

(1991) 04 MAD CK 0058
In the Madras High Court
Case No : Tax Case (R) No. 1598 of 1981

Union Carbide India Limited	Vs	APPELLANT
State of Tamil Nadu		RESPONDENT

Date of Decision : 04-04-1991

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Item 6(I)

Citation : (1991) 04 MAD CK 0058

Hon'ble Judges : A.S. Anand, C.J.;Raju, J

Bench : Division Bench

Judgement

Dr. A.S. Anand, C.J.—The only question which we are called upon to consider in this tax revision case is whether are carbon falls under item 6 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. Since the assessment year in question is 1975-76, it would be appropriate to extract item 6 of the First Schedule as existing during that period. The item read as follows :

----- "Sl. Description
of the goods Point of Rate of Effective No. levy tax from (1) (2) (3) (4) (5) per
cent. ----- 6
Cinematographic equipment At the 7 1-4-1959 including cameras, projectors,
point of 10 1-9-1963 sound recording and reproducing first sale 11 1-12-1965
equipment, lenses, films, and in the 12 18-6-1967 parts and accessories
required State 15 26-2-1970" for use therewith.

2. Indeed, this entry came to be amended by Act 7 of 1981 with effect from October 29, 1980, the amended entry reads as follows :

"Cinematograph equipment including cameras, projectors, sound recording and reproducing equipment, lenses, films, are carbon or cinema carbon and parts and accessories required for use therewith."

3. The Tribunal, relying upon the judgment of the Supreme Court in Annapurna

Carbon Industries Co. v. State of Andhra Pradesh [1976] 37 STC 378 held that are carbon which are manufactured by the petitioner-assessee fell under item 6 of the First Schedule as it existed prior to the amendment by Act 7 to 1981. The assessee questions that finding.

4. Mr. C. Natarajan, learned counsel for the assessee submitted that since are carbon has transient life and it exhausts itself by consumption during operation, it cannot be treated as an accessory and that the meaning of the expression "accessory" cannot be extended to include transient parts but has to be confined to such parts which are of a permanent nature and which in any case are not consumable articles. It was further submitted that are carbon is an independent commercial commodity and, therefore, cannot be covered by item 6 of Schedule I as it existed prior to its amendment in 1980.

5. The precise issue before us has been answered by the Apex Court and the question is no longer res integra. In Annapurna Carbon Industries Co. v. State of Andhra Pradesh [1976] 37 STC 378, the question before the Apex Court was whether sales of are carbon were rightly subjected to sales tax on the ground that they fell under entry No. 4 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. Entry No. 4 in that Act reads as follows :

"Cinematographic equipment, including cameras, projectors, and sound recording and reproducing equipment lenses, films and parts and accessories required for use therewith.

"As could be seen this entry is in terms exactly the same as item No. 6 of Schedule I of the Tamil Nadu General Sales Tax Act prior to its amendment in 1980. The Apex Court held that are carbons were rightly held by the High Court of the Andhra Pradesh to be covered by entry No. 4 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. The Apex Court considered the term "accessories" as used in entry No. 4 of Schedule I to the Andhra Pradesh General Sales Tax Act, and after referring to the Webster's Third New International Dictionary held that the article are carbon would be included in the expression "accessory" which was required for use in projectors or other cinematographic equipment. Taking note of the main use of the are carbon to be the production of powerful light used in projectors in cinemas, the court held that the view taken by the Andhra Pradesh High Court that are carbons were covered by the relevant entry No. 4 was justified. In view of the categorie finding recorded by the Supreme Court on an identical entry in the Andhra Pradesh General Sales Tax Act to the effect that are carbons are included in entry No. 4 of the Act, the conclusion is inescapable that are carbons would fall under item No. 6 of Schedule I to the Tamil Nadu General Sales Tax Act as it existed prior to its amendment. Of course, after the amendment, are carbon has been specifically included in the same entry.

6. The submission made by Mr. Natarajan that are carbon is an independent commercial commodity and is of a consumable nature cannot detract from the

fact that are carbon is necessarily an accessory required for use in projectors and other cinematographic equipment. It is not permissible to restrict the ambit and scope of the term "accessory" only to parts which are of a permanent nature. The reliance placed by Mr. Natarajan on Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Union Carbide India Ltd. [1976] 38 STC 198 where a Division Bench of the Kerala High Court held that are carbon cannot be regarded as parts or accessories of cinematographic equipment need not detain us as we find that the Division Bench of the Kerala High Court while rendering the judgment in Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Union Carbide India Ltd. [1976] 38 STC 198 disagreed with the reasoning adopted by the Andhra Pradesh High Court in T.R.C. Nos. 46 and 47 of 1969 decided on January 19, 1970. The judgment in T.R.C. Nos. 46 and 47 of 1969 was in fact judgment in Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, . Since the Supreme Court upheld the view taken by the Andhra Pradesh High Court in that case, it necessarily follows that the law laid down by the Kerala High Court in Deputy Commissioner of Agricultural Income Tax and Sales Tax v. Union Carbide India Ltd. [1976] 38 STC 198 cannot be considered to be, on that aspect, any longer good law.

7. It would also be relevant in this connection to note that in Mehra Bros. v. Joint Commercial Tax Officer [1991] 80 STC 233, the Apex Court once again noticed with approval the meaning assigned to the expression "accessory" as given in Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, . The Supreme Court, speaking through K. Ramaswami, J. opined thus :

"Thus this Court accepted the meaning of "accessories" as an object or device that is not essential in itself but that adds to the beauty or convenience or effectiveness of something else or is supplementary or secondary to something of greater or primary importance which assists in operating or controlling or may serve as aid or accessories. The "are carbon" was held to be an accessory."

8. We, therefore, find that the view of the Tribunal that "are carbon", even prior to the amendment of item 6 of the First Schedule to the Tamil Nadu General Sales Tax Act, fall under item 6 is sound and unexceptionable. Consequently, since the only question involved stands settled by the Supreme Court in Annapurna Carbon Industries Co. v. State of Andhra Pradesh [1976] 37 STC 378 and again in Mehra Bros. v. Joint Commercial Tax Officer [1991] 80 STC 233, the tax revision case fails and is dismissed. No costs.

9. Petition dismissed