

CTO, ANTI EVASION, CIRCLE III, RAJASTHAN, JAIPUR A

v.

M/S PRASOON ENTERPRISES, JAIPUR

(CIVIL APPEAL No. 3198 OF 2019)

MARCH 26, 2019 B

**[ABHAY MANOHAR SAPRE AND
DINESH MAHESHWARI, JJ.]**

Rajasthan Value Added Tax Act, 2003:

Schedule IV, Entry 155; Schedule V, Residuary Entry – Mobile Crane Wire Ropes – Tax rate applicable – Whether chargeable to tax at the rate of 4% under Entry 155 of Schedule IV or at the rate of 12.5% under the Residuary Entry of Schedule V of the Act – Revenue's submission was that since the goods in question are not specified in any of the Entries in Schedule IV and Schedule V nor they are the parts of the Mobile Cranes, the only Entry under which they can be taxed is the Residuary Entry of Schedule V of the VAT Act – Held: Mere reading of Entry 155 shows that Hydraulic excavators (earth moving and mining machinery), Mobile Cranes and Hydraulic Dumpers (including parts thereof) are chargeable to tax at the rate of 4% – A thing is a part of the other, if the other cannot function without it – Mere perusal of the literature shows that the Mobile Cranes are not complete without the wire ropes – Therefore, the Mobile Crane Wire Rope is an essential part of the Mobile Crane and would fall in Entry 155 of Schedule IV of the VAT Act and chargeable to 4% tax. C D E F

Dismissing the appeals, the Court

HELD: 1.1 Mere reading of Entry 155 would go to show that the goods called Hydraulic excavators (earth moving and mining machinery), Mobile Cranes and Hydraulic Dumpers (including parts thereof) are chargeable to tax at the rate of 4%. The expression “*including parts thereof*” was inserted in the Entry 155 by an amendment w.e.f. 09.05.2006. It, therefore, indicates that the parts of the goods specified in the Entry were not G

- A chargeable to tax at the rate of 4% prior to 09.05.2006 but became chargeable at the rate of 4% only on and after 09.05.2006. [Paras 25, 26][1052-E-G]

- 1.2 The test as to whether a particular item is a part of other is “a thing is a part of the other if the other is incomplete without it”. In other words, “a thing is a part of the other, if the other cannot function without it”. Applying this principle to the facts of the case at hand, the wire ropes used in the Mobile Cranes are a part of the Mobile Cranes and thus fall in Entry 155 of Schedule IV of the VAT Act. *A fortiori*, it is taxable at the rate of 4%. [Para 27-29][1052-G, H; 1053-A-B]

- C *M/s Annapurna Carbon Industries v. State of Andhra Pradesh (1976) 2 SCC 273 : [1976] 3 SCR 561 ; Commissioner of Central Excise, Delhi v. Insulation Electrical Private Limited (2008) 12 SCC 45 : [2008] 5 SCR 625 – relied on*

- D 1.3 Mere perusal of the literature filed by the respondent to show as to how the Mobile cranes are designed, structured, built and operated in the field when it put to its ultimate use by the consumer depict that the Mobile Cranes are not complete without the wire ropes. It is for this reason, the Mobile Crane Wire Rope is an essential part of the Mobile Crane and, therefore, falls in Entry 155 of Schedule IV of the VAT Act. It is, therefore, taxable at the rates prescribed for the goods specified in Entry 155. [Paras 31 and 32][1053-D-F]

Case Law Reference

- | | | | |
|---|------------------|-----------|---------|
| F | [1976] 3 SCR 561 | relied on | Para 27 |
| | [2008] 5 SCR 625 | relied on | Para 27 |

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3198 of 2019.

- G From the Judgment and Order dated 05.01.2017 of the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Sales Tax Revision Petition No.114/2016.

WITH

- H CIVIL APPEAL NOS. 3199-3200, 3201-3202 AND 3203 OF 2019.

Dr. Manish Singhvi, AAG, D.K. Devesh, Satyendra Kumar, Irshad A
Ahmad, Advs. for the Appellant.

Ms. Jyoti Mendiratta, Ravinder Pal Singh, Advs. for the
Respondent.

The Judgment of the Court was delivered by

ABHAY MANOHAR SAPRE, J.

In C.A. @ S.L.P.(c) No.11937/2017

1. Leave granted.

2. This appeal is filed against the final judgment and order dated 05.01.2017 passed by the High Court of judicature for Rajasthan at Jaipur Bench, Jaipur in S.B. Sales Tax Revision Petition No.114 of 2016 whereby the High Court dismissed the revision petition filed by the appellant herein.

3. The appeal involves a short point as would be clear from the undisputed facts stated *infra*.

4. The appellant herein-State of Rajasthan (Commercial Tax Department) is the revision petitioner whereas the respondent herein is the respondent of the revision petition before the High Court out of which this appeal arises.

5. The respondent is engaged in the business of trading of spare parts of mining machinery, steel wire ropes, standard wires, wire rods etc. These goods are subjected to payment of Value Added Tax (VAT) under the Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as “VAT Act”). The respondent is a registered dealer under the VAT Act.

6. The Commercial Tax Officer (AE) [hereinafter referred to as “CTO”] conducted a survey in the respondent’s business premises on 16.03.2009 and it was noticed therein that the respondent was charging VAT at the rate of 4% on “Mobile Crane Wire Ropes”.

7. It is with this background fact, the question arose before the taxing authorities under the VAT Act as to which is the proper Entry under the VAT Act for charging tax on “Mobile Crane Wire Ropes”.

8. The aforementioned question arose before the CTO in the assessment proceedings, which were initiated against the respondent in their business premises as a result of the survey conducted by the CTO

B

C

D

E

F

G

H

A and also arose before the Deputy Commissioner, Commercial Tax Department to seek his advance ruling on the aforementioned question.

9. The CTO and the Deputy Commissioner were of the view that the rate of tax chargeable to the goods in question is 12.5% as prescribed in the Residuary Entry in Schedule V under the Act and not 4% as prescribed in Entry 155 of Schedule IV of the VAT Act.

10. In other words, both the taxing authorities were of the view that the proper Entry for payment of tax on these goods is the Residuary Entry of Schedule V, which prescribes the rate of tax as 12.5%.

11. The CTO accordingly initiated the assessment proceedings C against the respondent for the Assessment Year 2007-2008. By assessment order dated 16.03.2009, it was held that the respondent was liable to pay VAT at the rate of 12.5% under the Residuary Entry of Schedule V of the VAT Act. Since the respondent had deposited the tax at the rate of 4% treating the goods in question as falling in Entry 155 of D Schedule IV, the notice was issued to the respondent to pay the difference amount of VAT along with penalty and the interest payable under the VAT Act.

12. The respondent felt aggrieved and filed appeal before the Deputy Commissioner (Appeals). By order dated 02.12.2010, the E Appellate Authority allowed the appeal and set aside the order of the CTO (AE). The Appellate Authority held that the ropes in question were essentially used in Mobile Cranes as part of the Mobile Cranes. It was held that a Mobile Crane is not complete and nor it can effectively function without the use of the rope. It was, therefore, held that the rope is a part F of a Mobile Crane and chargeable to VAT in accordance with rates prescribed in the Entry 155 of Schedule IV of the Act.

13. The State (CTO) felt aggrieved and filed appeal before the Rajasthan Tax Board under Section 83 of the VAT Act. By order dated 06.01.2016, the Board dismissed the appeal and affirmed the order of the Deputy Commissioner. The State (CTO) felt aggrieved and filed G revision petition in the High Court of Rajasthan Bench at Jaipur.

14. By impugned order, the High Court dismissed the revision and upheld the order of the Board, which has given rise to filing of this appeal by way of special leave by the State (CTO) in this Court.

15. So, the short question, which arises for consideration in this appeal, is whether the High Court was justified in dismissing the appellant's (State/CTO) revision and thereby justified in upholding the view taken by the Board that the "Mobile Crane Wire Ropes" are chargeable to tax @ 4% under Entry 155 of Schedule IV of the VAT Act.

A

16. Heard Dr. Manish Singhvi, learned AAG for the appellant and Ms. Jyoti Mendiratta, learned counsel for the respondent.

B

17. Learned counsel for the appellant (CTO) while assailing the legality and correctness of the impugned order reiterated the same submissions, which were urged before the High Court.

C

18. In substance, his submission was that the goods in question are chargeable to tax at the rate of 12.5%, which is the rate prescribed in the Residuary Entry of Schedule V of VAT Act because, according to the learned counsel, there is no specific Entry under which the goods in question fall for being taxed at a specified rate.

D

19. In other words, the submission was that since the goods in question are not specified in any of the Entries in Schedule IV and Schedule V of the VAT Act and nor they are the parts of the Mobile Cranes, the only Entry under which they can be taxed is the Residuary Entry of Schedule V of the VAT Act.

E

20. In reply, the learned counsel for the respondent (dealer) supported the impugned order and contended that it does not call for any interference.

21. Having heard the learned counsel for the parties and on perusal of the record of the case including the written submissions, we find no merit in this appeal.

F

22. As taken note of *supra*, the question, which arises for consideration in this case, is whether the "Mobile Cranes Wire Ropes" are chargeable to tax at the rate of 4% or 12.5% under the VAT Act.

G

23. In other words, the question arises is whether the goods "Mobile Cranes Wire Ropes" fall under Entry 155 of Schedule IV or under the Residuary Entry of Schedule V of the VAT Act.

24. At the relevant time, there were two relevant Entries which read as under:

H

A

SCHEDULE IV
[See section 4]
Goods Taxable at 4%

	S.No.	Description of Goods	Rate of Tax %	Conditions, if any
B	1.	2.	3.	4.
	155.	Hydraulic excavators (earth moving and mining machinery), mobile cranes and hydraulic dumpers (including parts thereof). <small>Bracketed portion was inserted by Notification No.F.12(63)FD/Tax/2005-51 dated 08.05.2006 vide S.O. No.99 dated 09.05.2006</small>	4	
C				

SCHEDULE V
[See section 4]
Goods Taxable at 12.5%

D	S.No	Description of Goods	Rate of Tax %	Conditions, if any
	1	2	3	4
	1.	Goods not covered in any other Schedule under the Act or under any notification issued under section 4 of the Act.	12.5	

E

25. Mere reading of Entry 155 quoted above would go to show that the goods called Hydraulic excavators (earth moving and mining machinery), Mobile Cranes and Hydraulic Dumpers (including parts thereof) are chargeable to tax at the rate of 4%.

F

26. It may be mentioned here that the expression "*including parts thereof*" was inserted in the Entry 155 by an amendment w.e.f. 09.05.2006. It, therefore, indicates that the parts of the goods specified in the Entry were not chargeable to tax at the rate of 4% prior to 09.05.2006 but became chargeable at the rate of 4% only on and after 09.05.2006.

G

27. This Court has laid down the test as to how the Court should decide the question as to whether a particular item is a part of other. The test is "**a thing is a part of the other if the other is incomplete without it**". In other words, "**a thing is a part of the other, if the other cannot function without it**". [See M/s Annapurna Carbon

H

Industries vs. State of Andhra Pradesh [(1976) 2 SCC 273 and Commissioner of Central Excise, Delhi vs. Insulation Electrical Private Limited (2008) 12 SCC 45)] A

28. When we apply this principle to the facts of the case at hand then we find no difficulty in holding that the wire ropes used in the Mobile Cranes are a part of the Mobile Cranes and thus fall in Entry 155 of Schedule IV of the VAT Act. B

29. *A fortiori*, it is taxable at the rate of 4%. The reasons are not far to seek.

30. The respondent has filed (Annexure R-1), the complete literature with a view to show as to how the Mobile cranes are designed, structured, built and operated in the field when it put to its ultimate use by the consumer. They have also filed the details of the specification issued by the Bureau of Indian Standards specifying therein the strength of each wire rod/rope, which is used in the manufacture of different kind of Cranes. C

31. Mere perusal of the literature would go to show that the Mobile Cranes are not complete without the wire ropes. In other words, in order to use the Mobile Cranes and make them operational, the use of wire ropes is essential. If wire ropes are not fitted in the Mobile Cranes, they will not function much less effectively. D

32. It is for this reason, we are of the considered opinion that the Mobile Crane Wire Rope is an essential part of the Mobile Crane and, therefore, falls in Entry 155 of Schedule IV of the VAT Act. It is, therefore, taxable at the rates prescribed for the goods specified in Entry 155. E

33. We, however, make it clear that we have examined only the question of taxability of the “wire ropes” in the context of its use in Mobile Cranes as would be clear from the question posed by the High Court in Para one of the impugned order.

34. In view of the foregoing discussion, the appeal is found to be devoid of any merit and it thus fails and is accordingly dismissed. G

In C.A.Nos. @ S.L.P.(c) Nos.4837-4838/2017, 4839-4840/2017 and 5981/2017

1. Leave granted. H

- A 2. These appeals are directed against the common final judgment and order dated 07.10.2016 passed by the High Court of Judicature for Rajasthan, Jaipur Bench at Jaipur in S.B. Sales Tax Revision Petition Nos.106, 101, 99, 100/2013 and 449/2011 whereby the High Court dismissed the revision petitions filed by the appellant herein.
- B 3. In view of the order passed above in C.A. @ S.L.P.(C) No.11937/2017, these appeals are dismissed.

Devika Gujral

Appeals dismissed.