

PETITIONER:
M/S. UNION CARBIDE INDIA LTD.

Vs.

RESPONDENT:
STATE OF ANDHRA PRADESH

DATE OF JUDGMENT 20/03/1995

BENCH:
VERMA, JAGDISH SARAN (J)
BENCH:
VERMA, JAGDISH SARAN (J)
BHARUCHA S.P. (J)
PARIPOORNAN, K.S.(J)

CITATION:
1995 SCC Supl. (2) 267 JT 1995 (3) 218
1995 SCALE (2) 355

ACT:

HEADNOTE:

JUDGMENT:

J.S. VERMA, J.:

1. These appeals by special leave are against the judgment dated 5.2.1976 in Tax Revision Case Nos. 18 and 19 of 1975, by the High Court of Andhra Pradesh. The two questions answered by the High Court relate to the assessment years 1968-69 and 1969-70 which are:

(1) Whether dry cell batteries manufactured by the assessee are exigible to tax under Entry No. 3 or Entry No. 38 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957?

(2) Whether the arc carbons manufactured by the assessee are exigible to tax under Entry No. 4 or Entry No. 38 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957?

The Tribunal held that the "dry cell batteries" are taxable under Entry No. 38 except only those which are specified for use in transistors, which alone are taxable under Entry No. 3; and the "arc carbons" are taxable under Entry No. 4. The revisions filed by the assessee have been dismissed by the High Court. Hence these appeals by special leave. The connected matters are similar and are disposed of in 221

terms of this judgment.

2. The relevant entries with reference to which the above questions are to be decided,

"3. Wireless reception instruments and apparatus, radios, and radio hoes, electrical valves, accumulators, amplifiers and loud-speakers and spare parts and accessories thereof.(b).	At the point of first sale in the state	12 paise in the rupee
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4. Cinematographic equipment	-do-	12 paise
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including cameras, projectors and sound recording and reproducing equipment lenses, film and parts and accessories required for use therewith.

in the
rupee

38.All electrical goods, instruments, apparatus and appliances including fans and lighting bulbs electrical earthenware and procelain and all other accessories. "

-do-

8 paise
in the
rupee

The assessee contends for taxing of these articles at the lower rate under Entry No. 38 and not at the higher rate under Entry Nos. 3 or 4.

3. We shall first consider the question relating to "arc carbons". The only argument on behalf of the assessee is that the carbon is used up and, therefore, it cannot be an accessory of the equipment specified in Entry No. 4. On this basis, the assessee claims that arc carbon used in the equipment is taxable under Entry No. 38 at a lesser rate. The High Court following its earlier decision held that arc carbons manufactured by the assessee were assessable under Entry No. 4 and not Entry No. 38. That view of the Andhra Pradesh High Court has been approved by this Court in *Annapurna Carbon Industries Co. vs. State of Andhra Pradesh*, [1976] 37 S.T.C. 378, and it was held that arc carbons fell within Entry No. 4 of the First Schedule to the Act. It was held by this Court that:

"..... The meaning of this entry can only be satisfactorily determined in the light of language of the entry itself considered in the context in which it occurs.

The entry No. 4 occurs in a schedule in which descriptions of goods to be taxed indicate that the expression "required for use therewith" has been employed for equipment or accessories connected with the main purpose. For instance, in entry No. 5, the expression

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occurs at the end as follows:

"Photographic and other cameras and enlargers, lenses, films and plates, paper and cloth and other parts and accessories required for use therewith. "

Apparently, the deciding factor is the predominant or ordinary purpose or use. It is not enough to show that the article can be put to other uses also. It is its general or predominant user which seems to determine the category in which an article will fall.

.....Again entry No. 3 for "wireless reception instruments and apparatus" includes "electrical valves, accumulators, amplifiers and loud-speakers and spare parts and accessories thereof". The words "Parts thereof" are used in several entries, such as entry No. 6 for clocks, timepieces and watches, entry No. 10 for dictaphones and other similar apparatus for recording sound and entry No. 11 for sound transmitting equipment such as telephones and loud-speakers.

Our object in indicating the nature of entries, amidst which entry No. 4 occurs is to show that some precision has been attempted in

making the entries. When it was intended to confine the entry to particular gadgets and "parts thereof" the entry said so. Of course, even where an entry relates to parts manufactured for use for a particular kind of instrument or gadget only, the article, manufactured to serve as a part of a particular kind of apparatus would not cease to be covered by the intended entry simply because a purchaser makes some other use of it. We have to find the intention of the framers of the schedule in making the entry in each case. The best guide to their intentions is the language actually employed by them. We find that the term "accessories" is used in the schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word "accessory" is used is given in Webster's Third New International Dictionary as follows: "an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else". Other meanings given there are : "Supplementary or secondary to something of greater or primary importance"; "additional"; "any of several mechanical devices that assist in operating or controlling to tone resources of an organ". "Accessories" are not necessarily confined to particular machines for which they may serve as aids, The same item may be an accessory of more than one kind of instrument.

It will be noticed that the entry we have to interpret includes "parts" as well as "accessories" which are required for use in projectors or other cinematographic equipment. We think that The Andhra Pradesh High Court correctly held that the main use of the are carbons under consideration was duly proved to be that of production of powerful light used in projectors in cinemas. The fact that they can also be used for searchlights, signaling, stage lighting, or where powerful lighting for photography or other purposes may be required, could not detract from the classification to which the carbon arcs belong. That is determined by their ordinary or commonly known purpose or user. This, as already observed by us, is evident from the fact that they are known as "cinema are carbons" in the Market. This finding was enough, in our opinion to justify the view taken by the Andhra Pradesh High Court that the goods under consideration are covered by the relevant entry No. 4. "

(emphasis supplied)
(at pages 380-81)

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4. A plea on behalf of the assessee for reconsideration of the decision of this Court in Annapurna Carbon Industries Co. (supra) was made. We find no ground to accept that submission. We may add that the decision has held the field for all these years and we do not find any reason to doubt the correctness of that decision. It must, therefore, be

held that the decision of the High Court that arc carbons are taxable under Entry No. 4 of the First Schedule to the Act does not call for any interference.

5. We now consider the question relating to dry battery cells. The matters involving this question are of two broad categories. One category relates to the period prior to certain amendments made in the Act in 1976 while the other category of matters relates to the period subsequent to that amendment. For the period prior to the 1976 amendment, the dry cell batteries only of Union Carbide India Ltd. which bore on it the mark "for transistors" were held to be taxable under Entry No. 3 at a higher rate while the multi-purpose dry cell batteries of all the assessees which did not bear any such mark were held to be taxable at the lesser rate under Entry No. 38. Accordingly, for the period prior to 1976, the only aggrieved assessee is the Union Carbide India Ltd. in respect of its batteries bearing the mark "for transistors" which were assessed at the higher rate under Entry No. 3 while the State is aggrieved by assessment of the remaining dry cell batteries of all assessees under Entry No. 38. For this reason, there are cross appeals by the Union Carbide India Ltd, and the State relating to the period prior to 1976 amendment.

6. For the post-1976 period, the High Court has held that all dry cell batteries, after the amendments in the Act, are taxable only under Entry No. 38. Accordingly, the State alone has preferred the appeals in this behalf for the post-1976 period.

7. All the appeals are considered together since they involve for decision the common question of taxability of dry cell batteries. The contention of the learned counsel appearing for the assessee is that the dry cell batteries are taxable only under Entry No. 38 for the entire period. On the other hand, the contention on behalf of the State Government is that all such batteries are taxable throughout only under Entry No. 3. In the alternative, it was urged that after the 1976 amendment effective from 1.9.1976, the dry cell batteries are taxable under Entry No. 137 as it then stood but not under Entry No. 38. It was submitted that Entry No. 3 is attracted because dry cell batteries are "accessories" of wireless reception instruments etc. even if not "accumulators"; and that it is not "accessories" of "electrical goods" due to which Entry No. 38 is excluded. In short, the contention on behalf of the State is that a "dry cell battery" is either an "accumulator" or "storage battery" or an "accessory" of wireless reception instruments etc. to fall under Entry No. 3 throughout or Entry No. 137 w.e.f. 1.9.1976 but not an "accessory" of "electrical goods" to fall under Entry No. 38. The question for decision, therefore, is whether the view taken that dry cell batteries fall within Entry No.38 is incorrect on the grounds urged by the State. Only in respect of Union Carbide India Ltd,. for the pre-1976 period, the question also is : Whether the dry cell batteries marked "for transistors" were wrongly assessed to be taxable under Entry No, 3 instead of Entry

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No.38?

8. At this stage, the relevant entries as they stood after the amendment made in 1976 and 1985 may also be quoted:

With effect from 1.9.1976:-

"3. Wireless reception instruments and apparatus, radios and radio gramophones, electrical valves, accumulators,	At the point of first sale in the state	12 paise in the rupee
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amplifiers and loudspeakers
and spare parts and
accessories thereof. (1003)

38. All kinds of electrical
goods, instruments, apparatus
and appliances that is to say -

-do-

8 paise
in the
rupee

(i) Wires, holders,
plugs, switches,
electrical earthenware
and porcelain ware;

(ii) Casings, cappings,
reapers, bends, junction
boxes, meter-boxes,
switch boxes, meter-
boards and switch boards
other those made of wood;

(iii) Electrical
fans, lighting bulbs,
torches, fluorescent
tubes and their fittings,
like chokes and starters
and other parts and
accessories thereof,

(iv) Electrical grinders,
mixers, blenders, hair driers,
shavers, washing machines
cooking ranges, boilers,
ovens, geysers, gener-
ators, transformers and
parts and accessories
thereof,

(v) Electronic systems,
instruments apparatus,
appliances including
electronic cash register-
ing indexing card-
punching, franking and
addressing machines,
computers of analog and
digital varieties, one
record units,
oscilloscopes and other
electronic equipment and
material and parts and
accessories thereof;
(1038)

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137. Electrical storage
batteries and parts
thereof of including
containers, covers
and plates (1137) state

At the point
of first
sale in the

12 paise
in the
rupee

With effect from 1.7.1985:--

152. Dry batteries or cells
*(and parts and accessories
thereof).

At the point
of first
sale in the

*(10) paise
in the
rupee

*Rate of tax on item 152 reduced from 11 paise to 10 paise
and the bracked words added by G.O.Ms.No.630, Rev.,
dt.30.5.1986 w.e.f. 1.6.1986 and later by Act 19 of 1986
w.e.f. 1.8.1986

The subsequent amendments show that with Entry No. 152
specifically providing for "dry batteries or cells" while
Entry No. 3 remained the same, since then "dry batteries or
cells" cannot come under Entry No. 3 in view of the specific
Entry No. 152. The question is whether prior to the

specific provision being made in Entry No. 152 for dry batteries or cells, Entry No. 3 had to be preferred or it was Entry No. 137 w.e.f 1.9.1976 which included "dry batteries or cells". To come under Entry No. 137 which is the alternative argument advanced on behalf of the State Government, dry batteries or cells must fall within the meaning of "storage battery" and for attracting Entry No. 3 it must fall within the expressions "accumulators" or "accessories thereof". We shall presently show that dry batteries or cells are not "storage batteries" or "accumulators". The real question therefore would be whether they can be called "accessories" of wireless reception instruments etc." to fall within Entry No. 3. This is because the expression is "accessories thereof".

9. In Hamlyn All-Colour Science Encyclopedia the "accumulators" are described as:

"The accumulator does not make electricity in the way that the dry battery does. Electricity has to be put in before any can be taken out. The same amount of electricity can be obtained from an accumulator as was put into it."

On the other hand dry batteries are called a primary cell which is different from an accumulator, secondary cell or storage battery.

10. In Chambers Science and Technology Dictionary, "accumulator" is defined as:

"Voltaic cell which can be charged and discharged. On charge, when an electric current is passed through it into the positive and out of the negative terminals (according to the conventional direction of flow of current), electrical energy is converted into chemical

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energy. The process is reversed on discharge, the chemical energy, less losses both in potential and current, being converted into useful electrical energy. Accumulators therefore form a useful portable supply of electric power, but have the disadvantages of being heavy and of being at best 70% efficient. More often known as battery, also called reversible cell, secondary cell, storage battery"

and storage battery is mentioned to be the same as an accumulator.

11. Primary cells and primary batteries or dry batteries or cells are understood in common parlance as well as in technology to be different from accumulators or storage cells.

12. In The New Encyclopedia Britannica, Vol.1, at page 963, it is stated that,

"There are two major type of voltaic cells: primary batteries and secondary, or storage, batteries. (The latter are sometimes also called accumulators.) Primary cells are constructed in such a way that only one continuous or intermittent discharge can be obtained. Secondary devices, on the other hand, are constructed so that they can be discharged and then recharged to approximately their original state. The charging process is the reverse of the discharge process; therefore, the electrode reactions in these batteries must be reversible.

"Primary batteries" are defined as

"Several varieties of primary cells are available. These include dry, wet, and solid electrolyte. Dry cells are not actually dry but contain an aqueous electrolyte that is unspillable or immobilized. Many of these cells are sealed to prevent seepage of the electrolyte or reaction products. Common examples of such primary batteries are acidic dry cells (e.g. carbon-zinc cells), used in flashlights, toys, and certain transistorized portable radios; alkaline dry cells, employed in cameras, tape records, and electric razors, and mercury cells, utilized in aids and photographic flash guns."

and "Secondary batteries" are defined as

"Such batteries consist of an assemblage of several identical voltaic cells. Of the various types of storage batteries available, the lead-acid type is the most widely used.

It serves as the power source for the electrical systems of many kinds of motor vehicles, particularly automobiles and trucks. It is also commonly used to provide electricity for emergency lighting and communication circuits.....

13. For this reason, dry batteries or cells cannot be treated as "storage batteries" for the purpose of Entry No. 137 or "accumulators" for the purpose of Entry No. 3.

14. The expression "accessories thereof" in Entry No. 3 indicates that Entry No. 3 can be attracted only if the dry batteries or cells can be treated as accessories of the wire reception instruments etc. specified in Entry No. 3 or else they would fall under Entry No. 38 as "other accessories" of "all electrical goods" being the residuary entry. The dry cells or batteries marked for use in transistors as is the case of some such batteries manufactured by the Union Carbide India Ltd. alone during the pre-1976 period, may fall under Entry No. 3 as held by the High Court. However, multi-purpose batteries, not specified for use in transistors alone cannot be treated as "accessories thereof" of wireless reception instruments etc. for the purpose

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of Entry No. 3.

15. In Annapurna Carbon Industries Co. significance is attached to use of the word "thereof" and it was indicated that the deciding factor is the predominant or ordinary purpose or use and it is not enough to show that the articles can be put to other uses also. It was held therein that the general or predominant user seems to determine the category in which an article will fall. On a comparison made between the different entries in which the term "accessories" is used in the Schedule to describe goods, it was shown that the word was construed taking into account the fact whether the goods have been manufactured for use as an aid or addition to any of the specified articles in that entry or not. It was also pointed out that when it was intended to confine the entry to particular gadgets and particulars thereof, the entry said so; and, therefore, the expression "accessories thereof" must mean the general or predominant user of the article only as an accessory of one of the specified items mentioned in that entry. Applying & a test, it cannot be held that dry batteries or cells which were not marked "for transistors" and were multi-purpose cells were manufactured for predominant use as accessories of the wireless reception instruments etc. to fall under

Entry No. 3 SD that they could not be treated as "other accessories" of "all electrical goods" for the purpose of attracting Easy No. 38.

16. At this stage it is also useful to refer to a clarification made by the Board of Revenue by a circular dated 7-1.1977 which reads as follows:

"B.P.Rt.No.29/1977 Board of Revenue
(C.T.)

Hyderabad D7-1-1977

Shri A. Krishnaswamy, I.A.S.,
Commissioner of Commercial Taxes.

Sub - Andhra Pradesh General Sales Tax Act, 1957

Rate of tax on dry battery cells

Clarification issued.

Ref.- Representation dated 27.9.1976

from M/s Indo National Limited,
Nellore-

The trade has requested the Board to clarify be rue of tax applicable to dry battery cells. battery cells.

The Board has examined the issue and is of the view that dry battery cells would be of two types :

1 . Those labelled for a special use such as transistor batteries. The rate of tax would depend on the rate leviable on the goods for which they are labelled as being an accessory. In the case of transistor batteries, they would be subjected to tax as accessories of radios

2. Those that are not labelled for special use, such dry cells would be liable 1st Schedule to the Andhra Pradesh General Sales Tax Act 1957, i.e. 'Electrical Goods' liable to tax at 8% at the point of 1st sale in the State.

Sdt T.Jesudenam
Asstt. Commissioner (CT)"

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(at page 120 from paperbook of C.A.Nos.4537-39/1986)

The above circular is of significance to indicate the manner in which these entries were understood and construed even by the Department which is in accord with the construction made of the entries by the High Court.

17.For the above reasons, we do not find any infirmity in the view taken by the High Court on any of the two questions which it has decided. There is no ground to interfere in any of these appeals.

18.Consequently, all the appeals and the special leave petition are dismissed. No costs.

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