Before Hon'ble Ashok Bhan & N. K. Sodhi, JJ.

STATE OF HARYANA,—*Appellant.*

versus

M/S RAJINDRA ELECTRONIC STORE, AMBALA CITY,—*Respondent.*

G.S.T.R. No. 37 of 1986.

The 8th January, 1996

Haryana General Sales Tax Act, 1973—S. 42(1)—Schedule 'A', Entry No. 18—Flourescent tubes when sold assembled is electrical appliances alongwith chokes, phatties *and starters and exigible to tax at the rate of 10 per cent under Entry 18, Schedule 'A'—When sold separately chokes, starters and* phatties *would not be covered under Entry 18 of Schedule 'A'.*

Held, that flourescent tube, starter, choke and *phatti* when sold separately instead of sale of complete appliance would not be covered under Entry 18 of Schedule 'A' to the Haryana General Sales Tax Act, 1973 and the dealer would not be liable to pay sales tax on these items when sold separately at the rate of 10 per cent.

(Para 12)

for the ***Appellant.*** Arun Nehra, Addl. A.G. Haryana,

for the Respondent. : Nemo.

JUDGMENT

Ashok Bhan, J.

(1) Member, Sales Tax Tribunal, Haryana (hereinafter referred to as the Tribunal) has referred following question of law at the instance of the department for the opinion of this Court under section 42(1) of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as the Act) :—

> "Whether on the facts and in the circumstances of the case and having regard to the provisions of Entry No. 18 of Schedule 'A' to Haryana General Sales Tax Act, 1973 the dealer was liable to pay sales tax on flourescent tubes, starters,

chokes and Phatties at the rate of 10 per cent even when these are sold as individual items instead of sale of complete appliance ?"

(2) Respondent (hereinafter referred to as the assessee) is a dealer in electrical goods including chokes, Phatties, starters and fluorescent tubes. During the assessment year 1974-75, assessee had shown the sale of fluorescent tubes in the books of accounts leviable to tax at the rate of 10 per cent and the sale of chokes, phatties and starters was shown in the books of accounts leviable to tax at the rate of 6 per cent taking them as general goods. Under entry 18 of Schedule 'A' to the Haryana General Sales Tax Act, 1973, 10 per cent tax is leviable on the sale of electrical appliances. Entry 18 in Schedule 'A' as it existed in the year 1975 is reproduced below :—

"Electric appliances, excluding electric bulb, electric motors. motor starters and monoblock pumping sets."

(3) Assessing Authority while framing assessment for the year 1974-75 did not accept the contention of the assessee that the sale of chokes, phatties and fluorescent tubes/starters even when sold individually are not electrical appliances and held that fluorescent tubes. chokes, phatties and starters even when sold separately are electrical appliances being integral part of the same and accordingly levied tax at the rate of 10 per cent thereon under Entry 18 to Schedule 'A' of the Act.

(4) Assessee challenged the said order before the Deputy Excise and Taxation Commissioner (Appeals) Ambala who relying upon the decision of Gujarat High Court in *Star Radio and Electrical Co.* v. *Commissioner of Sales Tax, Gujrat* (1), accepted the appeal holding that electrical appliances are devices which serve a particular purpose; that the purpose of fluoresecnt tubes is to dispel darkness and fluorescent by itself can serve the purpose dispelling the darkness but it cannot be said that a starter, choke or Phatti can dispel darkness. It was held that they were in a way accessories or component parts of the electrical appliances known as fluorescent tubes and that the assessing authority was not justified in taking the sale of chokes, Phatties and starters at the rate of 10 per cent as these were not electrical appliances.

(5) Joint Excise and Taxation Commissioner (I) exercising revisional powers examined the legality and properiety of the order of

(1) 1971 (27) S.T.C. 367.

the Deputy Excise and Taxation Commissioner (Appeals). After affording an opportunity of hearing to the assessee, the revisional authority quashed the order of the appellate authority by holding that since without the use of Choke, Phatti and starter, the object of light cannot be achieved from the electrical tube and, therefore, chokes, phatties and starters were integral part of the electrical tubes and even if their sale was made separately, such sales were taxable at the rate of 10 per cent. It was further held that Chokes, Phatties and Starters cannot be used for any other purpose than the electrical tubes for dispelling darkness. Order of the appellate authority was set aside and that of the assessing authority was upheld. Assessing Authority was directed to calculate the tax at the rate of 10 per cent on the sale of Phatties, chokes and starters.

(6) Assessee assailed the order of the revisional authority in appeal before the Tribunal. Tribunal relying upon *Star Radio Electric Co.'s* case (supra) held that the component parts of an electrical appliance separately sold would not be an electrical appliance. Chokes, Starters and Phatties would only be component parts of an electrical appliance and, therefore, not liable to tax at the rate of 10 per cent.

(7) Aggrieved against the aforesaid order of the Tribunal department filed an application under section 42(1) of the Act for making reference of the aforesaid question of law for the opinion of this Court which was granted and that is how this reference has come up for hearing before this Court.

(8) We have heard the arguments of Additional Advocate General, Haryana, who appeared for the department. There is no representation on behalf of the assessee in spite of service.

(9) Chokes, Phatties and Starters do not serve any purpose by themselves and are meant to an end and not the end itself. These items do not by themselves produce light whereas fluorescent tubes with the help of these items can produce light. Flourescent tube, therefore, would be electrical appliance when sold along with these component parts. Chokes, Phatties and Starters are the accessories/ component parts of electrical appliances. Electrical appliances are chargeable to tax at the rate of 10 per cent under Entry 18 of Schedule 'A' of the Act and not the component parts/accessories to the electrical appliance. If the component parts/accessories are sold

as a composite part of the electrical appliance then it can be termed as an electrical appliance and chargeable to tax as a whole but if the component parts/accessories are sold separately, they cannot be termed as electrical appliances so as to fall within Entry 18 to Schedule 'A' of the Act. Wherever the legislature intended to charge component parts under Schedule 'A' it specifically mentioned the same against the relevant entry. For example, Entry 3 of Schedule 'A' reads "Refrigerators and Air Conditioning plants and component parts thereof." Against Entry 18 of Schedule 'A' it has not been mentioned that component parts of an electrical appliance are included in Schedule 'A'.

(10) Gujarat High Court in *Star Radio Electric* Co.'s case (supra) considered as to whether fluorescent tube without its accessories namely; without a Choke, Starter and Phatti is domestic electrical appliance within the meaning of Entry 52 of Schedule 'B' to the Bombay Sales Tax Act, 1953. After referring to the dictionary meaning of the word 'appliance' as given in the Oxford Dictionary :

> "a thing appiled as a means to an end, apparatus."

Encyclopaedia Americana :

> "Electrical appliance : a term given to many devices operated by electricity which are used in the home for domestic purposes. Such appliances may be divided into two general classes; those operated by heat, and those operated by power. In such appliances as the toaster, grill, flat-iron, waffle-iron, or even, the electric current heats a wire or conductor to red heat, and the heat thus produced performs the function of the device.....Where power is required to operate appliance such as washing-machine, vacuum-cleaner, refrigerator, fan, or water-pump, a small motor operated by electricity is used."

Corpus Juris Secundum :

> "Appliance" has been defined or employed as meaning a mechanical thing, an apparatus or device- an instrumental means, aid, or appurtenance; a thing applied or used as a means to an end, either independently or subordinately; something applied or used directly."

It was concluded by their Lordships as under :—

> "From these meanings given by different dictionaries it becomes clear that (1) an "appliance" is quite distinct from

"materials" from which it is made, and (2) an "appliance", as an apparatus, device or instrument, is "a means to an end". These two aspects should be borne in mind while considering whether a particular article can be called an appliance. The first aspect seeks to take an integrated view of the article concerned and says that materials or component parts of an appliance should not be mistaken as tantamount to the appliance itself. The second aspect emphasises the fact that the importnace of an appliance consists in its utility to serve the object for which it is possessed.

A device is used "as a means" only when it serves some purpose. If it does not serve any purpose, it ceases to be a "means". Therefore, its service "as a means to an end" is its main feature which brings it within the definition of the expression "appliance". This is the second aspect of the matter which has been considered in an American decision in *Honakar* v. *Pocatalico District Board of Education* 24 S.R. 544. We have not got before us the law report in which this case is reported, but at the foot-note No. 25 in the above volume of Corpus Juris Secundum at page 80 we find that in that case, the court considered an "educational appliance" and observed that an "educational appliance" is something necessary or useful to enable the teacher to teach the school children, and "must be shown to be suitable and reasonably necessary for the use of the public schools". This decision obviously emphasis the utility aspect of the appliance. As a matter of fact, both the aspects discussed above require us to take an integrated view of the whole apparatus or device which is under consideration. It is, therefore, now necessary to consider whether a fluorescent tube, without a Choke and a Starter, can be considered an appliance if viewed from these two aspects. Before actually discussing this question, it would be proper to know what a fluorescent tube is and what service it is expected to render."

(11) Thereafter it was concluded that in order to bring a particular article within the meaning of the Board "appliance", the article should be capable of rendering the desired service. The object of fluorescent tube is to dispel darkness. If fluorescent can

dispel darkness without its accessories i.e. choke and starter then the same would be an electrical appliance. If it was incapable of dispelling darkness without the Choke and and Starter then it was not an electrical appliance. It was held that standing alone the fluorescent tube, Choke and Starter would be merely different parts of the electrical appliance and therefore, would not be covered under Entry 52 of Schedule 'B' to the Bombay Sales Tax Act, 1953. Para 9 of the said judgment reads as under :-

> "As stated above, we have come to a conclusion that in order to bring a particular article within the meaning of the word "appliance", the article should be capable of rendering the desired service. Therefore, the most pertinent question which arises to be considered is, whether a fluorescent tube can render the desired service without the aid of a starter and a choke. If it is found, as is presumed by the Tribunal, that a starter and a choke are playing a definite role in supplying the fluorescent light, which is emitted through the tube, then it is difficult to ignore this role. If a starter and a choke are the essential parts of this appliance then it would follow that the fluorescent tube, without these two articles would not be capable of rendering the desired service, namely, dispelling darkness and giving fluorescent light. If a tube without a starter and a choke cannot render this service it ceases to be "a means to an end", and if it ceases to be "a means to an end", it is difficult to hold that this appliance comes within the meaning of entry 52 of Schedule 'B' of the Act of 1953. However, if it is found that the fluorescent tube without a starter and a choke can give as efficient service as is expected of a fluorescent tube, then obviously a starter and a choke are not essential articles for achieving the purpose in question. In that case, the fluorescent tube, even if it is without a Starter and a Choke, can be called "electrical appliance". In other words, if the object of fixing the fluorescent tube is to dispel darkness and to obtain fluorescent light, and if this object is served only by the combined action of starter, choke and fluorescent tube, then all the components, which contribute to the combined action and to the achievement of the object would constitute an appliance. But standing alone all of them would be merely different spare parts of that appliance."

(12) No exception can be taken to the reasoning given in this judgment. Accordingly, we fully concur with the reasoning adopted by their Lordships of the Gujarat High Court in *Star Radio Electric Co.'s* (supra), and adopt the same. In view of this, the question referred to us is answered as under :—

> "Fluorescent tube, starter, choke and Phatti when sold separately instead of sale of complete appliance would not be covered under Entry 18 of Schedule 'A' to the Haryana General Sales Tax, 1973, and the dealer would not be liable to pay sales tax on these items when sold separately at the rate of 10 per cent."

No costs.

R.N.R.

Before Hon'ble G. S. Singhvi & S. S. Sudhalkar, JJ.

SOHAN SINGH.—*Appellant.*

versus

KUSHLA DEVI & OTHERS.—*Respondents*

F.A.O. No. 2289 *of* 1995

The 12th April, 1996

Motor Vehicles Act, 1988—*S.* 173(1)—*Maintainability of appeal filed by either party without prior compliance of proviso to S.* 173(1) *of the Motor Vehicles Act—Object behind incorporating the proviso to S.* 173(1) *is remedial and beneficial—Appeal to be entertained by High Court only if amount deposited—Exemption cannot be claimed on ground that co-respondent has already made requisite deposit.*

Held, that the object behind incorporating the proviso to Section 173(1) of the Motor Vehicles Act, 1988 is remedial and beneficial. The requirement of the deposit of the amount as a condition precedent to the entertainability of the appeal protects the interest of the claimant in whose favour an award has been made. By making it obligatory to deposit the amount specified in the proviso to S. 173(1), it has been made clear by the Legislature that one who wants to challenge the award of compensation must part with a specific amount which can in appropriate cases may be made available to the claimants even