(2010) 03 BOM CK 0159

In the Bombay High Court

Case No : Sales Tax Reference No. 2 of 2001 in Reference Application No. 47 of 1998

The Commissioner of Sales Tax — APPELLANT

Vs

M.I.R.C. Electronic Ltd. — RESPONDENT

Date of Decision : 18-03-2010

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 52, 61(1), 8

Citation : (2010) 31 VST 452

Hon'ble Judges : V.C. Daga, J;K.K. Tated, J

Bench : Division Bench

Advocate : S.K. Nair, for the Appellant; G.S. Jetly and P.S. Jetly, for the Respondent

Judgement

K.K. Tated, J.—Heard the learned Counsel for the rival parties.

2. By this Reference u/s 61(1) of the Bombay Sales Tax Act, 1959 (herein after to be referred as "the BST Act, 1959") made at the instance of the Applicant-the Commissioner of Sales Tax, Maharashtra State, Mumbai; the Maharashtra Sales Tax Tribunal, Mumbai vide its judgment dated 09th June, 2000 has referred two questions of law for the opinion of this Court.

3. The material facts giving rise to this reference briefly stated as follows:-The Respondent-Dealer is the importer and reseller of the Electronics and Electrical goods. The Respondent preferred an application dated 30.04.1992 u/s 52 of the BST Act, 1959 before the Commissioner of Sales Tax, Maharashtra State, Mumbai for determination of the correct rate of sale tax in respect of Invoice No. 2709 dated 06.02.1992 for sale of "Onida Electronics Washing Machine". In the said invoice, the Dealer had charged the sale price of Rs. 38,985/- inclusive of sale and excise duty, for the sale of three washing machines. It was contended that "Onida Electronics Washing Machine" being an electrical appliance should be held to be covered by Schedule Entry C-II-97(b) making the said sale liable to tax @ 4%. On the other hand, the Department contended that the washing machine

specifically comes under Entry C-II-73(a) and therefore, the same is liable to tax @ 15% sales tax.

4. The Commissioner of Sales Tax vide its order dated 27.01.1993 has decided the Respondent''s application holding that the washing machine falls under Entry C-II-73(a) and thus, is liable to tax @ 15% sales tax u/s 8 of the BST Act, 1959. The Commissioner of Sales Tax, while deciding the said application, relied on the decision of the Tribunal in case of M/s Bradma of India Ltd. in Appeal No. 103/1991 dated 31.07.1992. In that matter, the question for decision before the Tribunal was as to whether the expression "cash registering machine" used in schedule Entry C-II-90 would cover "Bradma Cash Track, Electronic Cash Register".

5. Being aggrieved by the aforesaid order dated 27.01.1993, the Respondent preferred Appeal No. 37/1993 before the Tribunal. The Tribunal vide its order dated 30.06.1998 allowed the appeal and set aside the order passed by the Commissioner of Sales Tax. The Tribunal held that the electronic appliance is covered under Entry C-II-97(b), therefore, in the present case the washing machine is covered by this entry. The Tribunal further held that the contention of the Department is erroneous for the simple reason that the entire contention is based on the assumption that Entry C-II-97(b) is a residuary entry for electronic items. In other words, any of the items covered by other entries are not to be covered by Entry C-II-97(b) even though the same may be electronic appliance, equipment etc.. The Tribunal further held that any electronic machine or its operation certainly requires electrical energy but does not become an electrical machine on that count. The Tribunal further held that even the legislature had made a distinction between electrical instruments and electronic instruments inasmuch as electronic domestic appliances were included in Entry C-II-73(a) w.e.f. 01.01.1993. Therefore, the electronic washing machine would not be covered by Entry C-II-97(b).

6. Against the aforesaid order dated 30.06.1998, the Applicant u/s 61(1) of the BST Act, 1959 requested the Tribunal to refer questions of law to this High Court for opinion. The Tribunal by its judgment dated 09.06.2000 referred questions of law for the opinion of this Court, which read as under:

(i) Whether on the facts and circumstances of the case and on true and correct interpretation of Entry C-II-93(a) & C-II-97(b) was the Tribunal justified in law in holding that "Onida Electronic Washing Machines" effected under invoice No. 2709 dated 06.02.1992 are covered by scope of Entry C-II-97(b) and not that by C-II-73(b)?

(ii) Whether the Tribunal was justified in law in holding that the Entry C-II-97(b) is a special entry for washing machine and Entry C-II-73(a) is a specifically mentioned in the schedule Entry C-II-73(a)?

7. For deciding the controversy involved in this reference, it is necessary to refer to the Entries Nos. C-II-44(b), C-II-73(a) and C-II-97(b) which read thus:

Schedule C-II-44(b):

All electrical instruments apparatus and appliances (other than electronic systems, instruments, apparatus and appliances specified in Entry 97 and electrical appliances specified in Entry 73 in this schedule.

C-II-73(a):

Domestic and commercial electrical appliances such as grinders, mixers, blenders, irons, hair driers, shavers, washing machines, heaters, hot plates, toasters, cooking ranges, boilers, ovens, geysers, vacuum cleaners and components, parts and accessories of any of these.

C-II-97(b):

Electronic systems, instruments, apparatus and appliances other than these specified elsewhere and components parts and accessories of any of them.

8. Mr. Nair, learned "A" Panel Counsel appearing for the Applicant/Revenue submitted that the electronic washing machine is specifically mentioned in Entry C-II-73(a) and therefore, it would be liable to tax @ 15% sales tax. In his submission, the Tribunal failed to consider that the judgment delivered by this High Court was the subject matter before the Apex Court and the Apex Court has delivered the judgment in case of State of Maharashtra Vs. Bradma of India Ltd., wherein it has been held that the specific entry would override the general entry. The learned Counsel further submitted that the language of Entry 97(b) clearly shows by use of phrase "other than those specified elsewhere" that it is not only a residuary entry but also that electronic system instrument etc. may be classified under other entries. In his submission, Entry 90 on the other hand does not contain any words of limitation. The items mentioned therein would cover every specific thereof irrespective of a method of their operation. In the absence of any limitation or qualification as to the different kinds of cash registering machines, there is no reason to specifically read any such qualification and limitation in the entry to the particular points of cash registering machines. In view of these submissions, he submitted that the principles laid down by this High Court as to specific entry and general entry which was the base for the Tribunal is no more a good law in view of the decision given by the Apex Court in case of Bradma India Ltd. (supra). He, therefore, urged to allow the reference in favour of the Revenue.

9. Per contra, Mr. Jetly, the learned Counsel appearing for the Respondent submitted that the word "appliance" appearing in Entry C-II-97(b) also includes washing machine. In his submission, the word "appliance" is defined in "Cambridge Advanced Learner''s Dictionary" as under:

Appliance : a device, machine or piece of equipment, especially an electrical one that is used in the house such as a cooker or washing machine.

He further submitted that the meaning of terms used in the entry has to be considered from the common parlance in trade. For this purpose, he placed reliance on the judgments in the matters of Commissioner of Sales Tax v. Associated Dental & Medical Supply Co. reported in 1976 37 STC 336 and Commissioner of Sales Tax v. Dawoodbhoy M. Tayabally reported in 1975 36 STC 291. He further submitted that their case was fully covered by the judgment of the Apex Court in case of Bradma India Ltd. (supra) wherein the Apex Court in paragraph No. 10 specifically observed that the electronic washing machines were electronic goods and that the Assessee is entitled to the benefit of the exemption notification.

10. We have heard the rival parties. It is to be noted that "electric" has to do with the general concept of electricity. It is generally acceptable to use the terms electric and electrical interchangeably. Essentially, the word "electric" will function as a way of qualifying the flow of electricity as it relates to a specific event. For example, if a fire starts due to a problem with wiring in a building, the event can be described as an electric or electrical fire, caused by the electric or electrical wiring. The use of electric identifies a source of power that serves to create a logical effect when conducted through a process or device.

11. In contrast, "electronic" is a term that is descriptive of devices that are powered by electricity. An electronic device is often constructed using one or more electric elements that make it possible to manage the flow of electricity into the device. A television is a good example, since it is partially composed of a series of individual electric components that help to conduct the flow of electricity. In like manner, desktop and laptop computers are electronic in nature. Handheld devices such as cell phones are also electronic, while operating with the use of an electric component.

12. In the present case it is not necessary to go into detail to decide whether the washing machine is electronic appliance or electric appliance because the said issue is already covered in the matter of Bradma India Ltd. (supra). The Apex Court in that case specifically held that the electronic washing machines are the electronic goods. Paragraph No. 10 of that case reads thus:

10. The last decision relied upon by the respondent in support of its stand was the decision of this Court in B.P.L. Limited v. State of Andhra Pradesh (2001) 2 SCC 139. That case pertained to Entries of the Andhra Pradesh General Sales Tax Act, 1957 which we have noted are for the purposes of the Entries in question, materially different. Besides this Court was only called upon to construe an exemption notification which granted concessional rates of tax on electronic goods. In this context it was held that electronic washing machines were electronic goods and that the assessee was entitled to the benefit of the exemption notification.

In the present case Entry C-II-97(b) specifically states about the electronic appliances.

13. In the above mentioned facts and circumstances of the case, we are of the

opinion that the Tribunal has rightly held that the electronic washing machine falls under Entry C-II-97(b). Therefore, both the questions referred above are answered against the Applicant/Revenue and in favour of the Respondent/ Assessee. Reference is, accordingly, disposed of.