

A

COASTAL CHEMICALS LTD. ETC.

v.

COMMERCIAL TAX OFFICER, A.P. AND ORS. ETC.

OCTOBER 14, 1999

B

[S.P. BHARUCHA, V.N. KHARE AND D.P. MOHAPATRA, JJ.]

C

Sales Tax—Andhra Pradesh General Sales Tax Act, 1957—Section 5-B(1)—‘Consumables’—Natural gas used by the assessee as fuel for manufacture of paper and its products—Whether ‘consumables’—Held : The natural gas used by the appellant does not tend to the making of the end product, hence it is not a consumable.

D

The appellants purchased natural gas from Oil & Natural Gas Commission and used it for manufacture of paper and its products. Appellant claimed and got concession in the rate of tax. Subsequently when this concession was not allowed appellant filed a Writ petition, which was dismissed by the High Court. Hence these appeals.

Dismissing the appeals, the Court

E

HELD : 1.1. The word ‘consumables’ in S.5-B(1) of the A.P. General Sales Tax Act takes colour from and must be read in the light of the words that are its neighbours namely; ‘raw materials’, ‘component part’, ‘sub-assembly part’ and ‘intermediate part’; so read, it is clear that the word ‘consumables’ therein refers only to material which is utilized as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason that ‘consumable’ have been expressly referred to in the said provision, though they would fall within the broader scope of the words ‘raw material’.[698-G-H; 697-A]

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G

1.2. The natural gas used by the appellants does not tend to the making of the end product. Hence it is not a consumable. [697-C]

Dy. Comm. of Sales Tax (Law) Board of Revenue (Taxes) Ernakulam v. M/s. Thomas Stephen & Co. Ltd., Quilon, [1988] 2 SCC 264, relied on.

H

M/s. J.K. Cotton Spinning and Weaving Mills Co. Ltd. v. Sales Tax Officers, Kanpur & Anr., [1965] 1 SCR 900; Indian Farmers Fertilizers

Co-operation Ltd. v. Collector of Central Excise, Ahmedabad, [1996] 5 SCC 488; *Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd.*, [1989] 4 SCC 566 and *Commercial Taxes Officer, Circle D. Jaipur v. Rajasthan Electricity Board, Jaipur*, [1997] 10 SCC 330, held inapplicable. A

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2379 of 1991 Etc. B

From the Judgment and Order dated 19.12.90 of the Andhra Pradesh High Court in W.P. No. 5532 of 1990.

V.R. Reddy, Praveen Kumar, (Ms. Janaki Ramachandran) (NP), Ms. C.K. Sucharita, K. Ram Kumar, Ms. Santinarayan Y. Subba Rao and B. Sridhar, (Sunil Murarka) for R. Sasiprabhu for the appearing parties. C

The Judgment of the Court was delivered by

BHARUCHA, J. C.A. No. 2379/91 : D

On the application of learned counsel for the appellant, the appeal is dismissed as withdrawn.

C.A. No. 3440/91 :

The order under challenge was passed by a Division Bench of the High Court of Andhra Pradesh on a writ petition filed by the appellant. The writ petition was dismissed and the appellant is here by way of special leave to appeal. E

The appellant purchased natural gas from the first respondent, the Oil and Natural Gas Commission. It used the natural gas as fuel for the manufacture of paper and paper products. It claimed that it was entitled to the concessional rate of tax that was provided for under Section 5-B(1) of the Andhra Pradesh General Sales Tax Act, 1957. Originally this was permitted and, when it was not, the appellants filed the writ petition aforestated. F G

Section 5-B (1) reads thus :

“Notwithstanding anything in this Act, every dealer shall pay, in respect of any sale of goods to another dealer for use by the H

A latter as raw material, component part, sub-assembly part, intermediate, consumables and packing material of any other goods which he intends to manufacture inside the State, a tax at the rate of four paise in the rupee or the rates specified in Sections 5, 5A and 6B in respect of goods other than declared goods, or Sections 6, 5A and 6B in respect of declared goods, whichever is lower on

B the turnover relating to such sale :

C Provided that the provisions of this sub-section shall not apply to any sale unless the dealer selling the goods furnished to the assessing authority in the prescribed manner a declaration duty filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority on payment of prescribed fee."

D The argument on behalf of the appellant is that the natural gas is a 'consumable' within the meaning of the aforesaid provision and, therefore, entitled to the concessional rate of tax. The High Court relied upon this Court's judgment in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s Thomas Stephen & Co. Ltd., Quilon*, [1988] 2 SCC 264, to come to the conclusion that the natural gas fell outside

E the meaning of the word 'consumables' in the said provision.

F Our attention was drawn to several judgments of this Court (*M/s. J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Anr.*, [1965] 1 SCR 900, *Indian Farmers Fertiliser Cooperative Ltd. v. Collector of Central Excise, Ahmedabad*, [1996] 5 SCC 488, *Collector of Central Excise, New Delhi v. M/s. Ballarpur Industries Ltd.*, [1989] 4 SCC 566 and *Commercial Taxes Officer, Circle D., Jaipur v. Rajasthan Electricity Board, Jaipur*, [1997] 10 SCC 330, none of which, in our view, has any relevance to the specific point at issue. No judgment has been referred to by the learned counsel for the appellant which deals with the meaning of

G the word 'consumables'.

H The word 'consumables' in the said provision takes colour from and must be read in the light of the words that are its neighbours, namely, 'raw material', 'component part', 'sub-assembly part' and 'intermediate part' so read, it is clear that the word 'consumables' therein refers only to material

which is utilised as an input in the manufacturing process but is not identifiable in the final product by reason of the fact that it has got consumed therein. It is for this reason that 'consumables' have been expressly referred to in the said provision, though they would fall within the broader scope of the words 'raw material'. A

In the case of *Thomas Stephen & Co.*, relied upon in the impugned judgment, it was held that cashew shells used as fuel did not get consumed in the manufacture of other goods and that "consumption must be in the manufacture as raw material". B

To use the words of *Thomas Stephen & Co.* the natural gas used by the appellant does "not tend to the making of the end- product". It is not a 'consumable'. C

The appeal is dismissed, with costs.

C.A. No. 2697/91 :

In the light of the order passed in C.A. No. 3440 of 1991, this appeal is dismissed. D

M.S.J.

Appeals dismissed.