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Court : Gujarat

Decided On : Jul-31-1975

Reported in : [1976]37STC163(Guj)

Judge : J.B. Mehta and; T.U. Mehta, JJ.

Acts : Bombay Sales Tax Act, 1959; Gujarat Sales Tax Act, 1969

Appeal No. : Sales Tax Reference No. 15 of 1974

Appellant : Vikas Traders

Respondent : The State of Gujarat

Advocate for Def. : G.T. Nanavati, Additional Government Pleader and; H.V. Chhatrapati, Additional Government Pleader of

Advocate for Pet/Ap. : P.D. Pathak, Adv.

Judgement :

J.B. Mehta, J.

1. The Tribunal has posed the following two questions in this reference :

'(1) Whether, on the facts and in the circumstances of the case and the material on record, the Tribunal is justified in holding that the sales of batteries, whether uncharged or charged, both are covered under entry 42B of Schedule C appended

to the Bombay Sales Tax Act, 1959

(2) If the answer to the first question in so far as it realates to uncharged (dry) batteries is in the negative, whether, in the facts and circumstances of the case, the Tribunal was justified in not remanding the case for determining whether the sales of batteries made by the applicant were the sales of uncharged batteries ?'

2. The dealer in question was dealing in spare parts of machinery and tractors. During the relevant assessment periods there were sales of Amco batteries. The contention of the dealer that these batteries fell in the residuary item, entry 22 of Schedule E, having been rejected and the batteries having been held to fall under entry 42B of Schedule C, the dealer has come in the present reference.

3. The Tribunal has recorded a categorical finding that some of these batteries can also be used in tractors. When an attempt was made to contend that these batteries were sold as uncharged or dry batteries and so they were not covered by the relevant entry 42B of Schedule C, the Tribunal repelled that contention on the finding that the bills in question disclosed sale of batteries and, therefore, it was not established that only uncharged batteries were sold. It was further an admitted fact before the Tribunal that the batteries sold by these dealers were used in the motor vehicles although some of them could be used in tractors. Finally, the Tribunal took note of the fact that the dealer had collected tax at 10 per cent from the customers of the batteries under entry 42B of Schedule C and had paid tax at 10 per cent to the revenue, which revealed that the dealer treated sale of batteries as falling under this entry 42B of Schedule C. It is in the light of these relevant facts that we have to answer the aforesaid questions.

4. The relevant entry 42B of Schedule C runs as under :

'42B. Component parts of motor vehicles specified in entry 44A in this schedule and other articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of such vehicles, not being such articles as are ordinarily also used otherwise than as such parts and accessories.'

The rate of sales tax is 10 n.p. in a rupee.

5. A bare perusal of this entry makes it clear that this entry lays down the rate of sales tax on motor vehicles, parts of those vehicles, which are specified in entry 44A, mentioning the motor vehicles as including the motor cars, motor taxi-cabs, motor cycles, motor cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries and chassis of motor vehicles.

6. The entry divides parts into component parts and 'other articles'. So far as the component parts of such motor vehicles are concerned, they specifically fall in this entry. So far as the 'other articles' are concerned, the legislature has added two more conditions to be fulfilled : (1) that such other articles must be adapted for use as parts and accessories of such vehicles, and (2) they must have fulfilled the exclusion test that they must not be such articles as are ordinarily also used otherwise than as such parts and accessories. These two conditions, one a positive one of adaptation for use as parts and accessories of motor vehicles, and the other the exclusion test, not being such articles which are ordinarily not used otherwise than as such parts and accessories, are laid down in respect of 'other articles', which are not component parts. The legislature, therefore, so far as these other articles were concerned, where these two further tests were to be applied, added in the parenthetic inclusive clause a specific catalogue of certain articles, viz., rubber and other tyres and tubes and batteries. So this specific enumerated catalogue by this inclusion declared those articles as falling in this entry as such 'other articles', irrespective of the fact whether they fulfil the two tests which were required for answering this description of 'other articles'. In other words, by this particular legislative device of a parenthetic inclusive clause, the legislature put these specifically enumerated articles in the inclusive catalogue, viz., rubber and other tyres and tubes and batteries, on par with the component parts, which themselves fall within this entry without any further condition being fulfilled.

7. In Dilworth v. Commissioner of Stamps [[1899] A.C. 99 at 105-106], their Lordships pointed out the settled rule of interpretation of the word 'include' which was very generally used in order to enlarge the meaning of words or phrases occurring in the body of the statute, and when it was so used these words or phrases must be construed as comprehending, not only such things as they signify according to their natural import, but also those things which the interpretation

clause declared that they should include. Their Lordships also pointed out that the word 'include' was susceptible of another construction, which might become imperative, if the context of the Act was sufficient to show that it was not merely employed for the purpose of added to the natural significance of the words or expressions defined. It might be equivalent to 'mean and include' and, in that case, it might afford an exhaustive explanation of the meaning which, for the purposes of the Act, must invariably be attached to these words or expressions. Therefore, we must find out the legislative intention as to whether it intended only to give exhaustive definition or to extend connotation of the term 'other articles' by setting at rest all controversy by reason of the two tests which are applicable to other articles, being not required to be invoked in the case of all these specified included items, viz., rubber and other tyres and tubes and batteries. The extended meaning was clearly intended. The legislature never intended that these specific articles in the catalogue 'rubber and other tyres and tubes and batteries' also required these two tests to be fulfilled like 'other articles' for falling within item 42B. The whole legislative intention would be frustrated if these specified articles were not treated on par with the component parts, without application of any further qualification or test. The construction suggested by Mr. Pathak has a fault of redundancy and we cannot even for a moment assume that the legislature speaks in vain. If even batteries were required for falling in this item to fulfil these two further tests of adaptation as parts of such vehicles and the exclusion test of not being such articles as are not ordinarily also used otherwise than as such parts, it is obvious that even without this inclusive parenthetic clause that object was already achieved. Therefore, if we were to give some meaning to this inclusive clause where the legislature has adopted this recognised legislative device for putting these specific catalogue of articles on par with the other component parts, the only interpretation of this inclusive clause would be that it is a clause of extension and not one of exhaustive definition. In that view of the matter, even if these batteries could be used for tractors and, proceeding on the assumption that tractors are not motor vehicles for the purpose of disposing of this condition, it is obvious that batteries being not required to satisfy the exclusion test in entry 42B, they were clearly covered within this item, on the sole finding of fact, in the present case, that the batteries sold by this dealer-firm were used in the motor vehicles. That is why

the dealer had actually collected tax at 10 per cent from the customers of the batteries under this very entry 42B of Schedule C and not on the basis that they were parts of a tractor as contended by Mr. Pathak.

8. Mr. Pathak had, of course, relied upon the notification, which is issued on 25th July, 1963, under section 41 under which at item 37, sales of tractors, spare parts and all accessories of such tractors were exempt from the whole of the general tax if the purchaser furnishes to the selling dealer a declaration in form C appended thereto declaring inter alia that he is an agriculturist and the tractor spare parts and accessories of tractor purchased by him will be used by him in the State of Gujarat for agricultural purposes. This notification, which exempted the tractors, their spare parts and accessories from the general sales tax, would clearly show that the State had interpreted tractors and spare parts and their accessories as not falling within entries 42B and 44A of Schedule C for which there would be no general sales tax, but only as falling under the residuary entry 22 of Schedule E. Mr. Pathak also rightly pointed out the settled legal position as laid down in J.K. Steel Ltd. v. Union of India [A.I.R. 1970 S.C. 1173 at 1177, 1186], that it was permissible to look at the notifications issued by the Government by way of exemptions. In the matter of taxation large powers are left in the hands of the executive. Generally speaking, the question of exemption was left to the discretion of the Government. Their Lordships pointed out that it ought to be so because exercise of that power depended on various circumstances some of which could not be anticipated in advance. Therefore, the settled rule of interpretation is that levy and exemption are parts of the same scheme of tax and the two together carry into effect the purpose of the legislature. Therefore, considering the scheme of the taxing measure, we must take into account not merely the levy but also exemptions granted. Therefore, there is prima facie scope for this contention that the State had proceeded on the footing that the tractors were not motor vehicles for granting them this special treatment by the exemption notification under section 41 if the relevant conditions were fulfilled. The same scheme has been adapted even in the later legislation in the Gujarat Sales Tax Act, 1969, where the same combined rate of 6 paise which was attracted under the residuary entry 22 of Schedule E was now enacted in entry 36(1) in Schedule II, Part A, under which 6 paise rate was laid down for tractors, spare parts and accessories thereon; while the motor

vehicles, motor lorries and their component parts were governed by entry 74 read with entry 66. As we earlier pointed out, on the statement of facts in the present case, it is obvious that this wider question of law does not arise for our consideration where the sale of battery was as a tractor part, for which under the previous law only general tax would have been payable. The dealer in the present case having admitted the facts that the batteries sold by these firms were used in motor vehicles and having paid rate of sales tax at 10 per cent under entry 42B of Schedule C, the wider question of law does not arise for our consideration and we do not give any opinion on that wider question as to whether tractor is a motor vehicle and as to what would be the tax if the battery was sold as a tractor battery or tractor spare part.

9. Besides, in the present case, battery is such a part of the motor vehicle that it can also fall even in the term 'component part' of the motor vehicle. In our earlier decision in the State of Gujarat v. Golden Metal Industries [[1975] 35 S.T.C. 349 at 350], we had pointed out that the expression 'component parts' would as per the Webster's Dictionary mean what would serve as one of the parts of the whole vehicle or as its constituent part, and that would have reference to what goes in the composition in the whole as its essential part. In Agarwala Brothers v. Commissioner of Sales Tax [[1969] 23 S.T.C. 306], the Allahabad High Court has on the entry in pari materia taken the same view that an article is a component of another when it forms a constituent part of the other and is essential for completing it. That presumes necessarily that the article as such must in its condition and functioning be capable of use in the other. That is why the diesel engine, which only with the assistance of conversion kits, could be used in motor vehicles, could not be said to be component part. On the same test in Commissioner of Sales Tax v. Pritam Singh [[1968] 22 S.T.C. 414], the Allahabad High Court again took the view that a body mounted on the chassis of the motor vehicle was an integral part of the motor vehicle and, therefore, the truck bodies manufactured and sold by the assessee should be considered as component parts of motor vehicles within the meaning of a similar entry. At page 415, it was pointed out that a motor vehicle was a vehicle or carriage propelled by a motor. The vehicle was ordinarily meant to be one for conveying passengers or goods. The component part, therefore, was an integral part which was necessary to constitute

the whole or without which the whole could not be conceived. On the aforesaid test, to complete motor vehicle, a body is a necessary or integral part because then only it can function as a conveyance or a motor vehicle by accommodating passengers or carrying goods intended to be conveyed. If we apply the aforesaid settled test of a component part, it is obvious that a battery is such an integral part to constitute the whole motor vehicle, as without the battery it would cease to be a motor vehicle. The motor vehicle is a vehicle propelled by motor power. It may be mechanically or electrically propelled, but it is the battery which is the most integral part of the motor vehicle without which it would never have driving force and it would have to be pushed merely. In that view of the matter, a battery would fall under this entry 42B even as a component part. Mr. Pathak vehemently argued that such an interpretation could not be put on this entry in view of the fact that the batteries were put in the inclusive clause only in the 'other articles' by the legislature. That is obviously done ex abundanti cautela for settling doubts, if any. As earlier pointed out, the legislature wanted to put the catalogued articles in this parenthetic inclusive clause on par with the component parts so that they may not be required to fulfil those two tests laid down for 'other articles', by this device of paranthetic inclusive clause and, therefore, it is obvious that this inclusion of batteries in the parenthetic inclusive clause would not afford any evidence for showing that a battery was not a component part of the motor vehicle. In fact, it satisfies the test of even a component part, as an integral part of the whole.

10. Mr. Pathak next argued that a battery would require to be charged and uncharged battery would not fall under this item. The Tribunal had rightly pointed out that it was not established that only uncharged batteries were sold by this dealer. Besides, the contention is one of despair. A battery in order to be a working battery has got to be a charged battery and, therefore, in order to make it a proper battery itself, if any charging has to be done, it could never be held that the legislature intended to make any difference between the charged or uncharged batteries for the purpose of entry 42B. There was no question of any further adaptation. The charging process had to be done for making it a proper workable battery as one of its constituent process, and it was not a process or adaptation done for the purpose of using it as a part of the motor vehicle.

11. Therefore, whichever way the matter is looked at, whether the battery being a component part or as having been listed in this catalogue in the parenthetic inclusive clause, a battery specifically falls in this entry 42B, even though it can be used even in a tractor. Therefore, the only answer which can be given on the first question must be in the affirmative, and so the second question cannot arise. The reference must be accordingly disposed of with no order as to costs.

12. Reference answered accordingly.

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