
(1996) 01 P&H CK 0002

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Ref. No. 37 of 1996

The State of Haryana

APPELLANT

Vs

Rajindra Electric Store

RESPONDENT

Date of Decision : 08-01-1996

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 42(1)

Citation : (1997) 1 ILR (P&H) 179 : (1996) 113 PLR 588

Hon'ble Judges : N.K. Sodhi, J; Ashok Bhan, J

Bench : Division Bench

Advocate : Arun Nehra, A.A.G, for the Appellant; Nemo, for the Respondent

Judgement

Ashok Bhan, J.—Member Sales Tax Tribunal, Haryana, (hereinafter referred to as the Tribunal) has referred the following question of law at the instance of the department for the opinion of this Court u/s 42(1) of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the Act):-

"Whether on the facts and in the circumstances of the case and having regard to the provisions of Entry No. 18 of Schedule "A" to Haryana General Sales Tax Act 1973 the dealer was liable to pay sales tax on fluorescent tubes starters, chokes and Phattis @ 10% even when these are sold as individual items instead of sale of complete appliance?"

2. Respondent (hereinafter referred to as the assessee) is a dealer in electrical goods including chokes, phatties, starters and fluorescent tubes. During the assessment year 1974-75 assessee had shown the sale of fluorescent tubes in the books of accounts liable to tax at the rate of 10% and the sale of chokes phattis and starters was shown in the books of accounts liable to tax at the rate of 6% taking them as general goods. Under entry 18 of Schedule "A" to the Haryana General Sales Tax Act, 1973, 10% tax is liable on the sale of electrical appliances. Entry 18 in Schedule "A" as it existed in the year 1975 is reproduced below :-

"Electric appliances, excluding electric bulb, electric motors, motor starters and mono block pumping sets."

3. Assessing Authority while framing assessment for the year 1974-75 did not accept the contention of the assessee that the sale of chokes, phattis and fluorescent tubes even when sold individually are not electrical appliances and held that fluorescent tubes, chokes, phatties and starters even when sold separately are electrical appliances being integral part of the same and accordingly levied tax at the rate of 10% thereon under Entry 18 to Schedule "A" of the Act.

4. Assessee challenged the said order before the Deputy Excise and Taxation Commissioner (Appeals) Ambala who relying upon the decision of Gujrat High Court in *Star Radio Electric Co. v. Commissioner of Sales Tax, Gujarat* 1971 (27) S.T.C.367 accepted the appeal holding that electrical appliances are devices which serve a particular purpose; that the purpose of fluorescent tubes is to dispel darkness and fluorescent by itself can serve the purpose dispelling the darkness but it cannot be said that a starter, choke or Phatti can dispel darkness. It was held that they were in a way accessories or component parts of the electrical appliances known as fluorescent tubes and that the assessing authority was not justified in taking the sale of chokes, phatties and starters at the rate of 10% as these were not electrical appliances.

5. Joint Excise and Taxation Commissioner (I) exercising revisional powers examined the legality and propriety of the order of the Deputy Excise and Taxation Commissioner (Appeals). After affording an opportunity of hearing to the assessee, the revisional authority quashed the order of the appellate authority by holding that since without the use of choke, phatti and starter, the object of light cannot be achieved from the electrical tube and, therefore, chokes, phatties and starters were integral part of the electrical tubes and even if their sale was made separately, such sales were taxable at the rate of 10%. It was further held that chokes, phatties and starters cannot be used for any other purpose than the electrical tubes for dispelling darkness. Order of the appellate authority was set aside and that of the assessing authority upheld. Assessing Authority was directed to calculate the tax at the rate of 10% on the sale of phatties chokes and starters.

6. Assessee assailed the order of the revisional authority in appeal before the Tribunal. Tribunal relying upon *Star Radio Electric Co's* case (*supra*) held that the component parts of an electrical appliance separately sold would not be an electrical appliance. Chokes, starters and phatties would only be component parts of an electrical appliances and therefore, not liable to tax at the rate of 10%.

7. Aggrieved against the aforesaid order of the Tribunal, department filed an application u/s 42 (1) of the Act for making reference of the aforesaid question of law for the opinion of this Court which was granted and that is how this reference

has come up for hearing before this Court.

8. We have heard the arguments of Additional Advocate General, Haryana, who appeared for the department. There is no representation on behalf of the assessee in spite of service.

9. Chokes, phatties and starters do not serve any purpose by themselves and are meant to an end and not the end itself. These items do not by themselves produce light whereas fluorescent tubes with the help of these items can produce light. Fluorescent tube, therefore, would be electrical appliance when sold along with these component parts. Chokes, Phatties and starters are the accessories/ component parts of electrical appliances. Electrical appliances are chargeable to tax at the rate of 10% under Entry 18 of Schedule "A" of the Act and not the component parts/accessories to the electrical appliance. If the component parts/accessories are sold as a composite part of the electrical appliance then it can be termed as an electrical appliance and chargeable to tax as a whole but if the competent parts/accessories are sold separately, they cannot be termed as electrical appliances so as to fall within Entry 18 to Schedule "A" of the Act. Wherever the legislature intended to charge component parts under Schedule "A" it specifically mentioned the same against the relevant entry. For example, Entry 3 of Schedule "A" reads "Refrigerators and Air Conditioning plants and component parts thereof." Against Entry 18 of Schedule "A" it has not been mentioned that component parts of an electrical appliance are included in Schedule "A".

10. Gujarat High Court in Star Radio Electric Co.'s case (supra) considered as to whether fluorescent tube without its accessories namely; without a choke, starter and phatti is domestic electrical appliance within the meaning of Entry 52 of Schedule "B" to the Bombay Sales Tax Act, 1953. After referring to the dictionary meaning of the word "appliance" as given in the Oxford Dictionary;

"a thing applied as a means to an end, apparatus."

Encyclopaedia Americana:

"Electrical appliance : a term given to many devices operated by electricity which are used in the home for domestic purposes. Such appliances may be divided into two general classes; those operated by heat and those operated by power. In such appliances as the toaster, grill, flat-iron waffle iron or even the electric current heats a wire or conductor to red heat, and the heat thus produced performs the function of the device..... Where power is required to operate appliance such as washing-machine, vaccum-cleaner, refrigerator fan, or water pump, a small motor operated by electricity is used. Corpus Juris Secundum:

"Appliance" has been defined or employed as meaning a mechanical tiling, an apparatus or device; an instrumental means, aid, or appurtenance; a thing applied or used as a means to an end, either independently or subordinately; something applied or used directly."

It was concluded by their Lordships as under :-

From these meanings given by different dictionaries it becomes clear that (1) an "appliance" is quite distinct from "materials" from which it is made, and (2) an "appliance", as an apparatus, device or instrument, is "a means to an end". These two aspects should be borne in mind while considering whether a particular article can be called an appliance. The first aspect seeks to take an integrated view of the Article concerned and says that materials or component parts of an appliance should not be mistaken as tantamount to the appliance itself. The second aspect emphasises the fact that the importance of an appliance consists in its utility to serve the object for which it is possessed.

A device is used "as a means" only when it serves some purpose. If it does not serve any purpose, it ceases to be a "means". Therefore, its service "as a means to an end" is its main feature which brings it within the definition of the expression "appliance". This is the second aspect of the matter which has been considered in an American decision in *Honakar v. Pocatalico District Board of Education* 24 S.R. 544. We have not got before us the law report in which this case is reported, but at the foot-note No. 25 in the above volume of *Corpus Juris Secundum* at page 80 we find that in that case, the court considered an "educational appliance" and observed that an "educational appliance" is something necessary or useful to enable the teacher to teach the school children and "must be shown to be suitable and reasonably necessary for the use of the public schools". This decision obviously emphasises the utility aspect of the appliance. As a matter of fact, both the aspects discussed above require us to take an integrated view of the whole apparatus or device which is under consideration. It is, therefore, now necessary to consider whether a fluorescent tube, without a choke and a starter, can be considered an appliance if viewed from these two aspects. Before actually discussing this question, it would be proper to know what a fluorescent tube is and what service it is expected to render."

Thereafter it was concluded that in order to bring a particular articles within the meaning of the word "appliance" the article should be capable of rendering the desired service. The object of fluorescent tube is to dispel darkness. If fluorescent can dispel darkness without its accessories i.e. choke and starter then the same would be an electrical appliance. If it was incapable of dispelling darkness without the choke and starter then it was not electrical appliance. It was held that standing alone the fluorescent tube, choke and starter would be merely different parts of the electrical appliance and, therefore, would not be covered under Entry 52 of Schedule "B" to the Bombay Sales Tax Act 1953. Para 9 of the said judgment reads as under :-

"As stated above, we have come to a conclusion that in order to bring a particular article within the meaning of the word "appliance" the article should be capable of rendering the desired service. Therefore, the most pertinent question which arises to be considered is, whether a fluorescent tube can render the

desired service without the aid of a starter and a choke. If it is found, as is presumed by the Tribunal, that a starter and a choke are playing a definite role in supplying the fluorescent light, which is emitted through the tube, then it is difficult to ignore this role. If a starter and a choke are the essential parts of this appliance then it would follow that the fluorescent tube, without these two articles would not be capable of rendering the desired service, namely dispelling darkness and giving fluorescent light. If a tube without a starter and a choke cannot render this service it ceases to be "a means to an end", it is difficult to hold that this appliance comes within the meaning of entry 52 of Schedule B of the Act of 1953. However, if it is found that the fluorescent tube without a starter and a choke can give as efficient service as is expected of a fluorescent tube then obviously a starter and a choke are not essential articles for achieving the purpose in question. In that case the fluorescent tube, can be called "electrical appliance. In other words, if the object of fixing the fluorescent tube is to dispel darkness and to obtain fluorescent light and if this object is served only by the combined action of starter, choke and fluorescent tube then all the components, which contribute to the combined action and to the achievement of the object would constitute an appliance. But standing alone all of them would be merely different spare parts of that appliance."

11. No exception can be taken to the reasoning given in this judgment, accordingly we fully concur with the reasoning adopted by their Lordship of the Gujarat High Court in *Star Radio Electric Co.'s* (supra) and adopt the same. In view of this, the question referred to us is answered as under :-

"Fluorescent tube, starter, choke, and Phatti when sold separately instead of sale of complete appliance would not be covered under Entry 18 of Schedule "A" to the Haryana General Sales Tax 1973, and the dealer would not be liable to pay sales tax on these items when sold separately at the rate of 10%."

No. costs.