

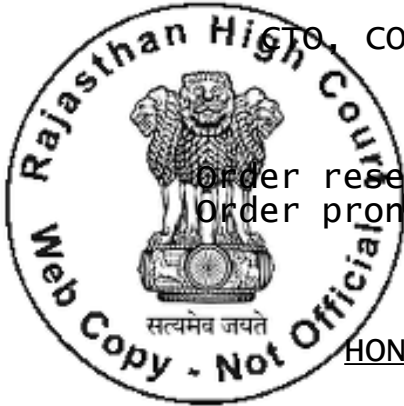
IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR
BENCH, JAIPUR

S.B. Sales Tax Revision Petition No.129 of 2012

M/S MARATHON INDIA LTD. D-248, BEHARI MARG, BANI PARK,
JAIPUR. THROUGH ITS DIRECTOR HIMANSHU DUBE

V.

TO, COMMERCIAL TAXES DEPARTMENT, CIRCLE 'J', KAR
BHAWAN, JHALANA, JAIPUR



Order reserved on : 21st October 2016
Order pronounced on : 2nd December 2016

HON'BLE MR. JUSTICE JAINENDRA KUMAR RANKA

Mr. T.C. Jain, counsel for petitioner
Mr. R.B. Mathur and
Ms. Tanvi Sahai, counsel for respondent

ORDER

1. The instant petition is directed against order dt 28.3.2012 passed by the Rajasthan Tax Board, Ajmer, in Appeal no.485/2011/Jaipur. The assessment year is 2007-08.

2. The brief facts noticed are that the assessee is supplier of batteries and during the course of its business, sold batteries for the purposes of Radio Communication Receivers (RCRs), which is mainly and primarily supplied to the Army for its use in the RCRs. while the claim of assessee has been that as per schedule IV (Part-A) of the Rajasthan Value Added Tax Act, 2003, there is an Entry bearing no.13, stating "Radio Communication Receivers, Radio Pagers – Rate of

Tax being 4%", and there is another Entry bearing no.28 in the same Schedule which states "Parts of 1 to 27 above - Rate of Tax being 4%", and the claim of assessee was that since battery is a part of Entry no.13 i.e. RCRs, therefore, the same rate of 4% was required to be applied insofar as the batteries are concerned, however, the claim of assessee was negated by the Assessing Officer, who held that batteries are being separately sold and it will fall in the Residuary Entry at the rate of 12.5%.



3. The matter was assailed before the Dy. Commissioner (Appeals), who after taking into consideration the certificates issued by Army Authorities, and the facts brought on record, held that batteries being used in RCRs cannot be separately taxed at the rate of 12.5% and the very nature of the batteries being integral part of RCRs, rate of 4% was only applicable.

4. The Revenue preferred appeal before the Tax Board, who after analysing the material on record, held that batteries are being separately sold and Residuary rate of 12.5%, which was applied by the AO, was just and proper and accordingly reversed the finding of DC(A).

5. Learned counsel for the assessee vehemently contended that the assessee is only a dealer of batteries which is mainly and primarily supplied to

Government of India for the purpose of Army, who use the same in RCRs and there is no other purpose of the batteries because batteries cannot be put to any other use except placing in the RCRs. Learned counsel contended that before the AO two certificates from



Office of the Directorate General Assam Rifles : Shillong, were submitted, which had certified that the batteries being supplied by the assessee is an integral part of RCRs and when there is a specific certificate of the purchaser, then the Tax Board ought not to have applied its own reasoning. Learned counsel contended

that there is no other use of the batteries except to put as an integral part of RCRs and when Schedule IV clearly expresses in Entry no.28 that parts and accessories of 1 to 27 above will also be taxed at the rate of 4%, the AO and the Tax Board ought not to have applied their analogy in taking the specific claim of the Residuary clause. Learned counsel relied upon **ACTO v. M/s Swastik Agencies** (2015) 12 RGSTR 394 (RHC), **Vikas Traders v. The State of Gujarat** [1976] 37 STC 163, **Commissioner of Central Excise v. Insulation Electrical (P) Ltd.** [2008] 9 VAT Reporter 139,

Hindustan Poles Corporation v. Commissioner of Central Excise [2006] 145 STC 625, **Assistant Commissioner v. Bits & Bites** [2011] 15 VAT Reporter 164, **Assistant Commissioner v. M/s Camlin Limited & Anr** (2015) 11 RGSTR 59 (RHC-SB), and **ACTO v. M/s Industrial Instruments, Jodhpur** [STR 331/2005, decided on 14.2.2013].

6. Per contra, learned counsel for the Revenue vehemently contended that the assessee is a seller of batteries and such batteries can be used for diverse purposes and are not merely integral part of RCRs. Learned counsel contended that the Tax Board has analysed the Entry again and has come to a specific finding that batteries sold separately were not an integral part of Radio sets and thus contended that the finding recorded by the Tax Board is just and proper, and relied upon **State of Punjab & Ors. v. Nokia India Pvt. Ltd.** AIR 2015 SC 1068, and **State of Uttar Pradesh & Anr. v. Kores (India) Ltd.** 1990 (26) ECR 464 (SC).



7. I have considered the arguments advanced by learned counsel for the parties and gone through the judgments relied upon by them.

8. It has already been observed that Schedule IV Part-A of the Act, which takes into consideration rate of 4% with reference to RCRs, Radio Pagers and so also Entry No.28 mentions about tax on entries no.1 to 27, which includes RCRs and Radio Pagers, to be applicable at the rate of 4%. It would be appropriate to quote the two certificates issued by respective authorities of Office of the Directorate General Assam Rifles : Shillong, who had purchased the said batteries, opining as under :-

“Office of the Directorate General Assam Rifles :
Shillong

CERTIFICATE

Certified that the 12v 15AH LiSO2 Battery is an

5

accessory of Radio Set STARS V 5W and can only be use for the Radio Set and no where else.

Place: Shillong – 10
Dated: 23 Mar 2010

(Ashwin Dev)
Colonel
Chief Signal

officer



OFFICE OF THE DIRECTORATE GENERAL ASSAM RIFLES
SIGNALS BRANCH, SHILLONG

CERTIFICATE

ELIS02 Battery 12V, 15Ah having Part No. Y3/6135-000288 is an integral part of Radio Communication Receiver STARS V (5 W).

The Radio Communication Receiver is incomplete/non-functional without Part No. Y3/6135-000288.

PLACE: SHILLONG – 10
DATED: 30 July 2010

Lt. Col.
S O I (IT & Comm)
Communication

Branch
Rifles

Directorate General Assam
Shillong - 793011”

9. On perusal of the above and in the certificates specifically issued by the authorities, which has not been adversely commented by the AO and/or the Tax Board, meaning that the batteries which were supplied by the assessee to the Army, were accessories of Radio Set STARS V 5W, and Radio Communication Receiver is incomplete/non-functional without the said part being placed. Once there is a specific certificate by the Army itself, who purchased the said batteries, in my view the finding reached by the Tax Board appears to be unjustified, and when Entry No.28 mentions about tax on 1 to 27, which includes RCRs and Radio Pagers, to be applicable at the rate of 4%, in my

view any part including batteries would cover in Entry No.28. Battery is certainly fitted for RCRs or used in cars and for other diverse purposes and unless a battery is fitted into a RCR or so to say a Car, it would be non-functional and such RCRs or/and Cars will not start and will not function.



10. Once there is a specific rate of 4% for the parts sold, in my view the finding reached by the AO as well as the Tax Board is contrary to the specific Entry as referred to hereinbefore.

11. This court in ACTO v. M/s Swastik Agencies (supra), had an occasion to consider a case where battery which was fitted into a Motor Car and this court, after taking into consideration few of the judgments, held that same rate is to be applied on sale of batteries as that of a Motor Car, though there was a finding that the batteries which are to be fitted in Motor Cars can be used for other diverse purposes then too, this court came to the conclusion that a nominal sale be that as it may of such batteries could not alter the nature of the transaction, whereas in the instant case there is a specific certificate of the Army Authority that the said battery can only be used as a part/integral part of RCRs, admittedly entire sale is to the ARMY only and for specific use alone.

11.1 This court in the case of ACTO v. M/s Industrial Instruments, Jodhpur (supra), had an

occasion to consider as to whether UPS and CVT are essential parts of computer or not, and whether different rate could be applied, and this court in the aforesaid case held that UPS and CVT are essential parts of computer and same rate has to be applied as that of a computer.



11.2 In the case of Vikas Traders v. The State of Gujarat (supra), the court took into consideration as to whether batteries were component parts and there was a finding that batteries were being used for tractors as well, and tractor being not motor vehicle, therefore, claim of the Revenue was that different rate would apply, however, the court analysing the provisions, came to the conclusion that battery specifically falls as component part even though it has been used in a tractor and thus directed to apply the same rate.

11.3 The apex court in the case of Hindustan Poles Corporation v. Commissioner of Central Excise (supra) has held that it is settled law that when one particular item is covered by one specified entry, then the Revenue is not permitted to travel to the residuary entry, and the residuary entry is meant only for those categories of goods which clearly fall outside the ambit of specified entries, and the same view was held by this court in the case of Assistant Commissioner v. Bits & Bites (supra).

12. The Karnataka High Court in the case of **State of Karnataka v. Mysore Thermo Electric (P.) Ltd.** [2014] 45 taxmann.com 111 (Karnataka), was considering a case of batteries which were specially designed and manufactured as per the specifications given by the Ministry of Railways, Government of India, and such batteries were sold to Railways for use in rail engines, wagons, coaches etc., while the claim of assessee was that rate of 4% was applicable, the Revenue in that case applied the same rate of 12.5% as in the instant case, the High Court after analysing the material on record came to the conclusion that when the batteries were manufactured as per the specifications of railways and sold it, formed part of railway coaches, engines and wagons and held that rate of 4% is required to be applied. In the instant case as well, the batteries are only for the specific use of RCRs and for no other purpose and, therefore, the rate of 4% is applicable.



13. The Allahabad High Court in the case of **Tudor India Limited v. State of U.P.** 2014 SCC OnLine All 11944, had also a occasion of considering sale of automotive batteries and held that battery is an essential component for the functioning of tractor and is an integral part of tractor and, therefore, the same rate was required to be applied.

14. The Allahabad High Court in the case of **Commissioner of Sales Tax v. Banaras Battery Works** 1981

U.P.T.C. 974, had an occasion to consider whether battery is an accessory or a part and it held that while an accessory has been held to be an article which is used for convenient and smooth functioning, whereas a battery cannot be said to be an accessory rather a vehicle is not complete without battery as the vehicle cannot operate without a battery, therefore, battery is a component part of motor vehicle and held that same rate is applicable.



15. The judgments relied upon by the learned counsel for the Revenue in the case of State of Punjab & Ors. v. Nokia India Pvt. Ltd. (supra) is distinguishable on facts, as insofar as cell phone battery charger is concerned, the court held that mobile/cell phone charger is an accessory to cell phone and is not a part of cell phone and found as a finding of fact that a battery charger cannot be held to be a component part of a cell phone but it is an independent product which can be sold separately without selling a cell phone and, therefore, held that the rate charged by the Revenue in that case was correct, whereas the finding as recorded hereinabove is that the battery used in RCRs is an integral part, is not separable and thus the judgment is distinguishable.

16. The judgment in the case of State of Uttar Pradesh & Anr. v. Kores (India) Ltd. (supra) was relating to ribbon used in a typewriter, and the court found as finding of fact that it was an accessory and

not a part of typewriter (unlike spool), though it may not be possible to use the latter without the former. The apex court also found that typewriters are being sold in market without a typewriter ribbon and, therefore, typewriter ribbon is not an essential part of typewriter so as to attract a lower rate of tax, and facts are distinguishable as in the instant case it is an integral part of RCR and cannot be separated.



Taking into consideration the aforesaid and for the reason assigned, the claim of assessee, in my view, appears to be just and proper and the rate of 4% was rightly paid by the assessee and is not required to be interfered with. The petition succeeds and the order of Tax Board dt 28.3.2012 is reversed.

(JAINENDRA KUMAR RANKA) J.