

(2014) 01 AHC CK 0215

In the Allahabad High Court

Case No : Sales/Trade Tax Revision Nos. 404, 408, 448, 449 of 2004 and 1728 of 2005

Commissioner

APPELLANT

Vs

H.C.S. Comnet System Ltd.
Hughes Escorts
Communications Ltd. Vs Commissioner

RESPONDENT

Date of Decision : 13-01-2014

Acts Referred:

Citation : (2015) 316 ELT 13 : (2014) 72 VST 383

Hon'ble Judges : Sudhir Agarwal, J

Bench : Single Bench

Advocate : Bharat Ji Agrawal, Senior Advocate, Piyush Agrawal, Gaurav Mahajan and Nikhil Agrawal, Advocate for the Appellant

Judgement

Sudhir Agarwal, J.—Heard Sri Bharat Ji Agrawal, learned senior advocate, assisted by Sri Piyush Agrawal and Sri Nikhil Agrawal, advocates, for the assessee and learned standing counsel for the Revenue. The question up for consideration in all these cases is "whether a "VSAT will be covered by the term "satellite receiver" under entry 75(i) of the Notification dated January 29, 2000 or it will be covered by entry 75(iii) under residual items of electronic goods?"

2. The two entries at item No. 75(i) and (iii) read as under:

"75(i) Television, video cassette recorders, video cassette player, satellite receiver, wireless set, video cassette, video games, electronic toys and telephones including cordless phones and parts of telephones and cordless phones.

(iii) Microwave oven and all other electronic goods not specified anywhere else in the Schedule or in any other notification."

3. The assessee deals in manufacture and sale of "VSAT". Revenue is of the view that "VSAT" is nothing but a "satellite receiver" and, therefore, taxable under entry 75(1) of the notification dated January 29, 2000, while the assessee claims

that "satellite receiver" is different from "VSAT". None of the items mentioned in entry 75(i) would take within its ambit "VSAT" and, therefore, it would be covered by entry 75 (iii) and taxable thereunder. The Tribunal in some of the cases has taken view that "VSAT" is a "satellite receiver" and, therefore, taxable under entry 75(i). Hence the revisions preferred by assessee assailing those orders of the Tribunal, while in another matter, Tribunal has taken a different view and held that "VSAT" is not a "satellite receiver", hence, taxable under entry 75(iii). Hence Revision No. 1728 of 2005 is by the Revenue, assailing the aforesaid order of the Tribunal.

4. In other words, the Tribunal also has taken different views in different matters and, therefore, this court is now called upon to decide whether "VSAT" is a "satellite receiver", or, being not covered by any item mentioned in entry 75(i) and (ii), it is taxable under entry 75(iii). Since it is not disputed by any of the parties that none of the other item in entry 75(i) and (ii) would cover "VSAT", and, the dispute relates only vis-?-vis "satellite receiver", therefore, the issue to be adjudicated by this court has narrowed down to whether "VSAT" is a "satellite receiver" or something other than that.

5. In order to understand the two items, it would be necessary to find out as to what actually two items are.

6. "VSAT" is a short form of phrase "very small aperture terminal" The "satellite receiver" as well as "VSAT", both are electronic equipments and, therefore, are covered by the term "electronic goods", but since "satellite receiver" is specifically mentioned in entry 75(i), therefore, it is taxable thereunder and electronic goods, which are not otherwise mentioned at 75(i) or any other entry, are taxable under entry 75(iii).

7. The Joint Commissioner (Executive), Trade Tax, Sector-1, Gautambudh Nagar, had written a letter dated March 13, 2012 to the Joint Commissioner (Writ Tax), High Court, Allahabad, copy whereof has been filed as annexure SA-3 to the supplementary affidavit, in C.T.R. No. 1728 of 2005, which describes features of VSAT. From a perusal thereof what transpires is that VSAT, basically, is a two-way satellite ground station, with a less than three meters tall (mostly are about 0.75 meter to 1.25 meter) dish antenna, stationed. The transmission rates of VSATs are usually from very low up to 4 Mbit per second. The primary job of VSAT is to receive/access the satellites in the geosynchronous orbit and relay data from terminals on earth, to other terminals and hubs. They often transmit narrow-band data such as credit card transactions, polling, RFID (Radio Frequency Identification Data) and SCADA (Supervisory Control and Data Acquisition) or broadband data such as satellite internet, VoIP, and videos.

8. VSAT technology is also used for various types of communications. Since VSAT can transfer video and voice, it can also support interactive distance learning, which can be used to train WIC clinic staff. VSAT consists of an outdoor unit (ODU) and indoor unit (IDU).

9. ODU is composed of a dish-shaped antenna that is typically 3 to 5 feet in diameter and electronic component which receives or transmits data, video or voice signal, to and from the satellite. This VSAT dish typically weighs no more than 150 pounds. This ODU is mounted outdoors, typically on top of the building roof with a non-penetrating mount. If this mounting option is not available, the dish can be mounted on the wall or on a pole away from the building. This ODU is connected to the IDU by a coaxial cable similar to a cable TV connection.

10. IDU is an electronic device, and is about the size of a small video cassette recorder. It transfers data, voice and video images between WIC computers and the outdoor unit. In addition to data transfer, the IDU facilitates the interactive distance learning training capability. In other words, VSAT is a satellite communication system that serves home and business users. A VSAT end-user needs a box that interfaces between the user's computer and an outside antenna with a transceiver. The transceiver receives or sends a signal to a satellite transponder.

11. In other words, what transpires from the above description is that VSAT is not merely a receiver of data from satellite but something more than that.

12. The "satellite receiver" has been sought to be explained as a standard electronic component similar in many ways to a stereo receiver. Its function is to select one of the channels transmitted by each satellite and then to process the video and audio signals in a form that can be recognized by both television and stereo system. It is said that a "satellite receiver" can only receive audio and video signals and not data.

13. To my mind, even if the technical aspects are not to be given much stress, to determine as to what a product is, one of the most commonly known doctrine in taxing matters, i.e., the "doctrine of common parlance", if need be applied, the result would be the same. Common parlance means, how a thing or product is known commonly by the people dealing in such product. It is well-settled principle of interpretation of different entries in sales tax statute that each entry has to be understood by different name in common parlance.

14. In *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, it was held a word describing a commodity in a sales tax statute should be interpreted according to its popular sense, the sense being that in which people conversant with the subject-matter with which the statute is dealing would attribute to it. Words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance.

15. Referring to the principle of common parlance, the apex court in *Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another*, said (page 414 in 48 STC):

"...That principle has been repeatedly reaffirmed in the decisions of this court. It holds good where a contest exists between the scientific and technological

connotation of the word on the one hand and its understanding in common parlance on the other..."

16. In *Tata Engineering and Locomotive Company Limited Vs. State of Bihar and Another*, in reference to phrase "raw material" held (page 215 in 96 STC):

"...The word "raw material" has not been defined in the Act. It has, therefore, to be understood in the ordinary and well accepted connotation of it in the common parlance of the persons who deal with it..."

17. The above view expressed by the apex court has been referred to and relied on recently in *BOC India Ltd. Vs. State of Jharkhand and Others*,

18. In the present case, it has not been disputed by learned Standing Counsel, that one if goes to purchase a "satellite receiver", in the market, dealer shall not supply him a "VSAT" and vice versa. The people dealing in electronic goods and items like "VSAT" and "satellite receiver" understand and take both the items separately. The Tribunal in its judgment dated February 28, 2005 in Second Appeal No. 737 of 2003 (for assessment year 2000-2001) while allowing assessee's appeal has accepted distinction between "satellite receiver" and "VSAT" on the ground of different functioning, user and purposes. This finding recorded in the aforesaid judgment has not been shown incorrect or perverse in any manner.

19. Once it is clear that functioning of "VSAT" and "satellite receiver" is different, their actual use is different, both are differently known by the people who deals therein, and, both work differently, then it cannot be doubted that a "VSAT" cannot be identified with "satellite receiver". It would not be correct to treat a "VSAT" as a "satellite receiver", so as to attract taxability under entry 75(i) of the notification dated January 29, 2000. In my view, "VSAT" is different from "satellite receiver". Since it is not separately mentioned in entry 75(i) and 75(ii), it would be covered by entry 75(iii), being an electronic good, not covered by any other item in entry 75 and would be taxable under entry 75(iii). The question, formulated above, is answered in favour of the assessee and against the Revenue.

20. The judgment of Tribunal dated February 28, 2005 in Second Appeal No. 737 of 2003 (for assessment year 2000-01) is confirmed. Accordingly, Trade Tax Revision No. 1728 of 2005 is hereby dismissed. The contrary view taken in other matters is held incorrect and illegal. Accordingly, Trade Tax Revisions No. 404 of 2004, 408 of 2004, 448 of 2004 and 449 of 2004 are hereby allowed and judgments of the Tribunal impugned therein are set aside. A copy of this order shall be transmitted to respective Tribunals to enable them to pass a fresh order in accordance with law.