Rajasthan Tax Board,Ajmer

Appeal No.1892/2008/Jodhpur
Ms Gulab Art Handi Craft,
Jodhpur ..... Appellant
V/s
Commercial Taxes Officer,
Circle, D, Jodhpur .....Respondent

D.B.
Sunil Sharma,Member
Manohar Puri,Member

Present:

Mr. D.Kumar, Advocate for the Appellant
Mr D.P.Ojha, Deputy Government Advocate for the Respondent

Order date 19.09.2016

JUDGMENT

(1) The appellant, registered with the Commercial Taxes Department, Rajasthan, and engaged in the business of electric motors and equipments, etc., preferred an appeal under section 83 the Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as, "the RVAT Act") before the Rajasthan Tax Board, Ajmer (for short,"the Board") against an order, dated 19.07.2008, passed under section 36 of the RVAT Act by the Additional Commissioner, Legal, Commercial Taxes Rajasthan, Jaipur (for brevity, "the ACCT") in respect of determination of tax rate on electric motors under the RVAT Act during the relevant period.

(2) The brief facts of the case are that the Appellant in an application filed on 15.05.2008 under section 36 of the RVAT Act before the ACCT raised certain queries, mainly ,as to whether 'electric motor' could be classified under entry no.27 of the Schedule IV to "the RVAT Act liable to tax @ 4% ? In this regard, the appellant desired the ACCT have following set of questions determined :

(i) Whether 'Electric Motor is taxable at the rate of 4%?

(ii) Whether 'Electric Motor' is covered by entry no. 27 of the Schedule IV to the RVAT Act which reads as "Capital Goods meaning plant and machinery including parts and accessories thereof"?

(i) What would be the rate of tax applicable to sale of 'electric Motor' when sold separately?

(ii) What would be the rate of tax applicable to sales of 'electric Motor' when sold coupled with other machines?

(3) Even as the ACCT proceeded determining rate of tax on electric motor the Assessing Authority who had been asked to submit comments with regard to the aforesaid matter opined that an electric motor, sold fitted in with a machine, would enter the fold of entry no. 27 of the Schedule IV to the RVAT Act so as to be liable to tax @ 4%; but, when sold barely as such, that is, bereft of any fitments, it would to be charged to tax at the residuary rate of 12.5% under Schedule V to the RVAT Act.

(4) The learned ACCT, however, taking a more radical view on the impugned matter and decreeing that properties of an electric motor did not, to all intents and purposes, admit of being classified as under capital goods for even a manufacturer- fastened on it a flat residual tax rate of 12.5 per cent: the fact that it was sold apart or with a machine, notwithstanding. The judgments of the Punjab & Haryana High Court in cases of M/s Gupta Agencies Vs. State of Punjab, reported on (1994) 92 STC 543, and M/s Electrical Engineering Corporation Vs. State of Punjab, reported on (1998) 104 STC 39, were referred to and relied upon by him deciding the impugned issue.

(5) Mr. D Kumar, learned counsel, appearing on behalf of the Appellant, began arguments assailing the Assessing Authority's expose to the ACCT for its alleged jurisdictional excess of subject matter of determination by dishing out an altogether new hypothesis of two fold taxation on sale of the same commodity, that is, electric motor,

simultaneously castigating the ACCT's sophomoric approach of deflecting and circumventing core issue of tax rate determination on electric motor in reference to it being "part of Plant & Machinery" and of linking it with an unrelated, irrelevant issue of availability of input tax credit to the Appellant in such a case.

(6) Mr. D Kumar, termed such a classification *ab initio void*, rather mockery of principles of canonical interpretive law, and vigoursly, contended that the Assessing Authority vouchsafing for two discriminatory rates of tax on sale of the same goods: one, 12.5 % in case of bare sale of electric motor and, second, 4% in case of 'sale coupled with machine', had from the start vitiated the tone and tenor of exercise aimed at determining tax rate on electric motor.

(7) The learned counsel for the appellant further argued that it was a matter of common prudence that no machine ordinarily could be run without an electric motor. He said that even as the ACCT in flight of fancy delineated an electric motor as not meeting with paradigm of being "Plant and Machinery and part and accessories thereof" so as to be charged to tax @12.5%, he contradicted his own thesis in the same breath excluding electric motor exclusively as capital goods essential for plant and machinery of a manufacturer from domain of entry no.27 of Schedule IV to the Act liable to tax @ 4% without having assigned any cogent reasons for such a faulty interpretation. In perspective of this incoherent analysis made by the ACCT, the question naturally arose as to how and why electric motor was not part of a machinery employed by a manufacturer in manufacturing its products,

(8) He argued that the ACCT, while determining the issue of appropriate rate of tax on electric motor, did not answer the questionnaire in entirety and carrying his arguments a pitch higher said that supposing electric motor happened to be "Capital Goods meaning plant and machinery inclusive of parts and accessories thereof." for a certain manufacturer, a fresh controversy was in offing on how the seller ought to have ascertained identity of its purchaser : whether he is a manufacturer, or dealer, or a consumer. He further contested that and even in case of purchase of electric motor which otherwise might be replacement purchase for a manufacture due to the motor developing a technical snag, or in case such purchases were made by an unknown customer, would that not be tantamount that option of its inclusion in the aforesaid category or otherwise had been left absolutely to the discretion of the buyer, and such eventuality would be inconsistent with judicial propriety.

(9) He was vociferous that in absence of an otherwise enabling notification/provision for regulating its (electric motor) purchase or sale for diverse purposes by different persons or entities: as was case during the relevant period,2006-07, the determining authority should have come out with open hands saying that there would be a single rate of tax on it @ 4 per cent.

(10) He further argued that the learned ACCT ignored outright the State Level Screening Committee (for brevity, " the SLSC) circular issued on August 2, 1998 notifying diesel generating sets, electrical equipments, electrical installation and fittings and cable within the category of "Plant and Machinery and its parts and accessories", which vindicated that in the aforesaid inclusive definition of Capital Goods,

electric motor, undisputedly and indispensably, *ipso facto*, became part and parcel of capital goods.

(11) He averred that to the utter disregard of the affirmation of SLSC, the highest statutory body for grant of tax incentives consisting of officers of the departments of finance and industry, Principal Secretary Finance included, which had already deliberated on the subject vide circular dated 03.08.1999 that "Diesel Generating Sets, Electrical Equipments and Electrical Installation and Fittings and Cables" fell within the category of "Plant and Machinery and parts and accessories", the ACCT made a contrary decision going against law. In such a scenario, electric motor invariably owed to have an inclusive interpretation of electric motor as electrical equipment.

(12) The learned counsel of the Appellant, Mr. Kumar, laid emphasis on the ruling of the Hon'ble Karnataka High Court in case of M/s Associated Cement Companies Ltd. Vs. State of Karnataka (2007) 7 VST 691, wherein ,in a similar vein, it had been decided that Thermal Generating Sets were machinery. His averment was that the West Bengal Taxation Tribunal, in case of M/s Prasant Agrawal Vs. Additional Commissioner of Commercial Taxes, West Bengal & ors. (1998) 109 STC 82, while defining term 'plant and machinery', came to conclusion that it *covered every instrument, apparatus and equipment necessary for manufacturing process.*

(13) Reliance was placed by the counsel of the Appellant on the verdict of the Hon'ble Patna High Court in case of Steel City Beverages Ltd. and Another Vs. State of Bihar and other (1996) 101 STC 510, wherein amongst other things it was held that *Plant in ordinary sense included whatever apparatus was used by a businessman for carrying on his business*, all goods were chattels fixed or movable which he kept for employment in his business with some degree of durability.

(14) Vociferously rebuffing the respondent's argument inasmuch as the latter's circumvented justification of anomaly of twin rates on sale of the same commodity without a rider was concerned, he said that during and by the relevant period the government had not come out with a legal provision for any for category based classification of tax rate in respect of electric motors.

(15) Vociferously rebuffing the finding of the learned ACCT that the judgment of Punjab & Haryana High Court in case of M/s Gupta Agencies Vs. State of Punjab (1994) 92 STC 543 had held the Electric Motor subject to levy of general sales tax @ 10 % , he strongly held his ground that the aforesaid ruling was not applicable to the facts and circumstances of the present case: the Punjab General Sales Tax Act,1948, showed that electrical goods with certain exceptions were to be treated as goods liable to the levy of 10% sales tax ; exception was made in respect of electric plant, equipment or an accessory thereof "*including service meters required for generation, transmission and distribution*". As electric motors were not used for transmission and distribution of electric power, they were liable to sales tax at the rate of 10 per cent. He carried the argument to the logical conclusion that his case mainly hinged on inclusive entry of capital goods which comprised even "diesel generating sets, electrical equipments and electrical installation and fittings and cables". Therefore, the very thought of debarring electric motor from inclusion in the category of capital goods would be a mindless travesty of justice.

(16) He expressly contended that in not giving proper thought to the vexatious issue of fiscal rate classification on electric motor, the learned ACCT failed to discern the matter in right perspective; because in course of day to day business transactions an electric motor was usually sold as embedded in the machinery (a machine) being its essential part- devoid

of which, it would not at least be a functional machine in working order for anyone, manufacturer included; and, moreover, if this very electric motor developed technical snag, became non- working or non functional and required a change, the purchase of a separate electric motor as replacement would definitely be a *sin quo non* for its user. Would it in that case turn into a different product having a different rate of tax, that is,12.5% than already paid on its initial purchase @4% under the category of capital goods.

(17) Appearing on behalf of the respondent State, Mr. D P Ojha, learned Deputy Government, argued that the ACCT was right in holding that since electric motor was not mentioned in any of the rate Schedules to the Act, it should be consigned to the general rate Schedule. He contended that there was no question of having two different rates of tax on sale of the same commodity in the State under similar conditions and circumstances and therefore in present case, too, no express or otherwise variation in due rate of tax on electric motors occurred, which was rightly determined @ 12.5% in the order under dispute here, for it was not assigned a particular rate of tax on the book of statute, even then for a manufacture the purchase of electric motor as "Plant and Machinery and part and accessories thereof " was not denied owing to availability of ITC at 8.5% against such purchase @ 12.5 % from the registered dealers in the State.

(18) The contentions of Deputy Government Advocate, Mr, D P Ojha, learned counsel for the respondent, in fact, centred around the legal aspects of fiscal rate determination of electric motor and aimed at driving it beyond the pale of entry no. 27 of schedule IV to the RVAT Act; and, for reason of it not being assigned any specific rate of tax in the statute, the learned counsel forcefully pleaded that the ACCT

committed no error in law subjecting it to tax at the residuary rate of 12.5 tax.

(20) Mr. D P Ojha, learned counsel for the respondent Revenue, argued that if a manufacturer purchased in the State various machinery for its Plant which had had electric motor therewith, would all this machinery be liable to tax @ 4%? He supported the impugned order of determination on the ground that the capital goods, not electric motors, were the appropriate goods for a manufacture that comprised his plant and machinery,

(21) He further argued that since there was no particular entry notified for electric motors in the rate Schedules I to IV to the RVAT Act, the residual schedule V to the Act, was the only place where it could reside and which it was assigned to in the impugned order. Revenue's learned counsel, Mr. D P Ojha, argued that the ACCT was right in holding that there was no question of having two different rates of tax on sale of the same commodity in the State under similar conditions and circumstances. In present case, too, there was no express or otherwise variation in due rate of tax on electric motors which was rightly determined @ 12.5% by way of the aforesaid order under dispute here.He summed up with request to reject the prayer of the Appellant.

(22) The rival contentions of the parties to the issue were heard and after going through the judgments of the Hon'ble courts (cited supra) and material placed on record, we now proceed to decide the vexatious issue of rate of tax on electric motors.

(23) In brief, the aforesaid contentious issue involved rival arguments centerd around the intertwined factual and legal aspects of whether by determining electric motor as not included in entry no. 27 of schedule IV to the RVAT Act, the learned authority had erroneously wrapped up the

issue on the count that electric motor, sold separately or coupled with machinery, was liable to tax @12.5%.

(24) Besides, another burning issue cropped up in the course of fierce arguments from both sides was as to whether interpretation of the aforesaid judgment of the Hon'ble Punjab High Court (supra) was misconstrued by the determining authority even when it neither referred to, nor considered nor decided whatsoever in any manner therein, the issue involved in the present impugned case in regard to tax rate on Electric Motor in context of "Capital goods meaning Plant & Machinery including parts and accessories thereof" under the RVAT Act?

(25) It is apparent that, to the prejudice of the appellant, the ACCT ignored a vital fact at the expense of common prudence that Plant and Machinery could not operate without motors, which established, rather rendered, electric motor an essential 'part and accessory of the plant'; and, to the utter disregard of the affirmations of the SLSC as delineated in circular dated 03.08.1999 which went as far as exhaustively detailing (that) diesel generating sets, electrical equipments and electrical installation and fittings and cables fell within the category of "Plant and Machinery and parts and accessories", the issue of rate structure on electric motor was sidetracked with an irrelevantly insignificant factor of grant of difference of tax rate of 12.5 per cent minus 4 per cent , equal to 8 per cent to the buyer dealer by instrument of input tax credit crediting its loss made good. Now, in this scenario, is it correct to hold that electric motor was not an electrical equipment, either?

(26) It was a travesty of justice that without disproving a scientific principle that as moto in DG set converted mechanical energy into electrical energy, convergely electric motor converted electrical energy into mechanical energy or, for that

matter, electrical motor was an electrical equipment, the learned ACCT, instead ,glossed over the aforesaid directive of SLSC in this regard not holding forth at all on this subject and proceeded with vehemence to conversely declare that electric motor was taxable flatly @12.5 per cent under RVAT Act.

(27) Coming to discussion on decision of the Ho'nble Punjab High Court (supra) which is a major plank of analysis in the impugned determination order , we find a sound logic in the argument of the appellant's counsel that facts of the impugned case, inasmuch as sought after placement of electric motor in domain of entry no 27 of ' Capital Goods meaning Plant and Machinery including parts and accessories thereof meant for use in manufacture" to the schedule IV to the RVAT Act is concerned, are not *para materia* to those of the aforesaid case of the Hon'ble Punjab High Court (***supra***).

(28) The learned determining authority, ACCT, seems to have laboured under misconstrued interpretation of the decisions of the Hon'ble Punjab & Haryana High Court in cases of M/s Gupta Agencies Vs. State of Punjab, reported in (1994) 92 STC(543) and M/s Electrical Engineering Corporation Vs. State of Punjab (1998) 104 STC (39) wrongly applying them to the facts of the case on hand. The relevant issue dealt with in those cases was whether Electric Motor qualified to be included in the entry 17 of Schedule A to the Punjab General Sales Tax Act, 1948, which displayed that electrical goods with certain exceptions were subject to levy of general sales tax @ 10 % and entry, electrical goods, read as, "Electrical goods other than electrical plant, equipment and their accessories including service meters required for generation, transmission and distribution."

(29) In the case before us, the issue does not relate to determine tax rate of tax on electrical goods required for generation, transmission and distribution as under the Punjab General Sales Tax Act, 1948, but how electric motor would be treated for determination of rate on tax under the RVAT Act. Therefore, present question relating to determination of whether or not electric motor was part and accessories of plant and machinery as "capital goods" with the aforesaid decision of the Honble Punjab High Court (***supra***) in respect of tax rate on "Electrical goods other than electrical plant, equipment and their accessories including service meters required for generation, transmission and distribution" are two separate distinguishable decisions given in different perspectives.

(30) This shows that the determining authority, ACCT, could not focus on addressing question of electric motor to be categorized under capital goods and if the answer was in affirmative why it be brought under the net of residuary taxation @12.5% whether sold independently or with a machine not deliberated upon . Even in its opinion conveyed to the ACCT, the Assessing Authority was forthcoming and pointed out that the contemporary relevant law had a glaring anomaly in description of entry no.27 of Schedule IV to the RVAT Act when read *vis a vis* clause (6) to section 2 of the RVAT Act in it that the capital goods were in this scheme of law were necessarily defined by all types of Plant and Machinery irrespective of whether or not in use for manufacture. It lends traction to the argument that the learned Additional Commissioner failed to appreciate that SLSC had featured an electrical equipment, as part of Plant and Machinery in circular No. F5 (Accts) 7/11ST/ Exemption/m Rules, dated 03.08.1999 that made it indicative that electric motor was to be charged to tax at the flat rate of four per cent.

(31) It is imperative to understand the term plant and machinery in a sense this expression logically conveys. The excerpts from decision in case of ADDITIONAL COMMISSIONER OF COMMERCIAL TAXES, ZONE, II, BANGALORE by their Lordships H.L. DATTU and Mrs. MANJULA CHELLUR, JJ. Dated October 29, 2004 are appropriate to bring point home and being reproduced as herein below:

"The expression "plant and machinery" is not defined under the Act. But the meaning of these two expressions is explained by the apex court and other courts. In the case of Scientific Engineering House P. Ltd. V/s commissioner of income tax, Andhra Pradesh [1986] 157 ITR 86 (SC) has explained the meaning of the expression "plant". In the said decision, the court has observed as under :

"That 'plant' was not necessarily confined to an apparatus which was used for mechanical operations or process or was employed in mechanical or industrial business. But in order to qualify as 'plant', the particular article had to have some degree of durability. The test to be applied was : Did the article fulfil the function of a plant in the assessee's trading activity ? Was it a tool of his trade with which he carried on his business ? If the answer was in the affirmative, it would be a plant'."

"The term "machinery" is also not difined under the Act and in the absence of such statutory definition, the word has to be given the ordinary meaning. The expression "machinery" in the common parlance is understood as some mechanical contrivances which by themselves or in combination with one or more other maechanical contrivances, by the combined movement and inter-dependant operation of their respective parts generate power, etc. Even otherwise also, the diesel generating unit is a self-contained unit capable of being put to use in the assessee's business and therefore, it could be a machinery."

(32) It appears that the learned ACCT seemed to have not appreciated the law and facts in correct manner while deciding vexatious issue of tax on electric motor @ 12.5, and rather failed to determine as to why electric motor whether sold independent of or for that matter, with a machine, should not be categorized under capital goods as liable to tax @ 4% than at residuary tax rate of 12.5% as determined by him.

(33) It is imperative that the Ho'nble Rajasthan High Court in a landmark decision, having bearing on the case in hand, in matter of Assistant Commissioner, Special Circle, Bhilwara Vs M/s Shree Alloys Industries Pvt Ltd., Bhilwara, SB Civil (VAT) Revision no. 41/2013, reported on TUD, Vol 40, Part 1, 2014 , decided a substantial question of law, that arose of a sale made by a certain dealer firm of *clinkerisation* plant and associated machinery to another trading firm at concessional rate of tax of 4% under section 2(7) of the RVAT Act, with regard to its applicability: whether it would only be on a transaction involving sale of capital goods to the manufacturer or on a sale to the trader . The following excerpts of the aforesaid judgment (supra) is given herein below :

"Learned counsel Shri Vinit Kumar Mathur assisted by the learned counsel Shri Dinesh Godara appearing on behalf of the petitioner-departement vehemently urged that the benefit of concessional rate of 4% VAT on "Capital goods" is prescribed under Schedule IV Entry 27 of the Act and the same could only be availed when the machin ery is directly supplied to a manufacturer. Learned counsel submitted that machinery was supplied by the respondent assessee to a dealer, who in turn sold the same to M/s Binani Cement Ltd., Sirohi, where the machinery was to be used in the manufacturing process. Learned counsel whilst placing reliance on the definition of "capital goods" under Section 2(7) of the Act submitted that the goods in question i.e.

article sold would only be covered by the definition when the same is meant for use in a manufacturing process. Learned counsel submitted that as per Section 2(7) of the Act. the sale of "capital goods" under schedule IV Entry 27 is taxable at the concessional rate of 4% only when the sale is made directly to a manufacturer and not on a sale made by one trader to another.

As per the learned counsel, admittedly, the respondent-assessee did not sell the machinery directly to the manufacturer M/s Binani Cement Ltd., Sirohi, but, instead supplied the same to the dealer M/s F.L. Smith, Kota. The transaction inter se between the respondent-assessee and the dealer firm M/s F.L. Smith, Kota would not be covered under the phrase "meant for use in manufacture" and, therefore, the respondent-assessee was wrongly allowed the benefit of the said definition and was not entitled to avail the benefit of concessional VAT @ 4% specified in Entry 27 of Schedule IV."

"Per contra, the learned counsel Shri Dinesh Mehta appearing on behalf of the respondent-assessee urged that the definition of "capital goods" as mentioned in Section 2(7) of the Act makes it clear that when the category of goods i.e. a plant, machinery, parts and accessories thereof are to be used in a manufacturing process they would be covered under the definition of "capital goods" and, thus, the tax thereupon would be governed by Schedule IV of the Act as it stood on the date of the transaction. He contended that as per the definition of "capital goods" contained in Section 2(7) of the Act, the "capital goods" means plant and machinery including parts and accessories thereof meant for use in manufacture unless otherwise notified by the State Government from time to time in the official gazette. As per him, whether or not, the goods transacted are covered by the definition would be governed by the purpose of use of the article not by the category of the persons between whom the transaction takes place. He further urged that the State Government by amendment dated 27.08.2008 deleted the entry 27 from

the Schedule IV and inserted the same in Schedule II through two Notifications of the same date. As per this entry, the benefit of concessional VAT is now available only on transactions involving purchase of "Capital goods" made from the registered dealers of the State. He submitted that the amendment came into force subsequent to the transaction in the case at hand. After the amending notifications, the transactions for the purpose of VAT assessment would be governed by reference to the persons between whom the transaction takes place. Learned counsel pointed out that post the Notification of 2008, only a transaction between the registered manufacturer dealers of the State who purchase the "capital goods" from the registered dealers of the State would be taxable at the concessional rate as per the Schedule II."

"Thus, it is manifest that it is the nature of the goods mentioned in the Schedule which is relevant and material for deciding the rate of applicable tax. The Legislature probably realized the difficulty faced by the Department and amended the provision by deleting Entry 27 from Schedule IV and inserted the same in Schedule II. As per Entry 27 of Schedule II, which became effective from 27.08.2008, the concessional tax would be governed by the nature of the transaction and the person or the class of persons who enter into the transaction. After the amendment, the concessional tax would apply on a transaction between the Registered manufacturing dealers of the State, purchasing "capital goods" from registered dealers of the State."

"The instant case also relates to transactions ended on March 31,2007. If the transaction in question had taken place after 27.08.2008, the concessional tax would apply on a transaction between the registered manufacturing dealers of the State, purchasing "capital goods" from registered dealers of the State. Moreover, the State Government by amendment dated 27.08.2008 deleted the entry 27 from the Schedule IV and inserted the same in Schedule II through two

Notifications of the same date. As such, electric motor, without any doubt, was covered by the Entry No. 27 of the Schedule IV as it then stood and as a consequence, would be taxable at the concessional rate of 4% only".

> *"In view of the above discussion, this court has no hesitation in holding that clinkerisation plantand machinery which was sold by the respondent-assessee were "capital goods" within the meaning of section 2(7) of the Act. Thus, the Assistant Commissioner, Special Circle, Commercial Tax, Bhilwara committed a gross error of law in imposing tax at the rate of 12.5% on the respondent-assessee by the order dated 07.01.2010 (Annexure-1). The earlier assessment order dated 30.03.2009 accepting the returns filed by the respondent-assessee disclosing payment of tax at the rate of 4% was just and proper."*

(34) Against the background of factual and legal matrix of the case in the foregoing account, We conclude that entry no. 27 in Schedule as it stood before 27.08.2008, conveyed a wider sense, including not only Plant and Machinery, but also encompassing part and accessories thereof, and thus rendered in unmistakable terms electric motor as embedded therein. With no restraining provision in force functional applicability of the aforesaid entry no. 27 of Schedule to the RVAT Act far outweighed the parochial interpretation indulged in by the ACCT in the process of the impugned determination order having regard to tax on electric motors. Even otherwise Electric Motor when sold alone embraces term, "part and accessory of the plant and machinery" in given sense, because also, unless legally restricted for a varying use by a specific statutory provision in force, how a warped version of the wording for the impugned entry could be used to deny benefit of

beneficial construction to the appellant assessee of four per cent tax on its commodity in the light of clause (6) of section 2 read with entry 27 of Schedule IV to the RVAT Act and, therefore, electric motor naturally fell in the entry no.27; hence taxable at the rate of 4%.

(35) Since there is no room for two fold taxation on the same commodity in the RVAT Act and in keeping with law enunciated in the aforesaid case of Assistant Commissioner, Special Circle, Bhilwara Vs M/s Shree Alloys Industries Pvt Ltd., Bhilwara (supra), it is held that the value added tax on the impugned commodity, that is, electric motor would be charged to tax@ four per cent in the relevant period under dispute in absence of an otherwise enabling statutory clause providing for sale with a rider before the aforesaid date 27.08.2008 to bring it to the excepted category of residual rate of IV Schedule annexed to the RVAT Act.

(36) As the schedules annexed to the RVAT Act set out the scheme of tax rates,they are necesserily part of the Act.The present issue mainly revolves ground several facets of uses of the electric motor in different walks of life and draws its strength from the rate schedules to the RVAT Act which are its umbilical chord. Decision on the impugned appeal regarding tax rate on elecltic motor to be decided herein below would be applicable and confined to the transactions till 27.08.2008.

(37) Therefore, appeal of the appellant in facts and circumstances of the case as enumerated in foregoing paras is accepted inasmuch electric motor would be liable to tax at the rate of four per cent, to all intents and purposes, in the relevant period under consideration. Also, aside from it,

the impugned determination order, dated 19.07.2008, on account of above decision having found it so seriously flawed as to render it meaningless, is set aside.

(38) Order pronounced.

19.09.2016

(MANOHAR PURI)
MEMBER

(SUNIL SHARMA)
MEMBER