(1984) 07 RAJ CK 0035

In the Rajasthan High Court

Case No : Reference Petition No. 51 of 1975

Jaipur Metals and Electricals Ltd. APPELLANT

Vs

Commercial Taxes Officer RESPONDENT

Date of Decision : 02-07-1984

Acts Referred:
Rajasthan Sales Tax Act, 1994 — Section 12A, 5

Citation : (1984) 57 STC 236

Hon'ble Judges : S.N. Bhargava, J;N.M. Kasliwal, J

Bench : Division Bench

Advocate : S.M. Mehta, for the Appellant; K.K. Sharma, for the Respondent

Judgement

N.M. Kasliwal, J.—The Board of Revenue on a direction given by this Court has referred the following question of law for the opinion of this Court:

Whether on the facts and circumstances of the case the copper wire sold by the assessee is covered by entry 49 of Notification No. F. 5(40) FD/RNT/ 63-13 dated March 2, 1963, or Notification No. F. 6(110) FD/RT/63 dated July 15, 1963 ?

2. Brief facts of the case are that M/s. Jaipur Metals and Electricals Ltd., Jaipur (hereinafter referred to as "the assessee"), supplied copper wire to the Pay and Accounts Officer, D.G.S.D., New Delhi. The invoice described the goods sold as under :

Wire copper hard drawn for telegraphs and telephones conforming to B. ss 174/1951, size 150 Ibs. per mile.

3. The assessing authority held that the primary use of the copper wire of the specification sold by the assessee was for the transmission of sound. The assessee could not show that it could be used for the distribution of electric power. The assessing authority further held that it was common knowledge that the copper wire used for telephone and telegraph lines could not be used for distribution of high voltage electricity. The specifications too were different. The

goods intended for the transmission of sound could not be classified as goods required for distribution of power. It was thus held that in the circumstances the sale of copper wire was to be taxed at the rate of 10 per cent.

4. The assessee aggrieved against the order of the assessing authority filed an appeal before the Deputy Commissioner (Appeals-1) and Commercial Taxes, Jaipur. It was contended on behalf of the assessee that copper wire was used in generation, distribution and transmission of electric power and therefore, the sales in question should have been taxed at 3 per cent according to Notification No. F. 5(110)FD/RT/63 dated July 15,1963. It was also contended that though the copper wire had been described in the invoice as "drawn for telegraphs and telephones", it could also be used for the transmission of electricity because like wire was used for this purpose. It was further contended that the assessment order itself mentioned that copper wire used for telegraph and telephone lines could not be used for distribution of high voltage electricity which mean that the assessing authority himself agreed that such a wire could at least be used for low voltage electricity. Reliance was placed on an earlier decision of the Board of Revenue given in Sales Tax Revision No. 276 of 1968, Jaipur Metals and Electricals Ltd. v. The State, decided on July 2, 1969, wherein it was held that the copper wire and copper conductors, etc., were of goods required for generation, transmission and distribution of electric power/energy in terms of items 29 and 27 of Government notification dated November 2, 1965, and May 29, 1967, respectively read with Section 5 of the Rajasthan Sales Tax Act.

5. On the other hand it was contended on behalf of the departmental representative that the assessing authority had concluded that the wire in question was intended for the transmission of sound. According to Notification No. F. 5(40) FD/RNT/63-13 dated March 2, 1963, sound transmitting equipment including telephones, loud-speakers and spare parts thereof were taxable at 10 per cent. As regards earlier ruling of the Board of Revenue it was contended that in the aforesaid case the copper wire was meant for the distribution of electrical energy and the main point decided was that this sort of wire could be treated as meant for generation, distribution and transmission of electricity whoever the purchaser might be. In the instant case, however, the wire was such which could never be used for the transmission of electricity.

6. The Deputy Commissioner held that the entry in the invoice itself went to show that the wire in question was drawn for telegraphs and telephones. In view of this specific entry, it would not be proper to conclude that this wire was meant for the transmission of electric power. The Commercial Taxes Officer had treated this wire for the transmission of sound and it was due to this fact that he had imposed tax at 10 per cent. The learned Deputy Commissioner did not agree with the argument of the learned authorised representative of the assessee that the wire could not be treated as an equipment for transmitting sound. According to the Chambers 20th Century Dictionary, "equipment" means "things used in equipping or furnishing". Wire thus became an equipment for transmitting sound.

The learned Deputy Commissioner in view of the above circumstances affirmed the order of the assessing authority. Aggrieved against the aforesaid order of the Deputy Commissioner, the assessee went in revision before the Board of Revenue. A Bench of the Board of Revenue by order dated January 5, 1973 upheld the orders of the assessing authority and the Deputy Commissioner (Appeals-1) and held that the sale in question would attract tax at 10 per cent.

7. Item 49 of the Government notification dated March 2, 1963, is reproduced as under :

Item 49. Sound transmitting equipment including telephones 10 per cent.

and loud-speaker and spare parts thereof.

8. According to the Government notification dated July 15, 1963, the rate of sales tax payable on all plants, equipments and their accessories (including service meters) required for generation or distribution of electric power was with immediate effect to be taxed at 3 per cent on the taxable turnover.

9. It was contended by Mr. Mehta, learned counsel for the assessee that the primary use of the wire in question was for generation or distribution of electric power and the rate of tax should have been applied according to the primary and basic use to which the copper wire in question could have been put and it was not relevant to see any entry made in the invoice. It was further submitted that a Bench of this Court in-between the same parties in State of Rajasthan v. Jaipur Metal and Electricals Ltd. 1981 48 STC 66 has already held in the following manner :

We have asked the learned Advocate appearing on behalf of the Revenue to make it clear whether the items which form the subject-matter of the dispute are capable of being used for any other purpose except generation, transmission or distribution of electric power. After having argued for some time, the learned Advocate has frankly conceded that except copper wires all other items regarding which the order has been passed by the Board of Revenue cannot be used for any other purpose except generation, transmission or distribution of electric power. The Board of Revenue has also given a finding of fact and the same has not been challenged. The items which are the subject-matter of the dispute before us are mainly and essentially used for the purpose of generation, transmission or distribution of electric power, and simply because by any stretch of argument they are capable of being used to any other purpose cannot affect the main classification to which they belong. The word ''accessory'' appearing in item 29 will have to be read in its own context and not distinct from the word appearing prior to it. The kind of item, which forms subject-matter of tax has to be determined by its ordinary or commonly known purpose or use. We have already observed that it is evident from the proved facts that the items which have been mentioned in the application filed u/s 12A of the Act are the equipments and they are accessories required for generation, transmission or distribution of electric power and as such taxable at concessional rate of 5 per cent under item 29 of the notification dated 2nd November, 1965.

10. It is thus contended by Mr. Mehta that the kind of item, which forms subject-matter of tax has to be determined by its ordinary or commonly known purpose or use. Simply because by any stretch of argument if such goods are capable of use to any other purposes cannot affect the main classification to which they belong. It is thus argued that the copper wire in question fell in the category of "required for generation, transmission or distribution of electric energy" and are liable to sales tax at the concessional rate of 3 per cent under the notification dated July 15, 1963. Reliance was also placed on the following observations made by their Lordships of the Supreme Court in Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh,

The meaning of entry 4 in -the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957, can only be satisfactorily determined in the light of the language of the entry itself considered in the context in which it occurs. That entry occurs in a schedule in which descriptions of goods to be taxed indicate that the expression ''required for use therewith'' has been employed for equipment or accessories connected with the main purpose. The deciding factor, however, is the predominant or ordinary purpose or use.

11. On the other hand it was argued by Mr. Sharma, learned counsel for the department, that there was no question of drawing any inference for use of copper wires in question as it was admitted by the assessee himself in the invoice that the wires had been drawn for telegraphs and telephones conforming to B. ss 174/1951, size 150 Ibs. per mile. It was further submitted that the assessing authority had held as a question of fact that the assessee could not show that the wires in question could be used for the distribution of electric power. It was further held that the primary use of copper wire of the specification sold by the assessee was for the transmission of sound. It was further found that it was common knowledge that copper wire used for telephone and telegraph lines could not be used for distribution of high voltage electricity. According to Mr. Sharma the above finding of fact was not set aside by the Deputy Commissioner or the Board of Revenue and on the basis of the above facts found proved by the Board of Revenue, there was no scope for any argument on behalf of the assessee that the copper wires in question could at all be used for generation, distribution or transmission of electricity.

12. We have considered the arguments advanced by the learned counsel for both the parties and have gone through the record. It remains admitted by the assessee in the present case that the copper wires were sold to Pay and Accounts Officer, D.G.S.D., New Delhi, and the invoice described the goods as under:

Wire copper hard drawn for telegraphs and telephones conforming to B, ss. 174/1951, size 150 Ibs. per mile.

13. When the entry in the invoice itself goes to show that the wire was drawn for

telegraphs and telephones conforming to the particular specifications at B. ss 174/1951, size 150 Ibs. per mile, then there was no question of finding out the predominant or ordinary purpose or use to which the copper wires in question could have been put. In case there would have been no mention in the invoice that the wire copper hard was drawn for telegraphs and telephones, there was certainly force in the argument of the learned counsel for the assessee and the authority cited by him would have been directly applicable in the case. But in the present case as already mentioned above when the purpose or use of the copper wires in question have been specifically mentioned in the invoice, the question of taxing the same on concessional rate does not arise. Though in view of the above specific mention in the invoice that the goods were sold for telegraphs and telephones, we are inclined to take the view that the goods sold are taxable at 10 per cent, still we asked Mr. Mehta, learned counsel for the assessee, to show us whether wire copper hard conforming to the specification B. ss 174/1951, size 150 Ibs. per mile could at all be used for the transmission of electricity or that the assessee had ever sold copper wires of such specification for transmission of electricity, but Mr. Mehta was unable to place any material on record in support of his contention.

14. In view of these circumstances it is held that on the facts and circumstances of the case copper wire sold by the assessee is covered by entry No. 49 of Notification No. F. 5(40) FD/RNT/63-13 dated March 2, 1963, and is not covered by Notification No. F.5(110)/FD/RT/63 dated July 15, 1963. The reference is answered in the manner indicated above.