(2018) 09 BOM CK 0035

In the Bombay High Court

Case No : Sales Tax Reference No.29 Of 2009 In Reference Application No.107 Of 2002

Commissioner Of Sales Tax,Mum — APPELLANT

Vs

M/S Khush Bhakht Electonicss — RESPONDENT

Date of Decision : 17-09-2018

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 41, 52, 61

Citation : (2018) 09 BOM CK 0035

Hon'ble Judges : S.C. Dharmadhikari, J;.P. Colabawalla J

Bench : Division Bench

Advocate : V.A. Sonpal, Dushyant Kumar

Judgement

,,,,

B. P. COLABAWALLA J.Â Â] :-,,,,

1. By this Sales Tax Reference, the third Bench of the Maharashtra Sales Tax Tribunal, Mumbai (for short, the â??MSTTâ?) has referred the",,,,

following question of law for an opinion of this Court under section 61 of the Bombay Sales Tax Act, 1959 (for short, the â??BST Actâ?).Â Â This",,,,

Reference has been preferred at the instance of the Applicant â?" Revenue.Â The question of law that has been referred for our opinion reads thus,,,,

:-,,,,

â??Whether on the facts and circumstances of the case and on a true and correct interpretation of schedule entries CII-124 and C-II-126, appended",,,,

to the Bombay Sales Tax Act 1959, the Tribunal was legally justified in holding the impugned product i.e. Hybrid Amplifier or Line Extender as not an",,,,

accessory of Cable T.V. covered by the said schedule entry C-II-124 but a general electronic item covered by the schedule entry C-II-126 ?â??Â Â,,,,

2. Before we analyze the relevant entries in the schedule to the BST Act and the legal submissions made before us in relation thereto, it would be",,,,

necessary to advert to some necessary facts.,,,,

3. The Assessee (M/s KhushBhakht Electronic Engineers Pvt. Ltd.) is engaged in the manufacture and sale of Hybrid Amplifiers and other electronic,,,,

instruments.Â In the context of this business activity, the Assessee is duly registered under the provisions of the BST Act.Â Â Since the Assessee",,,,

was having some doubt regarding one of its products, i.e. a â??Hybrid Amplifierâ? (described also as a â??Line Extenderâ?)Â and the applicable",,,,

tax rate in respect thereof, the Assessee filed an Application for determination of disputed question (the DDQ Application) before the Commissioner",,,,

of Sales Tax under section 52 of the BST Act.Â For the purposes of this DDQ Application, the Assessee produced before the Commissioner its sale",,,,

bill No.79 dated 11th March 1996 under which sale of the disputed product (Hybrid Amplifier) was effected.Â Before the Commissioner, the",,,,

Assessee described this disputed product (Hybrid Amplifier) as under :-,,,,

â??The Appellant manufactures distribution appliances like line extenders, couplers, splitters etc., which are used in the distribution of Cable TV",,,,

signal in the network.Â The impugned product 'Line Extender' is also known as Amplifier or Ampli or Booster.Â The function of the Line Extender,,,,

is to make-up for the losses in the dBm V value of the signals, taking place over the length of cable. The Line Extender is used for VHF, UHF and",,,,

skip band and Hyper band sections of the frequencyÂ spectrum.Â The function of the Line Extender is not only to increase the dB value of the,,,,

signals, but also to compensate the drop of higher frequency signals.Â The circuitry works on 24 VDC.Â The impugned article amplifies a broad",,,,

spectrum of frequency in the VHF/UHF bands and it isÂ claimed that it can be used for any application where amplification of these frequencies are,,,,

desired. TV frequency falls within the broad spectrum and therefore it is used by the Cable TVÂ industry.Â Â The user is the broadcaster who,,,,

broadcasts these signals via network of Cables from central room to the subscriber.Â As regards construction, it is stated that the instrument consists",,,,

ofÂ resistor, diodes capacitors, semi/conductor devices, ICs, inductors, connectors, transformers, components fuse and fuse-holders etc. PCB is",,,,

populated with components and semi conductor devices etc. All the components are soldered Assembled PCB is mounted on the aluminium chassis,,,,

and covers.Â The instrument does not conform to any standard specification.â?? Â Â,,,,

4. After giving this description, the Assessee claimed before the Commissioner that the impugned product was an electronic item not covered by any",,,,

specific entry and therefore, would fall under Schedule Entry C-II-126 which was a residuary entry for electronic items.Â Â Â Â It was the case of",,,,

the Assessee that in respect of goods covered by Schedule Entry No.C-II-126 the tax rate had been reduced to 4% as per Notification Entry A-33,,,,

under section 41 of the BST Act.Â In these circumstances, the Assessee contended that the sale of Hybrid Amplifiers was claimed to be liable to tax",,,,

at the concessional rate of 4%.Â,,,,

5. This classification as contended by the Assessee was not accepted by the Commissioner.Â The Commissioner inter alia held that the impugned,,,,

product was specifically required for Cable TV and therefore, it was covered by Schedule Entry No.C-II-124 as an accessory of the Cable",,,,

TV.Â Â Â Â Thus, having regard to the functional utility of the product, the Commissioner held that the Hybrid Amplifiers were covered by Schedule",,,,

Entry No.C-II-124 and liable to tax at 13%.Â Â It is in this manner, the Commissioner decided the DDQ Application filed by theÂ Assessee vide his",,,,

order dated 1st February 1997 (for short, the â??DDQ Orderâ??).Â",,,,

6. Being aggrieved by this DDQ order passed by the Commissioner, the Assessee challenged the same before the MSTT.Â It was the contention of",,,,

the AssesseeÂ before the MSTT that the use of Hybrid Amplifiers was not restricted to Cable TV alone and could also be used for several other,,,,

purposes such a drivers, pre-amplifiers for an induction furnace and cautery unit.Â Similarly, it also was used for ultrasonic applications.Â In this",,,,

regard, the Assessee also submitted an expert opinionâ??s report dated 19th August 1998 before the MSTT to show the different uses for which the",,,,

impugned product could be used.Â Apart from this, the Assessee also disputed the Commissioner's finding that the function of Hybrid Amplifiers are",,,,

akin to a TV Antenna.Â After hearing the parties, the MSTT, vide its order dated 29th June, 2002 accepted the contentions of the Assessee and set",,,,

aside the DDQ order passed by the Commissioner.,,,,

7. Being displeased with the order passed by the MSTT dated 29th June 2002,

the Commissioner of Sales Tax preferred a Reference Application",,,,

being Reference Application No.107 of 2002.Â Â,,,,

This Reference Application came to be allowed by order datedÂ 27th October, 2005 and the MSTT referred the question of law reproduced above to",,,,

this Court for its opinion and decision under section 61 of the BST Act.Â This is how the matter has come up before us.Â Â,,,,

8. In this factual backdrop, Mr Sonpal, learned Special Counsel appearing on behalf of the Revenue, submitted that Schedule Entry No.C-II-124",,,,

specifically deals withÂ TV Sets, TV Cameras, TV Receivers, Antennas, components, parts and accessories of any of them.Â Â In contrast, he",,,,

submitted that Schedule Entry No.C-II-126 was a residual entry and/or a general entry dealing with electronic systems, appliances other than those",,,,

covered elsewhere and components, parts and accessories of any of them.Â Â It was the submission of Mr Sonpal that if electronic items would fall",,,,

in any other Entry, the same would be outside the purview of Schedule Entry No.C-II-126.Â He submitted that the impugned product clearly fell",,,,

within Schedule Entry No.C-II-124 which covered TV Sets, Antennas etc.Â According to Mr Sonpal, TV Sets are operated as a wireless apparatus",,,,

to receive sound and images by radio waves.Â For this purpose, the antenna was an integral part through which TV waves were received.Â He",,,,

stated before us that the impugned product viz. Hybrid AmplifierÂ (Line Extender)Â admittedly was used for cable TV transmission, the function of",,,,

which was to make up the losses in the signals taking place over the length of the cable.Â Â This impugned product, according to Mr Sonpal, was",,,,

specifically required for Cable TV transmission.Â He thereforeÂ submitted that the impugned product was functionally akin to that ofÂ an Antenna,,,,

and having regard to the functional utility of the impugned product, he submittedÂ Â that the same wasÂ clearlyÂ an accessory of a TV which was",,,,

squarely covered byÂ Schedule Entry No.C-II-124.Â He therefore submitted that looking to all these facts and circumstances of the case, the",,,,

question of law reproduced above ought to be answered in favour of the Revenue and against the Assessee.Â Â Â Â,,,,

9. We have heard Mr Sonpal at length and have perused the papers and proceedings in the present Reference Application including the DDQ order,,,,

Entry,Description of the goods,Rate,Rate,Period

126,"Electronic systems, instruments (apparatus) and

other than those covered elsewhere and

components, parts and accessories of any of them.",13 %,13 %,1-10-1995 to date.

1.,"Rate reduced to 4 % on sale or purchase of

Electronic system, instrument and appliances,

refer entry A-33(1)(a) of Noti. U/s 41 w.e.f. 1-10-

1996 to 30-4-98. Now this Notification has been

deleted w.e.f. 1-5-98.",,,

2.,"Rate reduced to 2 % on sale or purchase of Fax

Machine, Calculator, Modem and Electronic

copier machines, refer entry A-33(I)(d) of Noti.

U/s 41 w.e.f. 1-10-1996 to 30-4-98. From 1-5-

1998 to 31-12-99 rate enhanced to 4 %, on above

items, refer entry A-33(I)(d) of Noti. U/s 41, rate

enhanced to 8 % and whole of surcharge and

turnover tax exempted w.e.f. 1.1.2000 to 14-8-00.

Rate reduced to 8 % and W.o.S. & T.T.

exempted on Fax Machine and Electronic copying

machine, refer entry 33(I)(d) of Noti. U/s 41

w.e.f. 15-8-2000.",,,

3.,"Rate reduced to 4 % on electronic components

and parts, refer entry A-33(3) of Noti. U/s 41,

w.e.f. 1-10-1995 to 31-12-99. Rate enhanced to 8

% and whole if surcharge and turnover tax

exempted w.e.f. 1.1.2000.",,,

4.,"Rate reduced to 4 % and whole of turnover tax

and surcharge reduced on described items, refer",,,

Hybrid Amplifiers would fall within the Schedule Entry C-II-124 which deals with TV sets, TV cameras, TV receivers, TV monitors, Antennas,",,,, components, parts and accessories of any of them.Â If the impugned product falls within Schedule Entry C-II-124, then necessarily the same would",,,,

fall outside the purview of Entry C-II-126.Â Â Â,,,,

15. From the facts that have been placed before us and also before the authorities below, it is quite clear that though Hybrid Amplifiers may be",,,,

usedÂ for Cable TV transmission to the extent that it boosts the signal that has to be transmitted, it has very many other uses.Â Â According to the",,,,

experts' opinion (and which was placed before the MSTT by the Assessee), it can be seen that the impugned product is capable of amplifying signals",,,,

over a range of 48 MHzÂ to 550 MHz.Â The maximum output is 120 dBU.Â For all these reasons, according to the experts' opinion, the impugned",,,,

product (viz. Hybrid Amplifiers) could be used for a variety of applications including in the aeronautical field, navigation etc. to name a few.Â The",,,,

expert further opined the difference between the properties of an Antenna and that of the impugned product viz. Hybrid Amplifiers.Â According to,,,,

the experts' opinion, the Antenna was a mechanical structure, constructed from metal sections and/or a wire mesh.Â In contrast, the amplifier was an",,,,

electronic assembly assembled using electronic components such as integrated circuits.Â Secondly, an Antenna was fabricated at a mechanical",,,,

workshop whereas the Amplifier was assembled in a unit only capable of specialized electronic assembly.Â Thirdly, the Antenna was a passive",,,,

device i.e.Â it did not require any power supply for its operation whereas the Amplifier was an active device requiring a power source. Fourthly, the",,,,

Antenna did not process or alter the electronic properties of the signals received by it whereas the Amplifier processed the input signal and in fact,,,,

boosted it before feeding to its output.Â Lastly, the Antenna was an essential component for receiving wireless transmission which were then fed into",,,,

a TV set whereas the Amplifier was not an essential part of a TV reception system. Over and above all this material, the experts' opinion clearly",,,,

shows that the impugned product can be used for mobile radio, VHF TV channels, Radio Service, FM Radio,Â in the aeronautical field, amateur",,,,

Radio, Radio Navigation as well as UHF TV channels.Â Â",,,,

16. From all these facts, what becomes clear is that the Hybrid Amplifier basically boosts the signal, be it for the purpose of transmission of Cable TV",,,,

or for several other purposes as set out by us earlier.Â This being the position, we agree with the finding of the MSTT that the impugned product viz.",,,,

Hybrid Amplifier has got a totally different function and it has no functionÂ akin to an antenna as was held by the Commissioner in his DDQ order.Â,,,,

We do not find that this Hybrid Amplifier can be classified under Schedule Entry CII-124 as it is neither a TV set, TV Camera, TV Receiver, TV",,,,

Monitor, antennas and components, parts and accessories of any of them.Â It is a stand alone active device for the purpose of boosting weaker",,,,

signals and is comprised of all electronic components and parts. In these circumstances, to our mind at least, it would squarely fall within Schedule",,,,

Entry C-II-126 which deals with electronic systems, instruments and appliances and components, parts and accessories of any of them.Â Merely",,,,

because the impugned product can also be used for the purpose of boosting Cable TV signals would not alone justify its classification under Schedule,,,,

Entry C-II-124.,,,,

17. It is true as submitted by Mr Sonpal that when there is a specific entry in the Schedule, the same would override a general entry.Â This",,,,

proposition of law has been laid down by the Supreme Court in the case of State of Maharashtra v/s M/s Bradma of India Ltd., reported in (2005) 2",,,,

SCC 669.Â However, we do not see how this decision would apply to the facts and circumstances in the present case.Â We find that the impugned",,,,

product viz. Hybrid Amplifier does not fall in any specific entry and therefore would be covered by the residual or general entry viz. Schedule Entry,,,,

C-II-126.Â Â Â Â,,,,

18. This being the factual position before us and our foregoing discussion, we have no hesitation in holding that the Hybrid AmplifierÂ sold by the",,,,

Assessee would fall within the Schedule Entry C-II-126.Â The question of law as reproduced by us earlier, is therefore answered in the affirmative",,,,

and against the Revenue and in favour of the Assessee.Â This Sales Tax Reference is therefore answered in the aforesaid terms.Â However, in the",,,,

facts and circumstances of the case, there shall be no order as to costs.",,,,