(1973) 10 AHC CK 0018

In the Allahabad High Court

Case No : Sales Tax Reference No. 471 of 1971

Commissioner of Sales Tax APPELLANT

Vs

Bharat Traders RESPONDENT

Date of Decision : 10-10-1973

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

Citation : (1974) 33 STC 3

Hon'ble Judges : R.L. Gulati, J;H.N. Seth, J

Bench : Division Bench

Advocate : P.N. Pachauri and N.N. Pachauri, for the Respondent

Final Decision : Disposed Off

Judgement

R.L. Gulati, J.—At the instance of the Commissioner of Sales Tax, U.P., Lucknow, the Additional Judge (Revisions), Sales Tax, Bareilly, has u/s 11(3) of the U.P. Sales Tax Act submitted this statement of the case and has referred the following question for our opinion:

Whether, on the facts and in the circumstances of the case, wooden gittis, switch-boards and battens would be taxed as electrical goods or as unclassified items.

2. In the assessment year 1966-67, the assessee had manufactured and sold wooden gittis, switch-boards and battens which are used in electrical installations. The quantum of turnover was not in dispute. The dispute related to the rate of tax. According to the assessee these goods were unclassified items and were taxable at the general rate of 2 per cent whereas the Sales Tax Officer held that they were electrical goods and were taxable at a higher rate. The assessee''s appeal was dismissed, but the revising authority upheld the assessee''s claim holding that the articles in question were not electrical goods. The Commissioner is aggrieved and hence this reference.

3. The notification relied upon by the sales tax department is No. ST-7096/X -- 1012-1965 dated 1st October, 1965, which has been issued u/s 3-A of the Act.

The entry appears as item No. 7 and reads:

Electrical goods, other than equipments, plants and their accessories required for generation, distribution and transmission of electrical energy.

4. Then next entry 7-A reads:

7-A. Electrical equipments, plants and their accessories required for generation, distribution and transmission of electrical energy.

5. The rate of tax against item No. 7 is 10 per cent. Thus, what we have to determine is whether wooden gittis, switch-boards and battens are electrical goods. There is no doubt that these items are used in electrification of houses and buildings. Admittedly, they are not electrical equipments as mentioned at serial No. 7-A. The simple question, therefore, is as to whether they can be said to be electrical goods. The term "electrical goods" has not been defined anywhere in the Act or the Rules. So it shall have to be interpreted to mean such goods as are commonly and in the commercial world understood to be "electrical goods". In common parlance electrical goods are those which are used by or through electricity such as electrical lamps, heaters and other gadgets which are worked by electric energy. In K.V. Narasimulu v. The State of Andhra Pradesh [1971] 27 S.T.C. 178 All, the Andhra Pradesh High Court considered the question as to whether wooden gittis, wooden casings and reapers fell within the meaning of the expression "all electrical goods and their accessories". Their Lordships held that wooden gittis were not accessories whereas the other two items were accessories. In that case, it was conceded that those articles are not electrical goods. In the instant case, we are not concerned with the accessories because the notification merely talks of electrical goods and not their accessories. Therefore, it is not necessary for us to decide whether articles in question can be said to be accessories of electrical goods. The Madras High Court in Deputy Commissioner of Commercial Taxes, Madurai Division, Madurai v. Ravi Auto Stores [1968] 22 S.T.C. 172 All, has held that merely because an article cannot be used without electricity it may not be decisive. It is necessary that, apart from that fact, the article, by its very nature, answers the description of "electrical goods". The Madhya Pradesh High Court in J.B. Advani-Oerlikon Electrodes Pvt. Ltd. v. Commissioner of Sales Tax, M.P. [1972] 30 S.T.C. 337 All, has held that in order to name an article "electrical goods", two things are necessary: (1) its use cannot be had without electrical energy; and (2) by its very nature it should answer the description of electrical goods. We are in respectful agreement with these observations of the Madras and Madhya Pradesh High Courts. Thus there are two essential requirements of "electrical goods": (1) that they must be used by electrical energy; and (2) they must answer the description of electrical goods. In the instant case the articles in question, viz., wooden gittis, switch-boards and battens, are not worked by electricity. They are used in laying or controlling wires carrying electrical energy. In themselves they are not worked by electricity and, secondly, in common parlance also they do not answer the description of electrical goods. On the same considerations this court in

Commissioner of Sales Tax, Lucknow v. B.C.M. Franklin and Co., Bareilly 1972 U.P.T.C. 716, has held that electrodes are not electrical goods even though electricity is consumed while making use of electrodes.

6. We are, therefore, of the opinion that the view taken by the revising authority is correct. We accordingly answer the question by saying that wooden gittis, switch-boards and battens are not electrical goods. The assessee is entitled to costs which we assess at Rs. 100.