(1982) 02 GUJ CK 0008

In the Gujarat High Court

Case No : Sales Tax Reference No. 25 of 1980

Bharat Sales Limited APPELLANT

Vs

The State of Gujarat RESPONDENT

Date of Decision : 17-02-1982

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 62

Citation : (1982) 49 STC 360

Hon'ble Judges : D.H. Shukla, J;A.N. Surti, J

Bench : Division Bench

Advocate : S.L. Modi, for the Appellant; R.P. Bhatt, Assistant Government Pleader for Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Surti, J.—The following questions of law are referred to us by the Gujarat Sales Tax Tribunal, Ahmedabad :

(1) Whether, on the fact and in the circumstances of the case, the Tribunal was right in law in holding that 0.5 KVA autovolters were accessories

of a refrigerator and, therefore, sales thereof were covered by entry 76 of Schedule II, Part A, to the Gujarat Sales Tax Act, 1969, as it then

stood ?

(2) Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that 4 KVA autovolters were accessories of

an air-conditioner having 1.5 tonne capacity and, therefore, sales thereof were covered by entry 69 of Schedule II, Part A, to the said Act, as it

then stood ?

(3) Whether, on the fats and in the circumstances of the case, the Tribunal was right in law in rejecting the case of the applicant that the disputed

autovolters were covered by entry 41 of Schedule II, Part A, or entry 16(2) of

Schedule II, Part A, to the Gujarat Sales Tax Act, 1969 ?

The assess is a public limited company incorporated under the Companies Act, 1956, and is registered as a dealer under the said Act. The

assessee carries on business at Ahmedabad to resell Gem autovolters or volt-regulators and other products as manufactured by M/s. General

Equipment Merchants Ltd. at New Delhi. The assessee had sold certain units of 0.5 KVA Gem autovolters to one M/s. Santosh Trading Co. on

3rd May, 1975, and had also sold certain number of units of 4 KVA Gem autovolters to the same party on 4th June, 1975. Thereafter the

assessee had filed an application dated 6th January, 1977, before the learned Deputy Commissioner of Sales Tax to determine the rate of tax

payable on the sales of the said two sets of above goods.

2. The said letter dated 6th January, 1977, is dressed by the manager of the assessee-company to the Deputy Commissioner of Sales Tax (H.Q.),

Commissioner of Sales Tax, Ahmedabad, and is in the following words :

Dear Sir,

Sub :- Determination u/s 62.

We are dealing in refrigerators, air-conditioners, water-coolers, televisions and autovolters/transformers, etc. But on our item, viz.,

autovolters/transformer, were are charging 7 per cent and other dealers of this trade are also charging 7 per cent only being the electrical goods.

So in view of the above please confirm the rate of sales tax on this particular item and oblige.

Thanking you,

Yours faithfully,

for Bharat (Sales) Limited

Sd/- M. K. Seth, Manager.

3. Deputy Commissioner of Sales Tax took into consideration the literature produced by the manufacturers as furnished by the assessee, and came

to the conclusion, that 0.5 KVA Gem autovolters were accessories of a refrigerator, and therefore sales thereof wore covered by and taxable

under entry 76 of Schedule II, Part A, to the said act. He also took the view that KVA autovolters were accessories of an air-conditioner having

1.5 tonne capacity, and therefore sales thereof were covered by entry 69 of

Schedule II, Part A, to the said Act, as it stood at the relevant time.

We may mention at this stage that learned Deputy Sales Tax Commissioner did take into consideration not only the literature in regard to the items

in question produced by the assessee-company, but also the recommendations made by the assessee-company to its constituent.

4. Substantially for the aforesaid reasons, the learned Deputy Commissioner took the view that 4 KVA autovolters were the accessories of an air-

conditioner and refrigerator, and hence, sales thereof were covered by entries 76 and 69 respectively as stated above.

5. The assessee-company was aggrieved by the said decision of the learned Deputy Commissioner and preferred an appeal before the Sales Tax

Tribunal, Ahmedabad. Before the Sales Tax Tribunal, the submission on behalf of the assessee-company was that the disputed autovolters were

electrical goods within the meaning of entry 41 of Schedule II, Part A, to the said Act. It was also the submission before the Tribunal that the

disputed autovolters were ""electric motors"" within the meaning of clause (2) of entry 16 of Schedule II, Part A, to the Gujarat Sales Tax Act. The

Tribunal did not accept any of the two submission urged on behalf of the assessee-company, and rejected the case of the assessee-company.

6. It is under these circumstances that the aforesaid points of law referred to us for decision.

7. At the time of the hearing of this reference, Mr. Modi for the assessee-company made a statement at the Bar, that it was not the case of the

assessee-company before us that the concerned autovolters were ""electric motors"", and hence, he said that he would not argue a case on the basis

that the assessee''s case would fall within the purview of Schedule II, Part A, entry 16(2), to the Gujarat Sales Tax Act, 1969.

8. In substance, Mr. Modi''s submission before us was that the autovolters were not accessories as provided in either entry 76 of the Act or entry

69 of the Act. At this stage, we may usefully set out the relevant entries as they stood at the relevant time, that is to say, on 4th June, 1975, the

date on which the alleged items were sold by the assessee-company to its constituents. Entry 76 of Schedule II, Part A, to the Gujarat Sales Tax

Act, as it stood on 4th June, 1975 :

76. (1) Refrigerators and mechanical water-coolers and component

parts and accessories thereof :

(a) of capacity up to 165 litres Fifteen paise Fifteen paise

in the rupee. in the rupee.

(b) of capacity over 165 litres Twenty paise Twenty paise

in the rupee. in the rupee.

(2) Deep freezers Twenty paise Twenty paise

in the rupee. in the rupee.

69. (a) Air conditioning plant Fifteen paise Fifteen paise

(.......) and spare parts in the rupee. in the rupee.

and accessories thereof.

41. Electrical goods (......) not Ten paise in Ten paise in

being machinery used in the the rupee. the rupee.

manufacture of goods and

spare parts and accessories

of such machinery.

Mr. Modi, the learned Advocate for the assessee, submitted that on a plain reading of the contents of the aforesaid entry 76 the correct reading

will be that unless the accessories sold are exclusively meant for refrigerators or an air-conditioner, a dealer cannot be charged by way of sales tax

having regard to the clear legislative intent reflected in entries 76 and 69 of the Act. In other words, Mr. Modi''s submission before us was that

unless the department comes to a conclusion that particular accessories were capable of being used only for a refrigerator or an air-conditioner,

entries 76 and 69 are not at all attracted and in that event the department could only charge the assessee on the basis of entry 41 of Schedule II,

Part A, to the Gujarat Sales Tax Act, 1969.

9. On the other hand, Mr. Bhatt, the learned Assistant Government Pleader for the State, also urged that if accessories are sold for the use of a

refrigerator or an air-conditioner even then a registered dealer can be taxed having regard to entires 76 and 69. It was also urged that if

accessories were sold without the sale of refrigerator or an air-conditioner, but in fact, if the same was used as an accessory for an air-conditioner or refrigerator, then also a registered dealer can be taxed having regard to the aforesaid entries 76 and 69.

10. We have carefully considered the submissions made by both the learned Advocates, and we must say that in regard to the sales of accessories

which can be used for a refrigerator or an air-conditioner at the time of all the aforesaid three situations, it will be for the department to ascertain as

to whether the accessories were sold and used for a refrigerator or an air-conditioner. If the department comes to the conclusion on the evidence

led by a dealer or on account of collection of any evidence by the department that the accessories which were sold by a dealer to its constituents

were for the use of a refrigerator or an air-conditioner, then the assessee-dealer will have to pay sales tax having regard to the contents of entries

76 and 69 of the aforesaid Act. If on the other hand, the evidence thus collected by the department discloses that the accessories sold by a dealer

were not used or were not meant to be used for a refrigerator or an air-conditioner, then the dealer will have to pay sales tax having regard to the

contents of entry 41 of the aforesaid Act.

11. Suffice it to say, that in each of such cases the department will have to record as a finding of fact in respect of the sale of accessories by a

dealer to its constituents.

12. In view of our aforesaid discussion in so far as the questions of law referred to us are concerned, we are of the view, that based on the finding

of fact to be recorded by the department as indicated above, a dealer will be taxed. If the evidence discloses that the accessories which were sold

were for the use of a refrigerator or were meant for a refrigerator, then the sales would obviously be covered by entry 76 of Schedule II, Part A,

to the Gujarat Sales Tax Act, 1969, as it stood on 4th June 1975. We answer the first question accordingly.

13. In regard to the second question of law referred to us, were say that if the evidence collected discloses that autovolters were sold as

accessories for the use of an air-conditioner or were meant for use for an air-conditioner, then the sales tax would be covered by entry 69 of

Schedule II, Part A, to the Gujarat Sales Tax Act, 1969.

14. In regard to question No. (3) we say that if the evidence discloses that the accessories sold by a dealer were not to be used or were not meant

for use of a refrigerator or an air-conditioner, then the sales would be covered by entry 41 of Schedule II, Part A, to the Gujarat Sales Tax Act,

1969.

15. We accordingly answer the questions referred to us by the Tribunal. Having regard to the facts and circumstances of the case, we make no

order as to costs.

16. Reference answered accordingly.

