

(1966) 01 P&H CK 0015
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2315 of 1965

Bharat Motor Company	Vs	APPELLANT
The Assessing Authority and Others		RESPONDENT

Date of Decision : 18-01-1966

Acts Referred:

Central Sales Tax Act, 1956 — Section 2
Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1968) 22 STC 133

Hon'ble Judges : J.N. Kaushal, J

Bench : Single Bench

Advocate : Bhagirath Dass and G.C. Mittal, for the Appellant; N.N. Goswamy, for the Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

J.N. Kaushal, J.—Four connected petitions, being Civil Writs Nos. 2215 and 2589 of 1965, and Nos. 68 and 1053 of 1966, will be disposed of by this order. The point involved in all the four petitions is common and the facts will be given in Civil Writ No. 2315 of 1965.

2. The petitioner-firm is a dealer registered under the Punjab General Sales Tax Act (hereinafter called the Act) and is carrying on the business of motor spare parts, tractor spare parts and lubricants etc. In the return for the year 1964-65, tax for the sale of spare parts of the tractors was calculated at the rate of six per cent, and on that basis the tax was deposited. A notice in Form S.T. 14 was issued and Amrit Lal, partner of the firm, appeared before the Assessing Authority in response to the notice. The main dispute raised was that the sales of the spare parts of the tractors, tyres and tubes were liable to be taxed at the ordinary rate of tax at six per cent. The Assessing Authority, however, took the view that such sales were liable to tax at the rate leviable on the sale of spare parts of motor vehicles under item (1) of Schedule "A" of the Act. The rate of tax

on the sale of spare parts of motor vehicles is ten per cent. The petitioner was dissatisfied with the order of the assessing authority, but did not file an appeal since the Excise and Taxation Commissioner, Punjab, had already intimated to the President, Punjab State Tractors and Tractor-parts Dealers' Association, Kala Kendar Road, Hissar, vide annexure "A", his view wherein it had been stated that the view, which was held by the said dealers' association regarding the levy of sales tax on the sale of spare parts of tractors, was contrary to law. This Court has been moved under Article 226 of Constitution of India for quashing the order of the Assessing Authority which was passed on 30th July, 1965, annexure "B".

3. It is strenuously argued by Mr. Bhagirath Dass, learned counsel for the petitioner-firm, that "tractor" is not a "motor vehicle" within the meaning of item (1) of Schedule "A" of the Act, wherein a list of luxury goods is given. According to the learned counsel, "tractor" could not be deemed to be an item of luxury and it is not a "vehicle". Reference is also made to Notification No. 1864-E. and T. 58/1012, wherein the rate of tax on the sale of tractors was fixed at a consolidated sum of Rs. 100 per tractor. In the view of the learned counsel, this notification gave a clear indication that the tractor was not regarded as a motor vehicle by the Punjab Government itself.

4. On behalf of the State, a preliminary objection has been taken that the petitioner-firm not having exhausted its remedies under the Act, no relief should be granted to it by this Court in writ petition. On the merits, it is stated that the Assessing Authority has taken a correct view of law and that "tractor" being a "motor vehicle", the sale of its spare parts was liable to tax at the enhanced rate under Schedule "A" of the Act.

5. In order to meet the preliminary objection raised by the State, Mr. Bhagirath Dass places his reliance on a Division Bench authority of this Court reported in Messrs Jhandu Mal Tara Chand v. Assessing Authority, Karnal 1966 All Tax Reports 48, wherein it was held-

Since the Deputy Excise and Taxation Commissioner, Ambala Division, who was the appellate authority from the order of the Assessing Authority, Karnal, felt himself bound by the departmental instructions, the remedy by way of appeal to him from the impugned order would have been futile and illusory and hence the preliminary objection put forward in the return as to this petition, being barred on the ground that the petitioner did not avail all the alternative remedies by way of appeal etc. cannot be allowed to prevail.

The rule laid down in the authority is clearly applicable to the present case. As it is clear from annexure "A", the view of the Excise and Taxation Commissioner, Punjab, being against the petitioner's contention it was futile for the petitioner to file an appeal under the Act. The petition under Article 226 having been admitted, it will not be a proper exercise of jurisdiction if the relief is denied to the petitioner-firm only because it has not exhausted its remedies under the Act, which remedies in the present case have been illusory and of no avail to it. The

preliminary objection is, therefore, overruled.

6. In order to appreciate the contentions advanced on both sides, the relevant provisions of law may be noted. Section 5(1) of the Act reads as follows :

5. (1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates not exceeding six naye paise in a rupee as the State Government may by notification direct:

Provided that a tax at such rate, not exceeding ten naye paise in a rupee, as may be so notified may be levied on the sale of luxury goods as specified in Schedule "A" appended to this Act from such date as the State Government may by notification direct. The State Government after giving by notification not less than three months notice of its intention so to do may by like notification add to or delete from this Schedule, and thereupon this Schedule shall be deemed to have been amended accordingly :

Provided further that the rate of tax shall not exceed two naye paise in a rupee in respect of any declared goods as defined in Clause (c) of Section 2 of the Central Sales Tax Act, 1956, and such tax shall not be levied on the purchase or sale of such goods at more than one stage :

Provided further that Government may by notification in the Official Gazette declare that in respect of any goods or class of goods the dealer may pay such lump sum by way of composition of the tax payable under this Act, as the Government may notify from time to time.

Schedule "A" of the Act contains a list of luxury goods as follows-

(1) Motor vehicles, including chassis of motor vehicles, motor tyres and tubes and spare parts of motor vehicles.

(2) Motor cycles and motor cycle combinations, motor scooters, motorettes and tyres, tubes and spare parts of motor cycles, motor cycle combinations, motor scooters and motorettes.

(3) * * * If "tractor" is covered by the words "motor vehicles" as used in item (1) of Schedule "A", then the view of the Assessing Authority will not be open to question. If, however, "tractor" is not a "motor vehicle", then sales tax cannot be charged on the sale of spare parts of tractor at the enhanced rate of ten per cent. There are two cases decided by the Madras High Court which cover the point which is before me. They are : The State of Madras v. Marshall Sons and Company (India) Limited [1954] 5 S.T.C. 305(Mad) and William Jacks and Company Limited Vs. The State of Madras, . In the first case a Division Bench of the Madras High Court while interpreting Section 3(2)(i) of the Madras General Sales Tax Act, which reads-

Motor vehicles including motor cars, motor taxi cabs, motor cycles and cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries-Additional tax 6 pies.

observed-

An agricultural tractor, though its propulsion is by a motor, is not a vehicle within the meaning of Section 3(2)(i) of the Madras General Sales Tax Act, 1939, because it is not a thing which is employed to carry either persons or goods on land. The meaning of "vehicle" is a conveyance or a carriage. An agricultural tractor is not used to convey anything and it is employed for agricultural operations and is driven by a driver.

In the second case, a learned Single Judge of the Madras High Court followed the earlier Division Bench authority.

7. I am in respectful agreement with the view of law taken in these two cases. The notification dated 19th April, 1958, referred to above, shows that "tractor" was treated as separate item and a fixed sum of Rs. 100 per tractor, irrespective of the sale price, had been made leviable. If the intention was to include the "tractor" within the word "motor vehicle", there was no necessity of issuing this notification. Otherwise also, it is difficult to say that the "tractor" is a luxury item. The intention of the Legislature, as expressed in section 5(1) first proviso, is to charge enhanced sales tax on the sale of luxury goods only. It would be anomalous to hold that "tractor" does not fall within the list of luxury goods but its spare parts do. I have, therefore, no doubt in my mind that the view of law taken by the Assessing Authority is totally unsustainable.

8. Mr. N. N. Goswamy, who appears for the Advocate-General places very strong reliance on the definition of "tractor" as given in Section 2(30) of the Motor Vehicles Act, 1939, which reads-

2. (30) "tractor" means a motor vehicle which is not itself constructed to carry any load (other than equipment used for the purpose of propulsion) but excludes a road-roller.

According to the learned counsel "tractor" has been defined as a "motor vehicle". I am, however, not prepared to import the definition given in the Motor Vehicles Act into the Punjab General Sales Tax Act. The purpose of both the Acts is totally different. Unless the definition of "tractor" is given in the Act, it must be construed in its popular sense. The Supreme Court while trying to find the meaning of the word "vegetables" as used in the C.P. and Berar Sales Tax Act, observed in *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola*, and *Anr.* [1961] 12 S.T.C. 286 (Mad) :

This word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been denned in the Act and being a word of every day use it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it." It is to be construed as understood in common language.

The counsel for the State tried to place reliance on the meaning of the word

"tractor" as given in "Webster's International Dictionary" and in "Corpus Juris Secundum". I, however, do not feel called upon to go into the dictionary meanings of "tractor", since, in my opinion, it is too well known as to what a "tractor"- means. The Madras High Court has rightly observed "that "tractor" is not a thing which is employed to carry either persons or goods on land." Unless a trolley is attached to a tractor, it cannot be used for the purpose of conveying anything. It is employed for agricultural operations only.

9. Due to the reasons stated above, these petitions would succeed. In the order passed by the Assessing Authority in Civil Writ No. 68 of 1966, although it has not held in so many words that a "tractor" is a motor vehicle, since he has proceeded to charge tax at the enhanced rate on the sale of spare parts of tractors, the case is identical with the other three cases. I would, therefore, set aside the impugned orders in all the four petitions. The Assessing Authority is directed to proceed afresh in accordance with law laid down in this judgment. In the circumstances there will be no order as to costs.