

(2009) 03 SC CK 0189

In the Supreme Court Of India

Case No : Civil Appeal No's. 1591-1592 of 2009 (Arising out of S.L.P. (C) No's. 24422-24423 of 2007)

Sony India Pvt. Ltd.

APPELLANT

Vs

Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Constitution of India, 1950 — Article 323B

Tamil Nadu General Sales Tax Act, 1959 — Section 28A

Citation : (2009) 11 Vat Reporter 144 : (2009) 23 VST 1

Hon'ble Judges : S. H. Kapadia, J;H. L. Dattu, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. Leave granted.

2. Appellant had a factory at Dharuhera, Haryana wherein it was manufacturing, inter alia, Televisions, Audio systems, Walkman-Pocket size Radio Cassette Player, which apart from being sold locally, were branch transferred to various States wherein local sales were made. They also imported certain items from abroad either at New Delhi or at Mumbai and after filing Bills of Entry for home consumption, paid customs duty and cleared the goods. The goods were thereafter branch transferred to their warehouses located in different parts of the country including Tamil Nadu. Prior to the period in question, appellant's products, both indigenously produced as well as those imported from outside India, were assessed under Entry 14(vi) and (viii) of Part D of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. They were, accordingly, taxed at 12% at the point of first sale in the State of Tamil Nadu. However, in 2002, an amendment was made for the first time and 'imported' goods falling in Part D of the First Schedule of the Act were sought to be taxed at enhanced rate of 20%. Appellant sought a clarification from the Commissioner u/s 28A of the Act. While the clarification was pending, the appellant challenged the said amendment vide

O.P.Nos.969-970/2002 before the Tamil Nadu Taxation Special Tribunal constituted under the Tamil Nadu Taxation Special Tribunal Act, 1992 in terms of Article 323B of the Constitution. One of the grounds of challenge was that there was no distinction between imported goods and indigenously manufactured goods particularly when they answer the same description, more so since the goods after import became part of the landmass of India. The appellant also alleged that identical goods manufactured by multinational corporations like LG, Samsung etc. were also subjected to levy of 12% only, since the said multinationals (who were competitors of the appellant) produced those goods in India. The Tribunal dismissed the O.Ps. against which Writ Petitions were filed by the appellant which were also dismissed by the High Court by the impugned judgment, hence these Civil Appeals.

3. As repeatedly observed by this Court, in tax matters, each word in the Entry requires a factual foundation to be established. In the present case, therefore, we need to look at the subject Entries.

4. We quote hereinbelow Part-D of the First Schedule to the Act - Sl. No. 14 (vi):

Sl. DESCRIPTION OF GOODS Point of Rate of Tax Levy in the No. State

14 (vii) Sound transmitting equipments of every First Sale 12% w.e.f description including @ [xxx] intercom devices, loud 27.03.2002 speakers including stereo or hi-fi amplifiers, speaker systems which are used with stereo or hi-fi musical systems, micro phones and stands thereof, headphones, earphones and combined microphones/ speaker sets @ 'Telephones' have been taken to part DD of this Schedule from 21st March 2003 as item 1 thereof. 5. We also quote hereinbelow from the same Part Sl. No. 14(viii), which reads as under:

Sl. DESCRIPTION OF GOODS Point of Rate of Tax Levy in the No. State

14 (viii) Television sets, antenna, television and video First Sale 12% w.e.f cameras, projectors, teleprompters, dish antenna and 27.03.2002 boosters, all electronic toys and games (The previous rates could not be indicated as the groupings of the goods varied from time to time) 6. We also quote hereinbelow, item 9 of the 11th Schedule, which reads as under:

Sl. DESCRIPTION OF GOODS Point of Rate of Tax Levy in the No. State

9 Imported cigarettes, medium density fibre boards, First Sale 20% textile and other items falling in Parts D and E of the First Schedule 7. The controversy has arisen because some of the times are imported from Japan by the Assessee whereas others are manufactured in India. As far as items manufactured locally in India, there is no dispute. The tax is levied at 12%. The dispute is basically confined to imported items in which the rate of tax is 20% (after 27.03.2002).

8. In the O.P. filed before the Tribunal, it was urged that once the importation stands completed, then the goods lose their character of imported goods and,

consequently, there would be no difference between the locally manufactured goods and imported goods (see page 54 of the SLP Paper Book). One more contention raised by the assessee in its Original Petition before the Tribunal was:

It is submitted that similar goods manufactured in India and sold by other dealer like Samsung, LG etc. in Tamil Nadu are being taxed at 12% after 27.03.2002. However, the petitioners (assessee) herein alone are now required to pay tax at 20%. Presently, the Act imposes a higher rate of 20% on sales tax whereas other similar goods suffer sales tax at 12%.

9. We do not wish to comment about the above contentions. Suffice it to state that these contentions would require adjudication, which has not taken place in the present case. Against the assessment orders, the assessee chose to move the Tribunal without exhausting statutory remedy under the Act. In our view, looking to the contentions advanced by the assessee, they ought to have proceeded to file appeals for each assessment year before the First Appellate Authority under the Act which they have failed to do. However, since an important question of law arises for determination and since the liability is likely to recur in future, we direct the appellant-assessee herein to prefer statutory appeal(s) within a period of four weeks. It is made clear that the First Appellate Authority will decide the said appeal(s) within a period of six months, uninfluenced by the observations made by the Tribunal as well as by the High Court in the impugned judgment. We express no opinion on the merits of the case. Whatever is stated hereinabove is only in the support of our order remitting the matter to the First Appellate Authority and that Authority shall not be bound by any of our observations mentioned hereinabove. The First Appellate Authority shall decide the matter on merits and it shall condone the delay, if any, in filing the appeals.

10. Civil Appeals are disposed of accordingly.

11. No order as to costs.