SUPREME COURT OF INDIA

Commnr. of Trade Tax, U.P.

Vs.

Parikh Gramodyog Sansthan

C.A.No.651 of 2005

(D.K. Jain and H.L. Dattu JJ.)

11.08.2010

JUDGEMENT

H.L.Dattu, J.

1. The question for determination in these Civil Appeals is whether the `Voltage Stabilizer' manufactured and sold by the assessee (respondent herein) ought to be taxed as electrical goods under Entry No. 16 of Schedule to U.P. Trade Tax Act, 1948 or as electronic goods under Entry No. 74(f) of the Notification No.1223 dated 31st March, 1992?

2. The Revenue contends that the voltage stabilizer is an `electrical goods'. The stand of the assessee is it is `electronic goods'.

3. The facts and the issues in all these civil appeals are identical and, therefore, these are all disposed of by this common judgment.

4. The Respondant/Assessee is in the business of manufacture of voltage stabilizer and sales thereof. The assessing Officer had passed Assessment Order dated March 31, 1997 under Section 41(8) of the U.P Trade Tax Act, 1948, directing S/S. Parikh Gramodyog Sansthan (Respondent) to pay Sales Tax in a sum of Rs. 1,00,875.55 and 19,3438.00 for the assessment years 1994-95 and 1995-96 respectively. This quantification was based on the rate applicable to electrical goods. The Respondents had stated that they were liable to pay taxes at the rates applicable to electronic goods under the old Entry 74(f) and the amended Entry 74(a)(iii) of the Notification, which was 4% for the assessment years 1994-95 and 1995-96.

5. The assessment years and the tax demand vary in each of these appeals.

6. Being aggrieved by the order passed by the Assessing Officer dated March 31, 1997, the assessee had preferred an appeal before the Commissioner of Trade Tax, which was dismissed vide order dated 29.7.1997. Subsequently, the Respondents filed second appeal

before the Trade Tax Tribunal, Moradabad. The Tribunal while modifying the order passed by the assessing officer had held that voltage stabilizers were `electronic' goods and not `electrical' goods, primarily on the ground that electrical goods involve the consumption of electricity, whereas an electronic device functions through the creation of an electron vacuum in the semiconductor material. The Tribunal also referred to a certificate issued by the Principal Director of Electronic Service and Training Center of Ram Nagar, Nainital, which is a government society, that voltage stabilizers are electronic devices. The Tribunal also noted that the Text Book `Basic Electronic Engineering' by M.L Anumani, categorises voltage stabilizers as electronic goods. The Tribunal also had taken note of circular issued by the U.P government dated 31.3.1992 (Notification No. 1223), the notification issued by the Punjab Government dated 10.11.1987, as well as Exemption No.12 of Entry No. 23 of the Excise Act, all of which categorizes voltage stabilizers as electronic goods.

7. Being aggrieved by the aforesaid order, the revenue had filed Revision Petition in the High Court at Allahabad. Before the High Court, the revenue had relied on the order passed by the Commissioner of Commercial Taxes in another assessee's case, wherein it was held that voltage stabilizers are electrical goods. The High Court has agreed with the reasoning of the Trade Tax Tribunal.

> "While rejecting the stand of the revenue, has observed that the order of Commissioner of Commercial Taxes, passed under Section 35 of U.P Trade Tax Act does not give out any reason as to why the automatic voltage stabilizer should be treated as electrical goods and not as electronic goods and, therefore, the reliance placed on the order passed by the Commissioner would not come to the aid of the revenue. Accordingly, the High Court dismissed the Revision Petition. That is how the revenue is before us in these appeals."

8. The learned counsel Sri Aarohi Bhalla would submit that, the commodity in question is electrical goods since it works on the principles of application of electric energy and also facilitates the distribution and transmission of electrical energy and therefore, it satisfies the twin tests that are required under Entry 16 of Schedule to the Act. It is further submitted, that for the goods to be classified as electronic goods, their functioning or operation must be controlled and guided by Micro Processing Chips. According to learned counsel, the voltage stabilizers function as step up or step down transformers and their working is not controlled by Micro Processing and, therefore, they are outside the ambit of electronic goods. It is also submitted that the assessee only imported electrical goods as raw materials for being used in the manufacture of stabilizers and the use of the raw material clearly establishes the fact that no microchips have been used while manufacturing the voltage stabilizers.

9. Per contra, Shri Dhruv Agarwal, learned counsel for the assessee would submit that the voltage stabilizer is made of electronic components and since the main component of the stabilizer being a microchip, the commodity in question requires to be classified as electronic goods and, therefore, falls under Entry 74 (f) of the Notification No. 1223 dated 31st March, 1992.

10. The relevant entries that are required to be noticed are, Entry 16 and Entry 74 of the Schedule to UP Trade Tax Act, 1948. They are as under:

> “16. "All electrical goods, instruments, apparatus, appliances and all such articles the use of which cannot be had except with the application of electrical energy, including fans, fluorescent tubes (including their starters, chokes, fixtures, fittings and accessories), electrical earthenware and porcelain, electrical equipments, plant and their accessories required for generation, distribution and transmission of electrical energy, electric motors and parts thereof, and all other accessories and components whether sold as a whole or in parts, but excluding torches, torch cells, dry cell batteries, torch bulbs and filament lighting bulbs."
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> 74 "(a) Electronic goods made by such tiny units whose investment in plant, machinery, equipment and apparatus as certified by a chartered accountant, does not exceed five lakh rupees and which manufactures and sells electronic goods notified Development Commissioner, Small Scale Industries, Government of India.
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> (b) Consumer electronic goods that is to say black and white television, tape recorders, and public address system.
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> (c) Office equipment that is to say data processing system, micro processor based mini/micro computer system, computer peripherals, dot matrix printers, line printers, desk top publishing system, floppy drives, the hard disk drives, video display terminals, key boards, mouse, plotters, digitizers, monitor, cartridge tape, steamer drive, calculators, electronic typewriters, data entry machines, automatic taller machines, cash dispensers.
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> (d) Photo copiers.
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> (e) Electronic components, that is to say all types of passive components/resisters, capacitors, diodes and other active components, transistors, integrated circuits, large scale integration/very large scale integration chips, black and white picture tubes, colour picture tubes, power semi conductors, audio tapes and video tapes, printed circuit boards/connectors, relays, upto electronic components, magnetic media, microwave tube, television components, television glass shell, electronic transducers, actuators, display devices that is light emitting diodes/liquid crystal diode, micro meters for video cassette records/video cassette players, crystals, tape deck mechanism, etched and framed foils, electronic tubes, deflection yokes, line out put transformers, electro deposited copper foils printed circuit board laminate, populated printed circuit boards, power supply devices, cabinet.
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> (f) All other electronic goods, parts and accessories not covered in any of the aforementioned categories.”

11. Entry 16 of the Schedule to U.P. Trade Tax Act is an inclusive definition. It speaks of all electrical goods, instruments, apparatus etc., the use of which cannot be had without the application of electrical energy, including plant and their accessories required for the generation, distribution and transmission of electrical energy.

12. Entry 74 of the Notification No.1223 dated 31 st March, 1992 and the subsequent Notification No. 3420 dated 1st October, 1994 speaks of electronic goods. There is no material change in these two Notifications, except change in the rate of tax on certain electronic items. The relevant entry for the purpose of the present case is Entry 74(f) of the earlier Notification and 74(a)(iii) of the subsequent Notification. The said entry speaks of all the other electronic goods not specified any where else in the Schedule or in any other Notification. The rate of tax during the relevant assessment years was 4%.

13. Before we consider the specific case of the revenue, it is desirable to know the meaning of the expression `electrical goods' and `electronic goods'.

> "ELECTRICAL GOODS:
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> The Law Lexicon (Justice T.P. Mukherjee 4th Ed, 1989 pg.574) defines Electrical Goods as `such articles the use of which cannot be had except with the application of electrical energy.' It must be kept in mind that an electronic device can be an electrical device but an electrical device cannot be an electronic device.
>
> ELECTRONIC GOODS:"

14. Sri M.P. Agarwal in his book Interpretation of Words, Phrases & Commodities under Sales Tax Laws has stated, `the fact that the electronic goods cannot be used without the aid of electricity is not the only criterion to determine whether those goods can be treated as electrical goods. The really important criterion is whether those goods are regarded as electrical goods in common parlance. It might consist of electronic systems, instruments, appliances, apparatus, equipment operating on electronic principles and all types of electronic components, parts and materials.

15. Now we will deal with the specific goods which we are concerned in these appeals. At the outset, we intend to notice what is a voltage stabilizer, its purpose, components and functions? Voltage Stabilizer:

> "A voltage stabilizer is a device which is able to deliver relatively constant output voltage while input voltage and load current changes over time. The voltage stabilizer is the shunt regulator such as a Zener diode or avalanche diode. Each of these devices begins conducting at a specified voltage and will conduct as much current as required to hold its terminal voltage to that specified voltage. Hence, the shunt regulator can be viewed as the limited power parallel stabilizer. The shunt regulator output is used as a

voltage reference. A Zener diode is a type of diode that permits current not only in the forward direction like a normal diode, but also in the reverse direction if the voltage is larger than the breakdown voltage known as "Zener knee voltage" or "Zener voltage". The device was named after Clarence Zener, who discovered this electrical property. An avalanche diode is a diode (usually made from silicon, but can be made from another semiconductor) that is designed to go through avalanche breakdown at a specified reverse bias voltage and conduct as a type of voltage reference. (see Wikipedia)"

16. The voltage stabilizer is an instrument which can be used by application of electrical energy and not an instrument for generation, distribution or transmission of electrical energy, but are used for regulating the inflow of electrical energy for variety of appliances.

"Voltage stabilizers serve the purpose of producing a constant output voltage from a variable input voltage. As a rule, voltage stabilizers operate with an in-phase regulated transistor, which has a control input driven by a stabilized control voltage. It is possible, given a constant control voltage to largely stabilize the output. Voltage in a defined operating range, by way of the characteristic response of the transistor acting as the actuator. The stabilized output voltage serves, as a rule, to supply voltage to electronic circuits which are connected down stream and often have a dedicated voltage regulator for voltage supply."

17. Purpose of Voltage Stabilizers:

"Voltage stabilizers provide a steady amount of electrical current to electronic devices when power fluctuates in the house or business where the devices are located. Power surges and sudden power drops can cause serious damage to computers and other sensitive electronics. Voltage stabilizers store power and provide power from its reserve to attached devices, which bypasses power fluctuations. Some voltage stabilizers are also incorporated into a universal power supply (UPS), which is a backup battery system that allows devices such as computers to continue operating for a limited period of time in the event of a power failure.

Standard Voltage Stabilizer Operation :

The specifics of how a voltage stabilizer operates varies from one type to another, but the basics remain the same. A voltage stabilizer is plugged into an outlet, which charges a series of capacitors or battery units in the stabilizer. These capacitors maintain their charge even if the amount of power from the outlet fluctuates.

Any device plugged into the stabilizer will draw its power from the capacitors or battery instead of directly from the outlet. The voltage stabilizer is wired so that the outlet and the devices are on separate circuits. As a device drains power from the capacitors, the power coming in from the outlet will continue to recharge them. Due

to resistance in the stabilizer's circuitry, its power to devices is lower than the ideal voltage from the outlet. This means devices may function slightly slower when connected to a voltage stabilizer.
Capacitor :

A capacitor (formerly known as condenser) is a passive electronic component consisting of a pair of conductors separated by a dielectric (insulator). When there is a potential difference (voltage) across the conductors a static electric field develops in the dielectric that stores energy and produces a mechanical force between the conductors. An ideal capacitor is characterized by a single constant value, capacitance, measured in farads. This is the ratio of the electric charge on each conductor to the potential difference between them.

Capacitors are widely used in electronic circuits for blocking direct current while allowing alternating current to pass."

18. It is evident from the facts of the case that an automatic voltage stabilizer involves the operation of a number of electronic components.

"A voltage stabilizer might have many components some of which use electricity. This cannot be the sole reason for classifying it as an electrical good. As noticed earlier, an electrical device can be an electronic device, but an electronic device cannot be an electrical device.

The Tribunal which is the last fact finding authority after taking into consideration the components of voltage stabilizer, the purpose for which it is used and the principles on which it works has come to the conclusion that the voltage stabilizer is electronic goods, for the purpose of taxation under U.P. Trade Tax Act, we are in agreement with the reasoning and conclusion reached by the Tribunal."

19. The learned counsel for the appellant has placed reliance on the observations made by Madras High Court in the case of *Williams Taks and Co. Ltd., Madras v. The State of Madras*[1] *and B.P.L. v. State of Andhra Pradesh*[2].

20. In the case of *Williams Taks and Co. Ltd., Madras v. The State of Madras*[3], the question that came up for the determination before the Court was whether the articles specified within the list mentioned thereby under General Sales Tax Act, 1939 were electrical goods. The Court observed that:

"it is neither possible nor desirable for this Court to embark on a preparation of an exhaustive list of what constitute `electrical goods' within the meaning of section 3(2)(viii) of the Act nor even is it possible to device a formula of universal application."

21. In the case of *B.P.L. v. State of Andhra Pradesh*[4], the question that was to be decided by this Court was "whether Fully Automatic Washing Machine can be regarded as `electronic goods' so as to attract a lower rate of sales tax." It was observed that the answer to the question arising in the case depends upon the interpretation of the definition of the term `electronic goods'.

> "The Court also pointed out that "on a plain reading thereof, it means that systems, instructions, appliances, apparatus and equipments, which are electronic and operate on electronic principle, would be electronic goods. All types of electronic components, parts or materials are also electronic goods as per the said definition.....
> What has to be seen is whether the automatic washing machines are electronic appliances or equipments operating on electronic principle."

22. In our considered view, these decisions would not assist the appellants. We, therefore, do not find any infirmity in the impugned judgment. Accordingly, we dismiss these appeals. In the circumstances of the case, there will be no order as to costs.

[1]*[AIR 1955 Madras 656 (V.42, C.N.208 Nov.)]*
[2]*[2001 (127) E.L.T. 655 (S.C.)]*
[3]*[AIR 1955 Madras 656 (V.42, C.N.208 Nov.)]*
[4]*[2001 (127) E.L.T. 655 (S.C.)]*