(1991) 04 GUJ CK 0022

In the Gujarat High Court

Case No : Sales Tax Reference No''s. 6 and 17 of 1983

Parekh Electric Wire Industries Pvt. Ltd. APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 15-04-1991

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 45(8), 62, 67, 69

Citation : (1992) 85 STC 464

Hon'ble Judges : S.D. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : J.S. Joshi and S.L. Modi, for the Appellant; Kamal M. Mehta, Assistant Government Pleader, for the Respondent

Judgement

G.T. Nanavati, J.—In both these references a common question arises for consideration and that is whether super enamelled copper winding wire ("SECW wire", for short) would fall within entry 16(2) or entry 41 of Schedule II, Part A to the Gujarat Sales Tax Act, 1969. Both these references are, therefore, disposed of this common judgment.

2. In Sales Tax Reference No. 6 of 1983, we are concerned with a manufacturer-seller of SECW wire. M/s. Parekh Electric Wire Industries Pvt. Ltd. is a manufacturer of SECW wire. It made an application to the Deputy Commissioner of Sales Tax u/s 62 of the Act for determination as to the rate of tax leviable on the sale made by it of "19 gauge-37.20 kgs. super enamelled copper winding wire" to M/s. B. M. Electricals and Motor Winders of Baroda on June 13, 1977. The Deputy Commissioner held that SECW wire cannot be regarded as spare part of electric motor and, therefore, its sale was liable to tax as electric goods falling under entry 41 of Schedule II, Part A to the Act. Thereafter, the Assistant Commissioner suo motu revised the assessment orders of the assessee in respect of the period from April 1, 1973 to June 30, 1974 and July 1, 1974 to June 30, 1975, holding that the sales of SECW wire were exigible to tax under entry 41. He also imposed penalty u/s 45(8) of the Act. Against this

determination by the Deputy Commissioner and the orders passed by the Assistant Commissioner in suo motu exercise of his revisional powers, the assessee preferred an appeal and two revision applications, respectively, to the Tribunal.

3. In Sales Tax Reference No. 17 of 1983, the dealer is M/s. Parekh Bros. Agency. It is a distributor in Gujarat State of products of M/s. Hara Cable Works of Orissa and the product in respect of which the dispute arose before the Sales Tax Officer during the assessment for the period from May 21, 1973 to March 31, 1974 was SECW wire. The Sales Tax Officer held that the sales of SECW wire were liable to tax under entry 16(2) of Schedule II, Part A to the Act. The Assistant Commissioner of Sales Tax, in exercise of revisional power u/s 67 of the Act, held that the said sales of the assessee were liable to be taxed under entry 41 of Schedule II, Part A to the Act M/s. Parekh Bros. Agency, therefore, filed a revision application before the Tribunal against the order passed by the Assistant Commissioner.

4. Before the Tribunal, it was contended by both the assessees that SECW wire being specially adapted for use as coil for use in an electric motor, is quite distinct from ordinary electric goods and is really a part or a spare part of electric motor. In the alternative, it was submitted that it should be held as "accessory to an electric motor". The Tribunal held that as SECW wire was required to undergo a further process of winding before it could be used in an electric motor, and as it lost its identity after it was converted into a coil and inserted into an electric motor, it cannot be regarded as a spare part of electric motor. The Tribunal further held that though SECW wire is specially manufactured for use in making coils for use in electric motor, it is not a spare part of electric motor as it cannot be inserted into an electric motor without subjecting it to a further process of winding. The Tribunal, taking this view, rejected the appeal and also the revision application, except to the extent that they were allowed so far as imposition of penalties was concerned.

5. On being moved by the assessees u/s 69 of the Act, the Tribunal has referred the following question to this Court for its decision :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in holding that "super enamelled copper winding wires" manufactured and sold by the applicant were not covered by entry 16(2) of Schedule II, Part A to the Gujarat Sales Tax Act, 1969, but they were covered by entry 41 of Schedule II, Part A to the said Act ?"

6. It was submitted by the learned advocates appearing for the assessees that SECW wire is used in electric motor for creating a magnetic field. Coil of the wire is prepared manually by winding the same. Depending upon the requirement, coil or winding, which is the other name by which the coil is known, or coils or windings are fixed into slots of stators of electric motor. Sometimes these coils or windings get burnt out or severely shorted and rewinding becomes necessary. It

is for that purpose that the SECW wires sold by the assessees are used, that is, for replacing the burnt out or shorted windings which are components of electric motor. Mr. Modi also submitted that the SECW wire is quite different from ordinary copper wire used for the purpose of passing electric current, and that it cannot be used for any other purpose, except as a coil in an electric motor for creating a magnetic field. He also submitted that SECW wire is sold exclusively by persons dealing in armature wire or by persons dealing in electric motors and their parts. They are not sold as electric goods. He also submitted that SECW wire, after it is sold to a person who wants to repair electric motor is cut in suitable length and turned into coils of the type required for repairing that motor. Thus SECW wire is specially adapted for use as a coil or winding in an electric motor and for that reason it should be held as a spare part of electric motor. It was not disputed before the Tribunal and is not disputed before us also that SECW wire is specially adapted for use in electric motor, nor is there any dispute as regards the function it performs in electric motor.

7. What was contended before the Tribunal and what is contended before us on behalf of the department is that SECW wire cannot be used straight-away in an electric motor, and that before it can be fitted into electric motor, it is required to be cut into required sizes and turned into a coil. In that sense, it can be said to be raw material used in the manufacture of or in repairing an electric motor. It was also submitted on behalf of the department that SECW wire loses its identity after it is converted into a coil and inserted into electric motor as no one in common parlance refers to a coil inserted into an electric motor as SECW wire.

8. In support of the submission that SECW wire can be said to be a spare part or part of a part, the learned advocates for the applicants have relied upon the decision of this Court in Vithal Chhagan & Sons v. State of Gujarat [1966] 17 STC 96. In that case, the question which arose for consideration was whether wrist watch-cases can be said to be spare parts of watches. This Court, after referring to the meaning of the word "part" as given in Black''s Law Dictionary, observed that a spare part would mean any integral part of an article which is carried, held, or kept in reserve for future use or to supply an emergency or which is carried, held, or kept in reserve for future use or to supply an emergency or which is addition or extra. It is implicit that the part in question must be a part which is severable and capable of being substituted or replaced by another, for otherwise there would be no point in having an additional or extra part or carrying, holding, or keeping such part in reserve for future use or to supply an emergency. These observations made by this Court are relied upon by Mr. Joshi and on the basis thereof, it was submitted by him that coil being an integral part of an electric motor, is often kept in reserve for future. He submitted that coil which is nothing else but SECW wire in a particular form is severable and capable of being substituted or replaced by another and, therefore, SECW wire should be regarded as spare part. While making those observations, this Court also pointed out that every part which goes into the making of an article would not necessarily be a spare part of that article. Therefore, merely because SECW wire

in a coil form is used in electric motor and can be replaced when burnt out or shorted, that by itself would not make it a spare part of electric motor.

9. Mr. Joshi also relied upon the decision of this Court in State of Gujarat v. Shah Veljibhai Motichand [1969] 23 STC 288, wherein this Court observed that mere alteration of shape by corrugation would not make an iron-sheet a different article or product of iron. He submitted that on analogy it can be said that merely because SECW wire is changed into a coil form, it does not cease to be SECW wire because it still remains SECW wire and does not lose its essential character as SECW wire. Only thing that can be said on the basis of this decision is that mere alteration of shape would not make an article a different one if it does not lose its essential character, and the purpose for which it can be used is not changed. Though this decision is helpful, it will still have to be considered whether SECW wire remains such a wire even after it is cut into suitable size and turned into a coil form.

10. The word "coil" according to Webster''s Twentieth Century Dictionary means "anything gathered into a series of rings or spirals ....". In the context of electricity, it means "a spiral or wire". As a verb it means "to form rings or coils or to move in a winding course". Therefore, coil or winding, which is used in electric motor is nothing else but wire put together in a coil form. It still remains a wire so much so that by reversing the process it can again be made into a straight wire. Even when it is used in an electric motor for the purpose of replacing the burnt out or shorted coil or winding, it remains wire though in the form of a coil. Therefore, the contention raised on behalf of the department that SECW wire is a raw material from which a coil is prepared and it is coil which is used in electric motor and not SECW wire, cannot be accepted. Though SECW wire, after it is used in electric contention that it loses its identity as the raw material would lose its identity after manufacture of the finished product, or inasmuch as it becomes a different article. The decision of the Kerala High Court in Paul Lazar v. State of Kerala [1977] 40 STC 437, on which heavy reliance was placed by the learned Assistant Government Pleader is also not much helpful to him. In that case, the question which had arisen for the court''s consideration was, whether copper wire can be regarded as component part of transformers which are undoubtedly electrical goods. The Kerala High Court, while answering that question observed that an article can be considered to be a component part of another when the article forms a constituent part of the latter and the latter is incomplete without the former. A component part has to be an identifiable object. It is not sufficient if the article has been used as a material or a constituent in the manufacture of the final product, like, for example, steel is used in the manufacture of transformers, motor vehicles, electric fans and the like or wood is used in the construction of boats, etc. These are raw materials used in the construction of such goods. They are not component parts in the sense that steering-wheels are to a vehicle or fan-blades are to a fan. Steering-wheels and fan-blades are identifiable as component parts and are so understood in common parlance. In order to be regarded as a component part the article so used must

have a commercial identity as a distinguishable part of the whole. Applying that test, the Kerala High Court in that case held that copper wire, although a necessary material or constituent used in the manufacture of electrical transformers, does not have an identity of its won to be regarded as a component part of electrical goods. Even if the test laid down in that decision is applied to this case, it is not possible to come to the conclusion that SECW wire is not a spare part of an electric motor. What is required to be noted is that in that case the court was concerned with copper wire which is an article of general use. For that reason, it was observed in that case that it did not have an identity of its own so as to be regarded as a component part of electrical goods. It was regarded merely as a necessary material or constituent used in the manufacture of electrical transformers. That is not the position of SECW wire. As pointed out earlier, SECW wire is specially adapted for use in electric motor. It is not capable of being used as an ordinary copper wire, or for any other purpose. The function of SECW wire in an electric motor is quite different inasmuch as it is used for the purpose of creating a magnetic field, as an integral but distinct part of electric motor. SECW wire has a distinct commercial identity as it is manufactured and sold as such and its use also is definite. It is not a general purpose article but is used ordinarily in electric motor for the purpose stated above. It is also regarded as a distinguishable part of stator which is an integral part of electric motor. It being neither a raw material used in the manufacture or reparation of electric motor, nor an article of general use, it will have to be held that it is an article having a distinct commercial identity and is a distinguishable part of electric motor. For these reasons, it will have to be held that SECW wires sold by the assessees were spare part of an electric motor and sales thereof fell under entry 16(2) of Schedule II, Part A to the Act and not under entry 41 of that Schedule. The Tribunal was, therefore, wrong in taking a contrary view.

11. We, therefore, answer the question referred to us in the negative, that is, in favour of the assessees and against the department. There shall be no order as to costs in these references.

12. Reference answered in the negative.

