
(1985) 11 RAJ CK 0027

In the Rajasthan High Court

Case No : Sales Tax Reference No. 25 of 1982

Assistant Commercial Taxes Officer

APPELLANT

Vs

New Laxmi Engineering and Trolley Works

RESPONDENT

Date of Decision : 08-11-1985

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 4(1)

Citation : (1986) RLW 338 : (1987) 64 STC 375 : (1986) 2 WLN 48

Hon'ble Judges : Shyam Sunder Byas, J; S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; Vineet Kothari, for the Respondent

Judgement

S.K. Mal Lodha, J.—In order to appreciate the question of law that arises for our consideration in this case, we may notice the relevant facts.

2. The dealer-assessee M/s. New Laxmi Engineering and Trolley Works, Jodhpur, submitted an application u/s 12A of the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (hereinafter referred to as "the Act") on February 28, 1978, to the Additional Commissioner, Commercial Taxes, for determining the following disputed question :

Whether the word "trailer" includes tractor-trolleys also ? Whether tractor-trolleys are exempt u/s 4(1) of the Rajasthan Sales Tax Act being agricultural implements ?

3. The Additional Commissioner, vide his order dated June 6, 1978, found that they are included as trailer vide entry No. 7 of Notification No. F. 4(64)/FD/Gr. IV/77-56 dated September 6, 1977 and so the rate of tax of trolley of tractor shall be 10 per cent. A revision was filed by the dealer-assessee before the Board of Revenue for Rajasthan, Ajmer ("the Board"). It appears that in revision, contention was raised, namely, that tractor comes within the definition of agricultural machinery. After considering the points that were raised in revision, the Division Bench of the Board, observed as under :

When a tractor is not a piece of "agricultural machinery", it can hardly be claimed that tractor's trailer or trolley is, agricultural machinery.

... .. It is true that the notification refers to all varieties of trailers by whatever name known but these words have to be read in the context of the entry, which is for motor vehicles. Motor vehicles have been listed to include motor vans, motor tankers, motor caravans, motor trucks and motor buses and the use of the word "trailers" in the context must be deemed to mean trailers attached to motor vehicles as described. A trailer does not have an independent source of motion. Tractors do not come within entry No. 7. They are comparatively slow moving vehicles and their trolleys are specially designed to carry loads at low speed. Tractors are taxed separately and on the date the application was made to the Additional Commissioner the rate of tax on tractors and spare parts thereof was 4 per cent. Logically, since the trailers of motor vehicles are taxed at the same rate as the vehicles themselves, tractor-trolleys ought to have been taxed at the rate for tractors. This, however, has not been done in the taxation entry for tractors. It will, therefore, be necessary to regard tractor-trolleys as an item not covered by any other entry and taxable at the general rate.

4. An application u/s 15(1) of the Act was filed by the Assistant Commercial Taxes Officer, Ward 1; "A" Circle, Jodhpur, for making reference to this Court. The Board has referred the following three questions to this Court:

1. Whether, under the facts and circumstances of the case, the word trailer includes tractor-trolleys also and whether tractor-trolleys are exempted u/s 4(1) of the Act being agricultural implements ?

2. Whether the tractor-trolleys are covered within scope of entry No. 7 of the Notification No. F. 4(64)/FD/Gr. IV/77-56 dated September 6, 1977 ?

3. Whether, in the facts and circumstances of the case, sales or purchases of tractor-trolleys were taxable at 4 per cent only ?

5. The reference made by the Board was pending on May 1, 1986, when the Rajasthan Sales Tax (Amendment) Act, 1984 (No. 20 of 1984) ("the Amendment Act" herein), had come into force. According to Section 13(11) of the Amendment Act, this reference is deemed to be an application for revision u/s 16 of the Act, as substituted by the Amendment Act and has to be disposed of as such. The questions referred by the Board arise out of its order dated March 24, 1981. We propose to determine them ad seriatim.

6. Questions Nos. 1 and 2.

In connection with this question, we have to determine whether the word "trailer" includes tractor-trolley also and whether the tractor-trolleys are exempt u/s 4(1) of the Act being agricultural implement. It may be stated that the Additional Commissioner opined that the purpose of trailer and trolley is the same and the trailer and trolley being separate items, are not included in

agricultural machinery or implement. However, the Board concentrated its attention to the other aspect, namely, that the tractor-trailer or trolley, cannot be agricultural machinery. After taking into consideration entry No. 7 of the notification dated September 6, 1977, it was of the opinion that the tractor-trolley is not a motor vehicle and since the notification refers to all varieties of trailers by whatever name known and further, if these words are read in the context of entry, which relates to motor vehicles, the word "trailers" used in entry No. 7 of the notification, must be deemed to mean trailers attached to motor vehicles.

7. In Chambers Twentieth Century Dictionary, "trailer" has been defined as a tracker, a creeping plant; a carriage, car, chair, etc.

Trolley" has been defined as costermonger's cart; a low wheelbarrow; a small truck; a bogie ; receptacle, or car travelling on an overhead wire or rail.

In Webster's dictionary, "trailer" has been defined to mean a cart, wagon, or large van for hauling furniture, produce, etc., designed to be pulled by an automobiles truck or tractor. The "trolley" means a "wheeled carriage, basket, etc. that runs suspended from an overhead. track.

8. The question is whether the trolley which is prepared by the dealer-assessee is trailer, as envisaged by entry No. 7 of the notification.

9. We may reproduce the material part of the Notification dated September 6, 1977:

S. No. 369. F. 4(64)FD/Gr. IV/77-56 dated 6-9-77 as corrected by corrigendum dated 24-9-77 (S. No. 370). S.O. 83.-In exercise of the powers conferred by Section 5 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954) and in supersession of all previous notifications issued in this behalf, the State Government hereby notifies that with immediate effect, the rate of tax payable by a dealer in respect of the goods specified in column 2 of the list annexed hereto, shall be as shown against them in column 3 of the said list.

						S.No.		
Description	of	goods	Rate	of	tax	1	2	3
7. Motor vehicles including chassis 10 per cent" of motor vehicles, motor-bodies of all shapes and designs (including motor vans, motor tankers, motor caravans, motor trucks and motor buses) whether built on chassis or separately and all varieties of trailers by whatever name known.								

10. According to this notification, the different types of trailers, may they be called by different names, have been included in entry No. 7 of the aforesaid notification. A further important question that arises is whether the expression used in entry No. 7 of the aforesaid notification, is so comprehensive as to include the tractor-trolley. A perusal of entry No. 7 shows that this entry relates

to various types of motor vehicles. Some types of motor vehicles have been mentioned in it as the word used is "including". In other words, in this entry various types of motor vehicles have been illustrated. Therefore, in the context in which the word "trailers" has been used, to our mind, it is with reference to the motor vehicles, which have been enumerated therein. Thus, by whatever names, the trailer may be known, it refers to the trailers, which are attached to the motor vehicles, enumerated or illustrated therein. It does not refer to the tractor as such and so the trolley of the tractor does not fall within the scope of entry 7. A tractor-trolley, as understood by common man or by the person who possesses it and sells or purchases, is one which is attached to the tractor. The Board was right when it came to the conclusion that as the tractors do not fall within entry No. 7, the word "trailers" as used in entry No. 7 does not include tractor-trolleys.

11. The next question that crops up for consideration is whether the tractor-trolleys are exempt u/s 4(1) of the Act. For this purpose, it will have to be seen whether the tractor is an agricultural implement. We may narrate the history of entry "agricultural machinery and implements". After the coming into force of the Act until March 8, 1969, the agricultural machinery and implements referred only to fertilizers and manures, agricultural machinery and implements including parts of such machinery and implements. From March 8, 1969, to April 7, 1978, these referred to agricultural machinery and implements including parts of such machinery and implements. In column No. 3, it has been stated that the following shall be deemed to be agricultural machinery and implements from April 1, 1958, to April 7, 1978 : (1) ploughs, (2) teeth of plough, (3) spade, (4) pick i.e., khudali, (5) chaff-cutter, (6) khurpi, (7) axe, (8) khanta, (9) persian wheel and spare parts, (10) belcha, (11) gandasa, (12) patela.

12. From April 7, 1978, till today; it is mentioned that according to Clause 8(a), the agricultural implements shall be as may be specified by the State Government by notification in the official gazette. In this case, the application u/s 12A was made on February 28, 1978 and so, we are concerned as to what was the position on the date of the application and thereafter.

13. In *Dani v. State of Karnataka* [1979] 44 STC 276 , it was held that the trailer is no accessory to a tractor and is not meant to be fitted into a tractor for increasing its beauty, convenience or effectiveness, though a trailer may be necessary for putting the tractor to a particular use, i.e., carrying loads from one place to another. Tractor-trailer is required for use of a tractor and therefore it cannot be an accessory to a tractor.

14. In *Delta Engineering Co. v. Commissioner of Sales Tax* [1963] 14 STC 515, a Division Bench of the Allahabad High Court held that the agricultural implements mean the apparatus or instruments employed in agriculture. Merely because water pumped out from wells by means of the water pumps can be used for irrigation, it cannot be said that they are instruments employed in agriculture. The contention of Mr. K.C. Bhandari, learned counsel for the Assistant Commercial Taxes Officer, is that the tractor-trolleys are not agricultural

implements, whereas Mr. Vineet Kothari, learned counsel for the assessee, contends that tractor-trolley is an aid of agriculture and so fall within the expression "agricultural implements" and that it is not necessary that it should be actually used for the purpose of agriculture. If anything helps in agriculture, according to Mr. Vineet Kothari, it is agricultural implements. As tractor-trolley is used in aid of the agriculture, i. e., for taking seeds, etc., before cultivation to the agricultural fields and after harvest the grain is brought in it, it is agricultural implement. In other words the contention of the learned counsel on behalf of the dealer-assessee is whether the persons who possess and from whom it is purchased, they consider tractor-trolley as agricultural implement or not. In this connection, reference was made to Commissioner of Sales Tax v. Shetkari Sahakari Sangh Ltd. [1975] 35 STC 554 , wherein it was held that it is not necessary that a machinery, before it can be said to be agricultural machinery, must be used exclusively for agricultural purposes.

15. The Supreme Court in Annapurna Biscuit Mfg. Co. v. Commissioner of Sales Tax [1981] 48 STC 254 has laid down that the words used in a law imposing a tax should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force and that if an expression is capable of a wider meaning as well as a narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case. In our opinion; a tractor-trolley is not an agricultural implement for the very obvious reason that it has not been specified as such as an agricultural implement in the notification, which has been referred to hereinabove. If the State Government wanted that a tractor-trolley is an agricultural implement as it is used and can be used in aid of agriculture, as it has specified various other agricultural implements, it could also be specified as such. It is further clear that the tractor-trolley is neither apparatus nor implement nor equipment for the purpose of carrying out agricultural operations. Trolley is nothing but wheeled carriage, basket, etc., that runs suspended from an overhead track. It is not necessary that it should be exclusively used for agricultural purposes. The agricultural implements, which have been specified in the notifications, are instruments, apparatus or implements, which are used for agricultural operations. It follows that the State Government never wanted that a tractor-trolley should be agricultural implement. We, therefore, hold that the tractor-trolleys are not agricultural implements.

16. Question No. 3

17. Now, the question is what is the rate of tax and under which entry of the Table, the tax is payable. We have already held that the tractor-trolleys are not included in the expression "trailers" as used in entry 7 of the Notification dated September 6, 1977 and therefore, the sales tax at the rate of 10 per cent is not leviable.

18. Tractor-trolley is not a spare part of the tractor and no debate has been raised on behalf of any of the parties that a tractor-trolley is a spare part of the

tractor and therefore, entry No. 17 of the Table 17 is not applicable. So the rate mentioned in entry No. 17 of Table 17, namely, tractors and spare parts thereof is not applicable. Then the question is at what rate the sales tax on tractor-trolleys is payable since there is nothing specific in the entry dealing with the tractor-trolleys in the Tables of the Sales Tax Act prescribing the rates for payment of sales tax or purchase tax on tractor-trolleys. It follows that this will be under entry No. 19 of Table 17, which is a residuary entry. This entry is applicable to those goods for which no rate of tax has been prescribed elsewhere under the Act or the Rules and so the sale or purchase tax payable on the tractor-trolley will be governed by entry No. 19 of Table 17. The sale and purchase tax which is payable on tractor, namely, 4 per cent is not payable on the tractor-trolley, for, a tractor-trolley is not spare part of the tractor.

19. The upshot of the above discussion is :

- (1) that the word "trailer" does not include tractor-trolley ;
- (2) that the tractor-trolleys are not "agricultural implements" and, thus are not exempt u/s 4(1) of the Act;
- (3) that the tractor-trolleys do not fall within the expression "all varieties of trailers by whatever names known" used in entry No. 7 of Notification No. F. 4(64)/FD/Gr. IV/77-56 dated September 6, 1977 ;
- (4) that the tractor-trolleys are not taxable at the rate of 4 per cent and the sale or purchase tax leviable on the tractor-trolleys is in accordance with entry No. 19 of Table 17, which is 7 per cent.

20. The reference, which has been treated as a revision u/s 15 of the Act as substituted by the Amendment Act, is disposed of as indicated above.

21. We leave the parties to bear their own costs.