(1992) 11 P&H CK 0088

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 19 of 1985

Gupta Agencies APPELLANT

Vs

State of Punjab RESPONDENT

Date of Decision : 03-11-1992

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 22(2)

Citation : (1993) 103 PLR 461

Hon'ble Judges : Ashok Bhan, J;A.L. Bhari, J

Bench : Division Bench

Advocate : R.P. Sahney, for the Appellant; G.S. Cheema, A.A.G., for the Respondent

Judgement

Ashok Bhan, J.—This judgment shall dispose of two General Sales Tax References No. 19 and 21 of 1985 relating to assessment years 1974-75 and 1975-76 respectively as the question of law in both the reference is the same which is in the following terms :-

"Whether in the facts and circumstances of the case, the electric motors fall within the ambit of the excepted goods mentioned in entry 17 of Schedule ''A'' to the Punjab General Sales Tax Act, 1948, and thus liable to Sales Tax at the rate of six per cent ?"

2. The facts are being taken from G.S.T.R. No. 19 of 1985.

3. The applicant, a registered dealer, dealing in resale of electric goods, filed his quarterly returns for the assessment year 1974-75, declaring gross turnover at Rs. 2,23, 162.07. Deductions were claimed in respect of sales of tax free goods and sales made to the registered dealers. The Assessing Authority not being satisfied with the returns filed, issued a statutory notice in form S. T. XIV u/s 11(2) of the Punjab General Sales Tax Act (hereinafter referred to as the Act), requiring the dealer to produce his accounts. The dealer appeared before the Assessing Authority in pursuance to the statutory notice issued to him and

produced his accounts which were examined by the Assessing Authority and found to have been maintained in the normal course of his business. After allowing permissible deductions, the dealer was assessed to sales tax at Rs. 18,184.79 Aggrieved against the order of assessment framed, the dealer filed an appeal before the Deputy Excise and Taxation Commissioner, on the ground that the Assessing Authority was in error in taxing the sales of electric goods at the rate of 10% instead of 6% and disallowing his claim for statutory deductions The Deputy Excise and Taxation Commissioner, vide his order dated 20 11 1979, partly accepted the appeal and deleted the amount of penalty imposed as it was held that the penalty was not exigible in the circumstances of the case. Against this order of the Deputy Excise and Taxation Commissioner, the dealer filed an appeal before the Sales-tax Tribunal who vide his order dated 3-1-1983, dismissed the appeal The dealer filed an application u/s 22(1) of the Act claiming certain questions of law to be referred to this Court. This application was declined by the Tribunal vide its-order dated 1-6-1983 Against this order of the Tribunal, the applicant dealer filed a petition u/s 22(2) of the Act before the High Court and this Court vide its order dated 9 7-1984, directed the Tribunal to refer the question of law for its opinion reproduced in para No. 1 of this order.

4. In this reference, the challenge is to the levying of sales tax at the rate of 10% on electric motors instead of 6%. Thus, (he sole question for determination in this reference is as to whether the electric-motors falls within the exception of item No. (17) of Schedule ''A'' appended to the Act, and thus liable to be taxed at the rate of 6% being an electrical equipment required for generation, transmission and distribution Item No. (17) in Schedule ''A'' attached to the Act, is as follows :-

"(17) Electrical goods other than electrical plant, equipment and their accessories including service matters required for generation, transmission and distribution."

5. It is not disputed that if the electrical motor is used as electrical plant, equipment and their accessories required for generation, transmission and distribution of electric energy then sales tax has to be charged at the rate of 6% but if it is not so used then sales tax. has to be charged at the rate of 10% Counsel for the dealer argued that electric motor was such an electric equipment which was required for either generation, transmission or distribution of electric power. Electric motors can be put to numerous uses. It is a settled principle of law that for any article to be covered by a particular entry, the test is whether that article is exclusively or at least predominantly used for the particular purpose envisaged in the legal provision. Electric motor is an essential fitment for many electrical gadgetry such as computers, air conditions domestic refrigerators, desert coolers and mixies etc. It cannot, therefore, be held that in common paflance or even other-vise an electric motor is considered as an item exclusively or at least predominantly used only in generation, transmission or distribution of electrical energy. The main purpose of an electric motor is to convert electric power into mechanical energy for motion.

6. Counsel for the dealer placed reliance on Madan Lal Pawan Kumar v. The Punjab State 49 S. T. C. 77, wherein it was held that ''super-enamelled copper wire'' was covered under exception of Item No. 17. From this judgment, it was sought to derive at that electric motor was an equipment required for generation, transmission and distribution of electric energy. We find no substance in this submission. In that case, their Lordships were considering as to whether the ''super enamelled copper wire'' was an accessory to the electrical plant and equipment or not. The finding was recorded on the statement of Dr. B Thapar, Head of Electrical Department, Engineering College, Chandigarh, who was expert in that line. He stated "The super-enamelled copper wire is not used for generation," transmission or distribution of energy. It is also not an electric plant or equipment but it is certainly used for making equipment required for generation. In that sense it can be said to be an accessory to the electric plant and equipment. For example, super-enamelled copper wire is used in winding of motors, transformers, relays and energy motors ". So, on the facts of that case on the basis of expert evidence it was held, that super-enamelled copper wire'' was an accessory used in making an equipment required for generation of energy Counsel for the dealer argued that ''super-enamelled copper wire'' attached to energy motor was held to be an accessory equipment for generation of electric power and, therefore, electric motor was an equipment for generation or distribution of energy. Madan Lal Pawan Kumar''s case (supra) is distinguishable from the instant case because in that case it was ''super-enamelled copper wire'' which was under consideration. It cannot be of any help to the facts of the present case where the issue involved is entirely different namely ; whether electric motors per se are covered under exception, to Item No. 17 of Schedule ''A'' appended to the Act or not, As held in the earlier part of the judgment, electric motors can be put to many uses and it cannot be held that the electric motor is an item exclusively or at least, predominantly required for generation, transmission and distribution of electric energy. To bring the case in exception to Item No. 17 in Schedule ''A'' of the Act, it has to be shown that the item is an electrical plant, equipment and their accessories including service meters required for generation, transmission and distribution of electric power.

7. A reading of entry 17 shows that electric goods with certain exceptions are to be treated as goods liable to the levy of 10 per cent sales-tax. Exception is made in respect of the electric plant and equipment and their accessories for generation, transmission and distribution. The goods sold by the dealer do not generate ''electricity''. These are also not used for transmission or distribution of electricity. It is thus clear that electric motor cannot be included in the exception to entry 17. The main purpose of an elective motor in fact is consumption or utilisation of electric energy and converting the same into kinetic (mechanical) energy for motion.

8. Counsel for the dealer invited our attention to office memo-No. 3335-ST. I dated 1-12-1967 with which a list of goods falling in the category of electric plant and equipment etc. was attached. Items indicated in the list were to be taxed at

6 per cent. Entry 19 of this list attached to the office memo reads as under :--

"Motors. Meters, Starters when used in the distribution generation and transmission of electricity."

Learned counsel argued that since the motors and motor starters were included in the office memo dated 1-12-1967, the rate of tax leviable should be six per cent and not ten per cent as per this memo. We do not find any substance in this submission Entry 19 of this list clearly shows that motors when used in distribution, generation and transmission of electric energy have to be taxed at the rate of simper cent and not otherwise. This fact becomes further clear from another memo No. 5006-S.T.I. dated 31-8-1973 issued by the Department of Sales-tax wherein it was stated that ''electric motors'' when not used in the generation, distribution and transmission of electricity cannot be treated as Electric plant, equipment and their accessories referred to in item (17) of Schedule ''A'' appended to the Punjab General Sales Tax Act, 1948, and as such are exigible to tax @ 10%. Accordingly, tax chargeable is @ 10% on electric Motors and Motors Starters, not used in the generation distribution and transmission of Electricity. Thereafter, memo No. ST1/67 dated 4-1-1974 was issued by the Department of Sales-tax which provided as under :--

"Government have decided to levy sales tax on electric motors and starters prior to 21st February, 1973 at the rate of 6% or at the rate which the dealers have charged from their customers whichever is higher. You are directed to make the assessments accordingly and also bring these instructions to the notice of the Assessing Authorities working under you for strict compliance. Spare copies of this communication for distribution amongst the Assessing Authorities are enclosed."

On the basis of this memo, counsel for the dealer argued that Government itself decided to levy sales-tax on electric motors at the rate of 6 per cent or at the rate which the dealers charged from their customers whichever is higher of sales made upto 21-2 1973 treating the electric motors falling in the exception to Item 17 of Schedule ''A'', and, therefore, the sales-tax was leviable at the rate of 6 per cent after 21-2-1973 as well and not at the rate of 10 per cent. As against this counsel appearing for the Department argued that memo dated 4-1-1974 was issued on the representation filed by the dealers to give a concession to them as due to the confusion created by various memos issued by the Department; dealer had been charging 6% sales-tax on the sale of electric motors which was clarified in the year 1973 and thereafter the sales-tax was to be charged at the rate of 10% on the sale of electric motors when not used in the distribution, generation and transmission of electric energy. This apart, memo dated 4-1-1974 at the most extended a concession to the dealers which was restricted to the sales made upto 21-2-1973 only but the Court ,has to interpret the Item (17) to Schedule ''A'' as it exists on the statute and the concession given by the Department on this point would not help otherwise in the interpretation of this entry. Therefore, we find no substance in this submission of the counsel appearing for the dealer either.

9. No other point was raised.

10. For the reasons stated above, the question referred to this Court for opinion is answered as under :--

"Electric motors do not fall within the ambit of excepted goods mentioned in Entry (17) of Schedule ''A'' to the Punjab General Sales Tax Act and therefore liable to sales tax at the rate of 10% and not 6% as claimed by the dealer."

No costs.

