Concap Capacitors Vs State of Andhra Pradesh and Another

Court: Andhra Pradesh High Court

Date of Decision: Oct. 31, 2005

Acts Referred: Andhra Pradesh General Sales Tax Act, 1957 â€" Section 9(1)
Central Sales Tax Act, 1956 â€" Section 8(5)
Income Tax Act, 1961 â€" Section 54E, 54E(1)

Citation: (2006) 148 STC 398

Hon'ble Judges: S. Ananda Reddy, J; B. Sudershan Reddy, J

Bench: Division Bench

Advocate: S.R. Ashok appearing for Y. Venkatesh Reddy, for the Appellant; K. Raji Reddy and A.V. Krishna Koundinya, Special Standing Counsel for Commercial Taxes and Special Government Pleader for Taxes, for the Respondent

Final Decision: Allowed

Judgement

S. Ananda Reddy, J.
These tax revision cases are at the instance of the dealers, who are the manufacturers as well as the traders

registered under the provisions of the Andhra Pradesh General Sales Tax Act, 1957 (for short, ""the APGST Act"") as well as under the Central

Sales Tax Act, 1956 (for short, ""the CST Act""), directed against the orders of the Sales Tax Appellate Tribunal where the Tribunal negatived the

claim of the dealers that the item, which they are manufacturing or dealing with, viz., capacitors, is exigible to tax at concessional rate as ""electronic

goods"" in terms of various Government Orders issued from time to time. As the common issue is involved in all these matters, they are disposed of

by this common judgment for the sake of convenience.

2. The common issue that arises for consideration is whether the ""capacitors"" are to be treated as ""electronic goods"" within the meaning of that

term under various Government Orders, viz., G.O. Ms. No. 864, dated September 7, 1993, G.O. Ms. No. 252, dated May 19, 1995 and G.O.

Ms. No. 653 dated July 31, 1997.

3. The assessing authorities in some of the cases while framing assessments accepted the claim treating the ""capacitors"" as ""electronic goods"" and

levied concessional rate of tax, while in some of the cases, the assessing officers negatived the claim as to the concessional rate of tax leviable on

the ""capacitors"" sold by them. Where the assessees are not successful before the assessing authorities, they have preferred appeals, while in the

cases where the assessing authorities accepted the claim of the dealer the assessments were revised by the Deputy Commissioner (CT). Similarly,

where the appeals were allowed, such orders were revised by the appropriate revisional authority and finally all the matters went in appeals before

the Sales Tax Appellate Tribunal. Though the Appellate Tribunal disposed of the appeals under different orders, but the conclusion is identical

negativing the claim of the dealers that ""capacitors"" are not ""electronic goods"", but are to be treated as ""electric goods"" exigible to normal rate of

tax.

4. A perusal of the orders of the Tribunal shows that the Tribunal did not confine its consideration to whether the item in question falls within the

ambit of the orders issued by the Government for the concessional rate of tax, but went beyond the notification and tried to consider the issue by

determining the nature of the goods whether it is ""electronic goods"" or electronic component and in that process held that the ""capacitors"" are not

electronic goods"". In fact, the Tribunal in one of its orders has gone to the extent of distinguishing the judgment of this Court in State of A.P. Vs.

Amara Raja Batteries, for illogical reasons, which the Tribunal is not expected to do so. In fact, in case of M/s. Garg Enterprises the Tribunal

having concluded that it is only an electric devise and therefore, cannot be classified as electronic item either technically or as understood by a

common man of ordinary prudence, but, however, again remanded to ascertain whether all the ""capacitors"" sold by the dealers were used in the

manufacture of electronic equipment and if so, in respect of such ""capacitors"" the dealers are entitled for the benefit of the notification by classifying

them as electronic items. The said findings are assailed in the present batch of cases.

5. The learned Senior Counsel Sri S.R. Ashok, appearing for the dealers contended that the Government with an intention to encourage the

industries, especially the industries that are manufacturing particular type of goods, which would come within the definition of the term ""electronic

goods"", have issued orders from time to time giving concessional rate of tax instead of normal rate as was fixed under the Schedules to the Act.

According to the learned Counsel, when once the Government has issued orders purporting to grant the benefit of concessional rate of tax, the

same has to be construed liberally so as to serve the purpose for which they are issued. The learned Counsel also contended that such

concessional notifications were issued from time to time and G.O. Ms. Nos. 520 and 521, dated July 20,1988 were issued under the provisions of

the APGST Act and the CST Act respectively, reducing the rate of tax to two per cent as against the normal rate of 16 per cent under entry 38 of

the First Schedule to the APGST Act. It is stated that the said notification has even defined the term ""electronic goods"", apart from specifying as

many as 12 items, which would come within the above term of ""electronic goods"". In addition, as there was certain difficulty in ascertaining which

are the items of goods, which would come under the said definition of ""electronic goods"", on the representations seeking clarification, the

Government of Andhra Pradesh issued a memo dated June 1, 1989 clarifying the position and informing the Commissioner of Commercial Taxes

that the Government has decided that the list of electronic items prepared by the Electronics Commission may be followed for the purpose of

concessional rate of tax on ""electronic goods"" ordered in G.O. Ms. Nos. 520 and 521. In terms of the said memo issued by the Government, the

Commissioner of Commercial Taxes issued a circular dated July 13, 1989 clarifying the above position as specified in the Memo of the

Government and the assessing authorities are requested to take action accordingly.

6. It is stated by the learned Counsel that though G.O. Ms. No. 520 was rescinded by G.O. Ms. No. 864, dated September 7, 1993, except for

the change in the concessional rate of tax from two per cent to four per cent, there is absolutely no change, the contents of the notification

continued to be the same as was in G.O. Ms. Nos. 520 and 521. Subsequently, G.O. Ms. No. 864 was superseded by G.O. Ms. No. 252 dated

May 19, 1995 and the relevant notification is at para-XXX of the said G.O., and in fact, the rate of tax also continued to be at 4 per cent and the

terms of the Government Order continue to be the same in its contents including the list of 12 items specified in the earlier notification. The said

notification was followed by G.O. Ms. No. 653, where only the rate of tax was reduced to 3.5 per cent. Therefore, the learned Counsel

contended that the contents of all the Government Orders continued to be the same. Therefore, the clarificatory memo issued by the Government

with reference to G.O. Ms. Nos. 520 and 521 equally applies to the subsequent Government Orders. The learned Counsel also at length referred

to and advanced arguments with reference to the literature as to how the ""capacitors"" would function as well as the types of ""capacitors"", etc.,

apart from placing the opinion of various experts in the relevant field.

7. The learned Senior Counsel relied upon various decisions of this Court as well as the Supreme Court in support of his contention that the

amendments are declaratory and are applicable not only to the subsequent transactions but also to the prior transactions. The learned Counsel also

contended that as the Government Orders are issued in order to benefit the industries by providing the concessional rate of tax, such Government

Orders are to be liberally construed so as to serve the purpose for which they are issued.

8. The learned Counsel Sri S. Ravi, appearing for some of the petitioners, contended that ""capacitors"" are provided concessional rate of tax by the

State both prior to the assessment years in question as well as subsequent, but, however, only for the relevant years, the department as well as the

Tribunal took a different view, which is not consistent with the intention of the Government, which issued the orders granting the benefit of

concessional rate of tax. Therefore, the learned Counsel sought for setting aside the impugned orders.

9. The learned Special Standing Counsel appearing for the respondents/department, on the other hand, supported the impugned orders. While

reiterating the stand of the department as well as the Tribunal, the learned Standing Counsel contended that in order to get the benefit of

concessional rate of tax the item that is being dealt with by the dealers has to conform the requirements to be treated as an "" electronic goods"" or

component or material. According to the learned Counsel, irrespective of the description of a particular item unless such item functions on the

electronic principle, it would not get the benefit of concessional rate of tax under the Government Orders issued from time to time. According to

the learned Counsel, the Tribunal considered this test whether the ""capacitors"" dealt with by the petitioners satisfies the test that the same functions

on the electronic principle or not and found that the ""capacitors"" are not satisfying the required test of functioning on the electronic principle, and

therefore, negatived the claim. In view of the said finding recorded by the authorities the dealers are not entitled for any relief. On factual aspects,

the learned Counsel also contended that some of the dealers, in fact, have collected higher rate of tax from its customers, and therefore, it is not

open to the dealers to claim the concessional rate of tax, having levied and collected the same at higher rate. Therefore, the learned Counsel sought

to dismiss the revisions. The learned Counsel also contented that as the issue was remanded by the Tribunal to the assessing authority for

ascertaining certain factual aspects, and, therefore, the tax revision cases are, in fact, not maintainable in terms of the decision of this Court in State

of Andhra Pradesh Vs. Business Forms Limited,

10. In reply, however, it is contended by the learned Counsel that as the Tribunal recorded a finding that the ""capacitors"", which are the items in

question, are not operating on the electronic principle, the said findings is assailed. Therefore, no useful purpose would be served if the dealers are

directed to appear before the assessing authorities as the said finding is not assailable before the assessing authorities.

11. Heard both sides and considered the material on record.

12. Admittedly, the electronic items are specified under entry 38 of the First Schedule and are exigible to tax at 16 per cent at the point of the first

sale in the State. Later the electronic items are shifted to the Sixth Schedule, as a result of which they are exigible to tax at every point of sale.

While so, the State Government, exercising the powers conferred under Sub-section (1) of Section 9 of the APGST Act, issued G.O. Ms. No.

520 dated July 20, 1988 reducing the rate of tax to two paise in a rupee with effect from July 1, 1988. Similarly, while exercising the powers

conferred under Sub-section (5) of Section 8 of the CST Act, identical notification was issued under that Act with identical terms. In the said

notifications, the term ""electronic goods"" was defined in para 2, as per which ""electronic goods"" means electronic system, instruments, appliances,

apparatus, equipment, operating on electronic principle and all types of electronic components, parts and materials and include 12 items which are

specifically mentioned. As there were some representations seeking clarification, the Government issued Memo No. 23718/CT.II.2/89, dated June

1, 1989, by which the Commissioner of Commercial Taxes was informed that the Government have decided that the list of electronic items

prepared by the Electronics Commission may be followed for the purpose of concessional rate of tax on ""electronic goods"" ordered in G.O. Ms.

Nos. 520 and 521, which were in operation in the field as on that date. Following the said Memo of the Government, the Commissioner of

Commercial Taxes in turn issued a circular dated July 13, 1989, conveying the same to all the assessing authorities. Subsequently, G.O. Ms. No.

520 was rescinded by G.O. Ms. No. 864, but at the same time granting the benefit of concessional rate by increasing from two paise, which was

fixed under G.O. Ms. No. 520 to four paise in a rupee at the point of first sale in the State with effect from August 1, 1993. The said Government

Order contains the same para 2 as was contained in G.O. Ms. No. 520 and also enumerates the same 12 items that are enumerated in the earlier

Government order. This was followed by G.O. Ms. No. 252, where the relevant notification was in para XXX, which is also in the same lines and

also enumerating the same 12 items. By the subsequent orders in G.O. Ms. No. 653, dated July 31,1997 the rate of tax was reduced from 4 per

cent to 3.5 per cent without effecting any of the terms in G.O. Ms. No. 252, which continued to be in operation except the amendment as to the

rate of tax.

13. The contention of the learned Counsel for the petitioners is that when the Government has issued clarificatory memo with reference to G.O.

Ms. Nos. 520 and 521, adopting the list prepared by the Electronics Commission for the purpose of concessional rate of tax as electronic items or

electronic components, the same holds good even for the subsequent notifications, as there was no material variation in the contents of the

subsequent Government Orders except variation in the rate of tax. But, on the other hand, the contention of the department is that unless a

particular item operates on electronic principle the same would not be considered as ""electronic goods"" or component for the purpose of

concessional rate of tax. We are unable to accept the said contention of the Revenue on the first principle. If a particular item of goods or

component, part or material is not specified in the list either in the Government Order or in the list of electronic items that are prepared by the

Electronics Commission, then only the question would arise for consideration whether a particular item can be treated as an electronic goods or

component or material, depending upon its operating principle, but not otherwise. Admittedly, the list of electronic items prepared by the

Electronics Commission shows that there are as many as 16 sub-headings under which various items that are listed or specified. In the present

case, we are concerned with ""plastic film capacitors"". The said item finds place under the sub-heading ""electronic components."" In the list of items

prepared by the Electronics Commission the plastic film capacitors is specified at 13.39. Similarly, there are other capacitors such as paper

capacitors at 13.38, ceramic capacitors at 13.42, and mica capacitors at 13.43. Therefore, it is clear that the item in question is clearly specified as

one of the electronic items contained in the list prepared by the Electronics Commission. In fact, when similar issue came up for consideration

before this Court in Amara Raja Batteries [1998] 111 STC 664 while considering G.O. Ms. Nos. 520 and 521, referred and relied upon the list

prepared by the Electronics Commission as was ordered to be adopted by the Government by its memo dated June 1, 1989. As batteries, which

fell for consideration, was found under item 13.93, the division Bench accepted the claim of the assessee and upheld the decision of the Tribunal

where the Tribunal allowed the claim of the assessee treating the batteries as electronic component. But, however, this decision was distinguished

by the Tribunal in the impugned orders on unsustainable grounds.

14. In Indian Extrusion Vs. Commissioner of Commercial Taxes, Hyd., A.P., another division Bench of this Court to which one of us (S. A. R., J.)

is a party had an occasion to consider the G.O. Ms. Nos. 520 and 521 as well as the clarificatory memo issued by the Government. While

considering whether cable jointing kits are electronic goods or not, the division Bench also referred to the decision of the apex court in State of

Orissa v. Dinabandhu Sahu & Sons [1976] 37 STC 583 where the apex court while dealing with the binding nature of the notification issued by

the Ministry of Finance, Department of Economic Affairs, Government of India, with reference to certain commodities under the head ""oil seeds

was pleased to observe:

It cannot, however, be denied that the Ministry of Finance, Department of Economic Affairs, is intimately conversant not only with the policy of

legislation for the purpose of implementation of the provisions of the Central Act but is also familiar with the nature and quality of the commodities

as also their use from time to time. If, therefore, such an authority issued a notification including certain commodities under the head of ''oil seeds'',

as defined under the Central Act, it cannot be said that the Tribunal and the High Court were not right in preferring such an opinion of the

Government as good evidence for its conclusion, to the opinions relied upon by the Andhra Pradesh High Court on which great reliance has been

placed by the appellant.

15. Further the Supreme Court in State of Tamil Nadu v. Mahi Traders [1989] 73 STC 228 : [1989] 8 APSTJ 139 held that a contemporaneous

exposition by the administrative authorities is a very useful and relevant guide to the interpretation of the expressions used in a statute. If that is so,

the same analogy has to be applied in interpreting the provisions of the Government Orders. Therefore, this Court basing on the above clarificatory

memo in the list of electronic goods prepared by the Electronics Commission accepted the claim of the assessee that cable jointing kits are to be

treated as electronic goods liable to the concessional rate of tax as provided under the Government Orders.

16. The learned Counsel also relied upon a decision of this Court in Andhra Pradesh Computer Stationery Manufacturers Association v. State of

A.P. [1999] 115 STC 173 : [1998] 26 APSTJ 184 where a division Bench of this Court accepted the claim of the assessee and held that

computer stationery would fall within the definition of ""electronic goods"", as the same definition as contained in G.O. Ms. No. 520 was repeated in

G.O. Ms. No. 864. The division Bench also observed that both the department as well as the traders have understood the meaning of the

expression ""electronic goods"" with reference to the classification given by the Electronics Commission. The concession itself was initiated as a

protection to the electronic industry of which the consumables and peripherals were treated as part for the purpose of such encouragement. If the

concession is withdrawn by a change of opinion with reference to the meaning of the words ""electronic goods"", there will be an unintentional

discouragement for the production of consumables and peripherals in the competitive trade and the impact will fall on the consumers, if not on the

local dealers.

17. In Mukesh Kumar Aggarwal and Co. v. State of Madhya Pradesh [1988] 68 STC 324 the apex court had an occasion to consider the user

test while interpreting the term ""timber"", and observed- ""The nature of the goods cannot be determined by the test of the use to which they are

capable of being put. The user test is logical but inconclusive. The particular use to which an article can be applied in the hands of a special

consumer is not determinative of the nature of the goods"".

18. In Porritts and Spencer (Asia) Ltd. v. State of Haryana [1978] 42 STC 433 the apex court, while considering the exemption notification with

reference to dryer felts made out of cotton or woollen yarn by process of weaving and commonly used as absorbents of moisture in paper

manufacturing units, held that all varieties of cotton, woollen or silken textiles falling under item XXX of Schedule B of the Punjab General Sales

Tax Act, 1948 are exempt from tax. The authorities including the Tribunal rejected the claim on the ground that the dryer felts were textiles within

the meaning of item XXX of Schedule B. They were, therefore, not exempt from sales tax. On a reference, the High Court also confirmed the view

of the lower authorities. But, however, the apex court reversed the said view observing that the use, which it may be put is also immaterial and

does not bear on its character as textile. It can be used even for industrial purpose. What is necessary is no more than weaving of yarn and

weaving would mean binding or putting together by some process so as to form a fabric. A textile may have diverse uses and it is not the use,

which determines its character as textile.

19. In Commissioner of Sales Tax Vs. Industrial Coal Enterprises, , the apex court while considering the exemption in respect of new industrial

units under the notification issued by the State Government, held : ""A provision granting incentive for promoting economic growth and development

in taxing statutes should be liberally construed and restriction placed on it by way of exception should be construed in a reasonable and purposive

manner so as to advance the objective of the provision. The object of granting exemption from payment of sales tax has always been for

encouraging capital investment and establishment of industrial units for the purpose of increasing production of goods and promoting the

development of industry in the State"".

20. In BPL Ltd. v. State of Andhra Pradesh [2001] 121 STC 450 : [2001] 32 APSTJ 41 the apex court had an occasion to consider whether

washing machines would fall under the category of ""consumer electronic product"" as referred to in G.O. Ms. No. 520, Revenue, dated July 20,

1988. Though washing machines are not specifically enumerated under the said list of Electronics Commission, but the court after referring to the

definition of the expression ""electronic goods"" and also the mode of functioning of the automatic washing machines, observed : ""... Even though

washing machine is not specifically mentioned as one of the items, it would fall under the category of ''consumer electronic product''. Like a record

player or radio, it works with the aid of micro processor and falls within the definition of "electronic goods'' as contained in the said notification

dated July 20, 1988"".

21. In Manickam and Co. v. State of Tamil Nadu [1977] 39 STC 12 the apex court while considering a provision which provides for the refund of

local tax paid in respect of inter-State sales, held that the said provision has to be construed even by looking into the clarificatory subsequent

amendment, which benefits the dealer for claiming refund irrespective of the local sales tax paid by himself and the relevant observation is ""An

amendment which is by way of clarification of an earlier ambiguous provision can be useful aid in construing the earlier provision, even though such

an amendment is not given retrospective effect"".

22. In Indo National Ltd. v. State of Andhra Pradesh [1987] 64 STC 382 a division Bench of this Court while considering whether dry-cells

would fall under which of the entries of the First Schedule, viz., 3, 38, 137,152, it was held that even if an item falls under more than one entry, the

said item should be considered under one where a lower rate of tax is applicable and accordingly held that dry-cells should be considered under

entry 38, which provides a lower rate.

23. In S. Gopal Reddy Vs. Commissioner of Income Tax, a division Bench of this Court while construing the second proviso to Section 54E(1) of

the Income Tax Act, 1961, which was inserted by way of amendment, holding it as clarificatory, observed as under:

A taxing statute or any other statute has to be construed reasonably. The effort should always be made to ascertain the intention of Parliament from

the words employed and, as far as possible, an interpretation which leads to absurdity should be avoided. Though equity and taxation are often

strangers, attempts should be made that these do not remain always so and if a construction results in equity rather than in injustice, then such

construction would be preferred to the literal construction.

Under the provisions of Section 54E of the Income Tax Act, 1961, what is to be invested in specified assets is the consideration or any part

thereof and unless the consideration is received, or accrues, there is no question of investing it. The second proviso to Sub-section (1) of Section

54E inserted with effect from April 1, 1984, states that in the case of compulsory acquisition of property under a statute, if the full amount of

compensation awarded for such acquisition is not received by the assessee on the date of such transfer, the period of six months referred to in

Sub-section (1) shall, in relation to so much of such compensation as is not received on the date of the transfer, be reckoned from the date on

which such compensation is received by the assessee. It would be consistent with reason to construe this proviso as being merely clarificatory. In

other words, the provision made by the second proviso to Sub-section (1) of Section 54E should be deemed to have prevailed even prior to April

1, 1984, i.e., with effect from the date of the enactment of Section 54E.

24. Though it was contended for the department that the tax revision cases are not maintainable in view of remand to the assessing officers for

ascertainment of certain facts necessary for granting or denying the benefit of concessional rate of tax in the light of the decision of this Court in

State of Andhra Pradesh Vs. Business Forms Limited, but a perusal of the order, as rightly contented for the petitioners, clearly shows that the

Tribunal recorded a finding that the item in question is not an electronic goods. In the light of the said specific finding, the assessing officer was not

free to decide the issue as the finding given by the Tribunal is conclusive as to the nature of the item. Therefore, the contention of the department is

devoid of merit as to the maintainability of tax revision cases.

25. If we examine the facts of the present case in the light of the abovereferred decisions, as, admittedly, the Government Orders issued from time

to time are intended to encourage the electronic industry, therefore, the said orders have to be liberally construed so as to serve the purpose for

which they are intended. Further, the State Government which issued the orders granting concessional rate of tax itself issued a clarificatory memo

adopting the items that are enumerated by the Electronics Commission for the purpose of extending the benefit of concessional rate of tax treating

those items as items falling within the purview of the orders issued by the Government. Though the clarificatory memo issued by the Government

and the consequential circular are with reference to the G.O. Ms. Nos. 520 and 521, and though the G.O. Ms. No. 520 was rescinded by a

subsequent series of orders, the sum and substance of the Government Orders have not altered, except variation as to the rate of tax. Further,

even the Government did not rescind or cancel the clarificatory memo issued by it, so also the circular issued by the Commissioner. Further, the

G.O. Ms. No. 521 issued under the CST Act was not rescinded or altered and continues to be in operation. In the light of the said position, would

it be open to the department to contend that the clarificatory memo issued by the Government was intended to be confined to the notification

referred to therein and such clarification has no application to the subsequent Government Orders issued under the very same provision of Sub-

section (1) of Section 9 of the APGST Act, especially where there is no change in the terminology of the Government Order including the definition

of ""electronic goods"" and also in the enumerated items ? As already observed that when the Government itself has issued the clarificatory memo

adopting the list of items enumerated by the Electronics Commission as electronic goods for the purpose of concessional rate of tax, it would not

be open to the department either to dispute or not to adopt the same for the purpose of concessional rate of tax. The memo of the Government

adopting the list of items of electronic goods, electronic components, parts and materials is equally applicable to all the subsequent Government

Orders.

26. The Tribunal had unnecessarily laboured at length to consider as to the functioning of the item in question and the principle on which the said

item is operating, which is not relevant when that item has been specifically enumerated in the list that was adopted by the Government for the

purpose of concessional rate of tax. As already referred to, the apex court has held in categorical terms that the user test is not determinative or

conclusive. Therefore, the Tribunal was not justified even with reference to its direction to the assessing authorities to ascertain as to the user of the

items sold by the petitioners for the purpose of extending the benefit of concessional rate of tax. Even in BPL Ltd. [2001] 121 STC 450 ; [2001]

32 APSTJ 41 also, the apex court had gone into the mode of functioning of automatic washing machines, which fell for consideration on the ground

that the said item was not enumerated in the list.

27. From the above it is clear that when a particular item of goods comes under any of the specified items, which are entitled for concessional rate

of tax, it is not open to the departmental authorities to go into the details either as to its user or the principle on which it is functioning. The necessity

as to the nature of functioning would arise only when a particular item was not specifically enumerated in the list. Admittedly, the plastic film

capacitor, which is under consideration, was specifically referred to under item 13.39 of the list prepared by the Electronics Commission, which

was adopted by the Government under its memo dated June 1, 1989. In the light of the said specific enumeration of the item in the list, there is

absolutely no scope for any further adjudication.

28. Under the above circumstances, the impugned orders of the Tribunal are set aside, declaring that the capacitors in question are one of the items

of electronic goods or components, which are entitled for the concessional rate of tax in terms of the Government Orders.

29. The tax revision cases are accordingly allowed. No costs.