

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 1591-1592 OF 2009
(Arising out of S.L.P.(C) Nos.24422-24423/2007)

M/s Sony India Pvt. Ltd.

...Appellant(s)

Versus

Commercial Tax Officer & Anr.

...Respondent(s)

ORDER

Leave granted.

Appellant had a factory at Dharuhera, Haryana wherein it was manufacturing, inter alia, Televisions, Audio systems, Walkman-Pocket size Radio Cassette Player, which apart from being sold locally, were branch transferred to various States wherein local sales were made. They also imported certain items from abroad either at New Delhi or at Mumbai and after filing Bills of Entry for home consumption, paid customs duty and cleared the goods. The goods were thereafter branch transferred to their warehouses located in different parts of the country including Tamil Nadu. Prior to the period in question, appellant's products, both indigenously produced as well as those imported from outside India, were assessed under Entry 14(vi) and (viii) of Part D of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. They were, accordingly, taxed at 12% at the point of first sale in the State of Tamil Nadu. However, in 2002, an amendment was made for the first time and 'imported' goods falling in Part D of the First Schedule of the Act

were sought to be taxed at enhanced rate of 20%. Appellant sought a clarification from the Commissioner under Section 28-A of the Act. While the clarification was pending, the appellant challenged the said amendment vide O.P.Nos.969-970/2002 before the Tamil Nadu Taxation Special Tribunal constituted under the Tamil Nadu Taxation Special Tribunal Act, 1992 in terms of Article 323B of the Constitution. One of the grounds of challenge was that there was no distinction between imported goods and indigenously manufactured goods particularly when they answer the same description, more so since the goods after import became part of the landmass of India. The appellant also alleged that identical goods manufactured by multinational corporations like LG, Samsung etc. were also subjected to levy of 12% only, since the said multinationals (who were competitors of the appellant) produced those goods in India. The Tribunal dismissed the O.Ps. against which Writ Petitions were filed by the appellant which were also dismissed by the High Court by the impugned judgment, hence these Civil Appeals.

As repeatedly observed by this Court, in tax matters, each word in the Entry requires a factual foundation to be established. In the present case, therefore, we need to look at the subject Entries.

We quote hereinbelow Part-D of the First Schedule to the Act – Sl.No.14

(vi):

Sl. No.	DESCRIPTION OF GOODS	Point of Levy in the State	Rate of Tax
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14	(vi) Audio and video cassettes, CDs, corresponding recorders and players, Gramophones of all kinds including record players, radio gramophones, gramophone records, matrices for records and record changers, sound recording and reproducing equipments including dicta-phones, car cassette players, tape-decks, tape players, compact disc players (including a combination of any of them) with or without wireless reception instrument and pagers[xxx]@.	First Sale	12% w.e.f 27.03.2002
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@ 'Cellular telephones' have been taken as item 1 of Part DD from 21st March 2003 – See that Part of this Schedule. Before this transfer, the rate of tax on their sales was reduced from 12% to 4% from 24th December 2002 by Notification No.II(I)/CT/74(d)/2002 of that date.

We also quote hereinbelow from the same Part Sl.No.14(viii), which reads as under:

Sl. No.	DESCRIPTION OF GOODS	Point of Levy in the State	Rate of Tax
14	(viii) <u>Television sets</u> , antenna, television and video cameras, projectors, teleprompters, dish antenna and boosters, all electronic toys and games (The previous rates could not be indicated as the groupings of the goods varied from time to time)	First Sale	12% w.e.f 27.03.2002

We also quote hereinbelow, item 9 of the 11th Schedule, which reads as under:

Sl. No.	DESCRIPTION OF GOODS	Point of Levy	Rate of Tax
9	<u>Imported</u> cigarettes, medium density fibre boards, textile and other items falling in Parts D and E of the First Schedule	First Sale	20%

The controversy has arisen because some of the items are imported from Japan by the Assessee whereas others are manufactured in India. As far as items

manufactured locally in India, there is no dispute. The tax is levied at 12%. The dispute is basically confined to imported items in which the rate of tax is 20% (after 27.03.2002).

In the O.P. filed before the Tribunal, it was urged that once the importation stands completed, then the goods lose their character of imported goods and, consequently, there would be no difference between the locally manufactured goods and imported goods (see page 54 of the SLP Paper Book). One more contention raised by the assessee in its Original Petition before the Tribunal was:

“It is submitted that similar goods manufactured in India and sold by other dealer like Samsung, LG etc. in Tamil Nadu are being taxed at 12% after 27.03.2002. However, the petitioners (assessee) herein alone are now required to pay tax at 20%. Presently, the Act imposes a higher rate of 20% on sales tax whereas other similar goods suffer sales tax at 12%.”

We do not wish to comment about the above contentions. Suffice it to state that these contentions would require adjudication, which has not taken place in the present case. Against the assessment orders, the assessee chose to move the Tribunal without exhausting statutory remedy under the Act. In our view, looking to the contentions advanced by the assessee, they ought to have proceeded to file appeals for each assessment year before the First Appellate Authority under the Act which they have failed to do. However, since an important question of law arises for determination and since the liability is likely to recur in future, we direct the appellant-assessee herein to prefer statutory appeal(s) within a period of four weeks. It is made clear that the First Appellate Authority will decide the said appeal(s)

within a period of six months, uninfluenced by the observations made by the Tribunal as well as by the High Court in the impugned judgment. We express no opinion on the merits of the case. Whatever is stated hereinabove is only in the support of our order remitting the matter to the First Appellate Authority and that Authority shall not be bound by any of our observations mentioned hereinabove. The First Appellate Authority shall decide the matter on merits and it shall condone the delay, if any, in filing the appeals.

Civil Appeals are disposed of accordingly.

No order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(H.L. DATTU)

New Delhi,
March 05, 2009.