(1982) 11 AP CK 0010

In the Andhra Pradesh High Court

Case No : Tax Revision Case No''s. 46 and 47 of 1978

Allied Auto Agencies APPELLANT

Vs

The State of Andhra Pradesh RESPONDENT

Date of Decision : 29-11-1982

Acts Referred:

Citation : (1983) 53 STC 344

Hon'ble Judges : Punnayya, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : T. Anantha Babu, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

Jeevan Reddy, J.—The only point that arises for consideration in these tax revision cases is whether spark plugs fall within entry 38 of the First Schedule, as it stood at the relevant time. The entry reads as follows :

"All electrical goods, instruments, apparatus and appliances including fans and lighting bulbs, electrical earthenware and porcelain and all other accessories excluding electric motors."

2. The Tribunal has held that they fall within this entry and that view is the subject-matter of challenge herein. The first enquiry in such a case ought to be, what is a spark plug and what is its function ? The Tribunal has held on the basis of the material placed before it that the spark plug is a fitment for conducting high ignition current from a storage battery or a magnet in the combustion chambers of an engine cylinder for conducting high ignition current in the form of an arc jumping between two electrodes which ignite the airfuel-mixture in the engine cylinder. In short, the spark plug is used in every internal combustion engine, whether it is automobile or any other form of internal combustion engine, for creating spark to ignite the fuel within the chamber. For this purpose a gap is provided between two electrodes, one of which is the central electrode and the other is the surrounding electrode, which are separated by insulating

material. When the current is made to jump over the gap it creates a spark, which ignites the fuel in the chamber. For the purpose of ensuring proper functioning, the electrodes are encased in insulating material which is generally ceramic material. Though in our minds a spark plug is intimately connected with a car, that does not appear to be the only use, it is put to. It is undoubtedly a part of the electrical system in the car. But the question it is whether for that reason it can be called "electrical goods".

3. Mr. Anantha Babu contended that the spark plugs are not electrical goods, because no electrical goods shop sells them and that only automobile shops sell these spark plugs. For this reason alone we are unable to say that it is not electrical goods, because, to take another instance, the bulbs used in a car are also not sold in electrical goods shops, but only in automobile shops. For that reason it cannot be said that the bulbs are not electrical goods. Each case had to be judged having regard to the relevant circumstances.

4. As stated above, the electrodes are the main functioning particles in a spark plug. In Deputy Commissioner of Commercial Taxes, Madurai Division Vs. Ravi Auto Stores, , a Bench of the Madras High Court has held that welding electrodes are not electrical goods within the meaning of entry 41 of the First Schedule to the Madras General Sales Tax Act, 1959, which is almost identical to the entry, with which we are concerned herein. In Jupiter Battery Works Vs. Commissioner, Sales Tax, the Allahabad High Court has held that batteries used in motor vehicles are not electrical goods. In Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, , the Supreme Court was considering a question whether arc carbons used mainly in projectors in cinemas fall within entry 4 of the First Schedule to the Andhra Pradesh General Sales Tax, 1957. Entry 4 read as follows :

"Cinematographic equipment, including cameras, projectors, and sound recording and reproducing equipment lenses, films and parts and accessories required for use therewith."

While considering this question the Supreme Court referred with approval to the decision in Deputy Commissioner of Commercial Taxes v. Ravi Auto Stores [1968] 22 STC 172. After examining the several entries in the First Schedule the court observed that some precision has been attempted in setting out the entries and that in construing each entry, the court has to find out the intention of the framers of the schedule in making the entry and that the best guide to their intention is the language actually employed by them.

5. It is well-settled in construing these entries that one must go by the words as they are understood in common parlance and in common usage. In this sense, undoubtedly, spark plugs cannot be understood to mean electrical goods. It is true that spark plugs are a part of the electrical system, but so are batteries and yet they are held not to be electrical goods.

6. Apart from the above test of common parlance, there is this circumstance

which inclines us to hold in favour of the assessee. Once the electrodes themselves have been held not to be electrical goods, it would be difficult for us to hold that the spark plugs which are in essence electrodes encased in ceramic material, constitute electrical goods. It is not necessary for us to express any opinion on the question whether they fall within entry 1 of the First Schedule as parts or accessories of motor vehicles, because that is not the case put forward by the department at any stage, nor it is the ground upon which the Commercial Tax Officer''s order was revised by the Deputy Commissioner.

7. For the above reasons, we hold that the spark plugs cannot be brought under entry 38 as it read at the relevant time and, if so, they must necessarily be taxed as general goods.

8. We may also state here that in 1976 entry 38 has been substituted altogether making it very elaborate. Spark plugs are now placed expressly under new entry, viz., entry 138, introduced simultaneously. If spark plugs are essentially electrical goods, one would expect the legislature to have included them in entry 38 while recasting the same in 1976. Of course, this is only one way of looking at the matter and it is clear that we are not basing our decision on this subsequent circumstance.

9. For the above reasons, the two revision cases are allowed and it is held that spark plugs do not fall within entry 38 of the First Schedule as it then stood. No costs. Advocate''s fee Rs. 250.