REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 5996 OF 2011
(Arising out of S.L.P.(C) No. 22054 of 2010)

M/S EUREKA FORBES LIMITED Appellant(s)

VERSUS

STATE OF BIHAR AND ORS Respondent(s)

O R D E R

1. Leave granted.

2. The present case relates to assessment of the Appellant herein concerning assessment years 1990-91, 1991-92, 1992-93 and 1993-94.

3. The assessment proceedings were initiated under the Bihar Finance Act, 1981 read with Bihar Sales Tax Rules, 1983. Notices under Section 17 (2)(a) of the Act were issued to the assessee for examination of books of accounts. The said books of accounts were produced and assessment orders under Section

17 (2)(b) of the Act were passed. In the said assessment order, the assessee was levied tax on vacuum cleaner at the rate of 12% treating it as electrical goods as against the contention of the Appellant that vacuum cleaner, which is an article dealt with by the Appellant, is taxable at the rate of 8%.

4. The Assessing Officer by the assessment order rejected the aforesaid contention of the assessee while holding that the assessee is liable to pay tax on vacuum cleaner at the rate of 12%. Being aggrieved by the aforesaid findings and assessment order passed by the Assessing Officer, the Appellant filed appeals which were entertained and disposed of dismissing the said appeals.

5. Being aggrieved by the aforesaid order passed in appeals, the assessee preferred Revision Applications before the Commercial Taxes Tribunal. By an order passed on 15.4.2004, the Tribunal dismissed the said Revisions holding that the vacuum cleaner is an electrical good or instrument and, therefore, it falls within Entry 81 of the Notification dated 26.12.1977 issued under Section 12 of the Bihar Finance Act – Bihar Sales Tax Act, 1959.

6. Being aggrieved by the aforesaid order of the Tribunal, a writ petition was filed, which was again dismissed by the High Court by judgment and order dated 26.2.2010 as against which this appeal was filed.

7. We have heard the learned counsel appearing for the parties in this appeal, who have taken us through the records. In the light of their submissions and on perusal of the records, we propose to dispose of this appeal by recording our reasons.

8. The issue that arises for consideration is whether the article vacuum cleaner could be included within the Entry 81 of the Notification dated 26.12.1977 issued under Section 12 by the respondents.

9. Entry 81 of the said notification reads as follows:-

> *"81. Electrical goods, instrument, apparatus and appliances including electric fans and lighting bulbs, electric earthware and porcelain and all other accessories excluding electric motor, dry cell batteries, torch, torch bulbs, exhaust fans, air circulators, and spare parts and accessories, electric heaters of all varieties."*

10. Counsel appearing for the Appellant has submitted before us that particular article, namely, vacuum cleaner, which is the article dealt with by the appellant in the course of its business

cannot be included within the ambit and scope of Entry 81 in view of the fact that the said article is not mentioned specifically within the aforesaid Entry. In order to reinforce his arguments, Mr. S.B. Sanyal, learned senior counsel also relied upon the subsequent Notification which is issued by the respondents on 26.7.2000. He has drawn our attention to the contents of the said Notification and particularly to serial no. 247 where vacuum cleaner is specifically mentioned with the rate of sales tax payable @ 12%. It is submitted by him that since in the subsequent Notification in 2000, vacuum cleaner has been specifically stated under serial no. 247 specifying the rate of sales tax at 12%, it should be assumed that the aforesaid vacuum cleaner having not been specifically mentioned in the earlier Notification under Entry 81, would be liable for the purpose of tax at 8% being an unspecified good. We have considered the said submissions in the light of the records. The Entry 81, which we have extracted above, provides that electrical goods, instruments, apparatus and appliances would have to be levied 12% tax effective from 1.4.1982. However, when it states of electrical goods, the same appears to us to be an inclusive description as it emphasises on the word 'including electrical

fans and lighting bulbs, etc.' and again it excludes from its purview electric motor, dry cell batteries, etc.

11. A reference to Section 12 of the Act would also make the position clear for Section 12 says in the proviso that the State Government can issue a notification fixing higher rate than eight percentum by specifying such goods or class of goods or description of goods. Therefore, by issuing a notification under Section 12, a higher rate than of 8% could be levied by the State Government on a class of articles of goods or goods specifically mentioned therein. The aforesaid position would be more explicit when we look to the Entries 116 and 127 of the same Notification of 1977 wherein by the Entry 116, articles like refrigerators, air-conditioners, air-coolers and air-conditioning plants, etc. have been taken out from the items "electrical goods" under Entry 81 by levying higher rate of tax.

12. That the vacuum cleaner dealt with by the appellant is an electrical good, there is no dispute raised for in the Special Leave Petition itself it is stated by the Appellant that the vacuum cleaner is a machinery which is run by electricity. Therefore, it is an agreed and uniform case of the parties that vacuum cleaner is

an electrical good. The said vacuum cleaner is not excluded from the purview and ambit of Entry 81 in any manner as is apparent from a bare reading of the contents of Entry 81.

13. We are concerned with the assessment years prior to 2000 and, therefore, the Notification issued on 26.7.2000 shall have no relevance or application to the facts of the present case.

14. Counsel appearing for the Appellant has submitted that since vacuum cleaner is not specifically included within the Entry 81, therefore, it should be deemed to be excluded. We are unable to accept the aforesaid contention in view of the fact that none of any electrical goods, instruments, apparatus, which is included in the said Entry is specifically mentioned and if that interpretation is accepted, all electrical goods would have to be excluded because they are not specifically mentioned therein. That could not be the intention of the framers of the Notification while exercising the powers under the subordinate legislation. If we also accept such an interpretation, in our opinion, entire Entry 81 would be rendered otiose.

15. Learned counsel also relied upon a decision of this Court in The

Federation of Andhra Pradesh Chambers of Commerce & Industry and Ors. Etc. Etc. v. State of Andhra Pradesh and Ors. Etc. Etc. reported in (2000) 6 SCC 550, wherein it is laid down in para 7 that taxing statutes are to be strictly construed and that nothing could be added to what is stated in the statute itself. We agree and accept the aforesaid principles of law laid down by this Court. That is a settled position of law, but according to us, the said decision in no way helps the Appellant in view of the reasoning given by us for the findings arrived at by us. So far the decision of the Division Bench of the Patna High Court in Eureka Forbes Ltd. v. State of Bihar and Ors. reported in 2000 (119) STC 460 (Pat.) is concerned, the same is also not applicable to the facts of the present case as the same relates to a case of re-opening of assessment on the ground of change of opinion and therefore, the said case also has no application at all. The decision of the Bombay High Court in Indian National Shipowners' Association, a Company having its registered office through its Deputy Secretary and Mr. Badrinath Durvasula having his place of business v. Union of India (UOI) through Secretary, Dept. of Revenue, Ministry of Finance Govt. of India and Ors. reported in 2009 (14) STR 289 (Bom.) also has no

application to the facts of the present case.

16. We have given our reasons for arriving at our findings and in our considered opinion, the decisions given by the High Court as also by all other authorities are correct decisions, recording cogent reasons, and, therefore, we are not inclined to interfere with the same.

17. The appeal has no merits and is dismissed accordingly but leaving the parties to bear their own costs.

.....J.
(Dr. MUKUNDAKAM SHARMA)

.....J.
(ANIL R. DAVE)

New Delhi
27th July, 2011.