

(2003) 04 AHC CK 0240

Allahabad High Court

Case No: Trade Tax Revision No. 702 of 2002

Agilent Technologies India Pvt.
Ltd.

APPELLANT

Vs

Commissioner Trade Tax

RESPONDENT

Date of Decision: April 28, 2003

Acts Referred:

- Uttar Pradesh Trade Tax Act, 1948 - Section 3(A)

Citation: (2004) 138 STC 693

Hon'ble Judges: Prakash Krishna, J

Bench: Single Bench

Advocate: Bharat Ji Agrawal, Piyush Agarwal and Mukul Gupta, for the Appellant; M.R. Jaiswal, for the Respondent

Final Decision: Allowed

Judgement

Prakash Krishna, J.

The question involved in the present revision is whether the ECG machines, defibrillators, colour doppler systems, patient monitoring equipments, hand held multimeter, RF network analyzer, communication performance analyzer, spectrum analyzer, mini OTDR are electronic goods and are liable to be taxed as such or are unclassified items. The case of the assessee is that these goods are electronic goods and are liable to be taxed under Notification No. 3402 dated October 1, 1994. Entry 74(a)(iii) of the said notification reads as follows :

Description of goods	Rate of tax
"(iii) All other electronic goods not specified anywhere else in the Schedule or in any other notification.	4 per cent.

2. The dispute relates to the assessment year 1999-2000. The applicant is a Company incorporated under the Indian Companies Act, 1956 and is carrying on the business of purchase and sale of electronic goods, which includes ECG machines, defibrillators, colour doppler, Patient monitoring equipments, etc. The assessing officer by the order dated March 14, 2000 has accepted the account books of the applicant but rejected its contention that the aforesaid goods are electronic goods. It was found by the Assessing Officer that the aforesaid goods are taxable as unclassified item at the rate of 10 per cent. It was also found by him that the applicant is a dealer of testing and measuring machines/equipments. The applicant had placed reliance upon certain notifications issued by the Information and Technology Department of the Government of India and other written literature to show that the goods in question were electronic goods, but without any success. The first and the second appellate authorities have concurred with the view of the assessing officer taken in the assessment order.

3. Heard Sri Bharat Ji Agrawal Senior Advocate assisted By Sarvasri Piyush Agarwal and Mukul Gupta and Sri M.R. Jaiswal Standing Counsel for the Department.

4. The main contention of Sri Bharat Ji Agrawal is that in all the aforesaid goods microprocessor is used and, therefore as held by the honourable Supreme Court in the case reported in [M/s. B.P.L. Ltd. Vs. State of A.P.](#), the goods in question are electronic goods within the meaning of the aforesaid notification. He also invited my attention to the order of the Deputy Commissioner (Appeals). In the said order the argument that in all these machines microprocessor/micro control circuits are there and these machines were on electronic system was noticed by the Deputy Commissioner (Appeals), but by misinterpreting the judgment of the Supreme Court it was held by him that under the U.P. Trade Tax Act, 1948 only consumer electronic goods are electronic goods. Since the applicant is not a dealer of consumer electronic goods but is a dealer of medical equipments or machines or testing equipments, the goods in question cannot be called electronic goods.

5. In the Concise Oxford Dictionary "Electronic" has been defined as "having components such as micro-chips and transistors and control and direct electronic currents".

The word "electronic" has been defined in Webster's Encyclopedic Unabridged Dictionary of the English Language in middle column on page 460 ; "of or pertaining to electronic or to devices, circuits, or systems developed through electronics". The word "electronics" has also been defined on the same page "as the science dealing with the development and application of devices and systems involving the flow of electrons in a vacuum in gaseous media, and in semi conductors."

6. He invited my attention towards the Gazette dated October 10, 1995 issued by the State Government under the Central Sales Tax Act in exercise of powers u/s 8(5) of the Central Sales Tax Act. In the said notification it has been provided that tax shall

be payable at the rate of 2 per cent on electronic goods. The attention was also invited towards the function of the various goods in question :

"A. ECG machines are for obtaining the electro cardiograms. The equipment is microprocessor based. They have electronics circuits for analysing, displaying and storing the signals. This equipment is an electronics goods.

B. Defibrillators are used for defibrillating the heart in case of any emergency by generating the energy of sufficient magnitude. This equipment is widely used for healthcare. This equipment is microprocessor based. They have electronics circuits for analysing, displaying and storing the signals. This equipment is an electronics goods.

C. Colour doppler systems are the electronic instruments used for cardiac monitoring of patients. These systems measure the various cardiac parameters and produce the image of the internal activity of organs such as heart, etc. This equipment is micro-processor based. They have electronic circuits for analyzing, displaying and storing the signals. This equipment is an electronic goods.

D. Patient monitoring equipments (Viridia family) is also used for monitoring the various cardiac parameters. This equipment is microprocessor based they have electronic circuits for analysing, displaying and storing the signals. This equipment is an electronic goods.

E. Hand held multimeter is used for measuring basic electronic parameters such as voltage, current, resistance, etc. This equipment is electronic equipment, with built in microprocessor controller circuits for the intended measurements of various signals in the electronic systems.

F. RF network analyser is used for characterising electronic devices and components. This instrument again measures the amplitude as a function of frequency. This equipment is electronic equipment, with built in microprocessor controlled circuits for the intended measurements or various signals in the electronic systems.

G. Communication performance analyser is used for testing the modern digital communication networks. This basically measures bit rate, etc., on the digital stream. This equipment is electronic equipment, with built in microprocessor controlled circuits for the intended measurements of various signals in the electronic systems.

H. Spectrum analyzer is used for characterizing the signals. This measures the frequency component, as a function of amplitude. This equipment is electronic equipment, with built in microprocessor controlled circuits for the intended measurements of various signals in the electronic systems.

I. Mini OTDR is the instrument used for characterising the faults in the fiber optic networks. This is a portable electronic instrument. This equipment is electronic

equipment, with built in microprocessor controlled circuits for the intended measurements of various signals in the electronic systems."

7. All India Institute of Medical Sciences by its letter dated January 18, 2001 has certified that the following goods are electronic products :

"1. Colour doppler ultrasound system,

2. Patient monitors,

3. Defibrillators,

4. Foetal Monitors,

5. ECG Machines, and

6. Holter."

8. Similarly the Medical Superintendent of Govind Vallabh Pant Hospital, New Delhi, has issued the certificate. Similar certificates have been issued by Electronic Trades and Technology Development Corporation, a Government of India Enterprise. Reliance was also placed upon a certificate issued by the Government of India, Ministry of Information and Technology dated June 8, 2002 confirming that the following equipments are electronic equipments for medical application :

"1. Colour doppler (Image point HX)

2. Colour doppler (SONOS4500, SONOS5500)

3. Colour doppler (Image point)

4. Patient monitoring equipment (viridia family)

5. Life saving equipments, e.g., Defibrillator (Code Master), ECG."

9. The controversy has been set at rest by the apex Court in the case of B.P.L. Electronics [2001] 121 STC 450. A reading of the case of B.P.L. Electronics [2001] 121 STC 450 shows that the Supreme Court has held that an item can be regarded as an electronic goods if its all functions which are required to be performed or controlled electronically by microprocessor. In the present case voluminous evidence has been filed by the applicant to show that the machineries in question are controlled and run by microprocessor. Attention was also invited towards the written arguments submitted before the Trade Tax Tribunal on behalf of the department. Even in the written arguments it was not disputed by the department that the machines in question are operated through micro-chips or microprocessors. On the other hand it was submitted that by operating the goods in question on electronic system, that is, by applying the electronic semi-conductors and micro chips or microprocessor, the function of the goods became faster, accurate and easier. On application of electronic system in the machines in question the results can be transferred on computer, from where the same can be printed through printer. But by operating

the same on electronic system the main function and object of goods for which the said equipment has been manufactured, are not change or altered. Thus, the case of the department is that by applying the semi-conductors or micro chips the functioning of the goods became faster. The department has not disputed at any stage that the goods in question are not having micro chips or microprocessor.

10. Reliance was also placed upon a division Bench judgment of our court reported in [2003] 131 STC 160 SC; 2003 UPTC 10 (Cannon India Pvt. Ltd. v. Commissioner of Sales Tax). It may also be stated here that for the subsequent assessment year a notice dated February 3, 2003 was issued by the department, for taxing the goods in question as unclassified items, to the petitioner. The said notice was challenged by filing writ petition No. 258 of 2003. A Division Bench of this Court vide its judgment dated March 10, 2003, following the judgment of the Supreme Court in the case of [M/s. B.P.L. Ltd. Vs. State of A.P.](#), quashed the notice and restrained the respondents from realising tax on electronic goods used for medical, testing and measuring purposes as unclassified item.

11. Following the aforesaid judgment, I hold that the goods in question are electronic goods and are covered by entry 74 of the notification dated October 1, 1994 and entry 75(iii) of Notification No. 298 dated January 29, 2000 and are liable to be taxed as such.

12. The revision is allowed and the order of the Tribunal is set aside. Any excess amount realised by the department shall be refunded to the applicant in accordance with law preferably within a period, of two months from today.