**(2013) 04 AHC CK 0099**

**In the Allahabad High Court**

**Case No :** Commercial Tax Revision No. 497 of 2009

M/s. Samsung India Electronics Pvt. Ltd. APPELLANT

Vs

Commissioner of Commercial Tax RESPONDENT

**Date of Decision :** 25-04-2013

**Acts Referred:**

Uttar Pradesh General Clauses Act, 1904 — Section 21
Uttar Pradesh Trade Tax Act, 1948 — Section 25

**Citation :** (2013) 6 ADJ 355

**Hon'ble Judges :** Bharati Sapru, J

**Bench :** Single Bench

**Advocate :** Piyush Agrawal, Bharat Ji Agrawal and Shubham Agrawal, for the Appellant;

**Final Decision :** Allowed

## Judgement

Bharati Sapru, J.—The present revision has been filed by the revisionist company against the order passed by the Tribunal dated 24.3.2009 for the assessment year 2003-04 under the U.P. Trade Tax Act, by which the tribunal has come to the conclusion that electrical washing machines which are being manufactured by the assessee are liable to be assessed at 12% under the Entry 3 (ii) of the notification No. 298 dated 29.1.2000 whereas it is the contention of the assessee that the rate of tax which is to be imposed on the electrical washing machines is 8% as per the same notification No. 298 dated 29.1.2000, which has been issued u/s 3A of the U.P. Trade Tax Act. It is the Contention of the learned counsel for the assessee that there are two specific entries and Entry No. 75 of the notification deals with ''electronic goods'' under which it is covered whereas entry 3 of the notification deals with ''electrical goods'' and does not apply to the assessee.

2. Learned counsel for the assessee has relied on the decision of the Hon''ble Apex Court in the case of M/s. B.P.L. Ltd. Vs. State of A.P., wherein the Hon''ble Apex Court has taken a view that the electrical appliances are quite different

from electronic appliances and therefore electrical goods which are not to be covered under the entry electronic equipments.

3. The entries with regard to electrical and electronic goods incorporated in the notification read as under:

K.A.NI. 2-298/XI-9(231)/94-U.P. Act 15-48-Order-2000

Dated Lucknow: 29th January, 2000

WHEREAS the State Government is satisfied that it is necessary so to do in public interest:

NOW THEREFORE in exercise of the powers under clause (d) of sub-section (1) of Section 3-A read with Section 25 of the Uttar Pradesh Trade Tax Act, 1948 (U.P. Act No. 15 of 1948) and Section 21 of the Uttar Pradesh General Clauses Act, 1904 (U.P. Act No. 1 of 1904), the Governor is pleased to make with effect from January 17, 2000, the following amendment in Government Notification No. KA.NI-2-100/X-9(231)/94 U.P. Act-15-48 Order 2000, dated January 15, 2000 (S. No. 92) as amended from time to time:

AMENDMENT

In the Schedule to the aforesaid notification for entries at serial numbers 3, 7 and 75 the following entries respectively shall, column-wise be substituted, namely:

4. Learned standing counsel Sri U.K. Pandey has appeared on behalf of the State and has vehemently argued that in view of the fact that as there is a special mention of category ''washing machines'' in Entry 3(ii), therefore it would come in the category of ''electrical goods'' and shall be excluded from ''electronic goods''.

5. However contrary to the contention that is made by the learned standing counsel, the tribunal in its order records that the product being manufactured by the assessee is a fully automatic electronic washing machine but simply by virtue of the entry 3 of the notification, it would stand excluded from electronic goods as mentioned in entry 75 of the said notification.

6. However answer to the questions in this case are squarely covered by a decision of the Hon''ble Apex Court in the case of B.P.L. v. State of A.P. Which I quote as under:

It was submitted by the learned senior counsel for the respondent that washing machine is specifically mentioned in item No. 38(iv) of the schedule to the said Act. Therefore, it was contended that notification of 20th July, 1988 cannot apply because in the case of washing machine the rate of duty specified under entry 38(iv) is 10 per cent. We are unable to agree with this contention for the simple reason that entry 38(iv) relates to electrical items including electrical washing machine whereas electronic item or products are referred to in entry 38(v). An electronic washing machine would come under 38 (v) and the notification dated 20th July, 1988 would apply to all electronic goods including automatic washing machines of the appellants.

This Hon''ble Apex Court has itself distinguished automatic electrical appliances from electronic goods and has held that benefits of rate of tax would also be granted to all electronic goods including electronic washing machines.

7. In similar situation, the Bombay High Court in the case of The Commissioner of Sales Tax Vs. M.I.R.C. Electronic Ltd., has come to the conclusion that electronic washing machines are to be taxed as electronic appliances. The Mumbai High Court has also held that the word "electric" has reference to the general concept of electricity whereas the word "electronic" would not mean the same because a electrical device only requires flow of electricity relating to a specific event or motion but electronic device is completely different as it requires series of individual electric components that help to conduct the flow of electricity. Having heard Sri Bharat Ji Agrawal learned senior counsel assisted by Sri Piyush Agrawal learned counsel for the revisionist and Sri U.K. Pandey learned standing counsel and having perused the material on record, I am of the opinion that when the finding of the tribunal itself is that the assessee is manufacturing fully automatic washing machines, then the conclusion drawn by the tribunal that it is liable to be covered as electrical item, is not justified, especially in view of the clear dictum of the Hon''ble Apex Court in the case of B.P.L. v. State of A.P. (supra).

In view of the above, this Court comes to the conclusion that the fully automatic machines manufactured by the assessee should be taxed at the rates applicable to the electronic equipments i.e. to say that at the rate of 8%. The impugned order of the tribunal is set aside.

The writ petition is allowed as above. No costs.

 