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Court : Delhi

Decided On : Mar-07-1986

Reported in : [1986]62STC267(Delhi)

Judge : J.D. Jain and; T.P.S. Chawla, JJ.

Acts : Bengal Finance (Sales Tax) Act, 1941

Appeal No. : Sales Tax Reference No. 30 of 1978

Appellant : Simplicity Engineers

Respondent : Commissioner, Sales Tax, New Delhi

Judgement :

Chawla, J.

1. M/s. Simplicity Engineers were registered as dealers under the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi ('the Act'). They manufactured and sold electric furnaces and allied equipment. The electric furnaces which they manufactured were used for baking or drying or other heat treatment processes in the ceramic and electrical industries. As need hardly be said, these furnaces operated on electricity.

2. At the relevant time, the sales of goods specified in Schedule I of the Act were chargeable to tax at a higher rate than other goods. Item 18 of Schedule I was as

follows :

'Electrical goods other than electrical plant, equipment and their accessories including service meters required for generation, transmission and distribution.'

3. In the course of the assessment for the financial year 1971-72, M/s. Simplicity Engineers contended that the electric furnaces sold by them were not 'electrical goods' covered by item 18, and, hence, did not attract the higher rate of tax. The Sales Tax Officer rejected this contention and held that the electric furnaces were 'electrical goods' covered by item 18.

4. On an appeal by M/s. Simplicity Engineers against the assessment order, the Assistant Commissioner of Sales Tax accepted their contention. However, the Commissioner of Sales Tax then filed an appeal before the Sales Tax Appellate Tribunal. The Tribunal agreed with the Sales Tax Officer and held that the electric furnaces were 'electrical goods' covered by item 18. Consequently, the order made by the Assistant Commissioner was set aside.

5. M/s. Simplicity Engineers then asked for a reference of the question to this Court. Accordingly, the Tribunal has referred the following question of law for decision :

'Whether, on the facts and circumstances of the case, the Tribunal was right in holding, that electric furnaces were liable to be treated as electrical goods under item No. 18 of the First Schedule appended to the Bengal Finance (Sales Tax) Act, 1941, as then in force in Delhi, and, thereforee, liable to tax at the rate of 9 per cent.'

6. At the hearing of the reference, counsel for M/s. Simplicity Engineers opened with a submission which had not been made on their behalf at any earlier stage : neither before the sales tax authorities nor the Appellate Tribunal. He said, that even assuming that the electric furnaces were 'electrical goods', they were, in any case, 'electrical plant' or 'equipment', and, thus, excluded by item 18 itself. Hitherto, the argument on behalf of M/s. Simplicity Engineers had only been that the electric furnaces which they sold were not 'electrical goods'. Nevertheless, we

heard counsel on this submission and have considered it.

7. In my opinion, there is no substance in this new contention. It is true that 'electrical plant' and 'equipment' and 'their accessories' are expressly excluded by item 18, but only if they are 'required for generation, transmission and distribution' of electricity. The argument ignores these latter words. It is admitted that, in the present case, the electric furnaces had nothing to do with 'generation, transmission and distribution' of electricity. Consequently, they do not come within any of the exceptions in item 18. Counsel for M/s. Simplicity Engineers ultimately accepted that this was the proper interpretation of item 18, and no longer pressed the argument.

8. He, then, reverted to the original contention that the electric furnaces were not 'electrical goods'.

9. The words 'electrical goods' have come before the High Courts for interpretation in a number of cases. The earliest is William Jacks and Co. Ltd. v. State of Madras [1955] 6 STC 301 (Mad.). In that case, the Madras High Court said that it was 'neither possible nor desirable' to prepare 'an exhaustive list' of 'electrical goods'. Nor was it possible to 'devise a formula of universal application'. With these observations, I would entirely agree. Nevertheless, the court then went on to approve the test :

'.... that only such articles the use of which cannot be had except with the application of electric energy, can be termed electrical goods or appliances.'

10. It will be noticed that this text, expressed in negative form, carries an affirmative implication that those articles which can be used only by the application of electricity are 'electrical goods'. To this implication, I will presently demur.

11. By applying that test, it was held in that case, that a double ended grinding machine 'must be regarded as electrical goods' because 'it cannot be worked except with the use of electricity'. So, also, were pump sets because 'there was no provision to drive them by an alternative power supply'.

12. The inadequacy of this test becomes immediately apparent from the decision of the High Court of Madhya Pradesh in Bansilal Agarwal and Bros. v. Commissioner of Sales Tax, Madhya Bharat [1958] 9 STC 100. There, it was held, that torch cells were 'electrical goods' notwithstanding that they could not be described as 'articles the use of which could not be had except with the application of electrical energy' for they themselves generated electricity.

13. The test underwent a substantial change in William Jacks and Co. Ltd. v. State of Madras [1960] 11 STC 340, another decision of the Madras High Court. The question there was whether a lathe machine came within the scope of the expression 'electrical goods'. It was held that it did not. The reason given was that though 'the lathe itself is machinery, dependent no doubt on electricity in this case, but which could easily be designed and altered for use with other types of power'. Thus, the test, according to this decision, was not whether the particular machine under consideration worked on electricity or not, but whether it could be 'designed' or 'altered' for use 'with other types of power'.

14. In Deputy Commissioner of Commercial Taxes, Madurai Division v. Ravi Auto Stores [1968] 22 STC 172 (Mad.), the uselessness of the test was almost acknowledged, though not expressly. That again was a decision of the Madras High Court. The question now was whether welding electrodes were 'electrical goods'. It was contended for the revenue that 'since the welding electrodes cannot be used except with the application of electrical energy' they should be regarded as electrical goods. The court said :

'In our view, the argument lays too much stress on the user of the article with electrical energy. That, no doubt, is a test for purposes of entry 41, but is not the only test. Before applying that test, the goods must be capable of classification as electrical goods. Though the words are easily understood in common parlance, it is one of those cases which are more easily understood than defined satisfactorily.'

15. With respect, if 'before applying that test, the goods must be capable of classification as electrical goods' where is the need for the test

16. The court then formulated the tests as follows :

'Intrinsically, the goods in question must be electrical goods and, secondly, their use cannot be had without electrical energy. Merely because an article cannot be used without electricity, it may not be decisive. It is necessary that, apart from that fact, the article, by its very nature, answers the description of 'electrical goods'. For instance, the use of a motor car cannot be had without batteries or a dynamo fitted to it. But on that account, can it be said that motor car is 'electrical goods' The answer, it seems to us, should be in the negative.'

17. On the basis of these tests it was held that welding electrodes were not 'electrical goods'.

18. In subsequent cases these two tests have been repeatedly accepted. In J. B. Advani-Oerlikon, Electrodes, P. Ltd. v. Commissioner of Sales Tax, M.P. [1972] 30 STC 337 (MP) they were applied and, again, it was held that welding electrodes were not 'electrical goods'. In Commissioner of Sales Tax v. Bharat Traders , on the basis of the same tests, it was held that wooden gittis, switch-boards and battens were not 'electrical goods' as they were not 'worked by electricity' but merely 'used in laying or controlling wires carrying electrical energy'. Besides, in common parlance also they did 'not answer the description of electrical goods'. On the same two tests, in Commissioner of Sales Tax, U.P. v. Import Association , it was held, that ammeters and voltmeters were 'electrical goods' as they could 'perform their function only when electrical energy is made to pass through them'. Although it was not so stated in that case, presumably, the court was of the opinion that ammeters and voltmeters are regarded as 'electrical goods' in common parlance. In State of Tamil Nadu v. Metro Electrical Globes [1977] 39 STC 188 (Mad.), the question was whether globes and lamp-shades are 'accessories' of 'electrical goods'. The court accepted the same two tests for determining what were 'electrical goods' but held that they did not have to be fulfillled by 'accessories'.

19. On reflection, it seems to me, that in the ultimate analysis there is really only one test for deciding what are 'electrical goods'. The test is whether the article in question comes within the meaning of 'electrical goods' as understood in common

parlance. But, this is subject to any other meaning appearing from the context in which the words are used.

20. If the article does not work on electricity, it is not 'electrical' and cannot come within the description of 'electrical goods' at all. The converse proposition, however, is not true. Simply because it does work on electricity does not ipso facto make it 'electrical goods'. Examples of this proposition, taken from the cases to which I have referred, are a lathe machine, a motor car and welding electrodes. thereforee, the requirement that the article should work on electricity is not the 'test' for deciding whether it is 'electrical goods', but the sine qua non for it to be such. This is why I demur to the affirmative implication in William Jacks and Co. Ltd. v. State of Madras [1955] 6 STC 301 (Mad.).

21. Nor is it relevant to consider whether the machine could be 'designed' or 'altered' for use with 'other types of power'. Surely, what one has to consider is the particular machine as it exists, and not some other machine which might be obtained by redesigning or alteration. The tax is to be assessed on what is actually sold, and not on possible substitutes or altered models.

22. I return, then, to the present case. As a matter of strict law, the meaning of a word or words in common parlance is a question of fact and, thereforee, to be decided on evidence. In the vast majority of cases, there is not likely to be much difference of opinion as to whether a particular article is 'electrical goods' or not as understood in common parlance. Yet, there are bound to be cases in which there will be a difference of opinion, and in such cases the matter can only be decided on evidence as to how the words are understood by ordinary people.

23. With regard to electric furnaces, of the type made by M/s. Simplicity Engineers, I would not venture to say, one way or the other, whether in common parlance they would be regarded as 'electrical goods'. Fortunately, in the context of item 18 it is not necessary to grapple further with that question. The words which follow 'electrical goods' in that item go to show that even 'electrical plant' and 'equipment' and 'their accessories' were within the concept of 'electrical goods' as envisaged by the draftsman. For, otherwise, there was no need to expressly exclude them. It seems, thereforee, that the draftsman had a very wide concept of 'electrical goods'

or intended those words to have a wider concept that in common parlance. Since 'plant' and 'equipment' come within that concept, there can be no doubt that an electric furnace, whether it be regarded as a 'plant' or 'equipment', is within the meaning of 'electrical goods'. An electric furnace is, true, covered by item 18.

24. For these reasons, I would answer the question referred in the affirmative. The costs of this reference will be paid by M/s. Simplicity Engineers to the Commissioner of Sales Tax. Counsel's fee Rs. 500.

Jain, J.

25. I agree.

26. Reference answered in the affirmative.