IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE ANTONY DOMINIC
&
THE HONOURABLE MR. JUSTICE DAMA SESHADRI NAIDU

FRIDAY, THE 9TH DAY OF SEPTEMBER 2016/18TH BHADRA, 1938

OT.Appeal.No. 1 of 2013 ()

APPELLANT(S):

PHILIPS ELECTRONICS INDIA LIMITED
DOOR.NO.VI/160B,KUTTIKKATTUKARA PO, ALUPURAM 683 503,
ERNAKULAM DISTRICT, REPRESENTED BY ITS AUTHORISED
SIGNATORY MR.KUMAR VENKITACHALAM.

BY ADVS.SRI.JOSEPH JERARD SAMSON RODRIGUES
SRI.ROVIN RODRIGUES

RESPONDENT(S):

STATE OF KERALA,
REPRESENTED BY THE COMMISSIONER OF COMMERCIAL TAXES,
THIRUVANANTHAPURAM 695 001.

R BY SRI. MOHAMMED RAFIQ, GOVERNMENT PLEADER

THIS OTHER TAX APPEAL HAVING BEEN FINALLY HEARD ON 09-09-2016, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S ANNEXURES:

ANNEXURE I	:	A COPY OF THE NOTIFICATION OF THE FINANCE DEPARTMENT, GUJARAT, DATED 01.04.2008.
ANNEXURE II	:	A COPY OF THE ORDER OF THE JOINT COMMISSIONER, COMMERCIAL TAX (LEGAL), GUJARAT, DATED 08.12.2011.
ANNEXURE III	:	A COPY OF THE APPLICATION FOR CLARIFICATION DATED 09.07.2012.
ANNEXURE IV	:	A COPY OF THE ORDER OF CLARIFICATION NO.C3/22783/12/CT DATED 05.11.2012.

RESPONDENTS' ANNEXURES: NIL

//TRUE COPY//

P.A. TO JUDGE.

rv

ANTONY DOMINIC & DAMA SESHADRI NAIDU, JJ.

O.T. Appeal No. 1 of 2013

Dated this the 9th day of September, 2016.

JUDGMENT

Dama Seshadri Naidu, J.

The appellant, a corporate giant, manufactures and trades in electronic goods, which include T5 fluorescent lamps. A registered dealer under the Kerala Value Added Tax Act, 2003 (the Act), it applied to the authorities under Section 94 of the Act to clarify the rate of tax applicable to T5 fluorescent lamps.

2. In response, the Department of Commercial Taxes, Kerala, issued Annexure IV order dated 05.11.2012. Repelling the appellant's contention that T5 fluorescent lamps ought to be treated on a par with Compact Fluorescent Lamps (CFL), the Department has held that they cannot be brought under entry 28A of the III Schedule to the Act, under which CFL has been categorised. Aggrieved, the appellant has filed this appeal.

3. The learned counsel for the appellant has strenuously contended that T5 fluorescent lamps and compact fluorescent lamps

function with the same technology and towards the same end: providing more light with less energy consumed. According to him, since T5 fluorescent lamp has not been assigned any specific HSN number, it ought to be classified along with CFL, especially because they both are technically and functionally the same.

4. Elaborating further, the learned counsel has contended that CFL is exigible to tax at 5%, but a T5 fluorescent lamp, in contrast, is taxed at 14.5%. According to him, the Department's clarification that the T5 fluorescent lamp would be taxable at 13.5% under entry 103 of SRO No. 82/2006 is erroneous. To support his submissions, the learned counsel has placed reliance on Reckitt Benckiser (India) Ltd. v. Commissioner, Commercial Taxes and others[1].

5. The learned counsel has also brought to our notice Annexure I, a notification issued by the State of Gujarat. According to him, T5 fluorescent lamp in the State of Gujarat has been treated on a par with CFL and taxed only at 5%. He has, therefore, urged us to follow the Gujarat example and clarify that the T5 fluorescent lamp, being similar to CFL, ought to be taxable at the same rate.

6. On the other hand, the learned Government Pleader has

[1] [2008] 15 VST 10 (SC)

submitted that the very objective behind taxing a CFL at 5% is that it is compact and can be used for replacing any conventional incandescent filament lamp, which consumes more energy. He has further contended that T5 fluorescent lamp, in contrast, cannot be termed compact; in fact, it requires a special device called 'putty' to hold the lamp in place.

7. Though the learned Government Pleader has fairly conceded that the technology may be the same, he has, nevertheless, stressed that the end use of both the products is entirely different. So absent any specific HSN number, the common-parlance method must be adopted. In elaboration, he has submitted that even in daily use, T5 fluorescent lamp is to be treated as a slim version of the regular tube light, rather than a CFL.

8. Heard the learned counsel for the appellant and the learned Government Pleader, apart from perusing the record.

9. To begin with, as seen from Annexure I, the State of Gujarat has issued a notification treating T5 fluorescent lamp on a par with CFL for taxation. That said, we should further acknowledge that Annexure I does not bind the Department; nor can it vitiate Annexure

IV clarification issued by the Department. At best, Annexure I is persuasive while the authorities decide the issue of taxing the product. Indeed, if the Government takes a fiscal decision as regards any particular product, the Court may have no say in that regard unless the decision so taken falls foul of any statutory mandate.

10. As seen, entry 28A of the III Schedule to the Act has specified only CFL without a HSN number. First, we are prepared to accept that T5 fluorescent lamp and CFL work with the same technology. But we find it difficult to accept that both the products are the same. It is not the case of even the very appellant either. After examining the samples of both the products—T5 fluorescent lamp and CFL—produced by the learned counsel on either side, we find that the products have their descriptions distinctly printed on the cartons. To elaborate, we may observe that the carton of T5 fluorescent lamp has nowhere mentioned that it is a CFL. As has been rightly contended by the learned Government Pleader, even in common parlance it is difficult to liken a T5 fluorescent lamp with a CFL, both of which are functionally different and distinct.

11. As regards the authority relied on by the learned counsel for

the appellant, all that that has been stated in Reckitt Benckiser (India) Ltd. (supra) is that absent HSN, the method of common parlance has to be adopted. Determining the nature of T5 fluorescent lamp, we may observe, is a question of fact. The authorities, with their expertise and experience, on a comprehensive consideration, have issued Annexure IV clarification holding that T5 fluorescent lamp cannot be equated with CFL. They have, as a result, declared the product exigible at 13.5%.

In the facts and circumstances, we see nothing patently illegal or arbitrary in Annexure IV to be interfered with. As a result, we dismiss the appeal. No order on costs.

ANTONY DOMINIC,
JUDGE.

DAMA SESHADRI NAIDU,
JUDGE.

Rv