**(1980) 04 RAJ CK 0017**

**In the Rajasthan High Court**

**Case No :** Sales Tax Reference No. 17 of 1971

State of Rajasthan APPELLANT

Vs

Jaipur Metal and Electricals Ltd. RESPONDENT

**Date of Decision :** 07-04-1980

**Acts Referred:**
Rajasthan Sales Tax Act, 1954 — Section 12A

**Citation :** (1981) 48 STC 66

**Hon'ble Judges :** M.L. Shrimal, J;M.B. Sharma, J

**Bench :** Division Bench

# Judgement

M.L. Shrimal, J.—At the instance of the revenue, the following question of law has been referred by the Board of Revenue for Rajasthan, at Ajmer, for being answered by this Court.

Whether, on the facts and circumstances of the case, sale of copper wire, copper conductors, cadmium copper category wires/conductors, all aluminium conductors, aluminium steel, tinned copper wires/conductors, bright annealed copper wire conductors, electrolytic copper rods/strips and electric meters are assessable to sales tax at the concessional rate ?

2. The facts in a nutshell are that M/s. Jaipur Metal & Electricals Ltd., Jaipur (hereinafter referred to as the assessee), applied u/s 12A of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as the Act), for determination of the rate of tax on copper wire, copper conductors, cadmium copper category wires/ condutors, all aluminium conductors, aluminium steel reinforced conductors, tinned copper wires/conductors, bright annealed copper wire/ conductors, electrolytic copper rods/strips and electric meters. The contention of the assessee-firm was that these items of sale are taxable at the rate provided under item 29 of Notification No. F. 5(155)FD(CT)/65-IV, Jaipur, dated 2nd November, 1965. It was urged that all the above-mentioned items were being used for generation, transmission or distribution of electric power. The assessee sought clarification from the department, whether in the case of sale of the above-noted

goods by them to intermediatory would make the sale taxable at the rate of 10 or 5 per cent under item 29 of the aforesaid notification. The Additional Commissioner, Commercial Taxes, Rajasthan, Jaipur, vide his order dated 26th December, 1967, held as under :

It is discovered that most of the sales of the items mentioned in the petition are sold to the Rajasthan State Electricity Board or other companies generating, transmitting or distributing electric power. There can be no doubt that these goods directly go in the generation, transmission or distribution of electric power. The difficulty arises in the case of goods which are sold to vendees which are not engaged in generation, transmission or distribution of electric power.

3. In the case of sale of these items, the Additional Commissioner held that before giving concession available by entry No. 29 of the notification dated 2nd November, 1965, the assessing authority will have, therefore, to ensure that the commodity is actually used for generation, transmission or distribution of electric power.

4. Being aggrieved by the decision of the Additional Commissioner, the assessee filed a revision petition before the Board of Revenue for Rajasthan, at Ajmer, which came up for decision before a Division Bench on 2nd July, 1969. The Board, after taking into consideration the authorities relied upon by the Additional Commissioner as well as the cases cited before it, held that the articles sold by the assessee were essentially required for generation, transmission or distribution of electric power, and nothing to the contrary was shown to them to prove and establish that any one of those goods were being used otherwise. It further held that in those circumstances it was not at all necessary for the assessing authority to look into the purpose for which the goods could be used. It further held that the sales of copper wires* copper conductors, cadmium copper category wires/ conductors, all aluminium conductors, aluminium steel reinforced conductors, tinned copper wire/ conductors, bright annealed copper wire/conductors, electrolytic copper rods/ strips and electric meters, are all goods required for generation, transmission or distribution of electric energy, and in terms of item 29 of the notification dated 2nd November, 1965, or item 27 of the notification dated 29th May, 1967, read with Section 5 of the Act are liable to sales tax at the concessional rate of 5 per cent. With these observations, the revision was allowed.

5. The revenue filed an application u/s 15(1) of the Act for making a reference to this Court, on which the present reference has come up for decision.

6. Before deciding the question, we will like to reproduce the notification along with the two disputed items Nos. 29 and 79. The notification dated 2nd November, 1965, reads as under:

In exercise of the powers conferred by Section 5 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act No. 29 of 1954), the Government of Rajasthan, being of the opinion that it is expedient in the public interest to do so, hereby provides that with immediate effect the rate of tax payable by a dealer in respect of the goods specified in column 2 of the list annexed hereto shall be as shown against them in column 3 of the said list.

29. All plants and equipments and their accessories (including 5% service meters) required for generation, transmission or distribution of electric power 79. All kinds of electrical goods, including torches, cells, casings. 10% microphones, electric fans, lighting bulbs, electrical earthen- ware, electrical porcelainware and other accessories excluding goods mentioned at S. No. 29

7. We have asked the learned Advocate appearing on behalf of the revenue to make it clear whether the items which form the subject-matter of the dispute are capable of being used for any other purpose except generation, transmission or distribution of electric power. After having argued for some time, the learned Advocate has frankly conceded that except copper wires all other items regarding which the order has been passed by the Board of Revenue cannot be used for any other purpose except generation, transmission or distribution of electric power. The Board of Revenue has also given a finding of fact and the same has not been challenged. The items which arc the subject-matter of the dispute before us are mainly and essentially used for the purpose of generation, transmission or distribution of electric power, and simply because by any stretch of argument they are capable of being used to any other purpose cannot affect the main classification to which they belong. The word "accessory" appearing in item 29 will have to be read in its own context and not distinct from the word appearing prior to it. The kind of item, which forms subject-matter of tax has to be determined by its ordinary or commonly known purpose or use. We have already observed that it is evident from the proved facts that the items which have been mentioned in the application filed u/s 12A of the Act are the equipments and they are accessories required for generation, transmission or distribution of electric power and as such taxable at concessional rate of 5 per cent under item 29 of the notification ''dated 2nd November, 1965.

8. The reference is answered accordingly against the revenue and in favour of the assessee. In the facts and circumstances of this case, the parties will bear their own costs.

 