
(2011) 03 RAJ CK 0059

In the Rajasthan High Court

Case No : Sales Tax Revision Petition No. 47 and 49 of 2005

Commercial Taxes Officer

APPELLANT

Vs

Godrej G.E.

RESPONDENT

Date of Decision : 30-03-2011

Acts Referred:

Central Excises and Salt Act, 1944 — Section 4
Rajasthan Sales Tax Act, 1954 — Section 2

Citation : (2011) 03 RAJ CK 0059

Hon'ble Judges : Vineet Kothari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Vineet Kothari, J.—Heard the learned Counsel for the parties.

2. This revision petition filed by the revenue is directed against the order of the Tax Board dated 26.8.04 whereby the Tax Board rejected the revenue's appeal in favor of the Assessee and held that "optional service charges" at the rate of Rs. 175/- per refrigerator under a separate contract of warranty for providing after sale services in respect of unit of refrigerators sold by the Assessee for a period of four years, would not form part of taxable sale price in the hands of the Respondent Assessee and, therefore, the imposition of the difference tax, interest and penalty was not justified.

3. The said impugned order of Tax Board dated 26.8.04 was passed following its earlier detailed order of Tax Board in the case of the same Assessee while deciding appeal No. 1185/1998/Jaipur M/s. Godrej GE Appliance Ltd. v. Commercial Taxes Officer on 28th October, 2002 wherein the Division Bench of Tax Board referring to decisions of Hon'ble Supreme Court in the case of Collector of Central Excise v. Kelvinator of India Ltd. (1998) 69 STC 427 (SC), in a matter arising under the Central Excise and Salt Act 1944 similarly held that no excise duty could be imposed on the "optional service charges" realised by the Assessee on the sale of refrigerators to the customers under a separate contract

of warranty for providing after sale service and repairs to such refrigerators, treating the same as part of assessable value under the central excise law.

4. Learned Counsel appearing for the revenue, Mr. R.B. Mathur urged that a coordinate bench of this Court in the later case of Commercial Taxes Officer v. Weston Electronics Ltd. (1992) 87 STC 522 (Raj.) and in the case of Commercial Taxes Officer v. Kelvinators India Ltd. (1992) 90 STC 336 (Raj.) remanded similar cases back to the assessing authority for finding as to whether such warranty charges or optional service charges were really optional on the part of the customers or not and, therefore, in the absence of any such finding where the assessing authority in the present case has found that more than 90% of the consumers had to pay such "optional service charges" while purchasing the refrigerators, at the rate of Rs. 175/- per refrigerator was really paid under an optional contract to be taken by the consumers and, therefore, it should be presumed to be a part of the sale price taxable under the Rajasthan Sales Tax Act. He submitted that the judgment of the Hon"ble Supreme Court in Collector of Central Excise v. Kelvinator of India Ltd. (Supra) arose under the central excise law and is, therefore, not applicable to the facts of the present case.

5. On the other hand Mr. T.C. Jain, learned Counsel appearing for the Respondent-Assessee submitted that the controversy in hand stands concluded by the aforesaid decision of the Hon"ble Supreme Court as well as the decisions of this Court and, therefore, it is no longer resintegra and the controversy in hand deserves to be decided in favor of the Respondent-Assessee. He also submitted that against the detailed order of the Tax Board dated 28th October, 2002 for the preceding year has become final and the Assessee has not so far received any notice of pendency of any revision petition challenging the said order of Tax Board and, therefore, that order having become final, the revenue is stopped from re-agitating the same issue in the present revision petition.

6. I have heard learned Counsel for the parties at length and perused the judgments cited at the bar and the impugned order of Rajasthan Tax Board.

7. In the considered opinion of this Court, the controversy in hand as to whether the optional service charges @ Rs. 175/- per refrigerator realised by the Assessee is taxable in the hands of Respondent-Assessee or not as part of sale price or not, is no longer resintegra and the same stands concluded by the judgments cited at the bar by learned Counsel for the Respondent-Assessee.

8. In Collector of Central Excise, Delhi v. Kelvinator of India Ltd., (supra) the Apex Court held, on the basis of evidence before it, that more than 91% of the purchases made by the consumers of such refrigerators had opted for the said warranty contract and had paid such optional service charges to the dealer, still the Apex Court held that it would not form the part of the assessable value for the purpose of the Central Excise under the said Act. The relevant portion of the judgment is quoted below for ready reference:

The point involved in these appeals is whether the four-year service contract

charge is includible in the value of the refrigerators for the purpose of assessment of Central excise duty u/s 4 of the Act. It was found as a fact by the Tribunal that after the free warranty period of one year is over, the Respondents herein offer a four-year service contract only for the sealed system or parts thereof. This contract is not free. It is on payment basis. The contract is not compulsory and the four dealers entered into service contract in respect of 91 per cent of their purchase. They did not make the contract for the remaining 9 per cent. It is also not necessary that the contract should be made right at the time of purchase of the refrigerator from the Respondents. In fact, it was found as a fact that some time contract was made only in less than 10 per cent of the sale. For the remaining 81 per cent of the purchases, the dealers took time from one week to over six months from the date of purchase. It was explained by the Respondents that depending upon the demand pattern in a particular area, the dealer purchased about 10 per cent of the refrigerators straightway with the service contract; for the remaining purchases, he exercised the option later, as and when the dealer anticipated further demand from his customers.

The Tribunal on an analysis of the evidence came to the conclusion that it was after-sale service and it was optional. Therefore, such service charges were not includible in the assessable value of the Respondents herein. The principle under which these will be includible has been laid down in *Union of India (UOI) and Others Vs. Bombay Tyre International Ltd. and Others*, where Pathak, J., as the learned Chief Justice then was, *inter alia*, observed as follows:

...expenses incurred by the Assessee up to the date of delivery on account of storage charges, outward handling charges, interest on inventories (stocks carried by the manufacturer after clearance), charges for other services after delivery to the buyer, namely, after-sales service and marketing and selling organization expenses including advertisement expenses cannot be deducted. It will be noted that advertisement expenses, marketing and selling organization expenses and after-sales service promote the marketability of the article and enter into its value in the trade. Where the sale in the course of wholesale trade is effected by the Assessee through its sales organization at a place or places outside the factory gate, the expenses incurred by the Assessee up to the date of delivery under the aforesaid heads cannot, on the same grounds, be deducted. But the Assessee will be entitled to a deduction on account of the cost of transportation of the excisable article from the factory gate to the place or places where it is sold. The cost of transportation will include the cost of insurance on the freight for transportation of the goods from the factory gate to the place or places of delivery.

The Tribunal also observed that the Respondents herein offered the four years service by a stamped endorsement on their sale invoice itself, it did not mean that the subsequent exercise of option by the buyer related back to the date of purchase itself. It was also found that there was no evidence to conclude that the service contract was a facade to split the true value of refrigerators into taxable

and non-taxable components.

In that view of the matter, the Tribunal set aside the order of the Collector of Central Excise (Appeals) and allowed the appeals. The contract for four years warranty service was optional, which was entered into later on. This is clearly after-sale facility, and cannot be includible in the assessable value of the refrigerators.

In the aforesaid view of the matter, the Tribunal was right in the view it took. These appeals fail and are accordingly dismissed.

9. In *Commercial Taxes Officer v. Kelvinator India* (supra) a coordinate bench of this Court while remanding the case back to the assessing authority held as under:

I have considered over the matter. In the case of *Commercial Taxes Officer v. Weston Electronics Ltd.* S.B. Sales Tax Revision No. 164 of 1988 on November (1992) 87 STC 522 (Raj.), this Court has held as under:

The definition of sale price as provided u/s 2(p) of the Rajasthan Sales Tax Act, 1954, clearly envisages that only that amount which is paid or is payable to a dealer as consideration for sale of goods will be included in the sale price. This definition has further been extended to include such further sums which might be charged for anything done by the dealer in respect of the goods at the time of or before the delivery. If the dealer is charging one sale price irrespective of the warranty for the second and subsequent years then the position may be different, but if it is optional to the purchaser to avail the benefit of the warranty or not to avail in respect of the second and the subsequent years for which a separate payment is made in addition to the sale price, then such separate payment cannot be included in the sale price. The payment by way of warranty is like an insurance charge and when the said amount is collected there is no transfer of property and at a future date a contingency may or may not arise where the defective part is replaced. In such a situation it cannot be said that the amount has been collected in respect of an act done before or at the time of delivery of the goods. The said amount has been charged not in respect of any goods delivered but for some future act. I am also in agreement with the contention of Mr. Kotwani that the definition as given under the Central Excises Act for the purpose of "cost" cannot be applied nor the decision thereof have any relevancy because the Rajasthan Sales Tax Act, is a self-contained code and in view of the specific definition the assistance from the other Act cannot be taken. In these circumstances, I am of the view that if the payment in respect of warranty were voluntary in nature and have separately been charged then it will not form the part of the sale price. The Assessee has neither produced the books of account, nor the information required was furnished before the assessing authority and the Tribunal has proceeded only on the basis of one bill. It would be proper to send the matter back to the Commercial Taxes Officer for examination whether there was separate price for the sale of the commodity with

warranty and without warranty or it was one price as contended by Mr. Bafna in all cases and if it is found that the price was one whether the warranty is taken or not, then no benefit can be availed by the Assessee. But if the amounts charges are separate for the value of the commodity and the warranty charges and the said payment have not been collected from all the dealers, then the same will not form part of the sale price.

In view of the decision given by this Court I am of the view that the matter should go back to the assessing authority for recording finding as to whether the warranty charges were optional and whether they were separately charges. The Assessee shall produce the books of accounts, documents and the agreement in proof of the contentions raised by him that he said charges do not form part of the sale price.

In view of the aforesaid binding precedents and moreover in view of the fact that order of the Tax Board in the case of the same self Assessee-Respondent vide order dated 28th October, 2002, which appears to have been allowed to become final by the revenue vide the order produced before this Court, this Court is of the view that the revenue cannot now contend that either the matter deserves to be remanded back to the assessing authority or such optional service charges realised by the Assessee in after sales separate contract while selling the refrigerators, deserves to be included in the selling price. The controversy stands concluded in favor of the Respondent-Assessee and, therefore, the present revision petition filed by the revenue is found to be devoid of merit and the same is accordingly dismissed. No costs.