
(2009) 01 P&H CK 0061
In the Punjab And Haryana At Chandigarh

Northern India Sales Corp.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 28-01-2009

Acts Referred:

HARYANA VALUE ADDED TAX ACT, 2003 — Section 36

Citation : (2009) 22 VST 160

Hon'ble Judges : M.M. Kumar, J;H.S. Bhalla, J

Bench : Division Bench

Judgement

M.M. Kumar, J.—The Haryana Tax Tribunal, Chandigarh (for brevity "the Tribunal") has allowed the application filed u/s 36(1) of the Haryana Value Added Tax Act, 2003 corresponding to Section 42(1) of the Haryana General Sales Tax Act, 1973 (for brevity "the Act") for reference to this Court for adjudication of certain questions of law. The assessee has claimed that the said questions have arisen from the order dated September 8, 2003 passed by the Tribunal in STA No. 631 of 2000-01 whereby the Tribunal has dismissed the appeal of the assessee in respect of the assessment period October 10, 1996 to March 31, 1997. Accordingly the following two questions have been referred for the adjudication of this Court:

1. Whether, in the facts and circumstances of the case, the Tribunal is right in holding that electric fans are not "electrical goods" but "electrical appliances"?

2. Whether, in the facts and circumstances of the case, on correct interpretation of October 1996 notification electric fans are not electrical goods?

2. Brief facts of the case are that assessment for the year 1996-97 of the assessee was framed by the assessing authority vide order dated January 10, 2000. However, while examining the record, the DETC (ST)-cum-revisional authority, Karnal discovered that the assessing authority had levied tax at six per cent after October 30, 1996 on the sale of electric fans whereas the rate of tax after October 30, 1996 was 10 per cent. Accordingly, the revisional authority

after notice to the parties assessed the sale of electric fans made after October 30, 1996 at 10 per cent and raised an additional demand. This order has been upheld by the Tribunal.

3. Feeling aggrieved, an application was filed by the assessee for referring the aforesaid questions of law for adjudication before this Court.

4. We have heard learned Counsel for the parties.

5. Having heard learned Counsel for the parties and perusing the record with their able assistance we are of the view that the matter seems to be covered against the Revenue and in favour of the assessee by a Division Bench judgment rendered in the case of *Kanwar Brothers v. State of Punjab* [1992] 84 STC 307 (P&H). In that case the expression "electrical goods" was used in entry No. 17 of Schedule A to the Punjab General Sales Tax Act, 1948. This Court interpreting the aforesaid expression held as under : (at page 308)

Whether, on the facts and circumstances of the case, electric fans and electric presses are electrical goods within the meaning of entry 17 of Schedule A of the Act?

Entry 17 of Schedule A of the Act reads as under:

Electrical goods other than electric plant, equipment and their accessories including service meters required for generation, transmission and distribution.

The expression "electrical goods" has not been defined either in the Act or the Rules made thereunder. This being so, it is clearly the "common parlance" rule that must be applied. It will be recalled that while dealing with the matter, whether monoblock pumping sets were electrical goods or agricultural implements under the Act, a Division Bench of this Court in *Karnal Machinery Store v. Assessing Authority* [1973] 31 STC 3 observed that in the absence of any specific meaning having been given to the expression "electrical goods" either in the Act or the Rules made thereunder, "we have to necessarily construe it and understand the same in the sense it is used in common parlance". In holding so, the Bench also referred to the judgment of the Supreme Court in *Commissioner of Sales Tax v. Jaswant Singh Charan Singh* [1967] 19 STC 469, wherein it was observed "while interpreting items in statutes like the Sales Tax Act, resort should be had not to the scientific or the technical meaning of such terms, but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense."

Seen in this light, there can be no escape from the conclusion that electric fans and electric presses are clearly electrical goods within the meaning of entry 17 of Schedule A of the Act. The reference is thus answered in the affirmative against the assessee and in favour of the Revenue. There will, however, be no order as to costs.

6. Once the aforesaid interpretation on the expression "electrical goods" is

available then there is no reason for us to interpret entry No. 38A in the light of entry No. 60 which uses the expression "electrical appliances."

7. We are further of the view that the revisional authority committed grave error in law by making unwarranted distinction between the case in hand and the Division Bench judgment in the case of Kanwar Brothers [1992] 84 STC 307 (P&H). The aforesaid distinction is not called for which is discernible from the perusal of following part of the order which reads thus:

I have gone through the contentions of the learned Counsel. Entry No. 38-A was inserted in the notification with effect from October 30, 1996 making electronic and electrical goods leviable to tax at six per cent. Entry No. 60 which relates to electrical appliances was omitted in the same notification. The dealer has sold electrical fans, etc., which undoubtedly are covered under the classification of electric appliances. The contention of the dealer is that electrical fans are covered under the entry electrical goods after deletion of the entry of electrical appliances. He has also relied upon the judgment of the Punjab and Haryana High Court in the case of Kanwar Brothers v. State of Punjab [1992] 84 STC 307 wherein it has been held that because the expression "electrical goods" has not been defined either in the Act or the Rules made thereunder, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them and therefore held that electrical fans and electrical presses were electrical goods.

In the instant case, the position is different. Here the entry of electric goods is not an entry of a Schedule appended to the Act. The entry is a part of Notification issued by the State Government in exercise of its power u/s 15 of the HGST Act. While interpreting the same, intention of the Government is also to be kept in mind.

State Government has issued another notification u/s 18 of the HGST Act notifying the goods, which are leviable to tax at the first stage of sale. Entry 16 of this notification is consumer electrical appliances. An Explanation has been added to this entry which is as:

Explanation.-A consumer electrical appliance means utilization item of electric equipment usually complete in itself, generally other than industrial, normally built in standard sizes or types that transforms electric energy into another form, heat or mechanical at the point of utilization for example a flat iron, toaster, washing machine, dryer, hand grill, food mixer and air-conditioner, etc.

This entry was very much part of the delegated Legislature at the relevant time. In this entry electrical appliances have been clearly defined by way of an Explanation. Electrical appliances were leviable to tax at the stage of first sale even at that time. This clearly shows, that the Government, when it used the term "electrical goods" in the notification of October 30, 1996 issued u/s 15 has intended to levy tax at six per cent only on electrical goods and not on electrical appliances. By deleting entry 60 from the list, the Government intended to levy

tax at general rate on electrical appliances. Had it not been the intention of the Government it would have used the expression electrical appliances along with electrical goods.

8. A perusal of second para of the aforesaid order shows that the distinction is sought to be drawn on the basis of the fact that the entry has been made by issuance of notification whereas entry No. 17 in the Punjab Act was already in the Schedule which was part of the Act. The Division Bench judgment in Kanwar Brothers [1992] 84 STC 307 (P&H) has been avoided wholly on unwarranted grounds which is not sustainable.

9. In view of the above, the questions of law are answered in favour of the assessee and against the Revenue.