

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

SALES TAX REFERENCE NO.29 OF 2009

IN

REFERENCE APPLICATION NO.107 OF 2002

The Commissioner of Sales Tax,
Maharashtra State, 8th Floor,
Vikrikar Bhavan, Mazgaon,
Mumbai 400 010

... Applicant

v/s

M/s Khush Bhakht Electronic
Engineers Pvt.Ltd.
C.M. Banaji Building,
Room No.12, 1st Floor,
Forget Street X Lane,
Gowalia Tank, Tardeo,
Mumbai 400 036

... Respondent

Mr V.A. Sonpal, Special Counsel with Mr Dushyant Kumar, AGP for
the Applicant.

**CORAM : S.C. DHARMADHIKARI AND
B.P. COLABAWALLA JJ.**

RESERVED ON : 04th September, 2018.

PRONOUNCED ON : 14th September, 2018.

JUDGMENT [PER B. P. COLABAWALLA J.] :-

1. By this Sales Tax Reference, the third Bench of the
Maharashtra Sales Tax Tribunal, Mumbai (for short, the "**MSTT**")
has referred the following question of law for an opinion of this Court

under section 61 of the Bombay Sales Tax Act, 1959 (for short, the **“BST Act”**). This Reference has been preferred at the instance of the Applicant – Revenue. The question of law that has been referred for our opinion reads thus :-

“Whether on the facts and circumstances of the case and on a true and correct interpretation of schedule entries C-II-124 and C-II-126, appended to the Bombay Sales Tax Act 1959, the Tribunal was legally justified in holding the impugned product i.e. Hybrid Amplifier or Line Extender as not an accessory of Cable T.V. covered by the said schedule entry C-II-124 but a general electronic item covered by the schedule entry C-II-126 ?”

2. Before we analyze the relevant entries in the schedule to the BST Act and the legal submissions made before us in relation thereto, it would be necessary to advert to some necessary facts.

3. The Assessee (M/s Khush Bhakht Electronic Engineers Pvt. Ltd.) is engaged in the manufacture and sale of Hybrid Amplifiers and other electronic instruments. In the context of this business activity, the Assessee is duly registered under the provisions of the BST Act. Since the Assessee was having some doubt regarding one of its products, i.e. a “Hybrid Amplifier” (described also as a “Line Extender”) and the applicable tax rate in respect thereof, the Assessee filed an Application for determination of disputed question (the DDQ Application) before the Commissioner of Sales Tax under section 52 of the BST Act. For the purposes of

this DDQ Application, the Assessee produced before the Commissioner its sale bill No.79 dated 11th March 1996 under which sale of the disputed product (Hybrid Amplifier) was effected. Before the Commissioner, the Assessee described this disputed product (Hybrid Amplifier) as under :-

“The Appellant manufactures distribution appliances like line extenders, couplers, splitters etc., which are used in the distribution of Cable TV signal in the network. The impugned product 'Line Extender' is also known as Amplifier or Ampli or Booster. The function of the Line Extender is to make-up for the losses in the dBm V value of the signals, taking place over the length of cable. The Line Extender is used for VHF, UHF and skip band and Hyper band sections of the frequency spectrum. The function of the Line Extender is not only to increase the dB value of the signals, but also to compensate the drop of higher frequency signals. The circuitry works on 24 VDC. The impugned article amplifies a broad spectrum of frequency in the VHF/UHF bands and it is claimed that it can be used for any application where amplification of these frequencies are desired. TV frequency falls within the broad spectrum and therefore it is used by the Cable TV industry. The user is the broadcaster who broadcasts these signals via network of Cables from central room to the subscriber. As regards construction, it is stated that the instrument consists of resistor, diodes capacitors, semi/conductor devices, ICs, inductors, connectors, transformers, components fuse and fuse-holders etc. PCB is populated with components and semi conductor devices etc. All the components are soldered Assembled PCB is mounted on the aluminium chassis and covers. The instrument does not conform to any standard specification.”

4. After giving this description, the Assessee claimed before the Commissioner that the impugned product was an electronic item not covered by any specific entry and therefore, would fall under Schedule Entry C-II-126 which was a residuary entry for electronic items. It was the case of the Assessee that in respect of goods covered by Schedule Entry No.C-II-126 the tax rate had been

reduced to 4% as per Notification Entry A-33 under section 41 of the BST Act. In these circumstances, the Assessee contended that the sale of Hybrid Amplifiers was claimed to be liable to tax at the concessional rate of 4%.

5. This classification as contended by the Assessee was not accepted by the Commissioner. The Commissioner inter alia held that the impugned product was specifically required for Cable TV and therefore, it was covered by Schedule Entry No.C-II-124 as an accessory of the Cable TV. Thus, having regard to the functional utility of the product, the Commissioner held that the Hybrid Amplifiers were covered by Schedule Entry No.C-II-124 and liable to tax at 13%. It is in this manner, the Commissioner decided the DDQ Application filed by the Assessee vide his order dated 1st February 1997 (for short, the **“DDQ Order”**).

6. Being aggrieved by this DDQ order passed by the Commissioner, the Assessee challenged the same before the MSTT. It was the contention of the Assessee before the MSTT that the use of Hybrid Amplifiers was not restricted to Cable TV alone and could also be used for several other purposes such as drivers, pre-amplifiers for an induction furnace and cautery unit. Similarly, it also was used for ultrasonic applications. In this regard, the Assessee also

submitted an expert opinion's report dated 19th August 1998 before the MSTT to show the different uses for which the impugned product could be used. Apart from this, the Assessee also disputed the Commissioner's finding that the function of Hybrid Amplifiers are akin to a TV Antenna. After hearing the parties, the MSTT, vide its order dated 29th June, 2002 accepted the contentions of the Assessee and set aside the DDQ order passed by the Commissioner.

7. Being displeased with the order passed by the MSTT dated 29th June 2002, the Commissioner of Sales Tax preferred a Reference Application being Reference Application No.107 of 2002. This Reference Application came to be allowed by order dated 27th October, 2005 and the MSTT referred the question of law reproduced above to this Court for its opinion and decision under section 61 of the BST Act. This is how the matter has come up before us.

8. In this factual backdrop, Mr Sonpal, learned Special Counsel appearing on behalf of the Revenue, submitted that Schedule Entry No.C-II-124 specifically deals with TV Sets, TV Cameras, TV Receivers, Antennas, components, parts and accessories of any of them. In contrast, he submitted that Schedule Entry No.C-II-126 was a residual entry and/or a general entry dealing with electronic systems, appliances other than those covered

elsewhere and components, parts and accessories of any of them. It was the submission of Mr Sonpal that if electronic items would fall in any other Entry, the same would be outside the purview of Schedule Entry No.C-II-126. He submitted that the impugned product clearly fell within Schedule Entry No.C-II-124 which covered TV Sets, Antennas etc. According to Mr Sonpal, TV Sets are operated as a wireless apparatus to receive sound and images by radio waves. For this purpose, the antenna was an integral part through which TV waves were received. He stated before us that the impugned product viz. Hybrid Amplifier (Line Extender) admittedly was used for cable TV transmission, the function of which was to make up the losses in the signals taking place over the length of the cable. This impugned product, according to Mr Sonpal, was specifically required for Cable TV transmission. He therefore submitted that the impugned product was functionally akin to that of an Antenna and having regard to the functional utility of the impugned product, he submitted that the same was clearly an accessory of a TV which was squarely covered by Schedule Entry No.C-II-124. He therefore submitted that looking to all these facts and circumstances of the case, the question of law reproduced above ought to be answered in favour of the Revenue and against the Assessee.

9. We have heard Mr Sonpal at length and have perused the

papers and proceedings in the present Reference Application including the DDQ order passed by the Commissioner dated 1st February, 1997 as well as the order passed by the MSTT dated 29th June 2002.

10. The real question that arises for our consideration is whether the impugned product falls within Schedule Entry C-II-124 which deals with TV Sets, Antennas etc. and their accessories or whether the same would fall within Schedule Entry C-II-126 which deals with the electronic systems, instruments and appliances and components, parts and accessories of any of them.

11. Schedule Entry C-II-124 reads thus :-

Entry	Description of the goods	Rate	Rate	Period
124	Television sets, television cameras, television receivers, television monitors, antennas and components, parts and accessories of any of them. Rate reduced to 6 % on sale of T.V. sets by Electronics Corporation of India to Govt. Recognized and/or aided secondary school, Junior training colleges, colleges of Education in the State, refer entry I-2 of Noti. U/s 41, w.e.f. 1-10-1995.	13 %	13 %	1-10-1995 to date

12. As can be seen from this Entry, the same deals with TV Sets, TV Cameras, TV Receivers, TV Monitors, Antennas and components, parts and accessories of any of them, and are taxed at the rate of 13%. However, this rate is reduced to 6% on sale of TV Sets by Electronics Corporation of India to Government Recognized and/or aided secondary schools, Junior training colleges, and colleges of Education in the State, with effect from 1st October 1995.

13. In contrast, Schedule Entry C-II-126 reads thus :-

Entry	Description of the goods	Rate	Rate	Period
126	Electronic systems, instruments (apparatus) and other than those covered elsewhere and components, parts and accessories of any of them.	13 %	13 %	1-10-1995 to date.
(1)	Rate reduced to 4 % on sale or purchase of Electronic system, instrument and appliances, refer entry A-33(1)(a) of Noti. U/s 41 w.e.f. 1-10-1996 to 30-4-98. Now this Notification has been deleted w.e.f. 1-5-98.			
(2)	Rate reduced to 2 % on sale or purchase of Fax Machine, Calculator, Modem and Electronic copier machines, refer entry A-33(l)(d) of Noti. U/s 41 w.e.f. 1-10-1996 to 30-4-98. From 1-5-1998 to 31-12-99 rate			

enhanced to 4 %, on above items, refer entry A-33(I)(d) of Noti. U/s 41, rate enhanced to 8 % and whole of surcharge and turnover tax exempted w.e.f. 1.1.2000 to 14-8-00. Rate reduced to 8 % and W.o.S. & T.T. exempted on Fax Machine and Electronic copying machine, refer entry 33(I)(d) of Noti. U/s 41 w.e.f. 15-8-2000.

- (3) Rate reduced to 4 % on electronic components and parts, refer entry A-33(3) of Noti. U/s 41, w.e.f. 1-10-1995 to 31-12-99. Rate enhanced to 8 % and whole if surcharge and turnover tax exempted w.e.f. 1.1.2000.
- (4) Rate reduced to 4 % and whole of turnover tax and surcharge reduced on described items, refer entry A-149 of Noti. U/s 41 w.e.f. 1-5-2002.
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14. As can be seen from this Entry, the same pertains to electronic systems, instruments, apparatus and appliances other than those covered elsewhere and components, parts and accessories of any of them. This entry (Schedule Entry C-II-126) is clearly a residual entry. This is clear from the words '*other than those elsewhere*' that appear in this Entry. However, the question still remains whether the impugned product viz. Hybrid Amplifiers would fall within the Schedule Entry C-II-124 which deals with TV sets, TV cameras, TV receivers, TV monitors, Antennas, components, parts and accessories of any of them. If the impugned product falls

within Schedule Entry C-II-124, then necessarily the same would fall outside the purview of Entry C-II-126.

15. From the facts that have been placed before us and also before the authorities below, it is quite clear that though Hybrid Amplifiers may be used for Cable TV transmission to the extent that it boosts the signal that has to be transmitted, it has very many other uses. According to the experts' opinion (and which was placed before the MSTT by the Assessee), it can be seen that the impugned product is capable of amplifying signals over a range of 48 MHz to 550 MHz. The maximum output is 120 dBu. For all these reasons, according to the experts' opinion, the impugned product (viz. Hybrid Amplifiers) could be used for a variety of applications including in the aeronautical field, navigation etc. to name a few. The expert further opined the difference between the properties of an Antenna and that of the impugned product viz. Hybrid Amplifiers. According to the experts' opinion, the Antenna was a mechanical structure, constructed from metal sections and/or a wire mesh. In contrast, the amplifier was an electronic assembly assembled using electronic components such as integrated circuits. Secondly, an Antenna was fabricated at a mechanical workshop whereas the Amplifier was assembled in a unit only capable of specialized electronic assembly. Thirdly, the Antenna was a passive device i.e. it did not require any

power supply for its operation whereas the Amplifier was an active device requiring a power source. Fourthly, the Antenna did not process or alter the electronic properties of the signals received by it whereas the Amplifier processed the input signal and in fact boosted it before feeding to its output. Lastly, the Antenna was an essential component for receiving wireless transmission which were then fed into a TV set whereas the Amplifier was not an essential part of a TV reception system. Over and above all this material, the experts' opinion clearly shows that the impugned product can be used for mobile radio, VHF TV channels, Radio Service, FM Radio, in the aeronautical field, amateur Radio, Radio Navigation as well as UHF TV channels.

16. From all these facts, what becomes clear is that the Hybrid Amplifier basically boosts the signal, be it for the purpose of transmission of Cable TV or for several other purposes as set out by us earlier. This being the position, we agree with the finding of the MSTT that the impugned product viz. Hybrid Amplifier has got a totally different function and it has no function akin to an antenna as was held by the Commissioner in his DDQ order. We do not find that this Hybrid Amplifier can be classified under Schedule Entry C-II-124 as it is neither a TV set, TV Camera, TV Receiver, TV Monitor, antennas and components, parts and accessories of any of them. It

is a stand alone active device for the purpose of boosting weaker signals and is comprised of all electronic components and parts. In these circumstances, to our mind at least, it would squarely fall within Schedule Entry C-II-126 which deals with electronic systems, instruments and appliances and components, parts and accessories of any of them. Merely because the impugned product can also be used for the purpose of boosting Cable TV signals would not alone justify its classification under Schedule Entry C-II-124.

17. It is true as submitted by Mr Sonpal that when there is a specific entry in the Schedule, the same would override a general entry. This proposition of law has been laid down by the Supreme Court in the case of State of Maharashtra v/s M/s Bradma of India Ltd., reported in (2005) 2 SCC 669. However, we do not see how this decision would apply to the facts and circumstances in the present case. We find that the impugned product viz. Hybrid Amplifier does not fall in any specific entry and therefore would be covered by the residual or general entry viz. Schedule Entry C-II-126.

18. This being the factual position before us and our foregoing discussion, we have no hesitation in holding that the Hybrid Amplifier sold by the Assessee would fall within the Schedule Entry C-II-126. The question of law as reproduced by us earlier, is

therefore answered in the affirmative and against the Revenue and in favour of the Assessee. This Sales Tax Reference is therefore answered in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

(B. P. COLABAWALLA J.)

(S. C. DHARMADHIKARI J.)