(2004) 10 AHC CK 0206

In the Allahabad High Court

Case No : Sales Tax Revision No''s. 483, 484, 485, 486, 487 and 488 of 1994

The Commissioner, Sales Tax — APPELLANT

Vs

S/S Modi Xerox Ltd. — RESPONDENT

Date of Decision : 08-10-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11, 21, 4A, 7
Uttar Pradesh Sales Tax Rules, 1948 — Rule 41

Citation : (2004) 10 AHC CK 0206

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : S.C, for the Appellant;

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These six revisions u/s 11 of U.P. Sales Tax Act (hereinafter referred to as "Act") are directed against the order of Tribunal dated 22.12.1993 relating to the assessment years 1984-85 (UP), 86-87 (Central) 85-86 (Central) 86-87 (UP), 84-85 (Central) and 85-86 (UP) respectively arising from the proceeding u/s 21 of the Act.

2. Dealer/opposite party (hereinafter referred to as "Dealer" was Public Limited Company incorporated under the Indian Companies Act, 1956, having its registered office at Rampur. Dealer had established a new unfit for the manufacture of eligibility certificate u/s 4-A of the Act being a new unit. The eligibility certificate was granted for xerographic equipment and system for the period of six years from 01.01.1985. Dealer was claiming the exemption from 26.05.1985 for the period of six years. Review application was also rejected. Dealer filed Writ Petition No. 11936 of 1990, which was allowed vide order dated 19.12.1990 and it was held that the dealer entitled for exemption from 26.05.1985 for the period of six years. It is informed that against the order of writ petition. SLP has been dismissed. In pursuance of the order passed in the writ petition, eligibility certificate'' was modified and the exemption was granted

from 26.05. 1985 for the period of six years. It appears that alongwith Xerographic machine dealer had also provided one installation kit to its customers, which consisted of Photo receptor, Toner Developer and Fuser oil. Admittedly, dealer was not manufacturing Toner, Developer and Fuser oil and they were purchased from outside the State of U.P. It is claimed that Toner, Developer and Fuser oil, which were consumable when sold separately, separate turn over was shown and the tax was paid but when the Toner, Developer and Fuser oil were sold in a kit though separate price was charged in the bill but their turn over was not separately shown in the original assessment proceeding and the tax has not been admitted on such goods. It is claimed that the installation kit was the part of the system and therefore, not liable to tax. In the original assessment proceeding under Rule 41 read with Section 7 assessing authority exempted the entire turn over of the Xerographic equipment, which also included the price of installation kit. However, tax was assessed only on the turn over of Toner and Developer sold separately.

3. Assessing authority, with the view that the dealer was not the manufacturer of Toner, Developer and Fuser oil and had imported all these items from outside the State of U.P. and though separate price for the installation kit was charged in the bill but they have not been disclosed separately in the original assessment proceeding by the dealer in as much as they were not part of Xerographic equipment and system, such turn over were escaped to assessment a proceeding u/s 21 were initiated in all the assessment years. In the proceeding u/s 21 of the Act dealer submitted that the Toner, Developer and Fuser oil were essential for the operation of the Xerographic equipment being part and parcel of the Xerographic equipment and system, the turn over of these goods were not liable to tax. Assessing authority had not accepted the plea of the dealer and levied the tax on the turn over of Toner, Developer and Fuser oil. First appeals filed by the dealer were rejected. Dealer filed second appeals before the Tribunal. Tribunal by the impugned order allowed the appeals and accepted the plea of the dealer and deleted the tax assessed on the turn over of Toner, Developer and Fuser oil. Tribunal held that the installation kit was the part of Xerographic equipment and system and since the eligibility certificate was issued for Xerographic equipment and system it also includes installation kit and therefore, it is not liable to tax. Tribunal however, upheld the reopening of the proceeding u/s 21 of the Act.

4. Heard learned counsel for the parties.

5. Learned Standing counsel contended that the dealer was not the manufacturer of Toner, Developer and Fuser oil during the year under consideration. He submitted that when the dealer, subsequently, started manufacturing Toner and Developer on the application being moved, eligibility certificate was issued. He further submitted that in the invoice apart from the price of the Xerographic machine, separate price for the installation kit was charged separately, which included the price of Photoreceptor, Toner, Developer and Fuser oil. He submitted that the installation kit and in particular Toner, Developer and Fuser oil were only

consumables and they were not the part of the equipments. He submitted that Photo receptor was also not the part but only an accessory. However, there is no dispute with regard to the photo receptor because it appears that the dealer was involved in the manufacturing of Photo receptor and hence exemption was allowed but so far as turn over of Toner. Developer and Fuser oil are concerned, they were not liable to be exempted under the eligibility certificate issued u/s 4-A of the Act because the dealer had purchased these items from outside the State of U.P. and was not manufacturer of these items. He submitted, that admittedly Toner, Developer and Fuser oil have not been sold or supplied, fitted in a Xerographic equipment and they were simply consumables purchased from outside the State of U.P., therefore, have been rightly assessed the tax and Tribunal has illegally deleted the tax on their turn over.

6. Learned counsel for the dealer submitted that the eligibility certificate was issued for Xerographic equipment and system and the installation kit was the part of the system. He submitted that all the four items were essential for the operation of the Xerographic equipment and without these four items, system was not complete and being part and parcel of the system Toner, Developer and Fuser oil were also exempted under the eligibility certificate. He submitted that Photo receptor is a metal drum coated with selenium. He refers Encyclopedia Americana International Edition, in which the use of the Photo receptor and toner is mentioned below.

"In machines produced by Xerox, the charged image is formed on the surface of a metal drum coated with selenium. The image is made visible by the application of, a plastic powder, called toner, that has been given the opposite electrical charge, and is thus attracted to the charged image on the drum. The toner image is then transferred to plain, uncoated paper by the attraction of another opposite charge placed behind the paper. The toner is fused on the paper by heat to produce a permanent image. In electrostatic copiers made by other manufacturers'', special paper coaled with zinc oxide is used, and the charged image is created directly on the paper. Totter is then applied and fused into place."

7. I have perused the order of Tribunal and the authorities below.

8. Learned Standing Counsel produced the record. In the record few copier of the bills, raised by the dealer are available. I have seen those bills. One of the bill is reproduced as below:

Customer Name & Address Invoice No. RRO/444 DT.2.7.86 Controller of Stores, South Ex. Gate Pass No. 1205 DT." Eastern Railway, Gardan Non-Ex.Gate Dt." Reach Pass No. 150 Dt." Calcutta-70003 Transporter NTTC Dt." L.R. No. 905 Dt." Form/Entry Permit No. Dt." Payment Due Control No. CAO/207 Date Dt. 25.6.86 Installation 1986 S/8386/6006-7170/71712 Adresws Dt. 20.6.86 Kharagpur Rly. P.O. Ref ... Workshop South Eastern Rly Inst. Rep. Ref... Dt." Kharagpur Distt. Midnapore.

Description Qty. Unit Price Amount Rs. Rs.

Modi Xerox Model 1025 R/E 1:1 One 88,500.00 Machine SR. NO. 2900334437 9,500.00 ---------- Less Discount 79,000.00 79,000.00 9,000.00 9,000.00 Installation Kit Semi Automatic Document Feeder (SADF) SR. No. ... ... OCTROI & OTHER LOCAL LEVIES (CHARGED EXTRA AS APPLICABLE) TOTAL INVOICE VALUE 88,000.00 LESS ADVANCE RECEIVED .... NET AMOUNT PAYABLE 88,000.00

NET AMOUNT PAYABLE IN WORDS RS. Ninetynine Thousand Four Hundred fifty only.

(SUBJECT TO TERMS & CONDITIONS ON REVERSE)

for MODI XEROX LIMITED

U.P. SALES REGN. NO. RR 0062946 C.S.T. REGN NO. RR 5017286 S.T. EXEMPTION REF. 8170 DT. 8/2/85 REGISTERED OFFICE: Modipuram 25O110. Merrut. UP. (India)

CUSTOMER DELIVERY NOTE

Dear Customer

MACHINE SERIAL No. ...

Please accept delivery of your ...

MODI XEROX 1025R/E/1:1

Machine with/without SADF. Kindly check that the items (all bearing the identification alphabets AF) Shown on the right have been correctly delivered Please then sign this form and return it to the Transporter You are further requested to Contact the MODI XEROX Service Department at MODI XEROX LIMITED...

on telephone Nos. ... Customer''s Signature & Delivery Date Who will then fully install your machine.

Please do not open any of the packages until

The arrival of our engineer. Name Capitals & Designation

9. Perusal of the bill shows that firstly the value of the machine was charged, in which the discount was reduced and, thereafter, the separate amount for installation kit was charged. No reason has been explained that if the installation kit was the part of the machine, why the price of installation kit was charged separately. It is clear fiat price for a complete machine was separately stipulated and thereafter, price oil installation kit was also separately stipulated and accordingly charged separately other than the price of machine The installation it had not been treated as a port of the machine. If it would have been a pan of the machine, separate price for their installation kit would not have been charged. It

is further stated that the installation kit consist of mainly Toner, Developer and Fuser oil, they were neither part nor accessories. They were only consumables. It may be true that for the operation of the machine, Toner, Developer and Fuser oil may be required but they can not be treated, as part arid parcel of the machine and system. Without these three items, machine was complete by itself for the operation of the motor-vehicle, petrol/diesel mobile oil brake oil etc. are required but they are only consumables and are neither part not accessories, with the same analogy Toner. Developer and Fuser oil may be required for the operation of the Xerographic machine to get photostat copy but they can not be said to be part of machine or system.

10. Submission of learned counsel for the opposite part is that Toner, Developer and Fuser oil being necessary for the operation of the Xerographic machine are the part of the system and since the eligibility certificate was issued for Xerographic Machine and system, these items are also covered under the eligibility certificate, has so force. System has been defined by the various dictionaries are as follows:

"Encyclopedia Dictionary defines system- "as a plan or scheme according to which things are connected or combined into a whole; an assembledge."

Black Dictionary defines system as-"Orderly combination or arrangement as of particular parts or elements into a whole, any methodic arrangement of parts."

New International Webster''s Dictionary Comprehensive Dictionary defines -"Orderly combination or arrangement as of parts or element into a whole."

11. In the present case Toner, Developer and Fuser oil were supplied separately in installation kit for which separate price was charged and not connected and attached with Xerographic machine and combined with Xerographic machine. In my opinion, it could not be because all the three items are neither part nor accessories but are consumables only. System has to be read alongwith machine. It means a composite integrated assembly or a combination in which various individual components or accessories are connected or attached making it a connected arrangements. It does not include anything, which is not connected or attached or integrated. Therefore, these three items are not covered even in the system also.

12. It is also pertinent to state here that when the applicant company intended to start the manufacturing of Toner. Developer and Fuser oil, they moved an application with the Government vide their letter dated 126 (82}Comp. Dated 09.04,1985 for the amendment in the Original Industrial Licence for the incorporation of Toner and Developer. On the application of the dealer, Toner and Developer was added in their Industrial Licence. In pursuance thereof, separate unit was established for the manufacturing of Toner and Developer and the exemption on the turn over was sought u/s 4-A of the Act treating these two hems .as different product, than the items manufactured earlier. After the production, the first sale of Toner was on 01.10,1986 and the Developer was on

19.03.1987. This fact is clear from a letter dated 20.10.1989 written by director of the company to the Director of Industries while claiming the exemption on the turn over of toner and developer separately. Few relevant paragraphs of the said letter are as below:

"Here, it may be clarified that Toner and Developer are chemical preparations involving a technology and process entirely different from those applicable to Copier machine which, as is evident, are electronic equipments. Each belongs to a different product group. Even the sales tax laws all over the country classify them under different heads for purposes to tax levy. In U.P., machines fall under entry 45 and Toner and Developer under entry 21 of the Schedule to the U.P.S.T. Act.

Therefore, considering that Toner and Developer are a different product manufactured in a new unit, though set up adjacent to an existing unit owned by the same person, MX applied for eligibility certificate/exemption from sales to u/s 4-A for a period of six years, commencing from the sale of first sale under ''Notification No. ST-II-604/X-9(208)1961-U.P. Act XV-4S-Order dated 29.1.85 (Annexure ''G'') in respect of Toner and Developer.

It appears, under some misconception the authorities instead of exempting the sales of Toner and Developer from Sales Tax for a period of six years commencing the date of their ''first sale'' in terms of Annexure ''G'', amended the certificate Annexure ''B'' and made the period of exemption coinside with that of copies machines.

The effect of such an amendment is that Toner and Developer on the one hand and Xerographic Equipment and Systems (copies machines) on the other have to all intents and purposes been accorded the status of "Same Goods" within the meaning of clause (b) of Expl. (1) to Section 4A and hence the anomaly. It is significant to note that conditions of grant under the two notifications are different and the two cannot be clubbed and mixed up as has been done in this case. It is therefore, submitted that the impugned modification of the exemption Order dated 8.2.1995 is wrong because;

i) ''Xerographic Equipment and Systems'' (copies machines) are different in character from ''Toner and Developer''. While copies fall under entry 45 (office machines and apparatus) of the Schedule to U.P.S.T. Act, Toner and Developer being chemical will be the subject matter of entry 21 to the Schedule.

ii) Toner and Developer being new products whose production having commenced in the new unit after the promulgation of notification No. ST II-604/X.9(208)-1981-UP Act XV-48-Order-85 dated 29.1.1985, are entitled to separate exemption for a period of six years from the date of first sale. It may be mentioned that for the purposes of this notification, the dated of commencement of production is not at all relevant if sales have taken place within six months of the production.

(iii) Toner and Developer being new product are entitled to exemptions for afresh period of six years commencing the date of first sale in terms of Annexure ''E'' read with Section 4A.

In view of the facts and circumstances mentioned above, it is submitted that this exists as an error apparent on the face of record which needs to be rectified by granting exemption to Toner and Developer for a period of six years commencing from the date of first sale which in the case of Toner is 1.10.1986 and in the case of Developer in terms of notification at Annexure ''E''."

13. The averments made in the aforesaid letter shows that the dealer itself treated toner and developer as separate independent new product and not as a part and parcel of the Xerographic machine and system.

14. For the reasons stated above, I am of the view that the Tribunal has erred in treating Toner, Developer and Fuser oil as the part of the Xerographic machine and system and allowed the exemption on the turn over of said goods.

15. In the result, all the revisions are allowed. Order of Tribunal is set aside and the turn over of Toner. Developer, and Fuser oil are held liable to tax.