IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL NO. 46 of 2017
With
CIVIL APPLICATION (OJ) NO. 58 of 2017
In
TAX APPEAL NO. 46 of 2017

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR.JUSTICE M.R. SHAH
and
HONOURABLE MR.JUSTICE B.N. KARIA

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	YES
2	To be referred to the Reporter or not ?	YES
3	Whether their Lordships wish to see the fair copy of the judgment ?	NO
4	Whether this case involves a substantial question of law as to the interpretation of the Constitution of India or any order made thereunder ?	NO

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STATE OF GUJARAT....Appellant(s)
Versus
M/S TITAN INDUSTRIES LIMITED....Opponent(s)

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Appearance:
MS MAITHILI MEHTA, AGP for the Appellant(s) No. 1
M/S WADIAGHANDY & CO, ADVOCATE for the Opponent(s) No.1

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CORAM: **HONOURABLE MR.JUSTICE M.R. SHAH**
and
HONOURABLE MR.JUSTICE B.N. KARIA

Date : 03/02/2017

ORAL JUDGMENT
(PER : HONOURABLE MR.JUSTICE M.R. SHAH)

[1.0] Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned Gujarat Value Added Tax Tribunal, Ahmedabad *(hereinafter referred to as "the learned tribunal")* dated 24/02/2016 in First Appeal No.23/2011 by which the learned tribunal has allowed the said Appeal preferred by the respondent herein quashing and setting the determination order passed by the learned Joint Commissioner and holding that NEBULA Jewellery Watch is covered under Entry 13(ii) of Schedule-II to the Value Added Tax Act *(hereinafter referred to as "the Act"),* revenue has preferred the present Appeal with the following proposed question of law;

> *(i) Whether the Hon'ble Tribunal has erred in law and in facts in holding that NEBULA Watch is falling under Entry 13(ii) of the Act?*

[2.0] The facts leading to the present Appeal in a nutshell are as under;

[2.1] The learned Joint Commissioner of Commercial Tax, Legal, Gujarat State, Ahmedabad passed the determination order dated 12/10/2011 holding that the goods in question i.e. *'NEBULA Jewellery Watch'* fall under Entry 87 of Second Schedule to the Act and the respondent – assessee is liable to pay tax at the rate of 12.5% from 01/04/2008 onwards and is also liable to pay additional tax of 2.5%.

Feeling aggrieved and dissatisfied with the aforesaid determination order dated 12/10/2011 passed by the learned Joint Commissioner of Commercial Tax, the respondent – original appellant preferred Appeal before the learned tribunal.

[2.2] It was the case on behalf of the assessee / dealer that the assessee is manufacturing Electronic Watches, Jewellery Watches (NEBULA brand), Jewellery (Tanishq brand), Spectacles (sun glasses /goggles – Fastrack Brand) at his various factories in India. It was the case on behalf of the assessee /dealer that the NEBULA Jewellery Watch is made of gold and /or silver and /or diamonds and /or precious stones and /or semi previous stones. It was contented on behalf of the assessee /dealer that the NEBULA Jewellery Watch would fall under 13(ii) of Schedule II of the Act. It was the case on behalf of the assessee /dealer that the NEBULA Watches are manufactured within the factory of the assessee with precision craftsmanship by the designers and artisans like goldsmith. It was contented that the jewellery watch is more a jewellery than a watch, because in such item the content of gold or precious metal and /or precious stone is predominant. It was contended on behalf of the assessee that the value of gold or precious stone remains at almost 90% to 95% whereas the value of watch is hardly of more than Rs.1400/- to Rs.2000/-, and therefore, it was submitted that the jewellery watch is in fact a piece of jewellery, where a watch movement is embedded in such jewellery. It was contended on behalf of the assessee that the buyer is very much interested in buying such item as jewellery because of its ornamental value and the status it carries in the society. It was submitted that one who wants to buy a watch only would buy a simple watch, but who wants to buy something more than a simple watch and a unique item in jewellery with an additional facility like that of a watch in jewellery would go for such jewellery watches. It was further submitted /contended that the jewellery watches normally are marketed by jewellers in their show room and watch dealers are hardly selling such jewellery watch, and therefore, it was submitted that NEBULA Jewellery Watch would fall under Entry 13(ii) of Schedule II of the Act.

On the other hand, it was the case on behalf of the State that NEBULA Jewellery Watch is a watch which carries mechanism of Watch. It was the case on behalf of the State that there is no specific entry of watch, and therefore, it would fall under Entry No.87 of Second Schedule of the Act. On appreciation of material on record and considering Entry No.13(ii) of Schedule II of the Act, by the impugned judgment and order, the learned tribunal has held that NEBULA Jewellery Watch would fall under Entry No.13(ii) of Schedule II of the Act. However, while holding so, the learned tribunal has observed and held that the said decision shall be applicable prospectively and the assessee /dealer shall not be entitled to refund on the basis of the said decision, more particularly, with respect to the past transactions.

Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the learned tribunal, revenue has preferred the present Appeal to consider the following proposed question of law;

> *(ii) Whether the Hon'ble Tribunal has erred in law and in facts in holding that NEBULA Watch is falling under Entry 13(ii) of the Act?*

[3.0] Ms. Maithili Mehta, learned AGP appearing on behalf of the State has vehemently submitted that in the facts and circumstances of the case, the learned tribunal has materially erred in holding NEBULA Watch as jewellery and thereby has materially erred in holding that the same shall fall under Entry No.13(ii) of Schedule II of the Act. It is submitted that the learned tribunal has not properly appreciated the fact that ultimately the NEBULA Watch is a watch, which carries mechanism of watch, and therefore, the same would fall under the residuary Entry No.87, as for watch there is no specific Entry. It is further submitted by Ms. Maithili Mehta, learned AGP appearing on behalf of the State that even otherwise consider Entry No.13(ii) of Schedule II of the Act it speaks on “Articles or Jewellery”. It is submitted that therefore for the applicability of Entry No.13(ii) of Schedule II of the Act, the goods must be “Article or Jewellery”. It is submitted that in the present case, the learned tribunal has proceeded on the footing, *whether the NEBULA Watch can be said to be jewellery falling under Entry No.13(ii) of Schedule II of the Act or not?* Relying upon the literature of NEBULA Watch from net it is submitted that even according to the respondent – assessee /dealer, NEBULA is a latest collection in watch. It is submitted that therefore NEBULA Watches are required to be treated and considered as watch, which would fall under the residuary Entry No.87 of Schedule II of the Act.

Making the above submissions, it is requested to admit /allow the present Appeal.

[4.0] The present Appeal is vehemently opposed by Shri Tanvish Bhatt, learned advocate appearing on behalf of the respondent – assessee /dealer. It is vehemently submitted by

Shri Tanvish Bhatt, learned advocate appearing on behalf of the respondent – assessee that in the facts and circumstances of the case, the learned tribunal has not committed any error in holding that NEBULA Watch is a jewellery falling under Entry 13(ii) of Schedule II of the Act. It is submitted that, as such, NEBULA Watch is predominantly a jewellery made of 18 Karat gold in which precious metals are used. It is submitted that, as such, it is a jewellery watch manufactured and designed by the precision craftsman of the Company and by the designers and artisans like goldsmith. It is submitted that the value of gold and /or silver and /or precious stones in the NEBULA Watch remains at almost 90% to 95% whereas the value of watch is hardly 5%. It is submitted that NEBULA Watch is a piece of jewellery where a watch movement is embedded in such jewellery. It is submitted that, as such, such watches are manufactured within the factory of the assessee /dealer with precious metals like gold and /or silver and /or stones. It is submitted that NEBULA Watches are not sold normally in watch shops and the same are normally sold in jewellery shops. It is submitted that therefore the NEBULA Watch is more a jewellery rather than watch. It is submitted that therefore the same is rightly to be held to be falling under Entry No.13(ii) of Schedule II of the Act. It is further submitted that either it may be treated as "Article or Jewellery" as the same is made of gold and /or silver and /or other precious metals and /or precious stones, and therefore, the same shall fall under Entry 13(ii) of Schedule II of the Act.

[4.1] It is further submitted by Shri Tanvish Bhatt, learned advocate appearing on behalf of the respondent – assessee that merely because the NEBULA Watch is having the mechanism of watch, considering the fact that predominantly it is a jewellery in which 18 Karat gold and other precious metals /diamonds are used and the value of gold /precious metals /diamonds /stones remains 90% to 95%, the same shall not lose the characteristic of jewellery as per Entry No.13(ii) of Schedule II of the Act.

[4.2] Shri Tanvish Bhatt, learned advocate appearing on behalf of the respondent – assessee has also heavily relied upon the meaning of *"Jewellery"* in *Law Lexicon Dictionary*. It is submitted that any item in which gold or silver or precious metals or precious stones is used predominantly may be a watch, dress, goggles, hairpins etc. can be said to be a jewellery. It is further submitted that the word *"Jewellery"* contained in Entry No.13(ii) of Schedule II of the Act is required to be given the widest meaning /sense. In support o the above submissions, he has relied upon the decision of the Hon'ble Supreme Court in the case of ***The Elel Hotels and Investments Ltd. and Anr Vs. Union of India*** reported in ***AIR 1990 SC 1664*** as well as another decision of the Hon'ble Supreme Court in the case of ***Asst. Collector of Central Excise, Guntur Vs. Ramdev Tobaco Company*** reported in ***AIR 1991 SC 506***.

Making the above submissions and relying upon the above decisions, it is requested to dismiss the present Appeal and answer the question in favour of the assessee /dealer and against the revenue.

[5.0] Heard the learned advocates appearing on behalf of the respective parties at length. The short question, which is posed for the consideration of this Court is, *whether NEBULA*

Watch can be said to be jewellery falling under Entry No.13(ii) of Schedule II of the Act or not?

> *Entry No.13(ii) of Schedule II of Value Added Tax Act reads as under;*
> *Articles or Jewellery made of gold or silver or both or of other precious metals (studded or not studded with precious stones or pearls whether real, artificial or cultured)*

[5.1] It is required to be noted that NEBULA Watch is made of 18 Karat of gold. In manufacturing the NEBULA Watch, precious metals /precious stone /diamonds are used. The value of gold or precious stone remains 90% to 95%. Thus, the NEBULA Watch is made of gold and /or silver and /or precious metal and /or precious stones, which are manufactured within the factory of the assessee with precision craftsmanship by the designers and artisans like goldsmith. NEBULA Watches are sold by and large at jewellery shops and they are not sold in normal ordinary watch shops. Thus, the jewellery watches are normally marketed by the jeweller in their showrooms. From the certificate of authentic person, production In-charge of the factory, it appears that in making NEBULA Watch huge labour /making charges is spent ranging upto Rs.18,000/- to Rs.65,000/-. From the certificate produced on record, it appears that NEBULA Watches are manually polished and individually inspected, cleaned and manually assembled. All the diamond settings are done manually. Around 30% in terms of value addition involves labour work and the polishing stone settings etc. are of manual artisan work and not by machine. As observed hereinabove, the content of gold and /or silver and /or precious metal and /or precious stone is predominant and the value of gold remains at almost 90% to 95% whereas the value of watch, is hardly more than 2% to 5%. Thus, when it is manufactured as a jewellery watch rather than simple watch, the value of watch is approximately Rs.3 lakh per piece. Though, the jewellery watch is not defined under the Act, however, as per Entry No.13(ii) of Schedule II of the Act, Articles or Jewellery made of gold or silver or both or of other precious metals (studded or not studded with precious stones or pearls whether real, artificial or cultured), shall fall under Entry No.13(ii) of Schedule II of the Act. In the present case, NEBULA Watch, which is predominantly a jewellery, is made of gold, precious metals and /or precious stones /diamonds and is made of 18 Karat gold. Under the circumstances, the same can be said to be an *"Article or Jewellery"* falling within Entry No.13(ii) of Schedule II of the Act.

[5.2] Even in the literature or advertisement on the net it is titled as NEBULA 18K Solid Gold Watches by TITAN. It is stated that each watch is inspired from stories that pay tribute to India's heritage and royal art and each watch is crafted to perfection under supervision of highly skilled technicians. It is further submitted that NEBULA Watch is a delicate blend of the finest craftsmanship in jewellery making and the latest in watch technology. At this stage, meaning of Jewellery in Law Lexicon dictionary is required to be referred to, which reads as under;

> ***Jewel.*** *A precious stone; a gem; a valuable stone set and prepared for wear; an ornament of dress,*

usually made of a precious metal, having precious stones as a part of its design.

1. An ornament of precious metal often set with stones or finished with enamel work [S.511, ill (a), IPC}; 2 a precious stone.

***Jewellery**. Jewels in general, but as commonly understood, ornaments of gold or silver, or precious metals, or precious stones. See 31 Cal. 166. "The word 'jewelry' is generally used as including articles of personal adornment, and the word further imports that the articles are of value in the community where they are used. A belt of cowry shells, a necklace of bears' claws, a head ornament of sharks' teeth, though possessing no value in themselves, are esteemed valuable in the communities where they are worn; and we, therefore, constantly find them referred to in books written in the English language – books of travel, standard works, encyclopedias, and scientific dissertations upon sociology – we find those articles described in those books as 'jewelery'. The articles of value used for personal adornment in our civilization are, and for centuries have been, the precious metals, -gold and silver, to which, I think, platina is now general added, – and what are known as precious stones, the diamond, sapphire, ruby etc. Articles manufactured form those for the purpose of personal adornment are known as articles of jewellery" (Robins v. Robertson, 33 Fed 709, 710)*

A bag of coins would not pass under a bequest of

"jewellery" (Sudbery. Brown, 4 W.R. 736 Eng.)
Hat pins, hair pins, breast pins, buckles, and other similar ornaments adapted for personal use or otherwise, and composed of base metal or imitation of precious metals and otherwise, some being set with imitation precious stones are dutiable as jewellery."

As per meaning of Jewel /Jewellery in Law Lexicon Dictionary means Articles manufactured from those for the purpose of personal adornment are known as articles of jewellery. Even hair pin, hat pin, buckles and other similar ornaments adapted for personal use or otherwise, and composed of base metal or imitation of precious metals and otherwise, some being set with imitation precious stones, are dutiable as jewellery. Even the dress having diamond on it predominantly can be in a given case said to be a jewellery. Mainly because the NEBULA Watch carries the mechanism of watch it will not loose the characteristic of jewellery.

[5.3] The word *"Article or Jewellery"* used in Entry No.13(ii) of Schedule II of the Act is required to be given the widest meaning and is not required to be read in a narrow or restricted sense and the fullest meaning is required to be given to the words used in the Entry in the texting statute. In the case of ***The Elel Hotel and Investments Ltd. and Anr (Supra)*** the Hon'ble Supreme Court has observed that the cardinal rule of interpretation is that the entries in the legislative lists are not to be read in a narrow or restricted sense and that each general word should be held to extend to all ancillary or subsidiary matters which can fairly and reasonably be said to be comprehended in it. It is further observed that the widest possible construction, according to the ordinary meaning of the words in the entry, must be put upon them.

[6.0] Considering the aforesaid facts and circumstances of the case, no error has been committed by the learned tribunal in holding NEBULA Watch as NEBULA Jewellery Watch falling under Entry 13(ii) of Schedule II of the Act. We are in complete agreement with the view taken by the learned tribunal. We see no reason to interfere with the impugned judgment and order passed by the learned tribunal in holding NEBULA Watch /NEBULA Jewellery Watch falling under Entry No.13(ii) of Schedule II of the Act.

[7.0] In view of the above and for the reasons stated hereinabove, the present Appeal fails and the same deserves to be dismissed and is accordingly dismissed. The question of law is answered against the revenue and in favour of the assessee.

Civil Application No.58/2017

In view of dismissal of the Tax Appeal, no order in the Civil Application and the same stands disposed of accordingly.

(M.R. SHAH, J.)

(B.N. KARIA, J.)

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