

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).16991/2006

(From the judgement and order dated 20/01/2006 in STA No. 16/2004 of
the HIGH COURT OF KARNATAKA AT BANGALORE)

THE ADDL.COMMISSIONER OF COMMERCIAL TAXES

Petitioner(s)

VERSUS

M/S. BANGALORE BODY BUILDERS (P) LTD.

Respondent(s)

(With application for c/delay in filing SLP)
(FOR FINAL DISPOSAL)

Date: 05/10/2007 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE H.S. BEDI

For Petitioner(s) Mr. Sanjay R. Hegde,Adv.
Mr. Amit Kr. Chawla,Adv.

For Respondent(s) Mr. Gopal Jain,Adv.
Mrs. Nandini Gore,Adv.
Ms. Mridul Sharma,Adv.

UPON hearing counsel the Court made the following

ORDER

Delay condoned.

Leave granted.

Heard the learned counsel for the parties. The appeal is
dismissed in terms of the signed order.

(A.S. BISHT)

(PUSHAP LATA BHARDWAJ)

COURT MASTER

COURT MASTER

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4686 OF 2007

[Arising out of SLP(C) No. 16991/2006]

THE ADDITIONAL COMMISSIONER OF
COMMERCIAL TAXES

... APPELLANT(S)

:VERSUS:

M/S. BANGALORE BODY BUILDERS (P) LTD.

... RESPONDENT(S)

ORDER

Leave granted.

This appeal involves interpretation of Notification dated 27.12.1979, issued by the Government of Karnataka, the relevant portion whereof reads as under:

"The Government of Karnataka hereby reduces with immediate effect the rate of tax payable under section 5 of the said Act in respect of sales to Departments of Government of India or Government of Karnataka or Government of any other State located in Karnataka (Zilla Parishads in Karnataka) (See Sl. No.370) for use by them, by a dealer, relating to goods produced in his manufacturing unit located in the State of Karnataka to 4 per cent under the KST Act 1957, notwithstanding anything contained in any of the Schedules to the KST Act, 1957, or if the rate of tax prescribed in any of the Schedule to the said Act, is lower than 4 per cent, then it shall be at the prescribed rate."

-2-

Bharat Earth Movers Limited (BEML) is a Government of India undertaking. It places orders for and on behalf of the Railway Administration. The relevant assessment year is 1991-92. Assessments were completed on 20.1.1993. The question which arose for consideration before the Courts below is as to whether the aforesaid exemption notification would apply in case of sale wherefor orders were placed by BEML for and on behalf of the Railway Administration. It appears that the Government of Karnataka itself had issued a clarification in 1991, which is to the following effect:

"Sale to BEML.- Stocks sold to BEML are eligible for the concessional rate of 4%. [CLR.CR.1086/87-88, dated 2.11.1987].
Sale of jigs and fixtures to BEML are also taxable at 13% under Entry 20 of II Schedule, [CLR.CR.1110/87-88, dated 19.11.1987].
Supply of rubber products manufactured in his unit by a dealer to BEML, which has placed orders for such supply on behalf of Ministry of Railways for use in the coaches being built for that Ministry, is eligible for the concessional tax rate of 4% in terms of Notification No.FD 71 CSL 84, dated 3.3.1986. [CLR.CR. 358/91-92, dated 22.10.1991]."

-3-

It is stated at the Bar that the said clarification has since been withdrawn with effect from 26.1.1997. Withdrawal of the said clarification, cannot have any application in the instant case as the assessment proceedings had been completed on 20.1.1993.

In view of the stand taken by the appellant itself, the respondent was entitled to the benefit of the exemption notification.

For the reasons aforementioned, this appeal has no merit and it is dismissed.

.....J
(S.B. SINHA)

.....J
(H.S. BEDI)

NEW DELHI,
OCTOBER 5, 2007.