

SUPREME COURT OF INDIA

Asst.Coll.Customs

Vs.

Associated Forest Products Pvt.Ltd.

(B.N.Kirpal and N.Santosh Hegde JJ.)

11.03.1999

ORDER

1. The appellant sells diesel engine pump sets. Diesel engine pump sets are used for agricultural purpose. It was the case of the appellant that the said pump sets were exempt from sales tax by virtue of the provisions of Item 13 of Schedule I of the Bengal Finance (Sales Tax) Act, 1941 which, at the relevant time, read thus:

“13. Agricultural implements Except: tractors, power-tillers and other implements operated by power and spare parts, accessories and component parts thereof.”

2. The Sales Tax Authorities took the view that the said pump sets were not agricultural implements. The Bengal Taxation Tribunal then took the view that the said pump sets were agricultural implements and were not covered by the exception from exemption from exemption because, in its view, the words “other implements” had to be construed in line with the words “tractors, power-tillers” in Item 13. The said Act was then amended by an ordinance (Ordinance 1 to 1993) on 7-4-1993,

which was replaced by the West Bengal Taxation Laws (amendment) Act, 1993 (Act 4 of 1993). By reason thereof, Item 13 read thus:

“13. Agricultural implements Except implements operated by power and spare parts, accessories and components thereof.”

The amendment was made retrospectively with effect from 1-10-1982. A provision that nullified the effect of any previous judgment, decree or order was also inserted in the said Act.

3. The Sales Tax Authorities again took the view that the said pump sets were not exempt from taxation on the basis that though they were agricultural implements, they were “operated by power”. Their decision was challenged by the appellant before the West Bengal Taxation Tribunal. The Judicial Member of the Tribunal took the view that the words “operated by power” did not mean “operated only by electric power” and therefore, held against the appellant. The Technical Member took the view that the words “operated by power” meant “operated only by electric power” and therefore, decided in favour of the appellant. In view of the divergence of opinion, the matter was referred to a third Member. Hence, the appellant is in appeal by special leave.

4. The principal contention on behalf of the appellant is that the word “power” in common parlance and understanding means electric power, that the said pump sets are not operated by electric power and that, therefore, the said pump sets are not covered by the exception to the exemption given by Item 13. We find that no evidence of common parlance and understanding had been laid before the Tribunal. If is, therefore, necessary to decide the appeal by reference to the plain language of Item 13 as it read before its amendment and after.

5. Before the amendment the exemption was granted to agricultural implements but not to tractors, power-tillers and other agricultural implements which were operated by power were excepted therefrom. Subsequent to the amendment, the exemption was given to agricultural implements but implements that were operated by power were excepted therefrom. A clear inference, therefore, arises that tractors for the purposes of Item 13 are agricultural implements that are operated by power. Now, tractors are

not operated by electric power but by other motive power. The words “operated by power”, therefore, cannot be confined to implements operated by electric power but must include implements that are operated by motive power of any kind. The majority decision of the Tribunal was therefore, justified.

6. It was submitted that the retrospective amendment and validation in 1993 imposed a grievous burden upon the appellant and other similarly placed because they were unable to collect the sales tax they now had to pay from the parties to whom they sold the said pump sets. We are not impressed by the argument for the Ordinance that made the amendment and introduces the validation section was promulgated within about nine months of the disposal by the Tribunal of the earlier filed by the appellant.

7. In the circumstances, the appeal fails is dismissed. No order as to costs.