
(1981) 02 BOM CK 0024
In the Bombay High Court
Case No : Sales Tax Reference No. 49 of 1977

Acme Plastic Industries

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 04-02-1981

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52

Citation : (1981) 48 STC 29

Hon'ble Judges : Sujata V. Manohar, J;D.P. Madon, J

Bench : Division Bench

Judgement

Sujata V. Manohar, J.—The applicants manufacture plastic grills for Messrs. Philips India Ltd. These grills are supplied by the applicants to Messrs. Philips India Ltd. who carry out certain processes on the grills and thereafter fit them on to the transistor radios manufactured by them (Philips India Ltd.).

2. The applicants, who were desirous of knowing the correct rate of sales tax in respect of the two types of plastic grills sold by them to Philips India Ltd., made an application u/s 52 of the Bombay Sales Tax Act, 1959, for determination of this question by the sales tax authorities. Their application was in respect of the plastic grills sold by them under the invoices dated 9th September, 1988, and 4th May, 1968. On this application, the Commissioner of Sales Tax came to the conclusion that the plastic grills sold by the applicants were spare parts and accessories of transistor radios and that, therefore, they were covered by entry 65 in Schedule C to the Bombay Sales Tax Act, 1959, as then in force. The applicants had contended before the Commissioner of Sales Tax that the items sold by them were plastic goods which were covered by entry 19A in Schedule E to the said Act. This contention of the applicants was negated by the Commissioner. The applicants thereafter preferred an appeal before the Tribunal. The Tribunal upheld the finding of the Commissioner to the effect that the grills sold by the applicants were covered by entry 65 in Schedule C to the said Act. The Tribunal came to this conclusion on the ground that the grills sold by the

applicants were accessories of wireless sets. The Tribunal held that the grills in question were not spare parts of wireless sets. They were, however, accessories of wireless sets and hence they fell under entry 65 in Schedule C. Thereafter, at the instance of the applicants, the following question has been referred to the High Court for determination :

"Whether, on the facts and circumstances of the case, the finding of the Tribunal that the sales of goods, i.e., B.S.U. Grills under invoice No. AP/301 dated 9th September, 1968, and Deluxe Grills under invoice No. AP/0892 dated 4th May, 1968, were covered by the scope of entry No. 65 of Schedule C to the Bombay Sales Tax Act, 1959, is correct ?"

3. Entry 65 in Schedule C, at the relevant time, was as follows :

Entry	Description of goods	Rate of sales tax	Period of No. or purchase tax in operation	paaise in the rupee
1	2	3	4	5
65.	Wireless reception instruments and apparatuses and radio gramophones.	Twelve	1st September, 1967, to 10th May, 1973.	

The applicants claim that their plastic grills fall not under entry 65 in Schedule C but under entry 19A, clause (b), in Schedule E. Entry 19A in Schedule E, at the relevant time, was as follows :

Entry	Description of goods	Rate of sales tax	Rate of general purchase tax	Period of No. goods or purchase tax	paaise in the rupee
1	2	3	4	5	6
19A	Goods made primarily from any kind of plastics (other than those to which entry 53 in Schedule C or any other entry in that or any other schedule applies, but including roofing, or wall plastic tiles) :- (a) if made from thermo-plastic setting plastic	Eight	Three	1st September 1967, to 31st August, 1969.	
	(b) in other cases do.	Five	Three		

4. The applicants have challenged the finding of the Tribunal to the effect that the plastic grills sold by them can be considered as accessories of wireless reception instruments or apparatuses under entry 65 in Schedule C. Mr. Patel, who appears for the applicants, has relied upon the meaning of the term "accessories" given in various dictionaries as meaning something contributing in a subordinate degree to a general result or effect; as an additional or extra item. However, whether a particular item constitutes an accessory of any instrument or apparatus is a question to be determined not with reference entirely to the dictionary meaning of the term, but with reference to the facts of each given case. It is the contention of the department that the plastic grill which is supplied by the applicants should be considered as an accessory because it is not an essential component of a transistor radio. In other words, a transistor radio can function

as a transistor radio without a grill. This cannot be the test for determining whether any part of a transistor radio is to be considered as its accessory or not. We have to examine a transistor radio as it is available in the market. What is sold is not merely the mechanism of a transistor radio but a transistor radio in a portable case which can be used by a customer safely and conveniently. Hence the case in which the instrument or apparatus of a transistor radio is fitted is as much a part of a transistor radio which is sold in the market as the instrument itself. In the present case, for example, a transistor radio is not available in the market without a grill. The grill, therefore, is a part of the transistor radio itself, and it cannot be considered as an accessory.

5. In this connection, a reference may be made to the case of *Vithal Chhagan & Sons v. State of Gujarat* [1966] 17 S.T.C. 96., where the Gujarat High Court was required to consider whether wrist-watch cases are spare parts of watches within the meaning of entry 10 in Schedule E to the Bombay Sales Tax Act, 1959. While considering the relevant entry, the Gujarat High Court observed :

"Now it is a well-settled rule of construction in sales tax statutes that words used by the legislature in entries in various schedules to describe different kinds of goods for prescribing different rates of tax must be construed not in any technical or scientific sense but as understood in common parlance."

6. It further went on to observe :

"When a customer goes to a dealer and asks for a wrist-watch, he does not ask for the mechanism; he asks for what is popularly known as wrist-watch and that is the article consisting of the mechanism fitted in the watch-case, an article ready for use as a wrist watch. The watch-case is as much an integral part of the wrist-watch as the mechanism and both make up the wrist-watch as understood in ordinary parlance."

7. Similarly, in the present case, when a customer asks for a transistor radio he does not ask merely for the mechanism; he asks for what is popularly known as a transistor radio; that is to say, he asks for the mechanism as fitted in the transistor case. The case in which the transistor is fitted is as much an integral part of the transistor radio as the mechanism itself. The grill supplied by the applicants, after finishing processes are carried out on it, is fitted in the case and is a part of the case. Therefore, the grill, which is processed and fitted on to the transistor radio, is also as much a part of the transistor radio as the mechanism itself, and hence it will not be possible to consider the grill as an accessory. In the case of *Rose Mary Carpentry Works v. State of Madras* [1964] 15 S.T.C. 924, the Madras High Court was required to consider whether a radio cabinet could be considered as a component part of a radio. The Madras High Court negated the contention that a radio cabinet was an accessory within the meaning of entry 5 in the First Schedule to the Madras General Sales Tax Act, 1959, and held that it was a component part of a radio. The court observed that a finished radio set has, as an essential component part, the wooden cabinet in which the valves,

loud-speaker and other mechanical contrivances of a radio are housed, and if a radio set is opened up it can certainly be resolved into several component parts, including the wooden cabinet. It, therefore, held that a radio cabinet was a component part of a radio. The same reasoning can be applied in the present case also. A number of authorities were cited at the Bar in order to show the meaning of the term "accessory". There can be no dispute about the meaning of that term. None of the authorities cited, however, was concerned with an item of the type in question in the present case. It is not, therefore, necessary to discuss them.

6. In the light of the ratio laid down by the Gujarat and the Madras High Courts, it cannot be held in the present case that a plastic grill, which requires a certain process to be carried out before it is fitted on to a transistor radio, can be considered as something which is merely in the nature of an accessory to a transistor radio. A transistor radio, as a finished product, is available in the market in a case to which a grill is fitted and, therefore, the grill of the type sold by the applicants after it is processed can be better considered as a component of a transistor radio, rather than as an accessory.

7. It was also submitted by the sales tax authorities that the grills in question are spare parts of a transistor radio. This contention also cannot be accepted. In the case of *Commissioner of Sales Tax v. Amar Radio Cabinet Works* [1968] 22 S.T.C. 63, the term "spare parts" was construed by the Bombay High Court as connoting a part which requires replacement in the ordinary course on account of wear and tear, and an extra item for use in an emergency. In that case, radio cabinets which were manufactured and sold by the assesseees were held not to be spare parts within the meaning of entry 65 in Schedule C then in operation. In the present case, the grills, in the form in which they are manufactured, cannot be used in transistor radios at all because they are a semi-finished product and require certain processes to be carried out before they are fitted on to transistor radios. Secondly, these grills are manufactured by the applicants at the instance of Messrs. Philips India Ltd. for being fitted on to their transistor radios. They are not sold in the market as spare parts - as they cannot be - because they are semi-finished goods. They are not required to be replaced on account of wear and tear. Nor are they required for use in an emergency. In any case, the grills sold by the applicants cannot be so used because they have to be processed before they can be fitted to transistor radios of Philips India Ltd. In these circumstances, it is not possible to consider the grills in question as spare parts of transistor radios. They cannot, therefore, be considered as falling under entry 65 in Schedule C, as then in force. It is agreed between the parties that if the grills in question do not fall under entry 65 in Schedule C, then they fall under entry 19A, clause (b), in Schedule E, as then in operation.

8. In the premises, the question referred to us is answered in the negative, that is to say, in favour of the assesseees and against the department.

9. The respondents to pay to the applicants costs of the reference fixed at Rs.

300. The amount of Rs. 100 deposited by the applicants to be refunded to them.
10. Reference answered in the negative.