

**(1980) 01 AHC CK 0013**  
**In the Allahabad High Court**  
**Case No : S.T.R. No. 129, 130 and 131 of 1978**

Commissioner, Sales Tax

APPELLANT

Vs

Kohinoor India Pvt. Ltd.

RESPONDENT

**Date of Decision :** 04-01-1980

**Acts Referred:**

Uttar Pradesh Sales Tax Act, 1948 — Section 11  
Uttar Pradesh Sales Tax Act, 1948 — Section 11  
Uttar Pradesh Sales Tax Act, 1948 — Section 11

**Citation :** (1980) 45 STC 332

**Hon'ble Judges :** R.M. Sahai, J

**Bench :** Single Bench

**Advocate :** Bharatji Agarwal, for the Respondent

## Judgement

R.M. Sahai, J.—The following question of law was referred for the opinion of this Court u/s 11 of the U.P. Sales Tax Act, as it stood before its amendment:

Whether, in the facts and circumstances of the case, windscreen wipers and oil gauge manufactured and sold by the assessee and utilised in diesel locomotive were spare parts of machinery liable to be taxed at the rate of 6 per cent under Notification No. ST-7098/X -- 1012-1965 dated 1st October, 1965?

2. As the law has been amended, this reference is being decided as revision. The facts in brief are as follows: The assessee manufactured and sold various articles used in machinery in the assessment years 1970-71, 1971-72 and 1972-73. The dispute in this revision is in respect of windscreen wipers and oil gauges supplied to Diesel Locomotive Works, Varanasi. It was claimed by the department that they are taxable as spare parts of machinery whereas the assessee claimed its taxability as unclassified item. The windscreen wiper is used to remove the rain-water or water falling on the windscreen of the automobile whereas oil gauge is used to measure the level of oil. The relevant notification read as under:

In exercise of the powers u/s 3-A of the U.P. Sales Tax Act, 1948 (U.P. Act No. 15

of 1948), the Governor of Uttar Pradesh is pleased to declare that with effect from October 1, 1965, the turnover in respect of machinery and spare parts of machinery not being such machinery or spare parts thereof as are taxable under, any other notification issued under the aforesaid section, shall not be liable to tax except....

3. The question is whether these items can be considered to be spare parts of machinery. According to the learned counsel for the assessee, a spare part of a machinery is an integral part without which the machinery cannot work. It was submitted that windscreen wiper or oil gauge were not integral parts of machinery and were used to make running of the automobile convenient and smooth only. They could not therefore be considered to be spare parts. The learned counsel produced a wiper to demonstrate that unless force is generated in it through a knob which rotates, it cannot function by itself. Reliance in this connection was placed on Commissioner of Sales Tax v. Amar Radio Cabinet Works 1968 22 S.T.C. 63, Sujan Singh v. Appellate Assistant Commissioner, Sales Tax [1969] 24 S.T.C. 504, and Vithal Chhagan & Sons v. State of Gujarat [1966] 17 S.T.C. 96. The dictionary meaning of the spare parts was also placed as a part of the argument. On the other hand, the learned standing counsel argued that no factual foundation has been laid and therefore these controversies cannot be raised for the first time in revision. According to him, the scope of revision u/s 11 is the same as that of reference u/s 11(4). Reliance has been placed on Engineering Traders v. State of Uttar Pradesh 1973 U.P.T.C. 91 (F.B.) and Shyam Enamel Works v. Commissioner of Sales Tax 1974 U.P.T.C. 586.

4. So far as the objection of the standing counsel is concerned it is a reference of the Commissioner and if relevant facts are not on record or have not been found then the revision can either be dismissed under the new law or it could be returned unanswered under the old law. But, as, apart from the facts found, no other fact is necessary, it is not necessary to decide this controversy although it may not be out of place to mention that the scope of revision is not the same. It is much wider than the power exercised by this Court in advisory jurisdiction under the old law. Apart from it, the assessee is respondent and it is entitled to support the order on any ground except the grounds which necessitate investigation of facts.

5. Coming to the merits of the controversy "spare part" has been defined in Webster's International Dictionary as "an extra part of a vehicle or machine kept for use in emergency or replacement." In the Little Oxford Dictionary, it is defined as "spare part for substitution in machine". In Commissioner of Sales Tax v. Amar Radio Cabinet Works [1968] 22 S.T.C. 63, it was held by the Bombay High Court:

The short question that arises for our consideration is whether radio cabinets and loudspeaker cabinets fall within entry No. 65 of Schedule C, as, if they fall within that specific entry, they cannot fall within the general residuary entry No. 22 of Schedule E. It is the contention of Mr. Banaji for the taxing authorities that radio

cabinets fall within the expression "spare parts" of wireless instruments and apparatuses which occurs in the concluding portion of the said entry No. 65. We are afraid, we cannot accept that contention of Mr. Banaji. As a matter of plain language, the expression "spare parts" connotes a part which requires replacement in the ordinary course on account of wear and tear, and as an extra item for use in an emergency. Mr. Banaji's argument seeks to equate the expression "spare parts" with the term "parts" and does not give to the expression "spare parts" the colour that is lent by the word "spare" with which it is associated in that entry. It is inconceivable that anybody would keep a radio cabinet as an extra for use in an emergency, or that it could be said to be a part which would require replacement in the ordinary course on account of wear and tear. There may be exceptional cases in which a person replaces his radio cabinet, but, in interpreting an entry of this nature, we must give to the words occurring therein the meaning that can be attributed to them in common parlance and in common usage: *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola* [1961] 12 S.T.C. 286 (S.C.).

6. This decision was followed by the Delhi High Court in *Sujan Singh v. Appellate Assistant Commissioner, Sales Tax* [1969] 24 S.T.C. 504. A part in the absence of which the vehicle cannot run smoothly or otherwise is as much a part as the steering, brake, etc. In the Hindi notification, the words "atrikt saman" has been used for "spare parts". This further makes it clear that an article to be covered under that entry must be extra part of machinery which may be capable of being substituted. Before an article can be considered to be extra or spare part, it must be held to be part of the machinery. As unless something is part, it cannot be a spare part. A machinery may consist of numerous parts, some may be essential and integral parts of it and others may be for smooth and efficient running of the machine. All the same both are parts of the machinery. Those parts that can be replaced or substituted are described as spare parts. But merely because they can be replaced they do not cease to be parts. A part which cannot be replaced becomes a part of the machinery itself and those that are capable of being substituted become spare parts. A spare part is nothing but a part of the machinery. The distinction between parts and spare parts for purposes of taxability drawn in the decisions is too artificial. If the notification would have used the words "machinery, its parts and spare parts", it would have resulted in double taxation, once on the machinery itself and then on its parts. To avoid this, the word "part" has not been used and tax is leviable on machinery and on its parts which are sold separately for substitution and replacement.

7. It is not claimed that windscreen wiper is machinery. Nor is it described as part of any machinery. It is common knowledge that it is used in motor vehicles. Every part of a motor vehicle is not machinery nor all of its parts are known as parts of machinery. If "wipers" are not machinery nor part of machinery then they cannot be considered to be spare part of machinery.

8. The other item is oil gauge. It is used to measure level of oil. It may be used

for efficient functioning but it is a part of machinery and it is capable of being substituted or replaced. Therefore, it is spare part of machinery. The distinction drawn by the learned counsel on-the basis of integral part and part used for smooth and efficient running cannot be decisive of the controversy whether an article is spare part or not. The learned counsel urged that a part which adds to the efficiency or smooth functioning is considered as accessory. And what is accessory cannot be spare part. Reliance was placed on the dictionary meaning of the word "accessory" and a number of cases where the word came up for interpretation, namely, *N.A.V. Naidu v. Commissioner of Commercial Taxes* [1970] 25 S.T.C. 381, *Sales Tax Commissioner v. Lachman Singh* [1972] 30 S.T.C. 372, *Narasimulu v. State of Andhra Pradesh* [1971] 27 S.T.C. 178, and *Harinarain Chhotey Lal v. Commissioner of Sales Tax* [1974] 33 S.T.C. 599. Out of those, a few are discussed to demonstrate that the argument has no merit. In the *Narasimulu*'s case [1971] 27 S.T.C. 178, the question was whether wooden casings, reapers and gittis were accessories of electrical goods. It was held:

It is, having regard to the meaning given to the word "accessory" in various dictionaries, that the Principal Government Pleader contended that, in the case of electrical wiring other than conduit wiring, the wooden casings and reapers are accompaniments contributing to the safety and effective use of power and, as such, they are accessories, although they are secondary and non-essential items of electrical equipment. We are inclined to agree with the contention of the learned Principal Government Pleader for the reason that the wooden casings and reapers in question are solely made for wiring purposes.

9. In the *Lachman Singh*'s case [1972] 30 S.T.C. 372, this Court was concerned with oil-cans and steel files supplied along with chaff-cutters. It was held:

The word "accessory" has not been defined in the Act, nor it is a technical or a scientific term. In the *New English Dictionary* by W.A. Craig, the word "accessory" when used in relation to a thing means "something attributing in a subordinate degree to a general result or effect; an adjunct or accompaniment". Now, an oil-can or a steel file may not be adjuncts but certainly they are accompaniments of a chaff-cutter. They contribute in a subordinate degree to a general result or effect of a chaff-cutter. Without them a chaff-cutter cannot work efficiently for a long time. We are thus satisfied that oil-cans and steel files are accessories of chaff-cutters and their turnover is exempt from tax under the aforesaid notification.

10. In the *Bharat Traders*' case [1974] 33 S.T.C. 3, this Court was concerned with wooden gittis, switch-boards, etc. Following the decision of the Andhra Pradesh High Court in the *Narasimulu*'s case [1971] 27 S.T.C. 178, it was held that they were accessories. It shall be noticed that none of these items were part of the unit itself. They were separate and the machinery or the goods of which they were accessory could be used as such as well. For instance, electric wiring can be done without wooden casing and switch-board also. The oil-can or steel file supplied with chaff-cutter was not part of it. It was supplied separately. These

decisions cannot be helpful to resolve the controversy as oil gauge supplied by the assessee is a part of the machinery itself. It cannot be considered to be an accessory. An item which is part of machinery does not become accessory only because it is not as essential or integral part as others.

11. In the circumstances, these revisions succeed and are allowed in part. The question of law raised is decided by saying that windscreen wipers were not taxable as machinery part but oil gauge supplied by the assessee to Diesel Locomotive Works, Varanasi, was taxable as spare part of the machinery. In view of the divided success, the parties shall bear their own costs.