
(2005) 02 SC CK 0058

In the Supreme Court Of India

Case No : Civil Appeal No. 3960 of 1999

State of Maharashtra

APPELLANT

Vs

Bradma of India Ltd.

RESPONDENT

Date of Decision : 16-02-2005

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 42, 61(1)

Citation : AIR 2005 SC 956 : (2005) AIRSCW 894 : (2005) 2 JT 310 : (2005) 2 SCC 669 : (2005) 140 STC 17 : (2005) 2 Supreme 56

Hon'ble Judges : Ruma Pal, J;C. K. Thakker, J;Arijit Pasayat, J

Bench : Full Bench

Advocate : Mukesh K. Giri, for the Appellant; A.K. Ganguli and Pranab Kumar Mullick, for the Respondent

Final Decision : Disposed Of

Judgement

Ruma Pal, J.—The respondent manufactures electronic cash registers. In addition to the usual functions of a cash register, the respondent's models perform various other functions including: i) Billing and cash memo printing with alpha numeric print out ii) Cashier-wise cash collection summary and analysis. iii) Daily and periodical item-wise analysis iv) Stock analysis v) Re-order level analysis vii) Salesman-wise sales analysis; etc.

2. The question is whether such cash registers are classifiable under Entry 90 or under Entry 97(b) of Part II, Schedule (c) of the Bombay Sales Tax Act, 1959.

3. The two competing entries read as follows:-

Entry 90. "Tabulating calculating cash registering, indexing, card punching franking, addressing, cheque writing, statistical paper threading and data processing (other than computers) machines and components, parts and accessories of such machines.

Entry 97(a) "Computer and components parts and accessories thereof and tapes

spools and tapes spools and discussed therewith and

(b) Electronic systems, instruments apparatus and appliances other than those specified elsewhere and components parts and accessories of any of them."

4. The Departmental Authorities contend that the goods are classifiable under tariff Entry 90. The respondent assessee submits that the relevant entry is 97(b). The Maharashtra Sales Tax Tribunal accepted the department's submission on the grounds that the very name of the machine namely "Bradma Cash Track Electronic Cash Registers" would prima facie support the conclusion that it was covered by Entry 90, that admittedly the machine was primarily performing the functions which are normally carried out by a cash registering machine and that the additional functions performed by the respondent's models were merely subsidiary to such primary function. It was held that Entry 90 being the specific Entry dealing with Cash Registering Machines, would apply rather than Entry 97(b) which was the general entry.

5. At the instance of the Department, the following questions were referred to the High Court by the Tribunal for its decision u/s 61(1) of the Bombay Sales Tax Act, 1959:-

"1. Whether on the facts and in the circumstances of the case, the tribunal was right in holding that "electronic cash register" sold by the applicant was covered by entry No. 90 of Schedule C part II and not by entry No. 97(b) of Schedule C Part II appended to the Bombay Sales Tax Act, 1959?

2. Whether in the facts and in the circumstances of the case, the tribunal was right in holding that the various functions carried on by the machine were only subsidiary functions and that, therefore, the cash register was essentially only a cash register and could not be considered as an electronic system, appliance or instrument?"

6. The High Court answered the questions framed in favour of the assessee. Contrary to the opinion expressed by the Tribunal, the High Court was of the view that Entry 90 was the general entry and Entry 97(b) the special entry. Since there was no controversy that the electronic registers sold by the assessee were operated electronically, the High Court thought that it would more appropriately fall under Entry 97(b) and not under Entry 90. In arriving at this conclusion, the High Court relied upon a Bench decision of the Andhra Pradesh High Court in State of Andhra Pradesh Vs. Apex Agencies, , .

7. We are of the opinion that the High Court was wrong. Both the Tribunal and the High Court commonly enunciated the principle that a specific entry would override a general entry. In addition we would add, and as has been held in Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd., , resort has to be had to the residuary heading only when a liberal construction by the specific heading cannot cover the goods in question. The language of Entry 97 (b) clearly shows, by use of the phrase "other than those specified elsewhere" that it is not

only a residuary entry but also that electronic systems, instruments etc. may be classified under other entries. Entry 90 on the other hand does not contain any words of limitation. The items mentioned therein would cover every species thereof irrespective of the mode of their operation. Cash registering machines are specifically mentioned. In the absence of any limitation or qualification as to the different kinds of cash registering machines, there is no reason to read in any such qualification and limit the entry to particular kinds of cash registering machines. It is significant that by contrast, data processing machines have expressly excluded computers. Were it not so excluded, computers would have also fallen within Entry 90. In fact computers are separately dealt with Entry 97(a). But the exclusion of computers from data processing machines would indicate that the items mentioned in Entry 90 are generic covering all species of such items. Given the language of the two entries we fail to understand how the High Court could have come to the conclusion that Entry 97(b) was the specific entry and that Entry 90 was the general entry. Such an interpretation goes against the express language of the two entries.

8. There is an additional telling factor. The assessee had, on this understanding of the Entries, collected tax in respect of the cash registering machine sold by it at rates which are applicable to Entry 90 and not Entry 97(b). It was only after a Government Notification was issued u/s 42 of the Bombay Sales Tax Act reducing the rate of tax in respect of the items falling under Entry 97(b) from 20% to 4%, that the respondent claimed classification under that Entry.

9. The decision of the Andhra Pradesh High Court in Apex Agencies referred to by the High Court does not assist the respondent. The two competing entries in the Andhra Pradesh Sales Tax Act, 1957, made a clear demarcation between inter alia calculating machines (Entry 12) and all kinds of electronic goods including electronic system [Entry 38(V)]. Entry 38 (V) was therefore not a residuary entry nor was there any overlapping. There was a sharp line of demarcation between the two entries, a situation which is wholly absent in the two entries we are required to interpret.

10. Reliance was also placed by the respondent on a decision of the Tribunal in the assessee's own case *Bradma of India Limited Vs. State of Maharashtra*, judgment dated 6.11.1993). The goods, the classification of which was in dispute, were electronic weighing scales. The department did not seek to classify it under the specific heading namely Entry 69(A) which deals inter alia with all kinds of weighing machines. On the other hand it contended that it should be classified under Entry 90 which does not explicitly refer to weighing machines as it does to cash registers. The assessee contended that the machine was classifiable under Entry 97(b). In this context, the Tribunal was of the view that there was reasonable doubt whether the machine fell under Entry 90 or under Entry 97(b) and giving the benefit of doubt to the assessee, the machine was held to be classifiable under Entry 97(b). The case has no relevance to the facts before us.

11. The last decision relied upon by the respondent in support of its stand was the decision of this Court in M/s. B.P.L. Ltd. Vs. State of A.P., . That case pertained to Entries of the Andhra Pradesh General Sales Tax Act, 1957 which we have noted are for the purposes of the entries in question, materially different. Besides this Court was only called upon to construe an exemption notification which granted concessional rates of tax on electronic goods. In this context it was held that electronic washing machines were electronic goods and that the assessee was entitled to the benefit of the exemption notification.

12. In the circumstances, the decision of High Court is set aside. The appeal is allowed and the decision of the Tribunal confirmed without any order as to costs.