Anjani Trade Vs State Of Chhattisgarh, And Ors

WPT No. 9 Of 2012

Court: Chhattisgarh High Court

Date of Decision: Sept. 17, 2019

Hon'ble Judges: Goutam Bhaduri, J

Bench: Single Bench

Advocate: Anup Majumdar, Alok Bakshi

Final Decision: Disposed Of

Judgement

Goutam Bhaduri, J

1. Heard.

2. The contention of the petitioner is that the petitioner carries on the business of Sale & Trading of the Rechargeable Battery Bikes and for the

assessment year of 2006-07, the assessment was carried out by the Assessing Officer taking a clue of chargeable Value Added Tax (for short 'the

VAT') from that of M/s. Satya Yo Bikes and the VAT has been imposed @ 12.5%. The said order of assessment was subject of challenge before

the appellate authority Deputy Commissioner, Sales Tax, wherein also the rate of tax leviable @ 12.5% was maintained. It is contended that after

01.04.2008 the rate of tax/VAT was charged @ 4% as per entry 125 of part-II of Schedule-II of the Chhattisgarh Value Added Tax Act, 2005 (for

short 'the Act, 2005). The said amendment was effected with 01.04.2008 as per Annexure P-8. It is stated that before that the VAT was chargeable

placing the items sold by petitioner i.e. battery charged mopeds placing it on the residuary schedule, thereby 12.5% VAT was chargeable. It is

submitted that as per the law laid down in the case of Mayuri Yeast India Pvt. Ltd. Vs. State of Uttar Pradesh and Another {2008 (5) SCC 680} the

recourse to the residuary entry should have been taken by way of last resort. Whereas in the facts of this case, the State was principally convinced of

the fact that the VAT would be chargeable @ 4% with respect to sale of battery charged vehicle for which the entry was subsequently incorporated

at serial No.125. It is stated that at earlier occasion to charge VAT the guidelines give by the Supreme Court were not followed and without any

discussion the reasons for assessment, the charges were made by resorting to the residuary entry and higher rates were levied.

3. Learned counsel for the petitioner refers to the judgment passed by the co-ordinate Bench of this Court in WPT No.263 of 2017 & other connected

matters delivered on 05.03.2018 and would submit that in the likewise situation and would submit that Annexure P-1 dated 30.11.2011, Annexure P-4

dated 16.12.2009 and Annexure P-5 dated 21.06.2011 passed by the Additional Commissioner be quashed.

4. Learned State counsel would submit that the entry of serial No.125 was brought in the schedule in the year 2008, thereafter, the VAT was leviable

@ 4%, consequently, the assessment which was of the year 2006-07, it could not have been given a retrospective effect, consequently the impugned

order cannot be quashed.

5. I have heard learned counsel for the parties and perused the documents.

6. This fact is not in dispute that the petitioner is trading in sale of Electric Battery Charged Vehicles. In the levy of schedule of VAT, Schedule-II,

Part-II, entry 125 was inserted by the notification No.F-10-27-2008-CT- V(17), dated 28.03.2008 w.e.f. 01.04.2008, whereby the battery operated

electric vehicles were included in the column No.2 of the schedule and the rate of VAT was declared. Earlier to it the battery operated electric

vehicles on which the petitioner was trading was charged @ 12.5% by putting it in the residuary entry. There is no dispute that after 2008 the VAT is

charged @ 4% on the battery operated electric vehicles. In the instant case, the assessment year was of 2006-07, wherein the VAT was charged @

12.5%.

7. The Supreme Court in the case of Mayuri Yeast India Pvt. Ltd. Vs. State of Uttar Pradesh and Another {2008 (5) SCC 680} in paragraphs 34, 48

& 56 has held as under:-

34. It is now a well settled principle of law that in interpreting different entries, attempts shall be made to find out as to whether the same answers the

description of the contents of the basic entry and only in the event it is not possible to do so, recourse to the residuary entry should be taken by way of

last resort.

48. There cannot be any quarrel with the proposition that construction of the word is to be adopted to the fitness of the matter of the statute. But for

determining the said question, several factors which would be relevant are required to be gone into. The trade or commercial meaning or the end user

context would, thus, be a relevant factor.

56. We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the

tariff entry and another the residuary entry, the former should be preferred.

8. Further the Supreme Court in the case of M/s Bharat Forge and Press Industries (P) Ltd. Vs. Collector of Central Excise, Baroda, Gujarat {1990

(1) SCC 532} has held that only such goods which cannot be brought under the various specific entries in the tariff schedule should be attempted to be

brought under the residuary entry. In other words, unless the department can establish that the goods in question can by no conceivable process of

reasoning be brought under any of the tariff items, resort can be had to the residuary item.

9. The petitioner claims that on the earlier occasion too the battery operated vehicle could have been under the heading of renewable energy devices

and spare parts which was in serial No.96 of Schedule II, Part II of the Act, 2005. In this case the State in the year 2008 took a conscious decision to

make separate entry of 125, whereby the battery operated electric vehicles were specified in the schedule. The reading of the assessment order dated

05.12.2009 and the appellate order, it do not show any attempts were made by the Assessing Officer to interpret and to find out the product which

was subject of tax was covered in any of the basic entry of the schedule. Entry No.96 if is interpreted will also take within its sweep that renewable

energy devices and spare parts and the object to bring serial 125 by way of amendment of battery charged vehicles fortifies the same. No whisper is

made in the earlier assessment order that whether any efforts were made to bring the battery operated vehicles in other serial of goods. Therefore,

the earlier assessment order runs contrary to the Supreme Court guidelines laid down in Mayuri Yeast India Pvt. Ltd. Vs. State of Uttar Pradesh and

Another {2008 (5) SCC 680} .

10. In a result, the initial assessment order dated 16.12.2009 and subsequent appellate order dated 21.06.2011 and 30.11.2011 are quashed. The

assessment authority shall reassess the assessment made taking into the entry keeping in process law laid down by the Supreme Court in the case of

{2008 (5) SCC 680}. While assessing, the petitioner shall also be heard and proper opportunity be given to the petitioner.

11. With the aforesaid observation, the petition stands disposed of.