

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).503-504/2006

M/S. RAJA BRICKS & TILE INDUSTRIES

APPELLANT(S)

VERSUS

THE ADDITIONAL COMMISSIONER OF COMMERCIAL
TAXES & ANR.

RESPONDENT(S)

O R D E R

The appellant/assessee is the manufacture of bricks and tiles. It is registered under the Karnataka Sales Tax Act (hereinafter referred to as "the Act") and is paying sales tax on the goods manufactured and sold by it. For the relevant Assessment Year i.e. 1993-94, the appellant/assessee filed its sales tax return in respect of the roofing tiles as well as decorative roofing tiles. As per the appellant since roofing tiles are contained in Entry 8(iii) of Part 'T' of Second Schedule to the Act, attracting 5% duty thereupon, the aforesaid goods were excisable to the duty at the rate of 5%. The Assessing Officer, however, was of the opinion that the item in question would not be treated as "roofing tiles", but comes within the description of "other tiles" in the aforesaid entry and on that basis, he levied the sales tax at 15%. This

view has been upheld by the High Court as well in the impugned judgment dated 18.11.2004, against which the present appeal is preferred by the assessee.

In order to appreciate and decide the controversy, in the first instance, we reproduce Entry 8 of Part 'T' of the Second Schedule of the Act which reads as under:

8	Tiles,	
(1)	Mosaic tiles and chips	1-4-88 to 31-3-95 Thirteen percent 1-4-95 to 31-3-96 fifteen percent 1-4-96 to 31-3-98 Twelve percent From 1-4-98 [Ten percent]
(ii)	Ceramic and glazed floor and well tiles	1-4-88 to 31-3-95 Thirteen percent 1-4-95 to 31-3-96 fifteen percent 1-4-96 to 31-3-98 Twelve percent From 1-4-98 [Ten percent]
(iii)	Roofing tiles other than country tiles	1-3-88 to 31-3-95 Five percent From 1-4-95 (Four percent)
(iv)	Other tiles not covered by items (i), (ii) and (iii) above	1-4-88 to 31-3-96 Fifteen percent 1-4-96 to 31-3-98 Twelve percent From 1-4-98 (Ten percent)
(v)	Jointing powder (other than cement) and situ-mixture for laying tiles and chips specified above.	1-4-88 to 31-3-95 Thirteen percent 1-4-95 to 31-3-96 Fifteen percent From 1-4-98 (Ten percent)

A reading of the aforesaid Entry would indicate that in sub-heading (i), (ii) and (iii) there are specific kinds of tiles mentioned therein which attract a particular percentage of sales tax mentioned against those. If the goods/tiles are not covered by sub-entries (i), (ii) & (iii), then the residual entry namely sub-entry (iv) of Entry 8 would be applicable. The reading of the aforesaid entry would also demonstrate that insofar as roofing tiles, other than country tiles are concerned, they are specifically included in sub-entry (iii) in which 5% duty is payable for the period 1.3.1988 to 31.3.1995 and from 1.4.1995 duty has been reduced to 4%. Since the relevant Assessment Year in the instance case is 1993-94, if the goods manufactured by the assessee fall in this sub-entry, it would attract sales tax at the rate of 5%.

There is no dispute that the goods manufactured by the appellant are roof tiles. There are two kinds of such roof tiles manufactured by the assessee which are known as roofing tiles and decorative roofing tiles. Nevertheless, both are treated as tiles. In fact, the order of the Joint Commissioner of Commercial Taxes (Appeals) would reveal that the aforesaid description is existed as is clear from the following discussion contained the said order:

"21. The appellant has claimed that in the

manufacture of decorative and glazed tiles base material is fire clay which is fire powered, process and loaded in special type of kilns. The firing technic is (eligible) wherein the fuel used is furnace oil/electric power since to defuse the basic materials and it requires the temperature of 1200 degree to 1300 degree centigrade. "Whereas in roofing tiles base materials are ordinary clay. The maximum temperature required is 900 degree centigrade. The used is firewood, paddy husk, coconut shell, groundnut shell, keeping in view of these differences in manufacture, when the assessment records are pursued, it revealed that the appellant has purchased only fuel, firewood and saw dust. Which has been promptly assessed under Section 6? There is no purchase of furnace oil or fireclay. In the absence of these items, it should be concluded that the appellant has not manufactured decorative tiles or glazed tiles. The raw materials purchased and firewood is consumed for the manufacture of roofing tiles. Firewood which has been purchased and assesses under Section 6 will not generate 1200 degree to 1300 degree centigrade which is required to manufacture decorative tiles.

22. Further, the description of the tiles given by the appellant in case of weather proof tiles W-tiles flooring tiles, Spanish tiles, Hexagonal tiles, Helmet tiles are accepted. W-tiles helmet tiles are protruded tiles, which cannot be used inside the house as decorative tiles. All weather proof tiles can be used only outside because it can withstand sun and rain. But sun and rain cannot enter a house and no such tiles can be used inside the house. If also produced these tiles for my examination they are all made of ordinary clay without glazed finishing. At no stretch of imagination it can be called decorative tiles. Unfortunately Assistant Commissioner of Commercial Taxes (Int.) nor Deputy Commissioner of Commercial Taxes (Assessment) has not attempted to know the difference between roofing tiles and decorative tiles; yet, they ventured to assesses it as decorative tiles."

Notwithstanding the same, the High Court on a totally irrelevant consideration has excluded the aforesaid tiles from the purview of sub-entry (iii). Reasoning given by the High Court is that the roofing tiles falling under sub-entry (iii) are those tiles which attract lower rate of tax and are meant for common man and when such tiles are decorative tiles they would not be covered by sub-entry(iii). We do not understand this logic given by the High Court in support of its impugned judgment. The other reason given by the High Court is that the assessee itself keeps two different set of accounts books, one of the sale of "roofing tiles" and the other for "decorative tiles". We are dealing with a tax statute. The only consideration here would be as to whether the tiles manufactured by the assessee fall within the description contained in sub-entry (iii). Insofar as this aspect is concerned, it has been decided in favour of the appellant by the authorities themselves. Once that determination is held in favour of the assessee, no further inquiry which is not germane to the issue would be permissible. We are , thus, of the opinion that the goods manufactured by the appellant are covered by sub-entry (iii) of Entry 8 Part 'T' of the Second Schedule on which only 5% sales tax is payable and not 15% as held by the authorities below.

These appeals are, accordingly, allowed and the impugned judgment of the High Court is set aside.

.....J.
[A.K. SIKRI]

.....J.
[ROHINTON FALI NARIMAN]

NEW DELHI;
MARCH 04, 2016

ITEM NO.305

COURT NO.12

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 503-504/2006

RAJA BRICK & TILE INDS.

Appellant(s)

VERSUS

THE ADDL.COMMNR. OF COMMRL.TAXES& ANR.

Respondent(s)

(with office report)

Date : 04/03/2016 These appeals were called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ROHINTON FALI NARIMAN

For Appellant(s) Mr. Sanjay Kumar, Adv.
Mr. R.N. Keswani, Adv.
For M/s Keswani & Co.

For Respondent(s) Mr. V. N. Raghupathy, Adv.

UPON hearing the counsel the Court made the following
O R D E R

The Civil Appeals are allowed in terms of the signed order.

Interlocutory Application(s) pending, if any, shall stand
disposed of accordingly.

(Ashwani Thakur)
COURT MASTER

(Tapan Kr. Chakraborty)
COURT MASTER

(Signed order is placed on the file)