

(1981) 01 BOM CK 0040

Bombay High Court

Case No: Sales Tax Reference No. 31 of 1976 in Reference Application No. 109 of 1968
with Sales Tax References No"s. 32, 33 and 34 of 1976 and 25, 26, 27 and 47 of 1977

Hind Rectifiers Ltd.

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision: Jan. 16, 1981

Acts Referred:

- Bombay Sales Tax Act, 1959 - Section 61(1), 61(2), 61(3)

Citation: (1981) 47 STC 303

Hon'ble Judges: Sujata V. Manohar, J; D.P. Madon, J

Bench: Division Bench

Judgement

Sujata V. Manohar, J.

The applicants are registered dealers under the Bombay Sales Tax Act, 1959. They manufacture and sell rectifiers. During the relevant period, the applicants were assessed to payment of sales tax by the Sales Tax Officer in respect of the sales of rectifiers effected by them. The assessments were made on the basis that the rectifiers sold by the assessees fell under entry 20 in Schedule C to the Bombay Sales Tax Act of 1959 and not under the residuary entry 22 in Schedule E to the said Act.

2. Being aggrieved by this finding of the Sales Tax Officer, the assessees went in appeal before the Assistant Commissioner of Sales Tax. The Assistant Commissioner, however, confirmed the original finding. Thereafter, the assessees approached the Tribunal which also upheld the previous findings. Thereafter, in Sales Tax Reference No. 31 of 1976, the assessees made an application to the Tribunal for referring to the High Court the question whether the rectifiers manufactured and sold by them fell under entry 20 in Schedule C or under entry 22 in Schedule E. It was also urged by the assessees that the rectifiers might also fall under entry 15 in Schedule C. The Tribunal, however, rejected the application of the assessees and declined to make a reference to the High Court. Thereafter, the

assessees came to the High Court and pursuant to the directions of the High Court, the present reference in Sales Tax Reference No. 31 of 1976 has been made u/s 61, sub-section (2), of the Bombay Sales Tax Act, 1959. The references in the other sales tax references have been made u/s 61, sub-section (1), of the Bombay Sales Tax Act, 1959.

3. The question which has been referred to us for determination in all these references is as follows :

"Whether the Tribunal was right in holding that the rectifiers manufactured and marketed by the petitioners were not covered by entry No. 15 of Schedule C nor by entry No. 22 of Schedule E but are covered by entry No. 20 of Schedule C of the said Act ?"

Since this question is common in all the sales tax references referred to above, they have been placed together for hearing.

4. When these references reached hearing for the first time it was found that the statement of case framed by the Tribunal did not describe fully the goods in question. It was, therefore, not possible on the basis of these insufficient facts for the High Court to determine the question raised by the Tribunal. The matter was, therefore, referred back to the Tribunal by the High Court u/s 61(3) of the Bombay Sales Tax Act for the purpose of framing a supplementary statement of case. Accordingly, a supplementary statement of case has been formulated and is now before us.

5. When the matter reached hearing, Mr. Vaidya, who appeared for the applicants, gave up the stand that the goods in question fall under entry 15 in Schedule C to the Bombay Sales Tax Act. The only question, therefore, which requires determination is whether these goods fall under entry 20 in Schedule C or whether they fall under the residuary entry 22 in Schedule E. The description of the goods in entry 20 in Schedule C for the period 1st January, 1960, to 14th July, 1962, was as follows :

"Electrical goods (other than those specified in entry 15 in Schedule E) not being machinery used in the manufacture of goods; and spare parts and accessories of such machinery."

6. The description of the goods in entry 20 in Schedule C from 15th July, 1962, onwards is as follows :

"Electrical goods, other than those specified in any other entry in this schedule or in any other schedule."

The short question, therefore, is whether the rectifiers manufactured and sold by the applicants can be described as electrical goods. If they can be so described they would fall under entry 20 in Schedule C; otherwise, they would fall under the residuary entry 22 in Schedule E.

6. The rectifiers are described in the supplementary statement of case. from the description so given, it seems that the rectifiers manufactured and sold by the applicants are generally used for converting alternating current into direct current, for utilisation in electric traction, motor drives for steel rolling mileage, cement and paper industries, electroplating, etc. The principles on which the rectifiers manufactured by the applicants work are described in paragraph 4 of the supplementary statement of facts. According to the description given, the alternating current available from the mains is fed into the rectifier at one end. The current is processed by means of built-in-action in the rectifier based on electronic principle and the ultimate current that leaves the rectifier at the other end is the direct current which is fed to the equipment where it is necessary for the working of that equipment. It may also be pointed out that the rectifiers manufactured by the applicants are in accordance with the specific orders from the customers. They are not of any standard specifications and, therefore, they are not dealt with or sold through bazaar dealers dealing in electrical goods. 7. It has been urged by Mr. Vaidya, who appears for the applicants, that the rectifiers manufactured by the applicants cannot be classified as electrical goods. He has propounded three tests for determining whether any goods can be considered as electrical goods. The first test propounded by him is that the goods in question should work on electricity. According to Mr. Vaidya, if the goods in question work on electricity and consume electricity, they may be considered in a given case as electrical goods. On this basis he has submitted that the rectifiers which are manufactured by the applicants do not consume any electricity; they merely convert alternating current into direct current. Hence they should not be considered as electrical goods. This submission of Mr. Vaidya cannot be accepted. The test that he has propounded may be valid in some cases, but it cannot be applied in a very large number of cases. In the first place, it would be difficult to say that any equipment or article which consumes electricity or which works on electricity, must be necessarily considered as electrical goods, For example, an electric railway engine cannot be considered as electrical goods although it works on electricity and consumes electricity. Similarly, a motor car which also requires electricity for starting and also running it, cannot be considered as electrical goods. In fact, we have a large number of goods and devices which work on electricity and which, therefore, consume electricity, but do not necessarily fall under the category of electrical goods, e.g., electric typewriters, elevators in buildings, etc. In fact, the list of such goods would be unending. Such goods require energy for their working and electricity is the most common form of energy utilised for their working. Often, in popular parlance, the word "electric" is prefixed to the names of such equipments and appliances to show that they work on electricity. For example, we have electric typewriters. Here, the word "electric" is prefixed to the typewriters in order to show that they work on electricity to distinguish them from other manually operated typewriters. Similarly, we have electric railway engines as distinguished from diesel railway engines or steam railway engines. The mere fact that electrical energy is required for operating any

equipment cannot, therefore, be a conclusive test in order to determine whether that particular equipment or item can be considered as electrical goods in entry 20 in Schedule C. For the purpose of determining whether any goods can be considered as electrical goods falling under entry 20 in Schedule C, it would be better to look to the purpose for which the goods in question have been designed. For example, an electric locomotive is designed or utilised for carrying passengers and goods from one place to another. The energy which it utilises for the purpose of carriage may be electrical energy. But that does not make it electrical goods. Similarly, an electric typewriter would ordinarily be classified as office equipment rather than as electrical goods, because the main purpose for which it is used, namely, typing, has no nexus with either production, distribution, transmission or utilisation of electricity. Whenever the purpose for which the goods have been designed has a basic nexus with electricity - either its production, distribution, transmission or utilisation - the goods may be classified as electrical goods. Consumption of electricity is not a decisive guideline for the classification of any goods as electrical goods. In fact, there are goods which are known generally as electrical goods which do not consume electricity. For example, electrical wires do not utilise or consume any electricity at all. They must, however, be classified as electrical goods because electrical wires have a direct nexus with the transmission of electricity. The same is true of plugs and electric switches which are generally considered as electrical goods. Similarly, battery cells, which are also commonly considered as electrical goods, do not consume electricity. They produce electricity. Hence a more accurate criterion for determining whether any goods can be classified as electrical goods would be to see whether the purpose of the goods in question has any direct connection with the utilisation, consumption, transmission or production of electricity. At any rate, goods which have such a nexus would certainly fall in the category of electrical goods. If this test is applied to the rectifiers manufactured by the applicants, it would be clear that the rectifiers are directly connected with the utilisation of electricity. They are required for the purpose of converting an alternating current of electricity into a direct current, so that electricity of the required type may be available for being utilised in a given type of equipment. The rectifiers have, therefore, a direct nexus with electricity. The fact that they do not consume any electricity or consume only a very negligible amount of electricity cannot, therefore, remove them from the category of electrical goods for the purpose of levy of sales tax.

8. In this connection, a reference may be made to the case of State of Andhra Pradesh v. Indian Detonators Ltd. [1971] 28 S.T.C. 84 In that case, the point which required consideration was whether electric detonators could be classified as electrical goods failing under entry 37 of Schedule I to the Andhra Pradesh General Sales Tax Act, 1957. While negativing this contention, the Andhra Pradesh High Court held that an electric detonator, which is primarily and essentially an explosive accessory depending for its potency and power on the chemical combination,

cannot be classified as electrical goods or appliance. The Andhra Pradesh High Court also pointed out that certain goods cannot be used without electrical energy and yet they need not necessarily be electrical goods. The High Court gave the example of a motor car. Its use certainly depends on the functioning of the electrical equipment as well. In fact, without electrical energy, it may not be possible to start or make it run but, on that account, the motor car does not become electrical goods. The High Court, therefore, came to the conclusion that electric detonators, although they require electricity for their operation, cannot be classified as electrical goods. The same conclusion was reached by the Madras High Court in the case of William jacks and Co. Ltd. v. State of Madras [1960] 11 S.T.C. 340, where the Madras High Court was required to consider whether an electric lathe could be considered as electrical goods. While negativing the contention of the department, the Madras High Court pointed out that, although a lathe of the type in question before them could not be used at all without the use of electrical energy, none the less it remained a lathe which was provided with electric motors for its use. Electric motors were there only to provide the motive power for working the lathe. The Madras High Court, therefore, held that such a lathe could not be considered as electrical goods. Similarly, in the case of Commissioner of Sales Tax v. Import Association, Allahabad [1975] 35 S.T.C. 491, the Allahabad High Court was required to consider whether ammeters and voltmeters which are apparatus for measuring the quantum of electric current, could be considered as electrical goods of the type referred to in the U.P. Sales Tax Act. The Allahabad High Court held that ammeters and voltmeters could perform their function only by an electrical energy which was made to pass through them and hence came to the conclusion that they were electrical goods. The rectifiers in the present case can also function only when electrical energy passes through them. In fact, their main purpose is to convert alternating current into direct current of electricity. In view of this direct nexus between the rectifiers and electricity, they must be classified as electrical goods failing under entry 20 in Schedule C to the Bombay Sales Tax Act.

9. There are two other tests relied upon by Mr. Vaidya for the purpose of determining whether the goods in question should be classified as electrical goods or not. He has submitted that the determination of the question whether any particular goods can be classified as electrical goods or not would have to depend on commonsense, that is to say, how any ordinary man would describe such goods. This test would ordinarily be available in the case of goods which are in common use. In the present case, since the goods are of a specialised nature not ordinarily available in the market, it will be difficult to rely upon a test of this type. If, however, such a test were to be applied in the present case, then since the rectifiers are used for the purpose of converting alternating current into direct current, they are directly connected with the use of electricity and a common man would ordinarily classify such rectifiers as electrical goods. Thirdly, Mr. Vaidya has argued that rectifiers of the type in question are not dealt with or sold through bazaar dealers

dealing in the so-called electrical goods. Hence they should not be classified as electrical goods. This argument also cannot be accepted. Simply because an item is not manufactured on a mass scale or is, for any reason, not available in the market on a mass scale, it does not follow that the item cannot be classified as electrical goods. There may be items of special nature which are not ordinarily available in the market but which can still be electrical goods if the purpose for which they have been designed has a close nexus with the production or utilisation of electricity. In the course of his arguments, Mr. Vaidya pointed out that if an inquiry were to be made with a dealer in electrical goods regarding the rectifiers of the type in question, a person making such an inquiry would be referred by the dealer in electrical goods to the applicants who manufacture these goods. It would thus seem that the rectifiers of the type in question are considered to be electrical goods in respect of which an inquiry can be made with dealers in electrical goods and further that the dealers in electrical goods are expected to know about the goods in question. In fact, both from a commonsense point of view and a trade point of view also, the rectifiers are required to be classified as electrical goods falling under entry 20 in Schedule C.

10. In the premises, we answer the question which is raised in each of the above references in the affirmative, that is to say, in favour of the department and against the applicants.

The applicants will pay to the respondents costs of the reference in Sales Tax Reference No. 31 of 1976 fixed at Rs. 300. There will be no order as to costs in the rest of the references. The fees of Rs. 100 deposited by the applicants in each of the above references to be adjusted against the above order of costs and the balance amount to be refunded to the applicants.

11. References answered in the affirmative.