

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

S.L.P. (C) NOS.6971-6972 OF 1999@@
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M/S BPL LTD. APPELLANT(S)

Versus

STATE OF A.P. RESPONDENT(S)

(With prayer for interim relief and office report)

WITH
SLP(C) NOS. 10857-10858/2000, 11072/2000, 12004/2000, 21078/2000,
21263/2000, 21264/2000 and 21269/2000.

Date: 09/01/2001 These matters were called on for hearing today.

CORAM:
HON'BLE MR. JUSTICE B.N. KIRPAL
HON'BLE MRS. JUSTICE RUMA PAL
HON'BLE MR. JUSTICE BRIJESH KUMAR

For Appellant(s) Mr. Kapil Sibal, Sr. Adv.
in SLP(C) 6971-72/99 Mr. Roy Abraham, Adv.
Ms. Baby Krishnan, Adv.

in SLP(C) 10857-58, Mr. M N Rao, Sr. Adv.
11072, 12004, 21078, Mr. G Sreedhar, Adv.
21263, 21264, 21269 Mr. Ajith, Adv.
& 21324/00 Mr. Y Raja Gopala Rao, Adv.

For Respondent(s) Ms. K. Amareswari, Sr. Adv.
Mr. G. Venkatesh, Adv.
Mr. T. Anil Kumar, Adv.
Mr. K. Ram Kumar, Adv.

UPON hearing counsel, the Court made the following
O R D E R

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SLP(C) No.21324/2000 is taken on board.
Special leave granted.

For the reasons recorded in the signed judgment
placed on file, the appeals are allowed, the judgment of
the High Court and all the decisions of the authorities
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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 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.
REPORTABLE.@@
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Kalyani. (S.L. GOYAL)@@
AA
COURT MASTER @@
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(Signed Reportable Judgment is placed on file.)

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 444-445 OF 2001@@
EE
(Arising out of SLP(C) Nos.6971-6972/1999)

M/s B.P.L. Ltd. Appellant

Versus

State of Andhra Pradesh Respondent

AND@@
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CIVIL APPEAL NOS. 446-447 OF 2001@@
EE
(Arising out of SLP(C) Nos.10857-10858/2000)

M/s. Whirlpool of India Ltd. Appellant

Versus

State of Andhra Pradesh Respondent

(with Civil Appeal Nos. 448 to 454 of 2001
arising out of SLP(C) Nos. 11072, 12004, 21078, 21263, 21264,
21269 and 21324/2000)

JUDGMENT@@
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Kirpal, J. :@@
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Special leave granted.

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 dealers in televisions, audios, washing

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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.

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.

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

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"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:

- (i) Consumer Electronics;
- (ii) Electronic test and measuring

electronic principle would be electronic goods. All types of electronic components, parts or materials are

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also electronic goods as per the said definition. In addition thereto, sub-clause (i) of para 2 of the notification 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.

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.

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@@

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- 6 -

semi-conductor materials or through vacuum or gases." Under the heading "Consumer Electronics" at page 237 of the said Encyclopedia, 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 underlying 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 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 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

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- 7 -

the Indian Institute of Technology in the present case 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. In other words, what the said notification requires is that an 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 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.

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

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- 8 -

various types 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 of micro processor and falls within the definition of "electronic goods" as contained in the said notification dated 20th July, 1988.

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)

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- 9 -

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 38(v) and the notification dated 20th July, 1988 would apply to all electronic goods including automatic washing machines of the appellants.

For the aforesaid reasons, the appeals are allowed, the judgment of the High Court and all the decisions 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 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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.....J
(B.N. KIRPAL)

.....J
(RUMA PAL)

New Delhi,
January 9, 2001.

.....J
(BRIJESH KUMAR)