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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" \235) 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 "I" 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" \235, but comes within the description of "Other tiles" \235 in the aforesaid entry and on that basis, he levied the sales tax at 15%. This

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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 "I" 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 wall 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)

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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:

â S 21. The appellant has claimed that in the

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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. â SWhereas 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.â S \235

