(1983) 07 AHC CK 0015

Allahabad High Court

Case No: Sales Tax Revision No. 441 of 1982

Hind Lamps Limited		APPELLANT
	Vs	
Commissioner of Sales Tax		RESPONDENT

Date of Decision: July 27, 1983

Acts Referred:

- Central Sales Tax Act, 1956 - Section 11, 15

Citation: (1984) 57 STC 303

Hon'ble Judges: B.N. Sapru, J

Bench: Single Bench

Advocate: Bharatji Agrawal, for the Appellant; Standing Counsel, for the Respondent

Final Decision: Partly Allowed

Judgement

B.N. Sapru, J.
This is a revision by the assessee and pertains to the assessment year 1974-75.

2. The assessee is a manufacturer of bulbs, etc. There are only two disputes in the case.

(1) Whether the sale of coal-dust by the assessee is liable to be assessed to sales tax ?

(2) Whether the Tribunal was justified in assessing the tax on the sales of aluminium and brass caps made from the bulbs at the rate of 12 per cent treating them as a component of bulb instead of an unclassified item ?

3. I will take up the first question first.

4. The assessee purchased coal which it used in the its factory. The residue of the coal is left which is sold by the assessee. The assessee filed invoices which have been accepted. The invoices showed that the assessee had purchased coal from M/s. Karam Chand Thapar and Brothers (Coal Sales) Limited, Kanpur, which was a

registered dealer in Uttar Pradesh.

5. The Tribunal found that the invoices showed that the goods were directly purchased by the assessee from outside Uttar Pradesh on order of M/s. Karam Chand Thapar. The assessee paid 4 per cent sales tax on the purchase of coal.

6. The Tribunal held that the coal-dust which was sold by the assessee, was not a locally purchased coal or coal-dust and no State sales tax had been paid on it. Consequently, it held that the assessee was liable to pay the sales tax on the sales of the coal-dust.

7. The contention of the learned counsel for the assessee is that u/s 15(1) of the Central Sales Tax Act it is provided that every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely, the tax payable under the law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage.

7. Clause (a) of Section 15 of the Central Sales Tax Act reads as under :

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale of purchase price thereof, and such tax shall not be levied at more than one stage.

8. It is not disputed that the coal is a classified item. It can also not be doubted that the coal or the coal-dust which is the residue of coal, would be declared goods. The assessee has paid 4 per cent Central sales tax through the agency of M/s. Karam Chand Thapar and without determining whether M/s. Karam Chand Thapar & Brothers (Coal Sales) Ltd. had paid U. P. sales tax the Tribunal erred in holding that the sales of coal-dust by the assessee would be subject to tax as there could be not two impositions of U. P. sales tax on sales of imported coal.

9. The next question is whether the sales of aluminium and brass caps by the assessee could be subject to 12 per cent tax or they were taxable as unclassified items.

10. The argument on behalf of the assessee is that the caps sold by the assessee could not be held to be components of the bulb, as if the bulbs were dismantled, the cap, when taken out, would be something different from the cap as it was sold by the assessee. It has been urged that before the caps can be fitted on the bulbs, the caps are required to undergo a process in which insulation is done before they can be used for manufacture of the bulbs. It is also pointed out that the word "manufacture" has, now under the U. P. Sales Tax Act, a very wide definition and on that basis it is argued that the caps sold by the assessee are subject to a manufacturing process before they are used in the manufacture of bulbs.

11. On the other hand, the learned Standing Counsel has argued that the caps sold by the assessee are subjected to a maximum processing before they are fitted on to the bulbs and they continue to be caps despite the processing done by the manufacturer of bulbs.

12. The learned counsel for the assessee has relied upon a number of decisions in support of his contention.

13. He placed reliance upon a decision of this Court in the case of Commissioner of Sales Tax Vs. Punjab Gramophone House, . The question in that case was whether gramophone needle can be treated as a component part of gramophone under Notification No. ST-1738/X-1012-1963 dated 1st June, 1963, issued u/s 3-A of the U. P. Sales Tax Act, 1948. The entry ran as "gramophones and component parts thereof and records". It was held that the gramophone needles were not integral component of gramophone though they were required to play a record on gramophone. The Bench observed that;

In case gramophone needles fall within the term ''gramophones and component parts thereof, they would be taxable under the notification u/s 3-A at the rate of 10 paise per rupee. On the contrary, if they do not answer the description, it will be taxable as an unclassified item at a lower rate of tax. As the words ''component parts'' have been used in reference to gramophones, they refer only to such parts as are integral to the gramophone and go to constitute the mechanical contrivance known as ''gramophone''. One of the simple tests to be applied in order to determine whether a particular part is a ''component part'' of the complete machine is to see as to whether in case the machine is disassembled, the part in question would be one of the parts found on disassembling.

14. Applying the test, it was held that the gramophone needle would not fall within the category of "component parts of gramophone" as they do not constitute one of the integral parts which combine to make up a gramophone.

15. This case cannot be of any assistance to the assessee in view of the fact that the Court found that if a gramophone is disassembled, a needle would not be found whereas if a bulb is disassembled, the cap would be there.

16. The next decision relied upon by the learned counsel for the assessee is of the Supreme Court in the case of State of U. P. v. Kores (India) Ltd. 1977 UPTC 46 . In that case the Supreme Court held that the typewriter ribbon is an accessory and not a part of the typewriter within the meaning of Notification No. ST-1738/X-1012-1963 dated 1st June, 1963. The Supreme Court in that case had cited with approval the decision of the High Court of Mysore in The State of Mysore Vs. Kores (India) Ltd., wherein it was held :

Whether a typewriter ribbon is a part of a typewriter is to be considered in the light of what is meant by a typewriter in the commercial sense. Typewriters are being

sold in the market without the typewriter ribbons and therefore, typewriter ribbon is not an essential part of a typewriter so as to attract tax as per entry 18 of the Second Schedule to the Mysore Sales Tax Act, 1957.

17. As regards the typewriter ribbon the Supreme Court observed that :

Regarding ribbon also to which the abovementioned rule of construction equally applies, we have no manner of doubt that it is an accessory and not a part of the typewriter (unlike spool) though it may not be possible to use the latter without the former. Just as aviation petrol is not a part of the aeroplane nor diesel is a part of a bus in the same way, ribbon is not a part of the typewriter though it may not be possible to type out any matter without it.

18. This decision is also of no assistance to the assessee. The Supreme Court found that the ribbon was not a part of the typewriter. It was not possible to type out any matter without the ribbon. In the case before us, there can be no bulb without a cap.

19. The last decision relied upon by the learned counsel for the assessee is Agarwala Brothers Vs. Commissioner of Sales Tax, . The controversy in that case was whether the diesel engines sold by the assessee could be held to be the component parts of a motor vehicle. The facts in the words of the Division Bench of this Court were as follows :

Admittedly, the diesel engines sold by the petitioner could not be used for driving motor vehicles unless they were changed and converted to such purpose. For that, conversion kits were required. It was with the assistance of conversion kits that they were suitably converted or adapted for the purpose of driving motor vehicles. Apparently, in their unchanged or original condition they could not be used for that purpose. It is also not shown what is the degree of conversion which was necessary in order to make the diesel engines sold by the petitioner capable of use for driving motor vehicles. There is a complete absence of materials in that regard. The Judge (Revisions) has expressed the view that diesel engines are ordinarily used in motors and motor lorries. That may be so, but the question here is whether the diesel engine sold by the petitioner was capable of use in a motor vehicle and was a component part of a motor vehicle In Commissioner of Sales Tax Vs. Pritam Singh, we held that an article is a component of another when it forms a constituent part of that other and is essential for completing it. That presumes necessarily that the article as such must in its condition and functioning be capable of use in that other.

20. This case is also of no assistance to the assessee because the Bench has observed that the article is a component part of another when it formed a constituent part of that other and is essential for completing it.

21. The cap in the instant case is a constituent part of the bulb and is essential for completing it.

22. However, the learned counsel relied upon the following sentence from the judgment :

That presumes necessarily that the article as such must in its condition and functioning be capable of use in that other.

23. He stressed that as the caps sold by the assessee have to undergo certain processing which would fall within the manufacturing process within the U. P. Sales Tax Act before they are fitted on to the bulbs, the caps cannot be treated as a component part of the bulb.

24. It has not been shown that the caps sold by the assessee were capable of any other use than the use in completion of the bulbs. It is true that the caps made by the assessee are required to undergo some processing before they are fitted on to the bulbs. The basic shape and form of the caps are not shown to have undergone any drastic change. If the bulbs were to be disassembled, the caps would emerge as caps and nothing else and would be easily identifiable with the caps sold by the assessee. At least, the contrary has not been shown.

25. The answer to this line of argument is that the caps sold by the assessee change before they are fitted on to the bulbs. It is not suggested that they cannot be recognised in their original shape or form after they are fitted on to the bulbs. A minor process, even if it can be termed as a manufacturing process, does not alter the caps into something different. The caps continue to be caps and are essential for the completion of bulbs and consequently it appears that the caps are component part of the bulb.

26. In the result the revision is partly allowed, the order of the Tribunal is modified to the extent that the -ales of coal-dust by the assessee would not be held liable to tax. The findings of the Tribunal in regard to the caps sold by the assessee are confirmed. The papers will go back to the Tribunal u/s 11(8) to make appropriate orders. The parties will bear their own costs.