

Before G. C. Mital, J.

PAUL ELECTRIC COMPANY,—*Petitioner.*

versus

ASSISTANT EXCISE AND TAXATION COMMISSIONER—
Respondent.

Civil Writ Petition No. 3608 of 1979.

January 8, 1980.

Punjab General Sales Tax Act (46 of 1948)—Sections 6 and 21 (1) and Schedule B, Clause 10, Item 34-D—Monoblock centrifugal pump—Whether a variety of centrifugal pump as referred to in clause 10 Item 34D of Schedule B and an agricultural implement—Such pumps—Whether exempt from sales tax.

Held, that centrifugal pump is used for the purpose of pumping water from one place and conveying it to another place. Such a pump would be exempt from sales tax and would clearly fall within clause 10 of Item 34D of Schedule B to the Punjab General Sales Tax Act, 1948. When centrifugal pump is fitted with a motor and made into one piece by the manufacturer, it is known in common parlance as a monoblock centrifugal pump and is a separate marketable commodity. A reading of the various categories of Item 34 shows that the Government wanted to illustrate in detail the agricultural implements and category D relates to agricultural implements run with power including centrifugal pump. It cannot be attributed to the State Government that it wanted that one type of centrifugal pump should be treated as an agricultural implement and another kind of centrifugal pump should not be treated as an agricultural pump. If this had been the intention of the State Government, then in column 2 of Schedule B, the State Government would have provided the conditions and exceptions, if any, against clause 10 of Item 34-D, but this has not been done which clearly indicates the intention of the State Government that all centrifugal pumps, which are capable of being sold as one unit in the market and are manufactured in one piece would be covered by the definition of 'centrifugal pump' and would be exempt from the levy of sales tax. Thus, a monoblock centrifugal pump is included in the word 'centrifugal pump', the sale and purchase of which would be exempt from the payment of sales tax irrespective of the fact whether it is for agricultural purposes or otherwise.

(Paras 10, 11 and 13).

Petition under Articles 226 and 227 of the Constitution of India praying that the records of the case be called; and

- (a) *notice annexure "P. 6" be quashed inasmuch as the reassessment of monoblock pumps is concerned.*
- (b) *restrain the respondent from reassessing the sale value of Rs. 3,40,530, which has been allowed by the Assessing Authority under section 5(2)(a)(1), and or*
- (c) *grant any other relief to which the petitioner may be entitled in the facts and circumstances of the case.*

The next date of hearing is the 18th October, 1979 and the same may be stayed pending the decision of this petition. Also praying that the production of certified copies of the annexures and service of notice of the petition on the respondent be dispensed with.

Bhagirath Dass and Mr. S. K. Hirajee, Advocates, for the petitioner.

Ashok Bhan, Additional A.G., Punjab, for the respondent.

JUDGMENT

Gokal Chand Mital, J.—

(1) The substantial question of law which arises in this set of five cases (C.W.P. Nos. 3680, 3768, 3843, 3926 and 3945 of 1979 is whether a monoblock centrifugal pump would be an agricultural implement within the meaning of clause 10 of item 34-D of Schedule B to the Punjab General Sales Tax Act, 1948 (hereinafter called the Act) and as such exempt from sales tax being a tax free goods.

2. The petitioners carry on the business for the purchase and sale of pumping sets and other agricultural implements. They also deal in sale and purchase of monoblock centrifugal pumping sets. Before 15th of April, 1971, item 34 of Schedule B to the Act was as under:—

"Agricultural implements".

Thereafter, amendment was made in item 34 by notification, dated 15th of April, 1971 and the amended item 34 is as follows:—

"34. Agricultural Implements and parts thereof as per details below.

A. Ordinary Agricultural Implements.

- 1. Hand Hoe or Khurpa.*
- 2. Sickle.*

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3. Spade.

4. Baguri.

5. Hand Wheel Hoe.

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Up to 23.

B. Bullock Drawn Agricultural Implements.

1. Yoke.

2. Plough.

3. Harrow.

4. Cultivator or Triphali.

5. Seed drill, fertilizer drill, seed-cum-fertilizer drill.

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Up to 21.

BB. Camel drawn cart.

C. Tractor drawn Agricultural Implements.

1. Plough.

2. Harrow.

3. Cultivator or tiller.

4. Seed drill, fertilizer drill or seed-cum-fertilizer drill.

5. Fertilizer broadcaster.

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Up to 22.

D. Power Implements.

1. Thrasher.

2. Chaff cutter.

3. Maize sheller.

4. Groundnut dicorticator.
5. Seed grader.
6. Winnower.
7. Seed treater.
8. Power sprayer or duster.
9. Self propelled combine.
10. Centrifugal pump.
11. Poultry feed grinder and mixer.
12. Transplanter.”

Before the amendment of item 34 by notification, dated 15th of April, 1971, under the old item 34, a case with regard to monoblock pumping sets came up for consideration before a Division Bench of this Court in *Karnal Machinery Store v. The Assessing Authority, Karnal* (1), wherein it was held on the interpretation of the unamended item 34 that monoblock pumping sets the main purpose of which is to pump water, cannot be classed as electrical goods. It was further held that when such pumping sets are used by agriculturists for agricultural operations, they would be agricultural implements within the meaning of item 34 and exempt from the levy of sales tax, but when such sets are used for the purpose other than agriculture, then they would not be exempt from the levy of sales tax. Before the Bench deciding the aforesaid case, the stand of the State was that monoblock pumping sets fall within entry 17 of Schedule A of the Act, as electrical goods. The stand of the State that they are electrical goods and fall in Schedule A was negatived by this Court. After the aforesaid decision of this Court and after the amendment made in item 34 by notification, dated 15th of April, 1971, the monoblock pumping sets were not being taxed considering the same to be tax-free goods by the Assessing Authorities and the Appellate Authorities and no tax was levied on any one of the petitioners while passing assessment orders.

3. Later on, the Excise and Taxation Commissioner, Punjab, issued letter No. STI/79/879, dated 9th of April, 1979 to all the Assistant Excise and Taxation Commissioners in all the districts of Punjab on the subject, relating to rate of sales tax on monoblock pumping sets and it was stated therein that the State Government has clarified that monoblock pumping sets are not covered by item

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34—Agricultural implements as appearing in Schedule B to the Act and its sale is thus taxable at the rate of 6 per cent and further action may be taken accordingly. It was desired in the letter, that the instructions issued by the Government be brought to the notice of all the Assessing Authorities and the Inspectorate staff. After the receipt of the aforesaid letter the Assisant Excise and Taxation Commissioners started issuing notices for *suo moto* action under section 21(1) of the Act for cases already decided for the purpose of levying tax on the sale and purchase of monoblock pumping sets. Thereafter the present writ petitions under Articles 226/227 of the Constitution of India were filed in this Court to challenge the letter of the Excise and Taxation Commissioner, Punjab, dated 9th of April, 1979, as also the notices for *suo moto* action under section 21(1) of the Act, being wholly illegal, contrary to law and without jurisdiction.

4. The first matter to be considered is as to what is a monoblock centrifugal pump. On this, counsel for both the parties are agreed that a monoblock centrifugal pump is one marketable commodity and is sold as such as one unit in one block. The centrifugal pump and electric motor are attached with one coramon shaft and are inseparable. Even the Assessing Authority in order Annexure P-1 in the case of M/s. Paul Electric Company (C.W.P. No. 3680 of 1979) found as follows:—

“Monoblock pumping sets are combination of centrifugal pumps and electric motor and they are rolled out of the factories as single units. I have even seen the centrifugal pump and the monoblock pumping sets and found out that the part comprising the pumping set in the monoblock has a different shape from the combining side, than that of centrifugal pumps sold independently and, therefore, the assessee could not manipulate accounts by using single bill for sale of two items separately. Motor, like oil engine, provided motive force for the pump and if the producers design and manufacture one unit by attaching motor to the pump, it does not cease to be centrifugal pump and, therefore, I accept the contention of the counsel.”

An additional affidavit has been filed by the State in some of the writ petitions in which monoblock pumping set has been described as follows:—

“A monoblock, pumping set is one block, i.e. the centrifugal pump and an electric motor attached with one common shaft

and are inseparable. It is marketed as totally a different item and is distinct from centrifugal pump."

5. Mr Ashok Bhan, Additional Advocate-General, Punjab, has further shown to me the pamphlets of Kirloskar, both for monoblock centrifugal pump as also for simple centrifugal pump. A look at all the diagrams shows that monoblock centrifugal pump as also a simple centrifugal pump are one piece and are marketable commodities as one unit leaving the choice for the customers either to have a simple centrifugal pump or to have a monoblock centrifugal pump. From these diagrams, I find that the Assessing Authority as also the facts contained in the additional affidavit filed on behalf of the State are correct and show that a monoblock centrifugal pump is one complete unit manufactured as such and is marketable commodity although simple centrifugal pump is a separate marketable commodity.

6. The counsel for the parties are agreed that it is possible to purchase a centrifugal pump separately from an electric motor and then both can be used for pumping water and such system is not known as monoblock centrifugal pump as admittedly they are two separate pieces manufactured separately and sold separately, but put together and used with the help of pulley shafts for pumping water from the centrifugal pump with the help of electric motor. The counsel for the State says that only centrifugal pump would be exempt from sales tax and not the electric motor which was sold separately. This stand of the counsel for the State is not controverted even by the counsel for the petitioners.

7. The question on which the counsel for the parties are differing is as to whether the monoblock centrifugal pump which is manufactured and sold as one unit would be a centrifugal pump within the meaning of clause 10 of item 34-D of the Act or not. In order to decide the point, it will be necessary to go through the scheme of the Act and the Schedule.

8. Section 4 is a charging section and section 5(1) of the Act states that tax is leviable on the taxable turnover of a dealer subject to the provisions of the Act. Sub-section (2) of section 5 of the Act defines 'taxable turnover' to mean that part of a dealer's gross turnover during a year, which remains after deducting therefrom his turnover on the sale of goods declared tax-free under section 6 of the

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Act apart from other deductions. Section 6 provides that no tax is payable on the sale of goods specified in the first column of Schedule B subject to the conditions and exceptions set out in the corresponding entry in the second column thereof and no dealer is to charge sales tax on the sale of goods which are declared tax-free from time to time under this section read with Schedule B. Schedule B sets out in the first column various categories of goods which are declared tax-free under section 6 and item 34 with which we are concerned in this case specifies the categories of tax-free goods which have already been reproduced above.

9. By now it is well settled that the words which are not defined in the taxing statutes, but are words of every day use, must be construed not in their scientific and technical sense, but as understood in the common parlance. In this regard, reference may be made to the Supreme Court decision in *Porritts and Spencer (Asia) Ltd. v. State of Haryana* (2).

10. Centrifugal pump is used for the purpose of pumping water from one place and conveying it to another place. As has already been observed, there is no dispute between the parties that such a pump would be exempt from sales tax and would clearly fall within clause 10 of item 34-D of Schedule B. The variance is that the moment a motor is affixed with the centrifugal pump and is manufactured in such a way that the complete set is one unit, according to the assessee, it still remains a centrifugal pump whereas according to the State it ceases to be a centrifugal pump.

11. When centrifugal pump is fitted with a motor and made into one piece by the manufacturer, it is known in common parlance as a monoblock centrifugal pump and is a separate marketable commodity. Under item 34 in Schedule B, as it stood before the amendment of 5th of April, 1971, this Court in *Karnal Machinery Store's case* (supra), held that a monoblock centrifugal pump when purchased by a person other than an agriculturist for the purpose other than agriculture, would not be tax free. But whatever difficulty stood at that time has been removed by the amendment made in item 34 and the amended item 34, if now is looked at in a greater detail, would reveal the following state.

12. Item 34 has been sub-divided into five categories. Category A includes as many as 23 agricultural implements all of which show that such implements have to be used by manual labour. Category B includes 21 agricultural implements which can be used with the help of bullocks. Category BB shows that some implements as enumerated in category B can be used with the help of camel. Category C has 22 agricultural implements which are driven by a tractor and the heading of category D is of great importance which reads as 'Power Implements' and includes as many as 12 items which would be agricultural implements. A reading of all the 12 items would show that they may be used either by man-power, by diesel, petrol or any other type of gas, or may be run by electric power or by a generator. That is why the word 'power' in the heading of category D has been used which is of importance.

13. A reading of the various categories of item 34 shows that the Government wanted to illustrate in detail the agricultural implements and category D relates to agricultural implements run with power including centrifugal pump. It cannot be attributed to the State Government that it wanted that one type of centrifugal pump should be treated as an agricultural implement and another kind of centrifugal pump should not be treated as an agricultural implement. If this had been the intention of the State Government, then in column 2 of Schedule B, the State Government would have provided the conditions and exceptions if any against clause 10 of Item 34-D. But this has not been done which clearly indicates the intention of the State Government that all centrifugal pumps which are capable of being sold as one unit in the market and are manufactured in one piece would be covered by the definition of 'centrifugal pump' and would be exempt from the levy of sales tax. It is not possible to take any other view on a reading of the various categories of Item 34, and particularly of category B, which clearly includes the agricultural implements run with power. In view of the Supreme Court decision in *Porrits and Spencer (Asia) Ltd.'s case* (supra), a mono-block centrifugal pump is included in the word 'centrifugal pump', the sale and purchase of which would be exempt from payment of sales tax irrespective of the fact whether it is for agricultural purposes or otherwise.

14. However, it is made clear that if an ordinary centrifugal pump is sold separately from an electric motor with the object of using both for agricultural purposes, even then sales tax would be

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payable on the sale of the electric motor, but not on the sale of ordinary centrifugal pump.

15. In the written statement, a preliminary objection had been raised that these writ petitions are premature as only notices have been issued to the petitioners. However, Shri Ashok Bhan, Additional Advocate-General, Punjab, appearing before me, did not raise this objection and wanted this Court to lay down the law on the interpretation of the word 'centrifugal pump' for the guidance of the Sales Tax Department.

16. The counsel for the petitioners have also urged that the memorandum, dated 9th of April, 1979, annexure P-5, issued by the Excise and Taxation Commissioner, Punjab, conveying the decision of the State Government that monoblock pumping sets are not covered by Schedule B and tax at the rate of 6 per cent is leviable, is neither legal nor supported by any authority as no such memorandum on such matters can be legally issued by the Government. In the written statement, the following reply has been given to the aforesaid stand taken on behalf of the petitioners:—

“In reply to paragraph No. 9 of the writ petition it is submitted that although this paragraph is admitted, but the letter issued by the Excise and Taxation Commissioner does not carry any legal force, if it is not in accordance with law and it has not evidential value.”

In view of the aforesaid stand of the State, I hold that the memorandum annexure P. 5 has no legal force in view of my decision that monoblock centrifugal pump is a tax-free goods.

17. For the reasons recorded above, I allow all the five writ petitions and quash the memorandum, dated 9th of April, 1979, annexure P. 5, and the notice annexure P. 6, in so far as they relate to revising the assessments of monoblock pumping sets. The Assessing Authorities or the Assistant Excise and Taxation Commissioners shall be at liberty to take *suo motu* action for any other matter if they so choose to do in accordance with law. The petitioners shall be entitled to their costs, counsel's fee being Rs. 200 in each case.

N.K.S.