(1976) 03 MAD CK 0079

In the Madras High Court

Case No : Tax Case No''s. 310 and 316 of 1971 (Revision No''s. 198 and 204 of 1971)

State of Tamil Nadu — APPELLANT

Vs

Blue Star Engineering Co. Madras Private Limited — RESPONDENT

Date of Decision : 25-03-1976

Acts Referred:
Tamil Nadu General Sales Tax Act, 1959 — Section 16

Citation : (1977) 39 STC 194

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : K. Govindarajan, for the Additional Government Pleader No. I in T.C. No. 310 of 1971 and S.V. Subramaniam, for Subbaraya Aiyar and Padmanabhan, in T.C. No. 316 of 1971, for the Appellant; K. Govindarajan, for the Additional Government Pleader No. I in T.C. No. 316 of 1971 and S.V. Subramaniam, for Subbaraya Aiyar and Padmanabhan, in T.C. No. 310 of 1971, for the Respondent

Judgement

Sethuraman, J.—These two tax revision cases arise out of the sales tax assessments for the assessment years 1966-67 and 1967-68. They are on identical facts and, therefore, it is enough to consider the facts of one year and to apply the conclusion arrived at therein for the other.

2. In making the assessment on the assessee for the assessment year 1966-67, the assessing authority taxed the sales of drawing office equipment amounting to Rs. 83,633.75 at 6 1/2 per cent. Later on, he found that this equipment had to be treated as duplicating machine and assessed to tax at 11 per cent. He, therefore, took action u/s 16. The nature of this equipment has been described in an affidavit filed by the manager of the assessee-company, who is a qualified engineer, which runs as follows:

The drawing office equipment works on electrical circuit with the voltage of 220-230. Light from the astralon tube/the actinic lamp is released to pass through a spring loaded roller mounted with the specimen for which the facsimile is required. The spring loaded roller mechanism rotates the sensitised paper (dipped in a chemical solution) and the specimen around the lamp. A time-switch is also provided for controlling the time during which the light is to pass through this specimen. Both the roller mechanism and the time-switch are operated by electricity. The rotation of the sensitised paper and the specimen around the light for the required length of time completes the operation and the facsimile of the specimen is obtained on the sensitised paper.

However, the usage of the equipment is subject to certain limitations. For getting clear and correct facsimile of the specimen, the specimen should be typed or printed on a translucent paper for the light from the actinic lamp to pass. The matter should be typed or printed only on one side of the paper and it should be either blue or black. Copies can be had on the sensitised paper which can be utilised only for getting facsimile from the specimen by the above process. Both the chemical solution and the sensitised paper have got a specified life and so have to be utilised before the expiry dates mentioned therein. Without electricity or the sensitised paper, the facsimile cannot be obtained.

3. The assessee claimed that this equipment cannot be treated as a duplicating machine since it cannot function except with the application of electricity. It was also stated that the machine was equipped with an electrical roller for the movement of the chemical paper and that, therefore, it came within the scope of entry 41 of Schedule I to the Tamil Nadu General Sales Tax Act. Entry 41 reads as follows:

4. The assessing authority, however, considered that this came under entry 1, which runs as follows:

5. He pointed out that it was not denied that these machines were intended for taking copies of blue prints and documents. Treating them as copying apparatus used as duplicating machines, he held that the turnover was taxable under entry 1.

6. The assessment so made was confirmed on appeal by the Appellate Assistant Commissioner and also by the Tribunal. For the assessment year 1967-68, the Tribunal had come to a different conclusion. Except for the figures, the rest of the facts are common.

7. In the present tax revision cases the contention of the revenue was that this is a duplicating machine as it performs and is intended only for duplicating purposes. For the assessee the submission was that this is a printing and developing machine, as is shown by the pamphlet published by the company and that as it is operated by electricity, it came within the scope of entry 41.

8. We are unable to agree with the assessee''s submission. We find even from the pamphlet itself that the purpose for which it is sold is only to serve as a duplicating machine. It may be that in the process electricity is used. But in order to come within the scope of entry 41, it is not enough if electrical power is

used. It must essentially be electrical machines or electrical goods described in the said entry. Even taking that the equipment is usable only with the aid of electricity, still, where there are two entries, one general and the other particular, we have to take the particular or specific entry for the purpose of levying the tax. In this case, the particular entry is entry No. 1, where duplicating machines have been specified. In the circumstances, we consider that the assessing authority was right in taxing these goods as duplicating machines.

9. In the result, Tax Revision Case No. 310 of 1971 is allowed and Tax Revision Case No. 316 of 1971 is dismissed. There will be no order as to costs in both the revisions.

