
(1997) 10 MAD CK 0122

In the Madras High Court

Case No : TC No"s. 1386 to 1388 of 1980 and 33 to 36 of 1982

Commissioner of Income Tax

APPELLANT

Vs

Kel Components Ltd. and Another

RESPONDENT

Date of Decision : 29-10-1997

Acts Referred:

Income Tax Act, 1961 — Section 28, 80

Citation : (1999) 240 ITR 842

Hon'ble Judges : P. Thangavel, J;N.V. Balasubramanian, J

Bench : Division Bench

Advocate : Deokinandan, for the Appellant; K.M.L. Majele, for the Respondent

Judgement

N.V. Balasubramanian, J.—As the above tax cases raise a same point, they were heard together.

2. In TC Nos.33 to 36 of 1982, the Tribunal has stated a case and referred the following question of law in pursuance of the directions of this Court in TC Nos. 42 to 45 and 92 to 95 of 1979 under s. 256(2) of the IT Act, 1961 (hereinafter to be referred to as "the Act") for the opinion of this Court :

"Whether, on the facts and in the circumstances of the case, the volume controls manufactured by the assessee would fall within the expression "electronic equipment" appearing under entry 17 of the Fifth and Sixth Schedules of the IT Act, 1961 ?"

3. In TC Nos. 1386 to 1388 of 1980, the Tribunal has stated a case and referred the following two questions of law in pursuance of the directions of this Court in TC Nos. 400, 401 and 402 of 1978 dt. 15th October, 1979, under s. 256(2) of the Act, for our opinion :

"1. Whether the volume controls manufactured by the assessee would fall within the expression, "electronic equipment" appearing under entry No. 17 of the Fifth and Sixth Schedules of the IT Act, 1961 ?

2. Whether the Tribunal was justified in not dealing with the question regarding the reopening of the assessment under s. 147(b) of the IT Act, 1961 ?"

4. The assessment years involved in the Tax Case Nos. 33 to 36 of 1982 are 1968-69 to 1971-72. The assessment years involved in Tax Case Nos. 1386 to 1388 of 1980 are 1970-71, 1973-74 and 1974-75. As already stated, the point involved in both batch of tax cases is same and the point is whether the volume controls manufactured by the respective assesseees would fall within the expression, "electronic equipment" occurring in Entry 17 of the Fifth and Sixth Schedules of the Act.

5. There is no difference between the words found in Entry 17 of the Fifth Schedule and Entry 17 of the Sixth Schedule of the Act, and the Entry reads as under :

"Electronic equipment, namely, radar equipment, computers, electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components, such as valves, transistors, resistors, condensers, coils, magnetic materials and microwave components".

6. It is not necessary to set out the facts in both the batch of cases and it is enough if the facts found in TC Nos. 33 to 36 of 1982 are set out. The assessee is a manufacturer of resistors (volume controls) for radios and the question is whether such a volume control is entitled to development rebate at the rate of 25 per cent as claimed by the assessee on the ground that the assessee is a priority industry or at the rate of 15 per cent as granted by the ITO. It is not necessary to burden this judgment with the validity of the reassessment proceedings for the said years. The ITO held that the assessee is not entitled to claim higher development rebate on the ground that the assessee was not a priority industry. The AAC, on appeals, held that the assessee should be regarded as a priority industry and the assessee was entitled to claim the development rebate at the higher rate. Aggrieved by the order of the AAC, the Revenue preferred appeals before the Tribunal. The Tribunal held that the assessee is a manufacturer of resistor and the said resistor forms part of the electronic equipment in Entry 17 of the Sixth Schedule of the Act, and hence, the assessee would be entitled to higher development rebate on the ground that the assessee was producing an article which can be treated as priority industry. In so far as the asst. yr. 1970-71 in the assessee's case in ITA 4/1974-75 is concerned, the Tribunal found that it was a case of reassessment. Since the Tribunal has decided the question on merits of the case, the question of validity of reassessment for that year was not gone into. Challenging the order of the Tribunal, the Revenue has sought for and obtained a reference on the questions of law set out above.

7. The case of the Revenue which is based on the audit report is that the assessee was engaged in the business of manufacture of volume controls and the product manufactured by the assessee was distributed to the large scale manufacturers of radios in India, such as National, Ecko, Murphy, GEC and

others. Therefore, the assessee was a manufacturer of a component of radio receiver and the radio receiver is included in the category "telecommunication" and not under the head, "electronic equipment", under the provisions of the Industries (Development and Regulation) Act, 1951 (hereinafter referred to as "the Industries Regulation Act"). Therefore, the radio receivers are not included in the "electronic equipment" and the manufacturer of the component cannot be considered as a priority industry. The view of the Revenue is that the telecommunication equipment such as radio would not fall under the electronic equipment and though the product manufactured may be resistor within the meaning of Item-17 of the Sixth Schedule of the Act, the resistor manufactured by the assessee cannot be regarded as the basic component of the main equipment mentioned in the said list. Therefore, the radio resistor is not an article falling under Item-17 of the Sixth Schedule on the basis that it is not a component of the "electronic equipment", and the assessee cannot be treated as a priority industry. The AAC, on appeal, held that the product manufactured "resistor" was covered by Item 17 of the Sixth Schedule and the relief under s. 80-I should be granted to the assessee. The Tribunal, on appeal, went into the matter in great detail. The Tribunal noticed the plea of the assessee that the resistor was manufactured by the assessee for the use of electronic equipments other than radio also and, therefore, the exemption should be granted. The Tribunal noticed a book, "Understanding Electronic Components" by Farl. J. Waters. The Tribunal noticed a copy of the circular issued by the CBDT in F. No. 169/8/73-IT(A. I), dt. 18th June, 1973, wherein the Board has referred to the provisions of the Industries Development Act and stated that the electronic equipment is different from the telecommunication equipment. The Board was of the view that the radio receivers and public address systems cannot be regarded as electronic equipments. The Board has observed that it had consultations with the Department of Electronics on the question of manufacture of radio receivers and after consultations with the Department of Electronics, the Board came to the conclusion that the radio receivers cannot be regarded as electronic equipments. The Tribunal noticed that the resistors are referred to as rheostats or potentiometers.

The Tribunal noticed the provisions of the Industries Regulation Act and found that the electronic industries include telecommunications as well. For that purpose, the Tribunal relied upon the hand books of Statics 1973 published by the Association of Indian Engineering Industry and issued by the Secretary, Association of Indian Engineering Industry, India Exchange, 4, India Exchange Place, Calcutta. The Tribunal noticed that under the industrial policy resolutions, telecommunication items were classified under a separate schedule and the term, "electronic equipments" includes telecommunication instruments which includes entertainment equipments such as radio and television. The Tribunal noticed the growth of the electronic industry and particularly the growth of the component industry in the various components, particularly potentiometers and the components parts of the electronic equipments, particularly resistors and the

demand for the electronic components. After taking note of the above materials, the Tribunal came to the conclusion that the potentiometers or the resistors which the assessee manufactured are the basic components for the electronic communication equipments falling within Item 17 of the Sixth Schedule. The Tribunal noticed the contention of the Revenue that the radio did not fall within the meaning of electronic equipment because it falls under "telecommunication" in the Industries Regulation Act. The Tribunal held that if such a contention is accepted, the telecommunication equipments would not include electronic equipments, nor the wireless communication apparatus as they all fall under Item 6 of the First Schedule to the Industries Regulation Act. The Tribunal noticed that in spite of several opportunities granted to the Revenue, the opinion of the Department of Electronics was not made available to the Tribunal. The Tribunal also noticed that the Revenue has not placed any other material in this regard to prove that the radio receivers cannot be regarded as electronic equipments. The Tribunal noticed a letter of one K. V. Sashtri and on the basis of the information available, the Tribunal came to the conclusion that the resistors manufactured by the assessee should be regarded as electronic equipments. The above order of the Tribunal was followed in its order which is the subject-matter of tax case Nos. 1386 to 1388 of 1980 where there is one additional question regarding the reopening of the assessment under s. 147 of the Act was raised.

8. Mr. C. V. Rajan, learned counsel for the Revenue, submitted that the radio receivers cannot be regarded as electronic equipments. He referred to Item 17 of the Sixth Schedule and submitted that though the resistor is mentioned as one of the basic components in the said item, the resistor must be one of the basic components of the electronic equipment mentioned in the first part of the said Item-17 to the Sixth Schedule. He, therefore, submitted that the resistors manufactured by the assessee cannot be regarded as basic components of anyone of the items mentioned in "electronic equipments" in the said item. He, therefore, submitted that the Tribunal was not correct in holding that the resistors should be regarded as electronic equipments. He strongly placed reliance on a decision of Gujarat High Court in the case of Commissioner of Income Tax, Gujarat-I Vs. Satellite Engineering Ltd., , and submitted that the expression, "basic component" must be referable to the electronic equipment referred to in the first part of Item 17 of the Sixth Schedule.

9. Mr. Janarthana Raja, learned counsel for the assessee, on the other hand, submitted that the Tribunal has recorded a clear finding of fact that the term, "electronic equipment" includes telecommunication equipment which includes entertainment equipments like radio, television, etc. He submitted that the expression, "electronic equipment" in Item 17 includes electronic communication equipment and telecommunication equipment is mentioned by way of illustration. He, therefore, submitted that the Tribunal, after considering the materials on record came to the conclusion that the resistors are the basic components of the electronic communication equipment falling under Item 17 of the Sixth Schedule to the Act. He also submitted that the decision of Gujarat High Court in Satellite

Engineering Ltd. case, cited supra, also makes it clear that the question as to who is the purchaser of the article and the nature of the article manufactured by the assessee are altogether irrelevant. He also submitted that the items manufactured by the assessee were used by the manufacturers of radios would not render the assessee ineligible to claim itself as a priority industry. For that purpose, he relied upon a decision of this Court in the case of Commissioner of Income Tax Vs. Chitram and Co. Pvt. Ltd., . He also placed reliance on a decision of Bombay High Court in the case of Commissioner of Income Tax Vs. Telelink Products (P.) Ltd., , wherein Bombay High Court held that it is not permissible to have recourse to the provisions of the Industries Regulation Act for the purpose of interpreting Item 17 of the Sixth Schedule to the IT Act.

10. We have carefully considered the submissions of the learned counsel for the Revenue as well as the learned counsel for the assessee. The fact remains that the assessee manufactured resistors and the resistor is one of the items mentioned in Item-17 of the Sixth Schedule to the Act. The Tribunal noticed the relevant provisions of the Industries Regulation Act and found that the term "electronic equipment" includes telecommunication equipment which in turn includes radio receiver and television. The Revenue has not placed any material before the Tribunal to establish that the radio cannot be regarded as electronic equipment. Though the Revenue brought to the attention of the Tribunal the circular issued by the CBDT, the Circular was based on the opinion given by the Department of Electronics, but the opinion of the Department of Electronics was not placed before the Tribunal. In the absence of any evidence of material to show that the radio receiver cannot be regarded as electronic equipment, we have necessarily to go only by the findings of the Tribunal. The Tribunal on the review of the materials placed before it, particularly the growth of the component industry, percentage of the components and the demand of the electronic components, came to the conclusion that the resistors are the basic components of the electronic communication equipment which falls under Item 17 of the Sixth Schedule to the Act. The Tribunal noticed the function of the resistors from the treaties placed before it and on that basis it came to the conclusion that the resistor can be regarded as basic component of the electronic communication equipment. In Satellite Engineering Ltd. case, cited supra, the Gujarat High Court held that the expression, "basic component" is referable only to the expression, "electronic equipment" referred to in the first part of the Item 17 of the Sixth Schedule to the Act, and one of the specified items of electronic equipments in the said item is electronic communication equipment. Therefore, the decision of the Gujarat High Court, cited supra, clearly supports the case of the assessee to the extent that the resisters are the basic components and it is a basic component of the electronic equipment. The Tribunal also noticed that if the radio cannot be regarded as electronic equipment because it falls under the head, "telecommunication" in the Industries Regulation Act, the television also cannot be regarded as electronic equipment nor the wireless communication apparatus. Therefore, the finding of the Tribunal, in our view, is a finding arrived at on the

basis of the materials and in the absence of any contra-evidence or any other material produced by the Revenue to show that the radio cannot be regarded as electronic equipment, this Court has to accept the finding of the Tribunal that the resistors are the basic components of the electronic communication equipment.

11. Furthermore, the view of the ITO that radio receivers can be regarded as electronic communication equipment is based on the reading of the relevant entries in the First Schedule to the Industries Regulation Act. It is necessary to notice the legislative history behind the Item 5. When the Industries Regulation Act was enacted in the year 1951, there were only two schedules namely, First Schedule and Second Schedule. There was an amendment to the said Act and the relevant entries in so far as they are applicable to the present assessment years are concerned read as under :

"5. Electrical equipment :

- (1) Equipment for generation, transmission and distribution of electricity including transformers.
- (2) Electrical motors.
- (3) Electrical fans.
- (4) Electrical lamps.
- (5) Electrical furnaces.
- (6) Electrical cables and wires.
- (7) X-ray equipment.
- (8) Electronic equipment.
- (9) Household appliances such as electric irons, heaters and the like.
- (10) Storage batteries.
- (11) Dry cells.

6. Telecommunications :

- (1) Telephones.
- (2) Telegraph equipments.
- (3) Wireless communication apparatus.
- (4) Radio receivers, including amplifying and public address equipment.
- (5) Television sets.
- (6) Teleprinters.

The Entry 17 of the Sixth Schedule of the IT Act, 1961 reads as under :

"Electronic equipment, namely, radar equipment, computers, electronic accounting and business machines, electronic communication equipment, electronic control instruments and basic components such as valves, transistors, resistors, condensers coils, magnetic materials and micro-wave components".

It is relevant to notice that prior to the amendment of column 8 of Item 5, there was a reference to electrical equipment which was subsequently amended as electronic equipment. Item 6 of the First Schedule to the Industries Regulation Act no doubt includes radio receivers, television sets and teleprinters. But, on that account, it cannot be held that the radio receivers and television sets cannot be regarded as electronic equipments within the meaning of Industries Regulation Act. That apart, the decision of the Bombay High Court in Telelink Products (P) Ltd. case, cited supra, is an authority for the proposition that it is not permissible to have recourse to the provisions of the Industries Regulation Act for the purpose of interpreting entries in Sixth Schedule of the Act.

Therefore, the view of the ITO that because of the provisions of the Industries Regulation Act, the radio cannot be regarded as electronic equipment is erroneous in law.

12. That apart, the view of the ITO was that the assessee cannot be regarded as a priority industry as the item manufactured by the assessee was used by the manufacturers of radio in India such as, National, Ecko, Murphy, GEC, HMV, etc. But, the question how the purchaser uses the item manufactured by the assessee is irrelevant in determining the question whether resistors manufactured by the assessee can be regarded as basic components of the electronic equipments mentioned in Item 17 of the Sixth Schedule of the Act. The decision of the Gujarat High Court in Satellite Engineering Ltd. case, cited supra, and the decision of this Court in Chitram & Co. (P) Ltd. case, cited supra, are all to the effect that it is not relevant to decide how the purchaser uses the article manufactured by the assessee to determine whether the resistors manufactured by the assessee is a basic component of the electronic communication equipment. In our view, the Tribunal has considered the entire question in detail and has come to the correct conclusion in holding that the assessee is a manufacturer of potentiometer and it is a basic component of electronic equipment and the assessee is entitled to be treated as a priority industry under Item 17 of the Sixth Schedule as well as Item 17 of the Fifth Schedule to the Act.

13. In so far as Tax Case Nos. 1386 to 1388 of 1980 are concerned, the second question raised by the Revenue deals with the question of reassessment. Since we have upheld the order of the Tribunal on merits of the case, it is not necessary for us to render any answer to the second question of law referred to us in TC Nos.1386 to 1388 of 1980.

14. In fine, we answer the questions of law referred to us as under :

In TC Nos. 33 to 36 of 1982, the question of law referred to us is answered in the

affirmative and against the Revenue.

15. In TC Nos. 1386 to 1388 of 1980, the first question of law referred to us is answered in the affirmative and against the Revenue and the second question of law is not necessary to answer in view of the answer provided to the first question of law.

16. However, in the circumstances of the cases, there will be no order as to costs.