

IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

Commercial Tax Revision No. 01 OF 2009

M/s I.A.S. Products, Sector-4, Plot No.19,
SIDCUL, Industrial Area, Rudrapur,
Udham Singh Nagar.

..... Revisionist/Applicant.

Versus

Commissioner, Commercial Tax,
Uttarakhand at Dehradun

..... Respondent.

**Sri K.M. Mishra alongwith Sri C.B. Tripathi Advocates for the revisionist.
Sri Sudhir Kumar, learned brief holder for the State/respondent.**

Date: March 23, 2009.

Hon'ble Prafulla C.Pant,J.

Hon'ble B.S.Verma,J.

(Stay Application No.1647/2009)

This appeal is directed against the order dated 30.09.2008 passed by Full Bench of Commercial Tax Tribunal, Uttarakhand in Appeal No. 01 of 2008.

2. Heard learned counsel for the parties at length.

3. Brief facts of the case are that the assessee/revisionist carries on business alongwith other things of LPG Pressure Regulators. It moved an application dated 10.12.2007 under Section 57 of Uttaranchal Value Added Tax Act, 2005 for determination of rate of tax on the LPG Pressure Regulator before Commissioner, Commercial Tax, Dehradun. The assessee/revisionist's case is that the "LPG Regulators" are part of LPG Cylinders and are taxable at the rate of 4% in Schedule II(B)-8 as per notification No. 13/XXVII (8)/25.05.2006, which applies to "all utensils (including pressure cookers/pans), buckets and containers made of aluminium,

iron and steel, plastic and other material except precious metals and enameled utensils.” The Additional Commissioner, Commercial Tax, Dehradun, vide order dated 29.03.2008 held that L.P.G. Pressure Regulators are not covered under the aforesaid entry and consequently taxable as an unclassified items i.e. 12.5%. Aggrieved by said order, the assessee preferred an appeal under Section 53 (1) of the aforesaid Act before the Commercial Tax Tribunal, Dehradun. Full Bench of the Tribunal, after hearing the parties, vide its impugned order dated 30.09.2008, dismissed the appeal and accepted the view taken by the Additional Commissioner, Commercial Tax.

4. Learned counsel for the revisionist argued before us that LPG Pressure Regulators are inseparable from LPG Cylinders and, as such, they are part and parcel of Cylinders. It is contended that Cylinders, being containers are the utensils and as such not only on the Cylinders but also on the pressure regulators, the rate of tax payable by the assessee is 4% under the notification dated 25.05.2006 mentioned above.

5. Our attention is drawn by the learned counsel for the revisionist to the definition of Gas Cylinders as mentioned in the Gas Cylinders Rules, 2004. Clause (xxi) of Rule 2 of said Rules defines “Gas Cylinder” and “Cylinder” as under:-

“Gas Cylinder” or “Cylinder” means any closed metal container having a volume exceeding 500 ml but not exceeding 1000 litres intended for the storage and transport of compressed gas, including any liquefied petroleum gas (LPG), container compressed natural gas (CNG) cylinder fitted to a motor vehicle as its fuel tank but not including any other such container fitted to a special transport or under-carriage and includes a composite cylinder, however, the water capacity of

cylinders under for storage of CNG, nitrogen, compressed air, etc. may exceed 1000 litres up to 2500 litres provided the diameter of such cylinder does not exceed 60 cm;”

6. Our attention is also drawn to sub-rule (4) (a) of Rule 3 of the Gas Cylinders Rules, 2004 which provides as under:-

“Any person desiring to manufacture cylinders, valves, LPG regulators attached to self-closing valves, multi-function valves and other fittings shall obtain approval from the Chief Controller and in order to seek such approval, submit the particulars set forth in Schedule III and scrutiny fee as specified in Schedule V together with design drawings and calculations duly endorsed by Inspecting Authority.”

7. Also definition of “Pressure Regulator”, as mentioned in the Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 is referred. Clause (m) of Para-2 of said Order defines “Pressure Regulator” as under:-

“pressure regulator” means the equipment used for regulating the flow and pressure of liquefied petroleum gas from a cylinder to a gas stove;”

8. Referring to Para- 7 of said Order it is stated that like cylinders, the Pressure Regulators can not be sold in open market and if the items do not conform to the Indian standards specifications, the same are required to be destroyed by the manufacturers.

9. We have considered the submissions of the learned counsel for the revisionist/assessee and gone through the aforesaid definitions and the rules and we found that in all the above definitions

and rules, item “Cylinders” are separately mentioned from item “Pressure Regulators” indicating that the two are different items and as such “Pressure Regulator”, in our opinion, cannot be said to be a container by interpreting it to be part and parcel of the “Cylinder”.

10. Sri K.M. Mishra, learned counsel for the revisionist further argued that a LPG connection provided to a customer cannot function unless the cylinder is accompanied with the Pressure Regulator and the two are inseparable. Having considered the said argument, we are of the view that no doubt a LPG Pressure Regulator and a LPG Cylinder may be part and parcel of the connection provided to the customer but that does not mean that the two items are so inseparable so as to mean that the LPG Pressure Regulators are containers. Utensils, to which notification No.13/XXVII(8), dated 25.05.2006 applies, covers as mentioned therein :-

“All utensils (including pressure cookers/pans), buckets and containers made of aluminium, iron and steel, plastic and other materials except precious metals and enameled utensils.”

11. The definition of “Gas Cylinder” given in clause (xxi) of Rule 2 of Gas Cylinders Rules, 2004 does suggest that the same are metal containers. However, the said definition nowhere indicates that the LPG Pressure Regulators which are required to be attached for supply of gas to the stove is part of the container. Rather as mentioned above clause (m) of Para-2 of Liquefied Petroleum Gas (Regulation of Supply and Distribution) Order, 2000 makes it clear that Pressure Regulator is an equipment used for regulating the flow and pressure of liquefied gas from a cylinder to a gas stove. If the contention of assessee/revisionist is accepted then it will be difficult to explain to which of cylinders of double bottle connections, the pressure regulator given to customer forms part of it. Therefore, we are of the view that

pressure regulators cannot form part of the utensils to which the notification dated 25.05.2006 is applicable. That being so, we do not find any error of law committed either by the Full Bench of the Commercial Tax Tribunal or by the Additional Commissioner, Commercial Tax in holding that LPG Pressure Regulators are not containers and as such the tax payable on LPG Pressure Regulators is 12.5% applicable to unclassified items and not 4% which is applicable to the utensils.

12. For the reasons as discussed above, the revision is dismissed.

(Stay application No.1647/2009 also stands dismissed accordingly).

(B.S.V., J.) **(P.C.P., J.)**
23.03.2009

P.Singh