

CASE NO.:
Appeal (civil) 4832 of 2007

PETITIONER:
STATE OF ANDHRA PRADESH & ANR

RESPONDENT:
M/S CONCAP CAPACITORS, BALANAGAR, HYDERABAD & ORS

DATE OF JUDGMENT: 12/10/2007

BENCH:
C.K. THAKKER & ALTAMAS KABIR

JUDGMENT:
J U D G M E N T
ARISING OUT OF SPECIAL LEAVE PETITION (C) NO. 13207 OF 2006
C.K. THAKKER, J.

1. Leave granted.

2. This appeal is filed by the State of Andhra Pradesh & Anr. (\021Revenue\022 for short) against common judgment and order dated August 31, 2005 in several Revisions. By the impugned order, the High Court allowed Tax Revision Cases (TRC) filed by manufacturers, dealers and traders (\021assessee\022 for short) and held that \021Capacitors\022 is one of the items of \021electronic goods\022 or components, taxable at a concessional rate of tax under the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as \021the State Act\022) as also under the Central Sales Tax Act, 1956 (hereinafter referred to as \021the Central Act\022).

3. To appreciate the issue raised by the Revenue, few relevant facts may be stated.

4. The respondents in this appeal are manufacturers, dealers or traders of electronic goods, components and materials. They are duly registered under the State Act as well as Central Act. Their claim was that Capacitors, manufactured by them, was exigible to tax at a concessional rate as \021electronic goods\022 in terms of various Government Orders issued from time to time and not as \021electric goods\022 subject to higher tax. It was their case that the Assessing Authorities had taken conflicting views in different cases. In some cases, while making assessment orders, they accepted the case of manufacturers/dealers/traders treating Capacitors as \021electronic goods\022 and levied concessional rate of tax; while in other cases, the Assessing Authorities negatived such claim as to concessional rate of tax and ordered to levy Capacitors as \021electric goods\022. Where the Assessing Authorities had decided against the assessee, the assessee challenged the action before the Tribunal and where the issue was decided by the Authorities in favour of assessee, the Revenue had challenged such decision. All the matters were, therefore, placed before the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad. The Tribunal

considered the rival contentions of the parties as also provisions of the State Act and Central Act and various G.O.Ms. and observed that the item in question i.e. Capacitors did not operate on electronic principle and could not be considered as \021electronic\022 goods or component for the purpose of concessional rate of tax. It, therefore, remanded the cases to the Assessing Authorities to pass fresh assessment orders giving opportunity to the assessee to produce any material to show that they sold Capacitors which could be said to be \021electronic goods\022.

5. Being aggrieved by the orders passed by the Tribunal, the assessee approached the High Court of Andhra Pradesh by filing Revisions. The High Court, on consideration of relevant provisions of law as also various G.O.Ms. and referring to several decisions, held that from the relevant material, it was clearly established that \021Capacitors\022 would fall under the category of \021electronic goods\022 and the Tribunal was wrong in upholding the contention of Revenue that the item could not be said to be electronic goods. The High Court also held that in G.O.Ms. issued by the Revenue from time to time, various items were expressly specified and Capacitors was one of them. In view of specific mention of the item, the Revenue was bound to grant benefit to the assessee of concessional rate of tax and the Tribunal was not justified in considering the question on the basis of \021operating principle\022. The said process could have been undertaken by the Tribunal had there not been a specific mention of the item and the question was required to be decided on general principle and practice. But once there was a list of electronic items prepared by the Electronic Commission and G.O.Ms. referred to those items wherein \021Capacitors\022 was included, only thing the Tribunal required to do was to ascertain whether the item found place in the list or not. Once the item is included in the list, no further inquiry could have been undertaken. Accordingly, all Revisions were allowed and the issue was answered in favour of the assessee.

6. The Revenue has challenged in this Court the decision of the High Court. On July 31, 2006 delay was condoned and notice was issued. Affidavits in reply and rejoinder were thereafter filed and the matters were placed for final disposal.

7. We have heard learned counsel for the parties.

8. The learned counsel for the Revenue challenged the decision of the High Court. He submitted that the High Court was not at all justified in interfering with the order passed by the Tribunal. He urged that a finding of fact was recorded by the Tribunal which was \021final\022 and could not have been interfered with by the High Court in Revisions. It was also submitted that the Tribunal, in any case, had remanded the matter and it was thus not a

\021final order\022 which could have been disturbed by the High Court. If the assessee was in a position to convince the Authorities that he was entitled to concessional rate of tax, the Authorities would have decided the case in his favour. The High Court was, therefore, not right in entertaining and allowing Revisions. The counsel submitted that where a particular item is subject to payment of tax and the case of the assessee is that he is not liable to pay tax or is liable to pay tax at a concessional rate, the burden is on him to establish such case as it is an exception to the general rule. Such provisions of law\027primary or delegated\027 must be construed strictly. It was also argued that the Tribunal was wholly justified in considering the question on \021operating principle\022. The Tribunal noted that so far as \021Capacitors\022 is concerned, it did not operate as \021electronic goods\022 but as \021electric goods\022. Such approach which was real and practical, could not have been objected by the assessee and the High Court could not have commented the basis on which the Tribunal proceeded to consider the matter. Finally, it was submitted that in certain cases, assessee (manufacturers/dealers/distributors/traders) had collected the amount of tax at higher rates from the customers. Thus, on the one hand, the assessee contended that the item was subject to payment of concessional rate of tax and on the other hand, it collected the tax at higher rate from customers. The assessee thus would retain the amount collected from customers towards tax. This cannot be allowed to be done as it would amount to \021unjust enrichment\022 by the assessee. To that extent, therefore, in any case, the assessee is liable to pay the amount to the Revenue. On all these grounds, it was submitted that the appeals deserve to be allowed by setting aside the order passed by the High Court and by restoring the order of the Tribunal.

9. Learned counsel for the assessee, on the other hand, supported the order passed by the High Court. It was submitted that no error of law can be said to have been committed by the High Court in deciding the matters and these are not fit cases to entertain appeals under the discretionary jurisdiction of this Court under Article 136 of the Constitution. It was also submitted that it was clear from the provisions of law that \021Capacitors\022 could be said to be \021electronic goods\022 and subject to payment of tax at a concessional rate. In several cases, such view was taken by the Assessing Authorities. Since in some cases, a different view was struck, G.O.Ms. were required to be issued by the Authorities. Such amendments / instructions / communications were declaratory in nature and obviously, therefore, they were applicable with retrospective effect; i.e. not only to transactions subsequent to the issue of notification but even to prior transactions. \021Capacitors\022, hence, must be

treated as an item covered by the entry \021electronic goods\022 and subject to payment of tax at a concessional rate. It was also submitted that concessional rate has been granted on the item in question so as to ensure industrial growth in the State. A provision which has been intended for a laudable object of industrial development, must be liberally construed. And, even if two views are possible, the view favourable to the assessee should be adopted. When the High Court has taken such view, this Court may not interfere with it under Article 136 of the Constitution. It was also submitted that the High Court was wholly justified in criticizing the approach adopted by the Tribunal. The High Court was right in holding that \021operating principle\022 or \021user test\022 would apply to those cases where there is no express mention of a particular item in the notification or G.O.Ms. But once the item is specified in the list, there should not be further inquiry and the assessee would be entitled to concessional rate of tax on the basis of such entry. In the case on hand, several items were specifically mentioned in various G.O.Ms. \021Capacitors\022, admittedly, was one of them. In view of the said position, the Tribunal exceeded its jurisdiction in applying \021operating principle\022 or \021functioning\022 of the item and the High Court was right in criticizing it. The High Court was also constrained to observe that though the point was concluded by a decision of the High Court in earlier cases, the Tribunal sought to distinguish the said decision on the grounds not permissible in law. The counsel, therefore, submitted that no case has been made out by the Revenue to interfere with the order of the High Court and the appeal deserves to be dismissed.

10. We have given anxious consideration to the rival contentions of the parties. The question which is raised before us and which was raised before the Tribunal as well as before the High Court was as to whether the item \021Capacitors\022 is \021electronic goods\022 or \021electric goods\022. In this connection, our attention was invited by the learned counsel for the parties to the provisions of the State Act as also of the Central Act. The learned counsel for the assessee also referred to G.O.Ms. No. 520, dated July 20, 1998, issued under the State Act and G.O. Ms. No. 521 issued under the Central Act. The relevant part of G.O. Ms. No. 520 reads thus:

(2) For the purpose of this notification, the term \021electronic goods\022 means electronic systems, instruments, appliances, apparatus, equipment operating on electronic principles and all types of electronic components, parts and materials and includes\027

- (i) consumer electronics;
- (ii) electronic test and measuring

instruments;
(iii) medical electronic equipment,
(iv) electronic analytical instruments;
(v) electronic equipment / instruments
for nuclear, geo-scientific and
other special applications;
(vi) electronic process control
equipment;
(vii) power electronic equipment;
(viii) electronic industrial automation
and control equipment;
(ix) electronic data processing systems
and electronic office equipment;
(x) electronic broadcasting equipment;
(xi) electronic communication equipment
and
(xii) electronic aerospace and defence
equipment

11. G.O. Ms. No. 521 issued under Central
Act is in pari materia to G.O. Ms. No. 520.

12. On June 1, 1989, Memo No.23718/
CT.II.2/89 was issued by the Principal
Secretary to Government of Andhra Pradesh,
Revenue (CT-II) Department, inviting the
attention of the Commissioner of Commercial
Taxes to the reference cited in the said Memo
and informing him that the Government had
decided that the list of electronic items
prepared by the Electronic Commission should be
followed for the purpose of concessional rate
of tax on electronic goods ordered in
G.O.Ms.Nos. 520 and 521. The Commissioner was
requested to issue necessary instructions to
subordinate officers under Section 42A of the
State Act.

13. Pursuant to the above Memo, a Circular
was issued by the Commissioner of Commercial
Taxes on July 13, 1989 which is also relevant
and reads thus:

Office of the
Commissioner of Commercial Taxes
Andhra Pradesh : Hyderabad
Dated 13.07.1989

Ref. A1/1240/88

M.V. NATARAJAN, I.A.S.,
COMMISSIONER OF COMMERCIAL TAXES
C I R C U L A R

Sub : APGST Act & CST Act \026 Reduction in
the rate of tax on Electronic goods \026
Reg.

Ref:1. G.O.Ms.No. 520 Rev dt. 20.07.1988.
2. G.O.Ms.No. 521 Rev dt. 20.07.1988.
3. Govt. Memo No.23718/CT.11.2./89
dated 01.06.1989

It is informed that vide G.O.s first
and second cited, Government were pleased
to reduce the rate of tax to 2 paise on

Electronic goods with effect from 1.7.1988 mentioning a broad classification of electronic goods such as Consumer Electronics, Electronic test and measuring instruments, General Electronic Equipment etc.

Several representations have been received from the dealers requesting to clarify the specific items which falls under the classification, mentioned in the G.O. first cited, a copy of the Government Memo, third cited is enclosed along with a copy of the list prepared by the Electronic Commission duly authenticated.

2. The Assessing authorities are requested to take action accordingly.

3. This reference may please be acknowledged to next authority.

Sd/-
M.V. NATARAJAN
COMMISSIONER OF COMMERCIAL TAXES
(emphasis supplied)

14. A list of electronic items prepared by the Electronic Commission was also produced before the Tribunal as well as before the High Court and before us. Item No.13.0 relates to \021Electronic Components\022 under which at Item No.13.39 is shown \021Plastic Film Capacitors\022.

15. Thus, from the above G.O.Ms. and Circular issued by the Commissioner, it is clear that in pursuance of several representations received from Dealers requesting to clarify the specific items falling under \021electronic goods\022 that the Classification Memo was issued by the Government and the Circular by the Commissioner on the basis of the list prepared by the Electronic Commission. The said list expressly contained an item \021Capacitors\022. In view of specific reference to \021Capacitors\022, in our opinion, the High Court was right in relying on the said item and in holding that \021Capacitors\022 could be said to be \021electronic goods\022 and was covered by a concessional rate of tax under the Act.

16. The learned counsel for the assessee stated that on the basis of the list prepared by Electronic Commission, concessional rate of tax was recovered on items mentioned in the list. A similar question came up for consideration before the High Court of Andhra Pradesh in State of Andhra Pradesh v. Amara Raja Batteries, [1998 (111) STC 664 (AP)]. There, the Court was concerned with NICD Batteries. The Court considered G.O.Ms. 520 and 521 and item No. 13.93 of the list (\021other batteries\022) declared by Electronic Commission and held that it was entitled to concessional rate of tax.

17. The Court observed:
\023Since according to the list prepared by the Electronics Commission, the batteries are electronic components and since the electronic components are one of the items which are eligible for concessional rate of duty and since the clarification in the list prepared by the Electronics Commission is treated as part of the G.O. the batteries manufactured by the assessee are eligible for concessional rate of duty under G.O. Ms. No. 520, Revenue dated July 20, 1988 and G.O. Ms. No. 521 Revenue dated July 20, 1988 issued under the A.P. General Sales Tax Act and also Central Sales Tax Act\024.

18. It appears that the Revenue challenged the decision of the High Court by filing Civil Appeal Nos. 723-25 of 1999, but a three Judge Bench of this Court dismissed them on March 21, 2001 observing that there was \023no good reason to interfere with the order under appeal\024.

19. Once again, the issue came up for consideration before the same Court in India Extrusion v. Commission of Commercial Taxes, A.P., Hyderabad, (2001) 124 STC 474. In India Extrusion, the Court was considering the item of \021Cable Joining Kits\022. Relying on G.O.Ms.Nos. 520 and 521 and taking recourse to the list of electronic goods prepared by Electronic Commission, the High Court held that it could be said to be \021electronic goods\022 and was subject to levy at the concessional rate of tax. The Revenue accepted the judgment and had not challenged the said decision.

20. The High Court, in our opinion, was right in observing that when the Electronic Commission had prepared a list which contained the item \021Capacitors\022, it had to be accepted by the Revenue and tax can be levied only on the basis of such classification. The High Court was, therefore, right when it stated:

\023The 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\024.

(emphasis supplied)

21. To us, the High Court was also right in indicating that when the item has been specifically included in the list prepared by Electronic Commission, the Tribunal could not have applied \021functional test\022, \021operating principle\022 or \021user test\022. A limited inquiry which was required to be made by the Tribunal

was whether the item had been included in the list prepared by the Electronic Commission. If any item is included in the said list, it has to be treated as such and tax has to be levied on that basis. But if the item is not included in the list, it is open to the Tribunal to consider its placement on the basis of functional test as to whether such item could be said to be electronic goods. The item Capacitors has been expressly included in the list prepared by the Electronic Commission and hence it was not open to the Tribunal to apply operating principle or user test and the High Court was wholly justified in interfering with the order passed by the Tribunal.

22. The learned counsel for the assessee also urged that the underlying object of granting concessional rate of tax to Capacitors was industrial development. Relying on Commissioner of Income Tax, Amritsar v. Straw Board Manufacturing Co. Ltd., (1989) Supp (2) SCC 523, Commissioner of Sales Tax v. Industrial Coal Enterprises, (1999) 2 SCC 607 and Collector of Central Excise, Meerut v. Maruti Foam (P) Ltd., (2004) 6 SCC 722, it was urged that whenever a concession has been granted so as to bring about industrial expansion and growth, the provision must be liberally construed. In view of the fact, however, that according to us, item relating to Capacitors has been expressly included in the list prepared by Electronic Commission, it is not necessary for us to enter into larger question as, in our judgment, the assessee had rightly succeeded and the High Court was justified in allowing Revisions.

23. The learned counsel for the Revenue, no doubt, submitted that the Tribunal merely remanded the matter to the Authorities to decide them in accordance with law and the High Court ought not to have interfered with the order. In our opinion, however, the submission is ill-founded. As rightly held by the High Court, the Authorities were required to proceed on the basis of list prepared by Electronic Commission. Since the Electronic Commission included Capacitors as one of the items, it was not open to the Tribunal to enter into the question as to the functions to be performed by Capacitors and to remit the matter to decide as to whether it would be covered by the item electronic goods or electric goods. Hence, though the matter was remanded, the High Court was justified in interfering with the said order as it was not open to the Tribunal to pass such order.

24. Finally, it was submitted that some of the manufacturers, dealers and traders had collected the tax at the higher rate from their customers and now they are seeking relief from the Court to pay tax at concessional rate. If the contention of the assessee is upheld and they will be allowed to pay tax at a concessional rate, they would thereby unjustly enrich themselves inasmuch as on one hand they

had collected much more amount towards tax and will now pay lesser amount of tax to the Government. No assessee can be allowed unjust enrichment. Where an assessee is not entitled to a particular benefit, he cannot be permitted to retain such benefit. [vide Mafatlal Industries Ltd. v. Union of India, (1997) 5 SCC 536].

25. In the affidavit in reply, the allegation has been emphatically denied by the assessee. It was the case of the assessee that the allegation was factually incorrect that the assessee had collected tax at a higher rate and they now want to pay tax at a concessional rate. But in view of assertion by the Revenue and denial by the assessee, it would be appropriate if we do not enter into the said question by granting liberty to the Revenue to consider the question independently.

26. We, therefore, hold that the item "Capacitors" is subject to payment of tax at a concessional rate. The order passed by the High Court, to that extent is, therefore, upheld. It is, however, made clear that if any assessee had collected an amount at a higher rate of tax from its customers than the concessional rate as held by us, it is open to the Revenue to take appropriate proceedings in accordance with law for the recovery of such amount. The excess amount, if any, recovered by any assessee towards tax shall have to be paid by such assessee to the Government.

27. For the foregoing reasons, the appeal deserves to be disposed of and is accordingly disposed of subject to the observations made by us hereinabove. On the facts and in the circumstances of the case, however, there shall be no order as to costs.