

(1980) 09 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No"s. 266 and 268 of 1978 and 308 of 1979

Dass Hitachi (P.) Ltd. and Another

APPELLANT

Vs

The Assistant Commissioner (Assessment), Sales Tax

RESPONDENT

Date of Decision : 18-09-1980

Acts Referred:

Constitution of India, 1950 — Article 226

Constitution of India, 1950 — Article 226

Constitution of India, 1950 — Article 226

Citation : (1981) 48 STC 142

Hon'ble Judges : R.M. Sahai, J;H.N. Seth, J

Bench : Division Bench

Advocate : Bharatji Agarwal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

H.N. Seth, J.—The petitioners in these three writ petitions under Article 226 of the Constitution are M/s. Dass Hitachi (Private) Limited, hereinafter referred to as the petitioner and Sri S. K. Dass, the Managing Director of the petitioner. The petitioner carries on the business of manufacturing and selling electric meters which are known as electric energy meters or kilo watt hour meters (K. W. H. meters) and is liable to assessment under the U. P. Sales Tax Act as well as under the Central Sales Tax Act. The controversy in these petitions concerns the notices u/s 22 of the Sales Tax Act in respect of the assessment years 1972-73, 1973-74 and 1974-75 as also that u/s 21 of the U. P. Sales Tax Act for the assessment year 1974-75, issued to the petitioner by the Assistant Commissioner (Assessment), Sales Tax, Ghaziabad. Whereas relief in respect of notices issued to the petitioner u/s 22 of the Sales Tax Act for the assessment years 1972-73 and 1973-74 has been claimed in Writ Petition No. 268 of 1978, that in respect of similar notices issued with regard to the assessment year 1974-75 has been claimed in Writ Petition No. 266 of 1978. The notice issued u/s

21 of the U. P. Sales Tax Act for the assessment year 1974-75 is the subject-matter of controversy in Writ Petition No. 308 of 1979.

2. Briefly stated, the facts giving rise to these petitions are that regular assessments of the petitioner under the U.P. Sales Tax Act for the years 1972-73, 1973-74 and 1974-75 as also its assessment under the Central Sales Tax Act for the year 1974-75 were completed respectively on 29th November, 1977, 29th January, 1977, 30th March, 1978, and 30th March, 1978. In all these assessments the assessing authority had, without referring to any notification or provision, assessed the petitioner's turnover of sales of electric K, W. H. meters in accordance with rates specified in respect of entry No. 7-A mentioned in the notification dated 1st October, 1965, as amended from time to time. The said entry laid down the rate of tax payable in respect of "electrical equipments, plants and their accessories required for generation, distribution and transmission of electrical energy and electrical motors and parts thereof". A perusal of various assessment orders indicates that there was no controversy before the assessing authority about the petitioner's turnover of sales of electric meters being taxed on the basis that such turnover of electric K. W. H. meters was governed by entry No. 7-A of the said notification.

3. On 22nd April, 1978, this Court happened to answer the following question referred to it in Commissioner of Sales Tax v. Scientific Importers, Zero Road, Allahabad 1978 U.P.T.C. 398 (Sales Tax Reference No, 338 of 1974) :

Whether amperemeters, voltmeters and galvanometers are taxable at 10 per cent under entry No. 7 of Notification No. ST-7096/X-1012-1965 dated 1st October, 1965, or are taxable at 7 per cent under entry No. 7-A of the said notification or are unclassified items ?

and it opined thus :

In Commissioner of Sales Tax, U.P., Lucknow v. Import Association, Allahabad 1974 U.P.T.C. 565, it was held that ammeters and voltmeters were not instruments meant for generation, distribution or transmission of electrical energy and as such they were covered by entry No. 7 of Notification No. 7096/X-1012 dated 1st October, 1965. In this reference we are concerned with the same notification. Following the decision in Import Association's case 1974 U.P.T.C. 565, we hold that amperemeters and voltmeters are electrical goods covered by entry No. 7.

Galvanometers are also used for measuring electrical energy and, therefore, on the principle laid down in Import Association's case 1974 U.P.T.C. 565, we hold that galvanometers are also electrical goods covered by entry No. 7.

Accordingly, we answer the question referred to us in favour of the department and against the assessee. As nobody has appeared for the assessee, there will be no order as to costs.

4. The assessing authority, namely, Assistant Commissioner (Assessment), Sales

Tax, then took the view that the aforementioned decision of this Court clearly showed that the petitioner, in respect of the assessment years 1972-73 to 1974-75, was liable to pay sales tax under the U. P. Sales Tax Act on its turnover of the sales of electric K. W. H. meters effected up to 14th April, 1974, at the rate of 10 per cent and thereafter at the rate of 12 per cent (the rate prescribed in respect of item No. 7 in the notification dated 1st October, 1965). Likewise it took the view that sales tax under the Central Sales Tax Act for the year 1974-75 had also to be paid by the petitioner at the same rate. It accordingly issued the impugned notices u/s 22 of the Sales Tax Act on 12th June, 1978, and required the petitioner to show cause why its assessment for the years 1972-73 to 1974-75 be not corrected accordingly.

5. The petitioner then filed objections dated 28th June, 1978, before the assessing authority claiming that as the assessment orders did not suffer from any apparent error, it had no jurisdiction to initiate proceedings u/s 22 of the Sales Tax Act. It also contended that the decision of this Court in the case of Scientific Importers 1978 U.P.T.C. 398 had no application to the petitioner's assessment and that the assessment orders were quite correct. Since the assessment orders did not suffer from any error much less an error apparent, the assessing authority had no jurisdiction to issue the impugned notices to it. Subsequently the petitioner filed Writ Petitions Nos. 266 of 1978 and 268 of 1978 before this Court on 31st July, 1978, and obtained orders staying further proceedings which were being taken in pursuance of the impugned notices u/s 22 of the Sales Tax Act issued to the petitioner on 12th June, 1978. It appears that the petitioner was not satisfied with the quantum of its taxable turnover determined by the assessing authority for the year 1973-74 and had gone up in appeal before the Deputy Commissioner (Appeals), Sales Tax. That appeal was disposed of on 31st January, 1978, and the appellate authority had granted some relief to the petitioner. The Deputy Commissioner, Sales Tax, then filed revision applications u/s 10 of the Sales Tax Act before the Judge (Revisions), Sales Tax, Lucknow, in respect of the petitioner's assessment for the years 1972-73 and 1973-74 (as finalised in appeal 1973-74) questioning the propriety of the petitioner's turnover in respect of sale of electric K. W. H. meters at a rate lower than 10 per cent/12 per cent. These revision applications are still pending disposal before the Judge (Revisions).

6. After this Court had, on 31st July, 1978, stayed further proceedings in pursuance of the impugned notices issued to the petitioners u/s 22 of the Act, the assessing authority relying upon a decision of this Court in Scientific Importers issued notices dated 24th March, 1979, u/s 21 of the Sales Tax Act requiring it to show cause why its assessment both under the U. P. Sales Tax Act and the Central Sales Tax Act for the year 1974-75 be not reopened on the ground that it had been assessed to tax at a rate lower than that at which it should have been assessed under the Act. The petitioner has challenged the validity of the notices issued to it u/s 21 of the Act in Writ Petition No. 308 of 1979 filed on 26th July, 1979.

7. It may be mentioned that when the question about the rate applicable in computing the sales tax on the sale of K. W. H. meters sold by the petitioner during the assessment year 1975-76 came up for consideration before the assessing authority it passed an order dated 7th November, 1979, confirming the view on which it had issued the impugned notices under Sections 22 and 21 of the Sales Tax Act and computed the tax payable by the petitioner by applying the rate of 12 per cent specified against item No. 7 in the notification dated 1st October, 1965. The petitioner has gone up in appeal against its assessment for the year 1975-76 but the said appeal has remained pending awaiting the decision in these petitions. The orders passed by the assessing authority in connection with the petitioner's assessment for the year 1975-76 shows that so far as it is concerned it has finally made up its mind that the assessments for which it has issued notices under Sections 22 and 21 of the Sales Tax Act were wrong and that they have to be corrected or rectified accordingly.

8. It is not disputed that electric K. W. H. meters manufactured and sold by the petitioners are electrical goods. The main controversy between the parties centres round the question as to whether the turnover of the sales of such meters is covered by item No. 7 mentioned in the notification dated 1st October, 1965, which deals with the imposition of sales tax on electrical goods other than equipment, plants and their accessories required for generation, distribution and transmission of electrical energy at the rate of 10 per cent/12 per cent or whether it is covered by the entry in respect of item No. 7-A mentioned in the same notification which lays down that electrical equipment, plants and their accessories required for generation, distribution and transmission of electrical energy shall be liable to be taxed at the rate of 7 per cent only and whether there was in this regard an apparent error in various assessment orders for the years 1972-73 to 1974-75 passed by the assessing authority.

9. A perusal of the entry made in respect of item No. 7 mentioned in the notification dated 1st October, 1965, shows that it covers all electrical goods excepting electrical equipment, plants and their accessories. According to the learned counsel appearing for the petitioner, electrical K.W.H. meters manufactured and sold by it are electrical goods which are required for distribution of electrical energy and as such their turnover is squarely covered by the entry in respect of item No. 7-A mentioned in the notification dated 1st October, 1965, and is shown to be taxable at the rate of 7 per cent. Various assessment orders whereunder tax in respect of such turnover had been computed in accordance with the rates mentioned in respect of item No. 7-A were, therefore, correct. Accordingly the assessment orders did not suffer from any error much less an error apparent and there could be no question of the assessing authority having reason to believe that the petitioner's turnover had been subject to tax at a rate lower than that prescribed by the Act and that the impugned proceedings are without jurisdiction.

10. The contention of the respondent, on the other hand, is that, as held in the

Scientific Importers" case 1978 U.P.T.C. 398, the meters manufactured and sold by the petitioner are merely instruments for measuring electrical energy and that they are not required for distribution of such energy. They, therefore, do not fall under item No. 7-A mentioned in the notification dated 1st October, 1965. According to them the turnover of such meters necessarily falls under item No. 7 mentioned in the notification dated 1st October, 1965, and is taxable at the rate of 10 per cent/12 per cent. This is an apparent error which can be corrected u/s 22 of the Sales Tax Act. Further, the decision of this Court in the Scientific Importers" case 1978 U.P.T.C. 398 could provide a good reason to the assessing authority to believe that a part of the petitioner's turnover for the year 1974-75 had been assessed to tax at a rate lower than that at which it had to be assessed under the Act. In the circumstances the impugned notices issued by the assessing authority under Sections 22 and 21 of the Sales Tax Act were within jurisdiction. The learned counsel appearing for the respondent further contended that as at this stage only show cause notices under Sections 22 and 21 of the Sales Tax Act have been issued to the petitioner, it is open to it to appear before the assessing authority and to show to it that no change is required to be made in the various assessment orders. There is thus a clear alternative remedy available to the petitioner under the Sales Tax Act itself and no case has been made out for invoking the extraordinary jurisdiction of this Court under Article 226 of the Constitution.

11. We will first of all deal with the objection raised on behalf of the respondent that these writ petitions should not be entertained as it is open to the petitioner to obtain redress by following the procedure prescribed by the Sales Tax Act.

12. A perusal of the impugned notices issued to the petitioner shows that the only material on the basis of which the assessing authority issued notices u/s 22 of the Sales Tax Act to the petitioner for correcting an apparent error in the assessment orders and for entertaining a belief that the petitioner's turnover for the assessment year 1974-75 had been taxed at a rate lower than that at which it would have been taxed under the Act is the observation made by this Court in the Scientific Importers" case 1978 U.P.T.C. 398 to the effect that this Court has already held in the case of Commissioner of Sales Tax v. Import Association 1974 U.P.T.C. 565 that ammeters and voltameters are not instruments for generation, distribution or transmission of electrical energy and as such they are covered by entry No. 7 of Notification No. 7096/X-1012 dated 1st October, 1965, and that as galvanometers are also used for measuring energy they would, on principle laid down in the Import Association's case 1974 U.P.T.C. 565, be electrical goods covered by entry No. 7. The learned counsel for the petitioner submits that this Court in the Import Association's case did not lay down that ammeters and voltameters were not instruments for generation, distribution or transmission of electrical energy and, as such, they were covered by entry No. 7. Further no such principles that instruments meant for measuring electrical energy would necessarily be covered by entry No. 7 have been laid down in this case. It will be difficult and at any rate embarrassing for the authorities under

the U.P. Sales Tax Act either to overlook or explain the observations made by this Court in the Scientific Importers" case 1978 U.P.T.C. 398 and to do justice to the petitioner, if at all, the correct legal position in this regard can be clarified by this Court. In the circumstances, it will not be proper to relegate the petitioner to proceedings under the Sales Tax Act specifically when the assessing authority has already made up its mind in this regard as is evident from the assessment orders passed by it in respect of the year 1975-76.

13. We find force in the submission made on behalf of the petitioner that in the circumstances it will not be proper to refuse to entertain and resolve the controversy raised in these petitions under Article 226 of the Constitution on the ground that the petitioner can get its grievances redressed by having recourse to the proceedings under the U.P. Tax Sales Tax Act. The principal submission made by the learned counsel for the petitioner before us has been that the observations made by this Court in the Scientific Importers" case 1978 U.P.T.C. 398 are not accurate. So long as those observations are not clarified by this Court, it will not be open to the sales tax authorities to entertain the petitioner"s submission that electric K. W. H. meters manufactured and sold by it, which undoubtedly are instruments used for measuring electrical energy, do not fall under entry No. 7 but their turnover is covered by the entry at item No. 7-A of Notification No. 7096/X-1012 dated 1st October, 1965. Such a submission can be made only before this Court. Consequence of accepting such a submission would necessarily be that it will have to be held that in various assessment orders regarding which the notices under Sections 22 and 21 of the Act impugned in these petitions have been issued, the petitioner"s turnover had been brought to tax by applying the correct rate and that neither do the assessment orders suffer from any error much less an error apparent on the record nor could there be any occasion for the assessing authority to reopen the petitioner"s assessment u/s 21 of the Sales Tax Act on the ground that any part of its turnover for the year 1974-75 had been assessed to tax at a rate lower than that at which it should have been taxed under the Act.

14. Coming now to the substantial controversy involved in these petitions, we find that it concerns the interpretation of all the entries in respect of items Nos. 7 and 7-A mentioned in the notification dated 1st October, 1965. The relevant portions of the two entries read thus :

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

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

15. There is no controversy before us that the electrical K. W. H. meters involved in these cases are electrical equipments. The only question is whether they are equipments required for distribution of electrical energy. In case it is held that they are the equipments so required, they would fall under the entry in respect

of item No. 7-A ; and if it is held that they are not the equipments so required, they would be governed by the entry in respect of item No. 7.

16. In our opinion, any instrument or equipment, which the distributor of electrical energy requires for carrying out the activity of distributing the electrical energy to its consumer, will fall within the ambit of the expression "electrical equipment required for distribution of electrical energy". Generally electrical energy is sold to the customer and is charged at the rate mentioned in the tariff prescribed therefore on the basis of the quantity of energy consumed by the customer. The consumption of electrical energy is recorded by instruments like K. W. H. meters manufactured by the petitioner. These electrical meters have, therefore, necessarily to be used by the distributors while distributing electrical energy to the consumers and are in that sense required for the purposes of distribution.

17. The learned counsel appearing for the respondent contended that electrical energy is distributed by the licensee to the consumers. It is only the instruments which are necessary for conveying electrical energy to the premises of the consumer that alone can be considered to be the equipment or instrument required for distribution. Any other instrument which is not necessary for conveying electrical energy to the consumer but which is used only for the purposes of measuring the quantity of electrical energy supplied to the consumer would not be an instrument which is required for distribution of electrical energy. Such an instrument would be an instrument merely for measuring electrical energy supplied to the consumer. We are unable to interpret the meaning of the expression "instruments required for distribution of electrical energy" in the manner suggested by the learned counsel for the respondent. The interpretation placed by the learned counsel in substance equates distribution of electrical energy with transmission of electrical energy. The instruments which are necessary for actually conveying the electrical energy to the premises of the consumer would be the instruments which would be required for transmitting electrical energy to the premises of the consumer. There is a clear distinction between the expressions "transmission" and "distribution". The result of accepting the interpretation suggested by the learned counsel for the respondent would be that all the instruments which according to him are required for distribution of electrical energy would be the instruments which are required for transmission of electrical energy and the use of the word "distribution" in the entry in question would be absolutely redundant. We are, accordingly, unable to interpret the entry in the manner suggested by the learned counsel appearing for the respondent.

18. We now proceed to consider the two decisions of this Court on which strong reliance has been placed by the learned counsel for the respondent and which were relied upon by the respondent for issuing the impugned notices. In the case of Commissioner of Sales Tax, U.P. v. Import Association, Allahabad 1974 U.P.T.C. 565, this Court had an occasion to consider whether ammeters and voltmeters

were electrical goods other than equipments, plants and their accessories required for generation, distribution and transmission of electrical energy. This Court observed that these instruments were electrical equipments and that they were utilised for measuring the quantum of current. It pointed out that the nature of the function performed by these instruments was not generation, distribution or transmission of electrical energy. The amperometers are used for the purposes of measuring the amperage at which the current is flowing in a circuit at a particular time. Likewise a voltmeter is an instrument for measuring the voltage at which electrical energy is being supplied at a particular moment. Neither of these two instruments are like the K.W.H. meters which are the instruments which a distributor has to use for the purpose of measuring the quantity of electrical energy distributed to the consumer, so that he may charge for the same. There is nothing in the judgment of this Court which runs counter to and which is not consistent with our view that the instruments that are required by a distributor in connection with the distribution of electrical energy to the customer would be instruments required for distribution of electrical energy. It is like a vegetable seller requiring scales and weights for selling vegetable.

19. In the case of Commissioner of Sales Tax, U.P. v. Scientific Importers, Zero Road, Allahabad 1978 U.P.T.C. 398, the question for consideration was whether amperometers, voltmeters and galvanometers are taxable under the entry against item No. 7 or 7-A mentioned above. So far as the amperometers and voltmeters were concerned, this Court followed the decision in the case of Commissioner of Sales Tax, U.P. v. Import Association 1974 U.P.T.C. 565 and observed that so far as galvanometers were concerned they were also used for measuring electrical energy and, therefore, on the principle laid down in the Import Association's case 1974 U.P.T.C. 565 they were also covered by entry No. 7. That judgment was delivered by one of us. In that case when it was observed that galvanometers are used for measuring electrical energy, the observation merely meant that galvanometers were used for the purposes of measuring one aspect of the electrical energy which is passing through a circuit like amperometer which is used for measuring the amperage at which the current is flowing through the circuit; and voltmeter is used for measuring the voltage at which electrical energy is being supplied through the circuit. The expression was not used in the sentence that galvanometers are used for measuring the total amount of electrical energy sold or distributed to the customer. It may be that the instruments required for measuring various aspects of the current flowing through a particular circuit may not be instruments required for measuring the quantity of electrical energy supplied to the consumer, but a K.W.H. meter is an instrument which a distributor requires for measuring the quantity of actual electrical energy distributed to the consumer. We are, accordingly, of the opinion that neither the case of Commissioner of Sales Tax, U.P. v. Import Association 1974 U.P.T.C. 565 nor the case of Commissioner of Sales Tax, U.P. v. Scientific Importers, Zero Road, Allahabad 1978 U.P.T.C. 398, in an authority for the proposition that K.W.H. meters are electrical instruments which are not required

for distribution of electrical energy and the action of the respondent in issuing the notices under Sections 22 and 21 of the Sales Tax Act on the basis of those decisions is of legally justified.

20. In the result, all these petitions succeed and are allowed with costs. The notices under Sections 22 and 21 of the Sales Tax Act impugned in these petitions are quashed.