(1981) 02 P&H CK 0021

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 574 of 1980

Madan Lal Pawan Kumar APPELLANT

Vs

The Punjab State and Others RESPONDENT

Date of Decision : 05-02-1981

Acts Referred:
Punjab General Sales Tax Act, 1948 — Item 17 Schedule A

Citation : (1982) 49 STC 77

Hon'ble Judges : S.P. Goyal, J;J.V. Gupta, J

Bench : Division Bench

Advocate : J.S. Virk, for the Appellant; A.S. Sandhu, Additional Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

J.V. Gupta, J.—The petitioner, M/s. Madan Lal Pawan Kumar, is a registered firm under the Partnership Act and is dealing in the business of purchase and sale of electrical goods. According to the averments made in the writ petition, the firm is registered with the sales tax department under the provisions of the Punjab General Sales Tax Act, 1948, and has been given the sales tax registration No. FDK. IV. 2033.

2. In the present writ petition, the challenge is to the levying of sales tax at the rate of 10 per cent on the super-enamelled copper wire (hereinafter called the SE wire) instead of 6 per cent. Initially, the petitioner-firm, for the assessment year 1977-78, was assessed at the rate of 6 per cent on SE wire (vide annexure P. 3), but subsequently, reassessment was made, vide order dated 31st December, 1979 (annexure P. 1), and sales tax at the rate of 10 per cent instead of 6 per cent on SE wire was levied. The said order inter alia states :

It has been brought to the knowledge of the undersigned that SE wires should have been taxed at the rate of 10 per cent instead of 6 per cent in view of the instruction/clarification received from the Excise and Taxation Commissioner, Punjab, Patiala, vide Memorandum No. STI-79/1732 dated 6th August, 1979.

A copy of Memorandum No. STI-79/1732 dated 6th August, 1979, is annexure P. 4 to the writ petition.

3. Thus, the sole question for determination in this writ petition is whether SE wires fell within the exception of item No. (17), Schedule A, appended to the Punjab General Sales Tax Act, 1948, and were thus liable to be taxed at the rate of 6 per cent being an accessory or not. On 9th December, 1980, this Court passed the following order :

It is not disputed that item No. (17) in the Schedule A attached to the Punjab General Sales Tax Act, 1948, is as follows :

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

It is also not disputed that if the item in dispute, i. e., super-enamelled copper wire, is used for electrical plant, equipment and their accessories required for generation, transmission and distribution of electric energy. In that case, sales tax has to be charged at the rate of 6 per cent but if it is not so used, then sales tax has to be charged at 10 per cent.

With a view to record a firm finding in this regard, we consider it necessary to examine an expert who may be able to throw light on this subject. We accordingly direct that Dr. B. Thapar, Head of the Electrical Department, Engineering College, Chandigarh, be summoned for on 19th January, 1981, to give evidence in this regard. A copy of this order be forwarded to him by name so that he may come prepared with the statement which he is supposed to make before us.

Consequently, the statement of Dr. B. Thapar, Head of the Electrical Department, Engineering College, Chandigarh, was recorded on 19th January, 1981, in which 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.

An opportunity was afforded to the respondents for leading rebuttal evidence, if any. The learned counsel for the State stated at the Bar that no rebuttal was to be produced in this case. However, he contended that SE wires cannot be said to be accessories and, therefore, they are liable to be taxed at the rate of 10 per cent. He also cited Commissioner of Sales Tax v. Gulmohar Industries [1980] 46 STC 122 in support of his contention. We do not find that the said case has got any application to the facts of the present case. In view of the statement of Dr.

B. Thapar, who is an expert in the line, and there being no rebuttal thereto, we are of the opinion that SE wires are accessories to the electric plant and equipment as they are used in winding of motors, transformers, relays and energy motors and are thus covered under the exception of item (17) of Schedule A to the Punjab General Sales Tax Act as accessories. Therefore, they are liable to sales tax at the rate of 6 per cent.

4. Consequently, the writ'' petition is allowed and the reassessment order dated 31st December, 1979 (annexure P. 1), is hereby quashed. No costs.

