

MEM NO.301

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). 1954/2006

M/S. ENERCON (INDIA) LTD.

Appellant(s)

VERSUS

STATE OF KARNATAKA

Respondent(s)

(with interim relief and office report)

Date : 08/03/2016 This appeal was called on for hearing today.

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

For Appellant(s) Mr. Dushyant Dave, Sr. Adv.  
Mr. Subramoniam Prasad, Sr. Adv.  
Mr. Abhay Kumar, Adv.  
Mr. Tenzing Tsering, Adv.  
Mr. Utkarsh Srivastava, Adv.  
Mr. Ashmeet Singh, Adv.

For Respondent(s) Mr. Basava Prabhu S. Patil, Sr. Adv.  
Mr. V. N. Raghupathy, Adv.

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

The Civil Appeal is 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)

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).1954/2006

M/S. ENERCON (INDIA) LTD.

APPELLANT(S)

VERSUS

STATE OF KARNATAKA

RESPONDENT(S)

O R D E R

The appellant herein, by way of present appeal, questions the validity and legality of the judgment and order dated 18.08.2004 passed by the High Court of Karnataka, at Bangalore, in Sales Tax Revision Petition No. 72 of 2002 which was filed by the appellant herein. The said Revision Petition has been dismissed by the High Court thereby affirming the orders of the authorities below.

The facts in brief, which need to be noted for the disposal of the instant appeal, are that the appellant is engaged, *inter alia*, in the manufacture, sale, installing and commissioning of Wind Mill (Wind Energy Converter). It is a registered dealer under the Karnataka Sales Tax Act (hereinafter referred to as 'the Act'). The appellant had entered into the contracts dated 12<sup>th</sup> June, 1997 and 11<sup>th</sup> July, 1997 with M/s. Jindal Aluminium Ltd., Bangalore. These contracts were for installation, erection and commissioning of "Wind Energy Converter" for 16 Nos. Enercon make E-30 rated at 16 KW Wind Energy Converters. These were to be commissioned at Medakaripuram, Chitradurga Taluk, Karnataka State. The total value of the contracts was Rs.19,67,50,000/-. In the sales tax return

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Reason: -

filed by the appellant, it sought exemption from payment of sales tax on the ground that as per the provisions contained in Entry 57 of Fifth Schedule to the Act, Wind Mills were exempted from payment of sales tax. The provision for exemption is contained in Section 8 of the Act which reads as under:

"Section 8. Exemption of tax:- (1) No tax shall be payable under this Act on the sale of goods specified in the Fifth Schedule subject to the condition and exceptions, if any, set out therein."

Fifth Schedule to the Act gives list of various kinds of goods which are entitled to exemption. As mentioned above, insofar as Wind Mills are concerned, relevant Entry is at Serial No. 57 which is as follows:

"57. Wind Mills and any specially designed devices which run exclusively on wind power including electric generators and pumps running on wind energy."

The Assessing Officer after getting details of the aforesaid turnover of Rs.19,67,50,000/- from the appellant/assessee found that apart from various parts of Wind Mills which were supplied to the customers, expenditure was also incurred towards commissioning of the said Wind Mills at the site which had to be excluded. The exercise done by the Assessing Officer in this respect can be seen from the assessment order passed by the Assessing Officer. The relevant portion whereof giving such details, is as follows:

In view of the above it is proposed to assess your case as follows:

Total turnover		Rs.19,67,50,000.00
Less:		
1.	Wind Mills (Blades & Generators)	Rs.12,60,00,000.00
2.	Wind Mills (Parts i.e., Baskets & Studs & Nuts & other Accessories Add:G.P.@8%	Rs. 3,49,60,805.00 Rs.27,96,864.00
3.	Sub Contract of labour (Drawing, Survey, Soil Investigation and Drainage Add:G.P.8%	Rs.7,07,548.00 Rs. 56,603.00
4.	Labour involved in sub-contract a) Civil (Vasu Foundation) b) Electrical (GET Egg) c) Erection charges (Mega Electrical) d) Hire charges. Add:G.P.@8%	Rs.17,46,742.80 Rs.10,76,704.00 Rs.11,13,307.00 Rs.21,91,900.00 Rs. 1,75,352.00 Rs.17,08,25,826.00
Total taxable turnover proposed		Rs. 2,59,24,173.00
<u>Classification:</u>		
1. Transfer of goods involved in execution of works contract u/s 43 of the Fifth Schedule to the Act Rs.2,59,24,173.50 at 10%		Rs.25,92,417.00
2) TOT on Rs. 2,59,24,173.50@3%		Rs. 7,77,725.00
Total tax proposed		Rs.33,70,142.55

It is manifest from the above that insofar as the manufacturing of various parts of Wind Mills are concerned, they were given exemption by applying the provisions of Section 8 read with Entry 57 of Fifth Schedule to the Act. The figure to this effect was arrived at Rs.17,08,25,826/-. However, on the remaining amount i.e Rs.2,59,24,173/-, the sales tax was held payable on the ground that the said expenditure did not qualify as expenditure towards "Wind Mills".

A bare reading of the order of the Assessing Officer as extracted above would show that such expenditure was treated as

transfer of goods involved in execution of works contract".

The appellant challenged this order by filing an appeal before the Joint Commissioner of Commercial Taxes (Appeals), City Division-I, Bangalore. The Appellate Authority remanded the case back to the Assessing Authority to redo the assessment while doing so he also observed that there was no immediate transfer of moveable property in goods through various series of activities like foundation work, electrical work, commissioning etc. and hence, it was indivisible and comprehensive contract of supply, erection/installation and commissioning of wind mills as described under Section 2(1)(v-i) of the Act. This order of remand was challenged by the appellant by filing appeal before the Appellate Tribunal remitting the case back to the Assessing Authority to redo the assessment. The Tribunal dismissed the appeal. Being aggrieved, the appellant preferred Revision Petition before the High Court which has been dismissed by the impugned judgment.

The High Court after taking note of the provisions of Section 8 and Entry 57 has observed that meaning of the words "Wind Mills" is not defined under the Act and, therefore, some meaning has to be assigned to the same. It has further observed that since Section 8 of the Act exempts certain categories of "goods" which are specified in the Fifth Schedule of the Act, it is only those items which qualify as goods are to be exempted. Thereafter, an endeavour is made to point out what would be the goods falling within the expression "Wind Mill". It has held that the expression "Wind Mill" would include rotor consisting of blades, the hub assembly; nacelle; yaw system, tower and grid synchronization

assembly including transformer unit for delivering the power to the grid net work. It is also opined that the electrical work and transformers are vital parts of a wind mill and the wind mill cannot be put to use and it would not be functional device without the electrical works and the transformers and, therefore, they would also be recorded as parts of wind mill. However, the High Court has come to the conclusion that insofar as foundation work etc. is concerned that would not be exempted as it does not fall within the meaning of wind mill. It is the validity of this part of the order which calls for our attention.

After hearing the learned counsel for the parties, we are of the opinion, that a fundamental mistake which is committed by the authorities below is that foundation work or installation work, which is even considered as part of works contract by the Assessing Officer himself, cannot be treated as "goods". Even if we proceed on the basis that such work does not fall within the expression "Wind Mill", still it could not be treated as goods which could be exigible to sales tax under the Act. As pointed out above, the Assessing Officer himself classified such goods involved in execution of works contract. Once this was the opinion of the Assessing Officer and the part of work viz. foundation or erection work related to works contract, on this ground itself, no sales tax could have been charged thereon. We have also pointed out above that even the First Appellate Authority proceeded on the basis that the work like foundation work, electrical work, commissioning etc. was "series of activities and further that it was indivisible". On this finding as well, no further action to levy sales tax was

required.

Therefore, on the aforesaid grounds, we set aside the impugned order and allow this appeal with consequential relief.

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

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

NEW DELHI;  
MARCH 08, 2016