
(1985) 10 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No's. 319, 320 and 321 of 1982

Commissioner of Sales Tax

APPELLANT

Vs

Dawar Brothers

RESPONDENT

Date of Decision : 14-10-1985

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Entry 30, 44(1)

Citation : (1987) ILR (MP) 126 : (1986) 61 STC 35

Hon'ble Judges : K.K. Adhikari, J; J.S. Verma, J

Bench : Division Bench

Advocate : S.L. Saxena, for the Appellant; B.L. Nema, for the Respondent

Judgement

J.S. Verma, J.—All these three references u/s 44(1) of the M.P. General Sales Tax Act, 1958, have been made at the instance of the Commissioner of Sales Tax in respect of the same dealer, to decide the common question of law arising out of the Tribunal's order relating to three different periods of assessment. The common question of law is as under :

Whether, under the facts and circumstances of the case, prior to 1st September, 1967, tax on batteries was lawful as per entry No. 30 of Part II of Second Schedule to the M.P. General Sales Tax Act, 1958, or it was leviable as per entry No. 1 of Part II of Second Schedule ?

2. The dealer, M/s. Dawar Bros., carried on business in motor vehicles, motor parts and accessories, petrol, diesel and lubricants, etc. For the assessment years 1965-66, 1966-67 and 1967-68, the question arose about the rate at which sales tax was to be levied on the sale of batteries used in motor vehicles by this dealer. From 1st September, 1967, a specific entry was made for batteries, which was entry No. 1-A in Part II of Second Schedule to the Act. There was no controversy that from 1st September, 1967, sales tax on batteries was leviable under entry No. 1-A. For the periods 1965-66, 1966-67 and a part of the year 1967-68, up to 1st September, 1967, the dealer was assessed to

sales tax on the sale of batteries by the assessing authority as well as the first appellate authority in accordance with entry No. 1 of Part II of Second Schedule, rejecting the dealer's contention that it was entry No. 30 in Part II of Second Schedule, providing for a lower rate of tax, which was applicable. The Tribunal has, however, taken a contrary view and held that even though batteries sold along with the motor vehicles by the dealer were liable to be taxed under entry No. 1, yet, the sale of such batteries separately could be taxed only under entry No. 30 in Part II of Second Schedule, instead of entry No. 1 therein.

3. Aggrieved by the view taken by the Tribunal in favour of the dealer for all the three periods of assessment the Commissioner of Sales Tax sought a reference to this Court u/s 44(1) of the Act, which has been made to answer the above-quoted common question of law arising in all the three references.

4. Entries Nos. 1 and 30 in Part II of Second Schedule to the Act as well as the residuary entry in Part VI, during the relevant period up to 1st September, 1967, were as under :

"PART II

S. No. Description of goods. 1. Motor vehicle, including chassis of motor vehicles, motor bodies, motor tyres and tubes and spare parts and accessories of motor vehicles.

30. All kinds of electrical goods including torch, cells, casing, microphone, electric fans, lighting bulbs, electrical earthenware, porcelain and all other accessories.

PART VI

1. All other goods not included in Schedule I or any other part of this schedule."

With effect from 1st September, 1967, entry No. 1-A was inserted in Part II of Second Schedule as under :

"PART II

S. No. Description of goods. 1-A. Batteries excluding cells mentioned in entry 30 of this Part."

As earlier stated, there is no controversy that batteries fall under entry No. 1-A ever since its insertion with effect from 1st September, 1967. The question for decision is under which entry batteries fell prior to 1st September, 1967.

5. Entries Nos. 1 and 1-A provide for a higher rate of tax than that for goods falling under entry No. 30. Entry No. 1 in Part VI, which is the only entry in that Part is the residuary entry, which applies to goods not included in First Schedule or any other part of Second Schedule. The result, therefore, is that if there be no specific entry to cover batteries prior to 1st September, 1967, when entry No. 1-A was inserted, then it would fall under the residuary entry in Part VI, which also provides for a lower rate of tax than entry No. 1. The dealer's case is that the batteries sold by it separately and not along with the motor vehicles, though

used in motor vehicles, could be taxed prior to 1st September, 1967, only in accordance with entry No. 30 in Part II and not entry No. 1 therein, as claimed by the department. This contention of the dealer has been accepted by the Tribunal and the question is whether this view is correct.

6. The question really is whether wet storage batteries used in motor vehicles, when sold separately and not along with the motor vehicle by the dealer fall within the aforesaid entry No. 30 in Part II of Second Schedule to the Act, as held by the Tribunal or in entry No. 1 as contended by the department. It is not disputed that these batteries, when sold with motor vehicles, fall in entry No. 1 and, therefore, the only question is whether the same battery, when sold separately, even though it is an accessory of a motor vehicle, falls in entry No. 30 relating essentially to electrical goods.

7. In our opinion, the plain language of entry No. 30 itself indicates that wet storage batteries of this kind do not fall within that entry and it is only the dry cells which are included within it by specific mention of the word "cells" therein. Dry cells and wet storage batteries are both known as "batteries" of which they are different kinds. If the intention was to include all kinds of batteries in entry No. 30, then the word "cells" alone would not have been used therein, instead of the word "batteries" which would have also included cells along with wet storage batteries. The legislative intent is further evident from entry No. 1-A, inserted with effect from 1st September, 1967, providing expressly for batteries immediately after entry No. 1 and excluding therefrom "cells" mentioned in entry No. 30. Obviously, entry No. 1-A has provided for batteries, other than cells already covered by entry No. 30. It cannot, therefore, be doubted that wet storage batteries, with which we are concerned, could not be included prior to 1st September, 1967, in entry No. 30, which provides for "all kinds of electrical goods", including certain items specifically mentioned, one of which is "cells". The Tribunal's conclusion that these wet storage batteries used in motor vehicles fall within entry No. 1 only when sold along with the motor vehicles and that they fall under entry No. 30, when sold separately, results from a misconstruction of these entries. The distinction is not based on a possible or casual use of the goods but its inherent nature and primary use.

8. Since entry No. 30 cannot include a wet storage battery, which is admittedly an accessory of a motor vehicle, entry No. 1, providing for "spare parts and accessories of motor vehicles" is the specific entry to cover this item till 1st September, 1967, when entry No. 1-A, was inserted to expressly provide for "batteries excluding cells mentioned in entry No. 30". This result is obvious from the fact that entry No. 30 does not include wet storage batteries and it includes merely dry "cells" mentioned therein. For this reason, the question of attracting the residuary provision in Part VI also does not arise, since entry No. 1 till 1st September, 1967, and thereafter entry No. 1-A, specifically provide for wet storage batteries used in motor vehicles, whether sold with the motor vehicle or separately by a dealer in motor vehicles, motor parts and its accessories.

9. The Tribunal's conclusion is influenced by the fact that wet storage batteries can be used for purposes other than running of a motor vehicle. In our opinion, its likely or casual use for certain other purposes, while its essential use as an accessory of a motor vehicle continues, does not alter its inherent character as an accessory of a motor vehicle which brings it within the ambit of entry No. 1. This conclusion is also supported by the scientific meaning of the word "battery" and some decisions dealing with the ancillary questions, apart from the fact that entry No. 1-A, providing specifically for batteries with effect from 1st September, 1967, also classifies the goods with reference to its inherent nature and not its use.

10. A "battery" is an assembly of two or more cells that convert chemical energy to electrical energy by the use of electrodes and an electrolyte kept in a container. The electrolyte used in dry cells is in the form of jelly, while it is in liquid form in the wet cells. A storage battery is a device which may be used repeatedly for storing electrical energy at one time for use at another time. It is, therefore, clear that a dry cell is merely one kind of battery, which once discharged has to be discarded and it is called a dry cell because the electrolyte used therein is not wet but in jelly form. The wet cells or the storage batteries have a liquid electrolyte and can be used for storing energy; and they can also be recharged. [See Encyclopaedia Britannica, Vol. 2, 15th Edn., at pages 764-766, and Encyclopaedia Americana, Vol. 3, 1958 Edn., at pages 342 to 342b.] This manner in which the term "battery" is understood scientifically as well as in common parlance indicates that the aforesaid entry No. 30 included within its ambit only the dry cells and not the remaining kinds of batteries, i.e., wet storage batteries.

11. Some of the decisions, which throw light on the question, may now be referred. In *Jupiter Battery Works v. Commissioner, Sales Tax* [1973] 31 STC 80, the contention that batteries would fall within the definition of "electrical goods" was rejected. No doubt, specific mention of "batteries" was made elsewhere as a component part of a motor vehicle, but it was expressly held that batteries would not fall within the definition of "electrical goods". In *Bijili & Co. v. State of Tamil Nadu* [1974] 34 STC 461, a similar view was taken on the ground that "battery" is not covered by electrical goods, even though it is used for production of energy. This decision also is relevant for indicating that "battery" does not fall within the meaning of "electrical goods", even though, like the earlier decision, another entry covered batteries. In *P.P. Metal Corporation v. Commercial Tax Officer* [1977] 40 STC 393, the Andhra Pradesh High Court also took the same view that it is difficult to conceive of a battery as being treated as electrical goods.

12. In *Vikas Traders v. State of Gujarat* [1976] 37 STC 163, it was held that in spite of the fact that "battery" was included in a particular entry, but even without such inclusion, it was obvious that it would fall within the entry as a "component part of the motor vehicle". This decision, therefore, holds that a

battery would fall within the expression "component part of the motor vehicle", even without express mention of the word "battery" in such an entry. This decision, therefore, clearly supports the conclusion that "batteries" fall within the aforesaid entry No. 1 as an accessory of a motor vehicle even without express mention of the word "battery" therein till insertion of a specific entry for batteries on 1st September, 1967, as entry No. 1-A.

13. The meaning of the term "battery", as understood in common parlance and scientifically as well as the aforesaid decisions cited at the Bar, clearly indicate that all kinds of batteries, including wet storage batteries are not covered by the aforesaid entry No. 30, relating to "all kinds of electrical goods including torch, cells" inasmuch as dry cells are only one kind of batteries included in this entry by specific mention. The subsequent insertion of entry No. 1-A, wherein also "cells mentioned in entry 30" have been excluded from goods described as "batteries", indicates the legislative intent that wet storage batteries used in motor vehicles as an accessory or component part, were never included in the aforesaid entry No. 30. With effect from 1st September, 1967, the wet storage batteries are covered by the specific entry No. 1-A and prior to that date, they fell within entry No. 1 as an accessory of the motor vehicle.

14. As a result of the aforesaid discussion, it follows that the Tribunal has taken a contrary view on account of misconstruction of the relevant entries. The reference is, therefore, answered in favour of the department and against the dealer as under :

Prior to 1st September, 1967, wet storage batteries sold separately by the dealer were also taxable in accordance with entry No. 1 and not entry No. 30 of Part II of Second Schedule to the M.P. General Sales Tax Act, 1958.

There will be no order as to costs.

Miscellaneous Civil Case No. 320 of 1982 COMMISSIONER OF SALES TAX v. DAWAR BROS.

For the reasons given in the judgment delivered today in Miscellaneous Civil Case No. 319 of 1982 (Commissioner of Sales Tax v. Dawar Bros. [1986] 61 STC 35), this reference is answered in favour of the department and against the dealer as under :

Prior to 1st September, 1967, wet storage batteries sold separately by the dealer were also taxable in accordance with entry No. 1 and not entry No. 30 of Part II of Second Schedule to the M.P. General Sales Tax Act, 1958.

There will be no order as to costs.

Miscellaneous Civil Case No. 321 of 1982 COMMISSIONER OF SALES TAX v. DAWAR BROS.

For the reasons given in the judgment delivered today in Miscellaneous Civil Case No. 319 of 1982 (Commissioner of Sales Tax v. Dawar Bros. [1986] 61 STC 35),

this reference is answered in favour of the department and against the dealer as under:

Prior to 1st September, 1967, wet storage batteries sold separately by the dealer were also taxable in accordance with entry No. 1 and not entry No. 30 of Part II of Second Schedule to the M.P. General Sales Tax Act, 1958.

There will be no order as to costs.