

(1982) 08 AP CK 0018

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 5 and 109 of 1978

Pioneer Electronics

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 04-08-1982

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 14(4), 2(2), 20, 5(1)

Citation : (1983) 54 STC 83

Hon'ble Judges : B.P. Jeevan Reddy, J;Amareshwari, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Amareshwari, J.—These tax revision cases arise out of the order of the Sales Tax Appellate Tribunal dated 25th October, 1977. The assessee is a dealer in radios, radio spare parts and leather cases for radios. The dispute relates to the assessment years 1973-74 and 1974-75. T.R.C. No. 5 of 1978 relates to the assessment year 1973-74 and T.R.C. No. 109 of 1978 relates to the assessment year 1974-75. The Deputy Commercial Tax Officer assessed the sales of leather cases which are used as radio covers at 6 per cent treating them as falling under entry No. 90 of the First Schedule to the Andhra Pradesh General Sales Tax Act accepting the contention of the assessee. The said order was revised by the Commercial Tax Officer suo motu after issuing a notice to the assessee taxing the turnover on the sales of the leather cases at 10 per cent up to 28th February, 1974, and at 12 per cent thereafter treating the leather cases as radio accessories falling under item No. 3 of the First Schedule. The order of the Commercial Tax Officer was confirmed in appeal by the Assistant Commissioner of Commercial Taxes and in a further appeal by the Sales Tax Appellate Tribunal.

2. The main contention advanced on behalf of the assessee before the Appellate Tribunal was that the radio leather cases were not accessories of radios falling within the purview of entry No. 3 of the First Schedule to the Andhra Pradesh

General Sales Tax Act, but they were leather goods falling under item No. 90 of the First Schedule taxable at 6 per cent. One other contention raised was that even if the order of the original authority is erroneous the exercise of revision power u/s 2(2) of the Act is unwarranted and the only course open to proceed u/s 14(4) of the Andhra Pradesh General Sales Tax Act. Both the contentions were rejected by the Appellate Tribunal holding that the leather cases were radio accessories falling under item No. 3 of the First Schedule and the exercise of the revisional jurisdiction u/s 20 of the Act was not illegal or unwarranted.

3. In these revisions, the sole contention advanced by Mr. S. R. Ashok, the learned counsel for the assessee, was that the leather cases used as covers for the radios are not radio accessories within the meaning of item No. 3 of the First Schedule. We see no force in this contention. Accessories do not necessarily mean that they form part of the machine or a necessary article without which the machine cannot work. If the goods are used for a better and more convenient enjoyment of the instrument, the goods can be termed as accessories. Then the question is whether they fall under the entry "leather goods". The predominant or paramount use of the article is the determining factor. The Appellate Assistant Commissioner recorded a finding that the leather cases in question cannot be used for any other purpose except as covers for radios. They are set and designed as radio covers and made to suit the various sizes of the radios. They have no independent use. We have therefore no doubt in our mind that the leather cases in which the assessee is dealing are radio accessories squarely covered by item No. 3 of the First Schedule. In the case of the same assessee [Reported as Pioneer Electronics Vs. State of Andhra Pradesh, for the years 1971-72 and 1972-73 a Division Bench of this Court took the same view. But Mr. Ashok tried to distinguish the decision on the ground that the Act was amended in 1974 whereby item No. 90 was introduced in the First Schedule whereunder "leather goods other than footwear" were taxable at the rate of 6 per cent. It is, therefore, submitted that with effect from 1st April, 1974, all leather goods excepting footwear are liable to be taxed only at the rate of 6 paise per rupee. It is urged that by introducing this amendment the intention of the legislature is clear that all leather goods irrespective of their use except the goods excluded therein, namely, footwear, were to be taxed at the rate of 6 per cent. We are unable to accept this contention. All that the amending Act had done is to tax leather goods excepting footwear at 6 per cent whereas prior to the amendment they were treated as general goods u/s 5(1) attracting tax at 4 paise in a rupee. But as already observed the leather goods in question were meant to be used as radio covers. They are one species of leather goods which are used only as accessories to the radios and if that be so they do not come under item No. 90 while all other goods except those excluded under the very entry are taxable at 6 per cent. Radio leather cases which are species of leather goods are taxable at the rate applicable to radio accessories falling under item No. 3 of the First Schedule. Reference was made to item Nos. 83 and 101 wherein the expression "other than those specifically mentioned elsewhere" was used. It was pointed out

that if the legislature wanted to exclude radio accessories coming under the category of item No. 3 the same expression would have been used, in item No. 90 also. We do not think that such a construction can be permitted merely because of the absence of such words. The question is whether they are radio accessories or not and if the goods satisfy the test, they are liable to be taxed as goods within the meaning of item No. 3.

4. In the result, the two tax revision cases fail and are dismissed, but in the circumstances, without costs. Advocates' fee Rs. 150 in each.