof excluding agricultural machinery. An entry of this nature, obviously, includes all machinery, parts and accessories thereof, excepting that agricultural machinery do not come within the scope of this entry. In fact, all kinds of mechanical appliances, whether small or big, capable of use by itself or in combination etc., are all within the scope of this entry, as the entry is in general terms. Therefore, understanding of the words "parts and accessory" goes with the understanding of the word

"machinery".

64. Several illustrations even as can be understood from the decisions and authorities cited at the Bar indicates a particular goods is sometimes part of one machinery and can be an accessory to another machinery and there are many parts which are consumable and there are many consumables which are not necessarily parts. All parts may not be consumable and all consumables may not be parts. It is, therefore, hazardous to lay down any straightjacket formula for understanding or interpreting scope of the words "part and accessory" to machinery and examination can only be in that context.

65. It is also evident from a reading of the above judgments that mere fact that a goods or product appears to be consumable does not necessarily mean being a part or accessory. It is, therefore, we reject the argument that mere fact that the goods/products of the assessee can happen to be a consumable by itself cannot take it out of the taxability under Entry 52 of first schedule to the Act, as even otherwise it is a part or accessory to a machinery.

66. Though Sri Suryanarayan, learned Counsel for the assessee has urged that the assessing officer had described the product as a consumable tool, but that by itself does not absolve the assessee of the liability, as the assessee's effort rested with an attempt to show that the tool is consumable and therefore within the scope of Entry 52 of first schedule to the Act. A tool in a given situation can also be part, and otherwise it can even be an accessory. It may be one consumed in the course of the application of the tool with the machinery or become useless over a period after use. These are all, in our considered opinion, not a determinative test for holding that it is not a part or an accessory.

67. There is no denial in all these cases that the particular product with which the assessee is dealing is one which has been used in combination with other machinery part and has no use of by itself. It obviously amounts that it becomes a tool for the working of another machinery or an accessory because of the enhanced utility of another machinery or machinery with which in combination with its use enhanced or even that it can be such a tool without which the main machinery may even become dysfunctional, as in the case of a drilling machine, which is not of much use without a drilling bit. In a situation of such nature, drilling machine or drilling bit or blade or any other such accessory may even assume the role of being a part of the main machinery. It is, therefore, we are of the opinion that there cannot be a generalization or an examination de hors the particular product in combination with the machinery with which makes use of the goods or product.

68. Tribunal having reversed the finding of the assessing officer and the first appellate authority to hold that the item is not taxable, is not a judgment which can be sustained. It is, therefore, we are unable to accept the submissions on behalf of the assessee and in the result, these revision petitions are also allowed, order of the tribunal set aside by answering the question accordingly and the

order passed by the assessing officer, affirmed by the first appellate authority, is restored.

RE: CRP Nos. 295 & 333 OF 2010

AND CRP Nos. 235 & 289 OF 2010:

69. These revision petitions are by the state u/s 15-A of the Act. The assessee is a public limited company carrying on manufacture of spark plugs and fuel injection equipment, apart from many other parts and accessories used in motor industries. The subject matter of examination is taxability or otherwise of the assessee's products such as drill-bits which are also called as machinery tools and wear parts such as drill-bits, reamers, cutters etc.

70. The question is as to whether these goods or items when are brought into a local area are taxable under the provisions of the Act and as one covered within the scope of Entry 52 of first schedule to the Act. The assessing officer opined that being in the nature of parts and accessories to the use along with machinery employed by the assessee for producing its products. Assessment years are 1999-2000 and 2000-01 in CRP Nos. 295 and 333 of 2010 and 2001-02 and 2002-03 in CRP Nos. 235 and 289 of 2010. The views of the assessing officer having been affirmed in the appeal by the first appellate authority, the assessee was before the tribunal questioning the correctness of these orders. Tribunal having taken the view that these products are goods brought into the local area by the assessee being in the nature of consumables and therefore not taxable as parts or accessories on the authority of the judgment of the Supreme Court in the case of REWA COAL FIELDS LTD [supra], the state is in revision to get over the orders of the tribunal.

71. Grounds in support of these revision petitions are the same as in the above revision petitions which we have disposed of and therefore arguments on behalf of the state-revision petitioner by Ms S. Sujatha, learned AGA are the same. It is submitted by the learned government advocate the very arguments as are urged in the above cases equally hold good for the present revision petitions also.

72. We also notice that the tribunal had rendered its decision which is subject matter of CRP No. 235 of 2010 and 289 of 2010 on 18-1-2010 and by purporting to follow and apply the ratio of the judgment of the Supreme Court in the case of REWA COAL FIELDS LTD [supra] and we had occasion to examine the items mentioned above individually and the common arguments in respect of these items on behalf of the assessee was that the product or goods ultimately gets consumed in the course of application of the product in combination with other machinery used by the assessee. The tribunal also opined that in terms of its earlier order dated 18-1-2010 involving assessment years 1991-92 and 1992-93 that the commissioner having issued a general clarification to the effect that tools similar to drilling bits fall under SI. No. 1(iii)(e) of Part-M to second schedule to the KST Act are taxable at 4% and cannot be regarded as either machinery parts or its accessory and therefore the goods/items of the assessee

being tools similar to drill bits, cannot be brought to tax even under Entry 52 of first schedule to the Act and further reasoning is that both the enactment being Karnataka legislation to levy and collect tax and it is in combination to the definition to Section 2(B) providing for adoption of meaning assigned to words not specifically defined in the Act, as defined in the KST Act, the circular equally applies for understanding the scope of Entry 52 of first schedule to the Act and has, therefore, reversed the view taken by the assessing officer as affirmed by the first appellate authority.

73. Sri G. Rabhinathan, learned Counsel for the assessee has urged contentions of referential legislation for understanding the meaning and scope of Entry 52 of first schedule to the Act as was submitted by Sri Suryanarayan, learned Counsel for the assessee in CRP No. 294 of 2010 and has drawn our attention to the very-entries as we have discussed in the order in respect of CRP No. 294 of 2010.

74. Sri Rabhinathan has also urged that the goods being in the nature of consumable, they are not parts or accessories and has placed reliance on the judgment of the Supreme Court in the case of REWA COAL FIELDS LTD [supra]. Sri Rabhinathan has also placed reliance on the judgment of the Supreme Court in the case of NAGAR MAHAPALIKA, BAREILLY [supra] as also the judgment of this Court in the case of ASST COMMISSIONER OF ENTRY TAX & ANOTHER vs. MYSORE SALES CORPORATION ((1992) 84 STC 461) to contend that taxable event is one of causing entry of goods into the local area and examination as to what is the goods brought at the entry point of local area and not the manner of use of the goods later and as to whether it can be used in combination with some other machinery to become an accessory to some other machinery or even if it can be used as part of some other machinery at a later point of time after getting the goods into the local area.

75. Sri Rabhinathan has also placed reliance on the judgment of this Court in the case of K.B. DANI vs. STATE OF KARNATAKA [(1979) 44 STC 276, where this Court had occasion to examine the question as to a trailer is part or accessory of a tractor and having opined that a tractor is in the nature of an agricultural machinery and that contention that tractor trailer is not in the nature of machinery was not taxable within the scope of entry 20 of second schedule to KST Act and on the same analogue, cutting tools brought into local area by the assessee being just used by propelling or applying a circular motion by using an independent machine cannot be called as either part or accessory to a machine which propels or renders circular motion to the tool and therefore it has to be taken out of the scope of Entry 52 of first schedule to the Act, which includes only machinery, parts and accessories thereof. Submission is that tools are neither parts nor accessories. It is also urged that as tools do not have either convenience of the machinery or effectiveness of the machinery, but they cannot be called as an accessory.

76. One another argument addressed is that Section 2(B) of the Act should be given a purposive interpretation to make it meaningful rather than to understand

it in the manner that it becomes dysfunctional and has, therefore, urged that in so far as Entry 52 of first schedule to the Act is concerned, for understanding the meaning of words "parts and accessories" therein, the meaning as assigned to "parts and accessories" in the KST Act should be necessarily adopted.

77. While examination of common contentions has already been undertaken, the additional arguments addressed in the case of this assessee are one relating to a clarification issued by the commissioner in the circular and the other relating to the need for giving a purposive interpretation to Section 2(B) of the Act.

78. In so far as the clarification is concerned, learned government advocate has submitted that the commissioner had, in fact, issued a subsequent clarification dated 11-8-2009 indicating as under:

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In the circumstances, it is clarified that cutting tools such as twist drills, taps, reamers, cutters, drill bits, etc, are not consumables. They fall under Sl. No. 52 of First Schedule to the KTEG Act, 1979 and are liable to tax at 2% as per Sl. No. 7 of notification No. FD 11 CET 2002, dated 30.03.2002.

and therefore points out that the earlier circular relied upon was not even available for the purpose of understanding the scope of Entry 52 of first schedule to the Act and in this aspect is even otherwise emphatically clarified now that it is not a situation of withdrawing the clarification which had been issued in favour of any assessee or in general for understanding the provisions of the Act.

79. We have already noticed the scope and meaning of understanding the words and expressions as defined in the Act to be the same meaning as in the KST Act. In so far as the argument relating to purposive interpretation while the principle is, undoubtedly and readily accepted, it is not attracted to the present situation and is not at all applicable. A purposive interpretation is given for effectuating some words and phrases expressly mentioned and provisions made for a particular purpose. The manner of understanding Section 2(B) of the Act is only for the purpose of filling the gap or a vacuum in understanding any of the phrase or expression used in this enactment. Understanding of the scope of entry is not one such situation. It is, therefore, the argument that by giving a purposive interpretation to Section 2(B) of the Act one should travel to the provisions of the KST Act and look into the scope and manner of entry 1(iii)(e) of Part-M of second schedule to KST Act to be outside the scope of entry 1(iii)(a) of the same part and therefore a meaning of this nature should be attributed for understanding entry 52 of schedule-I to the Act does not stand to reason, as by carving out a separate entry in the schedule to the KST Act, the scope of entry 1(iii)(a) of part-M is reduced. It is not so in the case of entry 52. For this reason also, the argument fails. In fact, there is no corresponding entry in the present enactment as is to be found in entry 1(iii)(a) of Part-M of second schedule to the KST Act. If the entry does not figure in the Act, the question of interpreting or understanding it does not arise and Entry 52 of first schedule to the Act is not on a par with

entry 3(iii)(a), but there is considerable difference between the two entries as they occur in the two enactments.

80. It is for these reasons, the argument of either referential legislation or purposive interpretation does not appeal to us and is rejected.

81. In so far as the argument addressed on behalf of the assessee, relating to circular of the commissioner is concerned, in the first instance, the circular is only in the context of the provisions of KST Act. Argument that it can hold good in respect of Entry 52 of first schedule to the Act, in the first instance, assumes or proceeds on the premise that entry 52 is required to be understood for examining the scope of this entry in the context of the provisions of the entries in the KST Act. When that argument itself is rejected, calling in aid the circular issued by the commissioner in the context of understanding an entry in the KST Act, in our considered opinion, is too far fetched and not possible, irrespective of the subsequent clarification of the year 2009, may be in the wake of the judgment of this Court and the Supreme Court in the case of ADDISON & CO LTD [supra]. It makes no difference to the legal position as it stood before this clarification and at any rate the earlier clarification of the commissioner of the year 1990 in the wake of the view that provisions of the KST Act has no bearing or relevance in understanding the scope of Entry 52 of first schedule to the Act and therefore this argument also cannot succeed and is rejected.

82. One another aspect we need to add at this stage is about the operation of the charging section in combination with the first schedule to the Act. while one requirement for attracting the levy u/s 3 is undoubtedly causing of entry of any goods into the local area and with the specific purpose of use, consumption or sale, the charge is effectuated by issue of a notification in respect of any of the specified goods in the first schedule to the Act. Unless notified goods are brought into the local area, with the intention of use, consumption or for sale by a dealer, there is no charge. The fact of the notified goods coming into local area and the purpose for which it is brought are both significant and it is a combined operation of the two, which completes the charges in respect of the specified goods. Therefore, assuming that use, application or consumption etc., takes places not at the entry point but later cannot make any difference to the charge so long as the purpose for which the goods have been brought into the local area is for one of the three enumerated purposes such as use, consumption or sale by the dealer which manner of application of goods may occur later.

83. It is, therefore, we accept the arguments of learned government advocate and rejected the arguments of the learned Counsel for the assessee. Therefore these revision petitions are also allowed, orders of the tribunal set aside by answering the question accordingly and the orders passed by the assessing officer, affirmed by the first appellate authority, are restored.

In CRP No. 147/2011:

84. This revision petition is also by the Revenue and directed against the order

dated 2.8.2010 passed by the Tribunal in STA No. 1481/2009. Under the impugned order, the Tribunal had allowed the appeal of the assessee holding that the assessing authority and the first appellate authority had committed an error in levying tax under the provisions of the Act and with reference to Entry-52 of Schedule-I to the Act in respect of the goods which the assessee had caused movement inside the local area, namely, fly knives and Chainin saw chains.

85. The Tribunal having opined that these products cannot be brought to tax within the scope of Entry-52 for the reason that they cannot be described either as parts or accessories to machineries following the view taken by the Tribunal in the case of "MOTOR INDUSTRIES LTD., v. STATE OF KARNATAKA" rendered in STA No. 554 & 555 of 2005 wherein reliance was placed on the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra], the present revision petition contending, inter alia, that the Judgment of the Supreme Court has been wrongly applied, was inapplicable; that the Judgment of this Court in the case of ADDISON & CO., [supra] was one which was required to be applied and has therefore sought for setting aside the order of the Tribunal.

86. The assessee is a limited company engaged in the activity of generation of electricity by using biomass fuel and wood as agents for generating steam in the boiler and the assessment year is from 1.4.2005 to 31.3.2006.

87. This revision petition also being heard in common, Smt. S. Sujatha, learned Additional Government Advocate submits that arguments advanced on behalf of the State in respect of other civil revision petitions holds good for this revision petition also and has also pointed out that the assessee's goods do not stand on any different line insofar as taxability of items under Entry-52 of the Schedule-I to the Act, is concerned.

88. We have heard Sri. Keshavamurthy, learned Counsel for the respondent - assessee.

89. Mr. Keshavamurthy also places reliance on the decisions of the Supreme Court in the case of REWA COAL FIELDS [supra] and also in the case of NAGAR MAHAPALIKA, BAREILLY [supra] and in addition has placed reliance on the Judgment of the Allahabad High Court in the case of "COMMISSIONER OF SALES TAX, U.P. v. PUNJAB GRAMOPHONE HOUSE" reported in (1979) 43 STC 141 and submits that the Allahabad High Court had an occasion to examine the meaning of the word "component part" of machinery and had opined that the needles used in a gramophone for the purpose of playing a record is not component part of a gramophone and therefore submitted that the view taken by the assessing authority and affirmed by the appellate authority that the products are component parts of the cutting machineries in combination with which the subject goods are used cannot form part of the cutting machinery or tool cutting machinery and therefore submits that the view of the Tribunal should be affirmed.

90. An alternative argument is also addressed by Sri. Keshavamurthy, learned Counsel for the assessee to submit that the assessee being new industrial unit

has enjoyed certain benefits during its early stages; that the industry had a general exemption for a period of three years from the date of its setting up and which ended by 31.3.2004 and thereafter the assessee has been given exemption in terms of notification No. FD. 161. CET. 2001[1] dated 30.11.2001 read with certificate executed by the Industries Department bearing No. DIC/CTA/ETE/C1/2004-05 dtd. 8.4.2004 and therefore also the assessee cannot be subjected to tax as even if it is to be held that subject goods are assessable in relation to Entry-52.

91. Insofar as additional submissions urged on behalf of the assessee is concerned, Smt. S. Sujatha, learned Additional Government Advocate has pointed out that the order of the Allahabad High Court in the case of PUNJAB GRAMOPHONE HOUSE [supra] is not an authority that binds this Court; that in the wake of the view taken by this Court in the case of ADDISON & CO., [supra] and affirmed by the Supreme Court, it is not open to the assessee to contend that products such as cutting tools use of which is akin to products in the case of the assessee in ADDISON & CO., [supra] are all to be taken as parts or components and therefore it is the Judgment of the Supreme Court rendered in the case of ADDISON & CO., [supra] which is more useful for understanding the scope and ambit of Entry-52 as the examination was in the context of the very entry of this enactment.

92. The argument that it is not component part is an argument which is used by Sri. Keshavamurthy to point out that the assessing authority had opined that it is a component part and so also the first appellate authority and therefore the reliance on the Judgment of the Allahabad High Court.

93. Insofar as reliance placed on the exemption notification is concerned, learned Additional Government Advocate has pointed out that the assessee does not enjoy a general exemption in respect of all its products for five years period from 10.2.2004 onwards; that the exemption is only with reference to the goods covered and described in Entry-80 and therefore has no relevance while understanding or interpreting Entry-52 and at any rate, an exemption notification issued in the context of Entry-80 cannot be called in aid for claiming exemption in respect of goods liable to tax under Entry-52.

94. Learned Additional Government Advocate has also pointed out that the assessee in fact is taking up inconsistent stand to contend that the product is not a component part for the purpose of Entry-52 and when it comes to claiming exemption with reference to Entry-80, it is claimed as a component part; that the initial exemption was specifically with reference to machinery and equipment whereas the second notification under which the assessee can claim exemption for a period of five years is confined to raw materials, component parts, semi finished goods etc., and entry itself is different and therefore the benefit under the second notification cannot be sought to be availed of in respect of items or goods covered under Entry-52 and with reference to which perhaps the first notification was issued.

95. We have bestowed our attention to the rival submissions and insofar as the Judgment of the Tribunal purporting to follow the Judgment of the Supreme Court in the case of REWA COAL FIELDS [supra] is concerned, we have already elaborately discussed the issue and opined on the same in the other revision petitions preferred by the State as mentioned earlier.

96. Insofar as reliance placed on the Judgment of the Allahabad High Court in the case of PUNJAB GRAMOPHONE HOUSE [supra] is concerned, the Judgment was particularly in the context of examination undertaken by the court under the provisions of section 3-A of the U.P. Sales Tax Act, 1948 and as to whether the particular item fitted into Entry No. 7 under a particular notification issued under the provisions of that Act and with the specific description "gramophones and component parts thereof and records".

97. We are of the opinion that an examination of this nature in the context of a precise situation and product cannot be generalized to make it applicable in respect of goods described in very generic term like in Entry-52 of the Schedule-I to the Act which only says "Machinery [all kinds] and parts and accessories thereof.

98. Any interpretation placed on any word or phrase in a specific context or in a limited context cannot be applied or extended while understanding the scope of a general word, description of which covers all kinds of machineries and parts and accessories thereof.

99. It is therefore that we are unable to persuade ourselves that the Judgment cited at the Bar on behalf of the assessee in the case of PUNJAB GRAMOPHONE HOUSE [supra] can make any difference to the present examination for holding that the products of the assessee are not liable to tax under Entry-52 of the Schedule-I to the Act.

100. Mr. Keshavamurthy, learned Counsel appearing for the respondent - assessee has also pressed into service the Judgment of this Court in the case of MYSORE INDUSTRIAL SUPPLIES [supra] to contend that the identification of the goods should happen at the point of entry and not with reference to subsequent use etc.

101. This understanding is because of the nature of the charge under the Act as indicated in Section 3 of the Act. Even as per the Judgment of this Court in the case of MYSORE INDUSTRIAL SUPPLIES [supra], the taxing event is causing of the entry into local area and there cannot be any two opinions on the same.

102. However, we would also add to that Judgment to indicate that the very entry of goods by themselves does not attract tax, but it is only when entry of the goods mentioned in the Schedule-I is caused by a dealer, for consumption, use or sale therein. The combination of sub-sections [1] and [2] of Section 3 of the Act indicates that it is the dealer who is made responsible for payment of tax under the Act and identification of the goods even at the entry point is to be as

understood in the market parlance as can be distinguished with the understanding of the goods on a technical view point or from a scientific point of view. But, the understanding even in the case of MYSORE INDUSTRIAL SUPPLIES [supra] was in the context of examining the scope of Entry-7 as it stood then reading as "Industrial machineries and parts and accessories thereof.

103. It is of significance to notice that parts and accessories are only such parts and accessories to the main description in the entry namely "industrial machinery".

104. We notice the corresponding present entry is Entry-52 and reads as "machinery of all kinds and parts and accessories thereof", but excluding agricultural machinery. If machinery is not an industrial machinery, parts and accessories thereof also does not arise. Entry-7 while covered only parts and accessories of industrial machinery, the present entry covers parts and accessories of all kinds of machinery excluding agricultural machinery- Therefore, the meaning of the words "parts and accessories" also has to be understood in a generic context and the test has to be as to whether the parts and accessories are a part and accessory of any type of machinery in general and in particular with the type of machinery with which the dealer causes entry for any of the purposes mentioned in the charging section.

105. Obviously, a part or an accessory is not accompanying a machinery and has to be brought independently. The user of the part and machinery is definitely not at the entry point and it is only for identifying the goods, its utility in other machinery either as part or as an accessory which is of significance.

106. Insofar as goods which are brought within the local area by the assessee is concerned, it is brought into the local area by the assessee - dealer for the purpose of using it in combination with other machinery which the assessee uses for its business purposes and for producing any product or goods and therefore it is with reference to the application and the manner of application of the part insofar as the understanding of the words "parts and accessories of machinery" has to be understood in the context of Entry-52 of Schedule-I to the Act. The limited understanding of what constituted component part or a part in the wake of a specified type of machinery may not necessarily be useful or applicable in understanding the scope of the words "parts" and "accessories" of all types of machinery.

107. If the argument addressed on behalf of the assessee are to be accepted, then the levy of tax under the entry in respect of parts and accessories virtually becomes redundant or impossible. No redundancy can be attributed to the legislature and it has to be effectuated and purposive interpretation has to be attempted in harmonizing the conflict, if any.

108. In the wake of this need and in the wake of the Judgment of this Court, affirmed by the Supreme Court in the case of ADDISON & CO., [supra], such products or goods brought into local area by the assessee, but used that as tool

bids or like uses having been held as part or accessories, there cannot be a different view for the purpose of the present assessee.

109. It is therefore that we reject the argument to the effect that at the entry point it was not identified as a part of the particular machinery, but it was known otherwise etc. In the hands of the assessee - dealer, it was very well known and does become a part or component in the combination with type of machinery employed or used by the assessee and therefore we accept the submissions on behalf of the revenue, particularly, based on the Judgment of the Supreme Court in the case of ADDISON & CO., [supra].

110. Insofar as reliance placed on the notification is concerned and even as submitted by learned Additional Government Advocate, an exemption notification issued with reference to Entry-80 cannot be employed for claiming exemption under the levy of tax with reference to goods in Entry-52 and it is well known exemption notifications should be construed strictly and scope of the exemption notification cannot be enlarged either by way of analogy or logic. It operates only in respect of the specific goods mentioned and not beyond. Therefore, the argument that the assessee can even otherwise claim exemption from levy of tax with reference to second exemption notification cannot be accepted. Such being the finding of the Tribunal, we do not find anything wrong in the order.

111. Therefore, this revision petition is allowed answering the question accordingly.

RE: CRP No. 292/2010 & CRP Nos. 308-309/2010

C/W CRP No. 165/2011 & 166-167/2011:

112. State is the Revision Petitioner in these petitions preferred u/s 15-A of the Act. The respondent-assessee is a Limited Company, manufacturer and trader of drill bits, cutters and reamers amongst others. The assessment years relating to CRP No. 292/2010 & CRP Nos. 308-309/2010 are 1992-93, 1993-94 and 2000-01, in respect of CRP No. 165/2011 & CRP Nos. 166-167/2011 the assessment years are 1997-98, 1998-99 and 1999-2000. The questions of law are common arising in all these petitions and as under:

In CRP No. 292/2010 & CRP Nos. 308-309/2010::

(1) Whether the Tribunal was justified in allowing the appeal of the respondent particularly in the facts and circumstances of the case?

(2) Whether the Tribunal is right in holding that the part and accessories are consumable contrary to the view taken by the Hon"ble Supreme Court in the case of Addison & Co.?

In CRP No. 165/11 & CRP Nos. 166 & 167/2011::

(1) Whether the Tribunal was justified in allowing the appeal of the respondent particularly in the facts and circumstances of the case?

(2) Whether the Tribunal is right in holding that the tools like drill bits fall under the category of consumables and not as parts and accessories of machinery?

113. Petitioner-State is represented by Smt. Sujatha and respondent-assessee is represented by Sri. K. Ramnath Nayak and Sri. Gurudatta Shenoy.

114. We have heard Smt. Sujatha, learned Additional Government Advocate appearing for the revision petitioner and Sri. Gurudatta Shenoy and Sri. Ramnath Nayak, learned Counsel appearing for the assessee.

115. So far as the petitioner-State is concerned, submission of the learned Additional Government Advocate is that these questions are all analogous to the questions raised in the other revision petitions and the arguments are same that it is covered and affirmed by the judgment of this Court in the Case of M/s. ADDISON & CO. LTD. v/s THE STATE OF KARNATAKA in STA Nos. 1614-1618/2008, Submission on behalf of this assessee is also in like terms, except for few additional arguments touching upon the facts of the case of the assessee. The question insofar as the assessment years 1992-93, 1993-94 and 2000-01, arose as the Tribunal had remanded the matter to the Assessing Authority and taking advantage of the remand order, the assessee has raised contention that the products dealt with by the assessee which are brought into local area being in the nature of consumables, the judgment of the Hon'ble Supreme Court in the case of REWA COAL FIELDS to be applied and therefore contended that it is not taxable. This argument having found favour before the Tribunal, the present revision petitions before us by the State.

116. It is also the submission of Mr. Gurudatta Shenoy, learned Counsel for the assessee that the assessee has its manufacturing unit at Nasik and these goods are brought into local area where it has received the goods on stock transfer basis to its Branch at Bangalore and placing reliance on the decision of this Court in the case of Mysore Industrial Supplies, his submission is that the goods are not brought into local area as Parts or Accessories of any machinery at the point of entry and therefore, he is not liable to pay tax under Entry-52 of I Schedule to the Act. Mr. Shenoy has also pointed out that there are certain anomalies in the orders of the Assessing Authority and the First Appellate Authority that the Assessing Authority in one part of the order has opined that the goods are in the nature of components whereas in the very order, it has also opined that the goods are accessories. Therefore submits that it cannot be both at the same time. Particularly exclusive of one another and therefore the order was bad and the Tribunal has rightly corrected it and there is no need for interference of this Court. One another argument urged on behalf of the assessee in these cases is that for particular assessment year 2000-01, the Assessing Authority itself had allowed certain deductions for the taxable turnover such as discount allowed, but it has not been done in respect of the assessment years in question in these revision petitions and therefore also the matter to that extent warrants remand even if the subject goods are to be held as taxable within the scope of Entry-52 of the I Schedule to the Act.

117. One another argument canvassed before us by Mr. Shenoy is that in understanding the scope of the words "Parts and Accessories of machinery" in terms of clarification that had been issued by the Commissioner in the year 1990 under the provisions of KST Act. But the very notification having been withdrawn by the Commissioner as per the subsequent circular issued in the year 1999. In the subsequent notifications, it is being further made clear that this has nothing to do with the provisions of the Act. The clarification if at all cannot operate prospectively and it operates retrospectively and therefore for the assessment years in question and the subject matter of these revision petitions should be held that the clarification holds the field and therefore the assessee has decided to claim the benefit of the clarification so long as it is advantageous to the assessee. In support of his submission, the learned Counsel placed reliance on the decision of this Court in SUBHASH MARKETING v/s. COMMISSIONER OF INCOME TAX reported in v/s. STC 136.

118. Insofar as the argument relating to the nature of goods on the entry point and as to whether it is identified there as Parts or Accessories of machinery, we have already examined and rejected the arguments for the reasons mentioned in the above revision petitions and the orders passed in relation to other revision petitions heard together.

119. Insofar as the arguments relating to the discount to be made available for these assessment years is also an argument which cannot be examined in these revision petitions at the instance of the State wherein it was not an issue before the authorities particularly in the context of these assessment years and allowing or otherwise as a discounts or as deduction is based on fact and not on principle of law. Basically, it is on fact and if it enables the provision, it may be so claimed as deduction and not otherwise. Therefore, we do not propose to examine further the merits of these contentions urged in these revision petitions.

120. In fact, Smt. Sujatha, learned Additional Government Advocate joins issue and the main argument sought to put forth before this Court in the revision petitions preferred by the State to the extent the matter was in issue earlier is, if the order of the Tribunal does not mention that one way or the other, the assessee having succeeded, his arguments can be called in aid only to that extent, we examine the submission made on behalf of the assessee.

121. Insofar as reliance placed on the decision of this Court in SUBHASH MARKETING'S case is concerned, we have already clarified that the circular issued in the context of KST Act and clarified certain position cannot have any bearing and binding nature in respect of the provisions of the present Act. Clarification and withdrawal of the earlier clarification both having taken place in the context of KST Act that cannot have any bearing at all in understanding, interpreting or in understanding the benefit based on the clarification does not arise. So far as the present situation is concerned, whether or not a mention is made of the provision of the Act in the subsequent circular, it is not of any significance or relevance as the entire argument on behalf of the assessee being

clarificatory cannot be withdrawn retrospectively. In this case, there is no clarification at all and therefore does not warrant further examination on merits.

122. In the wake of the view that we have taken, following the judgment of this Court in the case of ADDISON & CO., [supra] and affirmed by the Supreme Court, we hold that the goods which are in the nature of cutters, reamers, drill bits etc., which are also accessories or additions to the drilling bits manufactured or sold by the assessee and in the course of manufacturing such parts are independently brought to local area also being used by the assessee, we hold that the charge in respect of the goods under Entry 52 of the Act makes good. The drilling bits being already been held as Parts and Accessories of other machinery even if the assessee should indulge in the activity of sale of the same, the liability and Entry-52 is also attracted and therefore, we answer the questions 1 to 3 in CRP No. 165/2011 and other connected cases in the negative so also questions 1 and 2 in CRP No. 292/2010 and other connected cases in the negative and against the assessee. Consequently, the revision petitions are allowed, the order passed by the Tribunal is set aside and the order of the Assessing Authority as affirmed by the Appellate Authority is restored. Parties are directed to bear their respective costs.