

M/S. B.P.L. LTD.

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v.

STATE OF A.P.

JANUARY 9, 2001

[B.N. KIRPAL, MRS. RUMA PAL AND BRIJESH KUMAR, JJ.]

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Sales Tax:

Andhra Pradesh General Sales Tax Act, 1957—First Schedule—Entry 38(iv); 38(v)—Notification levying concessional rate of tax on ‘Electronic Goods’—Automatic Washing Machines—Entitlement to—Held, automatic washing machines are electronic goods and therefore entitled to benefit of the notification.

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Appellants are manufacturers and dealers in semi and fully automatic washing machines. Sales tax rate leviable on washing machines was 10% prior to 20-7-1988 under the Andhra Pradesh General Sales Tax Act, 1957. A notification, issued under Section 9 of the Act, reduced the rate of sales tax to 2% on sale of ‘electronic goods’ with effect from 1-7-1988. The term ‘electronic goods’ is defined in the said notification. The appellants treated the fully automatic washing machines as ‘electronic goods’ and paid sales tax at the rate of 2%. Revenue rejected the benefit of the notification for fully automatic washing machines and raised a demand after making provisional assessments levying a rate of sales tax at 10%. Appellate Assistant Commissioner, Sales Tax Tribunal and High Court concurred with the Revenue. Hence the appeals.

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The appellants contended that fully automatic washing machines are electronic goods and therefore entitled to benefit of the notification; that such machines work on “Fuzzy Logic Computer Program”; that the machines were micro-computer-controlled which actually work on the principal of auto selection of the various parameters.

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The respondent State contended that there is a specific entry for washing machines under Entry 38 (iv) of the First Schedule to the Act; and that the notification is not applicable for automatic washing machines.

Allowing the appeals, the Court

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A HELD : 1.1. The key words which appear in the definition of 'electronic goods' in the notification are "operating on electronic principles". The underlying object for issuing such a notification was to give fillip to modern technology as a result of which consumer electronics or electronic appliances or equipment operating on electronic principles were to be charged a lesser rate of sales tax. The action of the automatic washing machines can be regarded as being one which runs on centrifugal force but the operation or the running of the machines is completely controlled by the micro process technology involved in such machines. The running of the machine and its functions are controlled by programmed micro chips. These micro-chips control and direct electric current in a programmed manner so as to enable the washing machine to carry out its functions. The operations which are automatically controlled in the working of the machines are that of (a) wash cycle, (b) rinse cycle and (c) spin/dry. It has been certified by the Indian Institute of Technology that the automatic washing machine of the appellants has the facility of water level control delay program. It has various programs which are controlled through micro-processor chips. The notification requires that an item can be regarded as an electronic goods if all its functions which are required to be performed by the equipment or appliance are performed or controlled electronically by micro-processor. Admittedly, the entire functioning of the washing machine is automatic. Data is fed into the machine and thereupon it is the micro processors which control and direct the carrying out of the various functions of the machine which results in the clothes being washed in the desired manner. [200-E-F-G-H; 201-A]

1.2. On 1-6-1989, the State Government issued a memorandum whereby the attention of the Commissioner of Commercial Taxes was drawn to the list of electronic items prepared by the Electronics Corporation and it was stated in this memorandum that the State Government had decided that the list may be followed for the purpose of concessional rate of tax on the electronic goods as envisaged by the earlier notification dated 20-7-1988. Under the heading "consumer electronics", radio receivers, cassette tape-recorders, record changers etc. are mentioned and entry 1.65 reads as follows: "Other consumer electronic aids/products". The reading of the list clearly shows that even though some of these equipments or appliances performed different functions like reproducing sound, as in the case of radio receivers or tape-recorders, all of them are controlled or work with the help of chips or micro processors. Even though washing machine is not specifically mentioned as one of the items, it would fall under the category of "Consumer Electronic Product". Like a record player or radio, it works with the aid of micro processor and

falls within the definition of “electronic goods” as contained in the notification dated 20-7-1988. [201-B-C-D-E] A

1.3. Entry 38(iv) of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957 relates to electrical items which includes electrical washing machine whereas electronic items or products are referred to in Entry 38(v). An electronic washing machine would come under Entry 38(v) of the Schedule and the notification dated 20-7-1988 would apply to all electronic goods including automatic washing machines of the appellants. The appellants are entitled to the benefit of the notification dated 20-7-1988 with the result that subject to other conditions which may be required to be fulfilled, the rate of sales tax payable in respect of the automatic washing machines would be 2% as prescribed by the said notification and thereafter as per notification dated 7-9-1993 the rate has been raised to 4%. [201-F-G] B
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CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 444-445 of 2001. D

From the Judgment and Order dated 01.4.1999 in TRC 47 & 48/96 of the High Court of A.P. at Hyderabad.

With

C.A. Nos. 446-447 of 2001. E

With

C.A. Nos. 448 to 454 of 2001.

Kapil Sibal, M.N. Rao, Ms. K. Amareswari Roy Abraham, Ms. Baby Krishnan, G. Sreedhar, Ajith, Y. Raja Gopala Rao, G. Venkatesh, T. Anil Kumar and K. Ram Kumar for the appearing parties. F

The Judgment of the Court was delivered by

KIRPAL, J. Special leave granted. G

The only question which arises for consideration in this case is whether Fully Automatic Washing Machine can be regarded as “electronic goods” so as to attract a lower rate of sales tax.

The undisputed facts are that the appellants are manufacturers and H

A dealers in television, audios, washing machines etc. and are registered dealers with the Sales Tax Department at Hyderabad. Though the appellants deal in both Semi and Fully Automatic Washing Machines, the present controversy is only with regard to Fully Automatic Washing Machines.

B Prior to 20th July, 1988, the rate of sales tax leviable on the sale of Automatic Washing Machine was 10 per cent. On 20th July, 1988, by a notification issued in exercise of power contained in Section 9 of the Andhra Pradesh General Sales Tax Act, 1957, the rate of tax payable on the sale of 'electronic goods' as defined in the said notification was reduced to 2 paise in a rupee with effect from 1st July, 1988. This notification also exempted the sale of electronic goods from the levy of additional tax under Section 5(a) and surcharge on sales tax under Section 6(B) of the said Act.

C The term "electronic goods" was defined in the said notification as follows:

D "2. For the purpose of this notification, the term "Electronic Goods" means electronic systems, instruments, appliances, apparatus, equipment operating on electronic principles and all types of electronic components, parts and materials and include:

- E (i) Consumer Electronics;
- (ii) Electronic test and measuring instruments;
- (iii) Medical Electronic Equipment;
- (iv) Electronic analytical instruments;
- (v) Electronic equipment/instrument for nuclear Geo-Scientific and other special application;
- F (vi) Electronic process control equipment;
- (vii) Power Electronic Equipment;
- Electronic industrial Automation and Control equipment:
- G (viii) Electronic data processing systems and electronic office equipment;
- (ix) Electronic Broadcasting Equipment;
- (x) Electronic Aerospace and Defence equipment."

H The appellants claimed before the Sales Tax Authorities that its

Automatic Washing Machines worked on *Fuzzy Logic Computer Program*. In other words, Fully Automatic Washing Machines were micro-computer-controlled washing machines that actually worked on the principle of auto selection of the various parameters. The entire work of washing the clothes, after the same were loaded into the machine, was carried out automatically, the machines being controlled and operated micro processor technology.

Without accepting the contention of the appellants, the provisional assessment order for the period 1st April, 1994 to 31st March, 1995 was passed raising a demand of Rs. 8,83,143 as differential tax. For subsequent period also tax was demanded, but it is not necessary to go into any further details in respect thereof.

The appellant filed appeals before the Appellate Assistant Commissioner but without success. The Sales Tax Appellate Tribunal, on a further appeal being filed by the appellants also came to the conclusion that the Automatic Washing Machines would not be regarded as electronic goods.

The High Court of Andhra Pradesh also decided the point in issue against the appellants. While disposing of the tax revision case, the High Court came to the conclusion that while the control panel of such machines was certainly electronic in the sense that it involved silicon chips and semi conductors, the washing machines themselves did not operate on principles of electronics. The washing machines, the High Court concluded, operated on the principle of centrifugal force, which is electro-mechanical in nature but not electronic and any amount of sophisticated control of machine installing micro-computer in the control panel could not make the machine electronic in nature. Hence, these appeals.

The answer to the question arising in these cases depends upon the interpretation of the definition of the term "electronic goods". The said term is defined by the aforesaid notification. On a plain reading thereof, it means that systems, instructions appliances, apparatus and equipments which are electronic and operate on electronic principle would be electronic goods. All types of electronic components, parts or materials are also electronic goods as per the said definition. In addition thereto, sub-clause (i) of para 2 of the notifications specifically provides that in the definition of the term "electronic goods" consumer electronics are also included. What has to be seen is whether the automatic washing machines are electronic appliances or equipments operating on electronic principle.

A Mr. Kapil Sibal, the learned senior counsel appearing for the appellants contended that it should be so regarded. Mr. M.N. Rao, the learned senior counsel submitted that in addition thereto, the automatic washing machine was in any case an item which should be regarded as consumer electronics and therefore would be entitled to the benefit of the said notification.

B The key words to our mind which appear in the said definition contained in the notification are "operating on electronic principles". In the Concise Oxford Dictionary, Tenth Edition, "electronic" has been *inter alia* defined as "having components such as micro chips and transistors that control and direct electronic currents". In McGraw-Hill Encyclopedia of Science and
C Technology (Sixth Edition), Volume VI at page 235 under the heading "Electronics" it is stated thus: "The branch of science and technology relating to the conduction and control of electricity flowing through semi-conductor materials or though vacuum or gases." Under the heading "Consumer
D Electronics " at page 237 of the said Encyclopedia, it is it is stated that: "Aside from the communications services of telephone, radio and television the consumer has available a wide variety of electronic devices and equipment which employ the detailed technology of the computer industry."

It appears to us that the underliving object of the State of Andhra Pradesh issuing such a notification was to give fillip to modern technology as a result of which consumer electronics or electronic appliances or equipment
E operating on electronic principles were to be charged lesser rate of sales tax. It is, no doubt, true that the action of washing machines can be regarded as being one which runs on centrifugal force but the operation or the running of these machines is completely controlled by the micro process technology involved in the said machines. It is not in dispute that the running of this
F machine and its functions are controlled by programmed micro chips. These micro-chips control and direct electric current in a programmed manner so as to enable the washing machine to carry out its functions. The operations which are automatically controlled in the working of the machines are that of (a) wash cycle, (b) rinse cycle and (c) spin/dry. It has been certified by
G the Indian Institute of Technology in the present case that the Automatic Washing Machine of the appellants has the facility of water level controlled delay program. It has various programs which are controlled through micro-processor chips. In other words what the said notification requires is that on item can be regarded as an electronic goods if its all functions which are required to be performed by that equipment or appliance are performed or
H controlled electronically by micro-processor. Admittedly, in the present case

the entire functioning of the washing machine is automatic. Data is fed into the machine and thereupon it is the micro processors which control and direct the carrying out of the various functions of the machine which results in the clothes being washed\ in the desired manner. A

We may here notice that on 1st June, 1989 the Government of Andhra Pradesh has issued a memorandum whereby the attention of the Commissioner of Commercial Taxes was drawn to the list of electronic items prepared by the Electronics Corporation and it was stated in this memorandum that the Government had decided that the State List may be followed for the purpose of concessional rate of tax on the electronic goods as envisaged by the earlier notification dated 20th July, 1988. A copy of the said list has been filed in Court which mentions various type of electronic equipments falling under different heads. Under the heading of "consumer electronics", radio receivers, cassette tape-recorders, record changers etc. are mentioned and entry 1.65 reads as follows: "Other consumer electronic aids/products". The reading of this list clearly shows that even though some of these equipments or appliances performed different functions like reproducing sound, as in the case of radio receivers or tape-recorders, all of them are controlled or work with the help of chips or micro processors. Even though washing machine is not specifically mentioned as one of the items, it would fall under the category of "Consumer Electronic Product". Like a record player or radio, it works with the aid or micro processor and falls within the definition of "electronic goods" as contained in the said notification dated 20th July, 1988. B
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It was submitted by the learned senior counsel for the respondent that washing machine is specifically mentioned in Item No. 38(iv) of the Schedule to the said Act. Therefore, it was contended that notification of 20th July, 1988, cannot apply because in the case of washing machine the rate of duty specified under entry 38(iv) is 10 per cent. We are unable to agree with this contention for the simple reason that entry 38(iv) relates to electrical items including electrical washing machine whereas electronic items or products are referred to in entry 38(v). An electronic washing machine would come under entry 38(v) and the notification dated 30th July, 1988 would apply to all electronic goods including automatic washing machines of the appellants. F
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For the aforesaid reasons, the appeals are allowed, the judgment of the High Court and all the decision of the authorities below are set aside. The appellants are held to be entitled to the benefit of the notification dated 20th July, 1988 with the result that subject to other conditions which they may require to be fulfilled, the rate of sales tax payable in respect of the Automatic H

- A Washing Machines would be 2 per cent as prescribed by the said notification and thereafter as per notification dated 7th September, 1993 by which rate has been raised to 4 per cent.

No order as to costs.

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Appeals allowed.