

(2004) 05 AHC CK 0009
In the Allahabad High Court

C.S.T.	Vs	APPELLANT
Suraj Rubber Industries		RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3B, 4B

Citation : (2008) 11 VST 480

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—This revision is at the instance of the Commissioner of Sales Tax against the order dated March 12, 1992 passed in Second Appeal No. 278 of 1991 for the assessment year 1985-86.

The opposite party is a manufacturer and seller of cycle and cycle rickshaw tyres and tubes. It is registered under the U.P. Sales Tax Act, 1948 and has also obtained recognition certificate u/s 4B of the U.P. Sales Tax Act, 1948. The present revision arises out of penalty proceeding u/s 4B of the Act on the ground that besides manufacturing cycle tubes it has manufactured and sold super heavy duty rickshaw tubes for which, the dealer was not authorised u/s 4B of the Act. Thus, the dealer has violated Section 4B of the Act. In reply to the penalty notice the dealer-opposite party has placed reliance upon a notification No. S.T.-II-7551/X dated December 31, 1976, issued u/s 4B of the Act. In annexure III of the said notification, the notified goods are mentioned. Entry No. 1 is the relevant entry which reads as under:

1. Bicycles, tricycles, perambulators, and accessories and parts thereof.
2. Placing reliance upon the aforesaid notification it was submitted by the dealer that it is legally permissible for him to manufacture and sell rickshaw tubes also. The word "tricycles" would cover "rickshaws" also. There is no violation of Section 4B of the Act. The assessing authority has considered the explanation

and examined the record and found that the rickshaw tubes were not permitted to be manufactured and only cycle tubes were permitted to be manufactured, thus, the violation of Section 4B was established and it levied the penalty by the order dated February 11, 1991 which has been confirmed by the appellate authority. But the Tribunal has set aside the penalty order.

3. Heard the counsel for the parties and perused the record. The following question of law has been framed in the memo of revision:

Whether on the facts of the case and in view of honourable High Court's decision in Road Master Industries v. Commissioner, Sales Tax, U.P. [1980] TLD 171 (All) Sales Tax Tribunal, Meerut was legally justified to allow the second appeal filed by the assessee against penalty order u/s 4B read with Section 3B of the U. P. Sales Tax Act?

4. Thus, the sole question involved in the present revision is whether the tricycle is different than a "rickshaw". The Tribunal has quoted the dictionary meaning of tricycle from different dictionaries and has come to the conclusion that the tricycle means a vehicle having three wheels and driven by human force, it, therefore, concluded that rickshaw is a tricycle.

5. That may be so. In interpreting the entries of tax statutes, it has been held that the preference should be given to common parlance meaning than the one as defined in a dictionary. The commodity should be understood in the sense in which persons dealing with it understand.

6. The Supreme Court has firmly ruled that in finding out to meaning of the entries mentioned in the Sales Tax Act, what is relevant is not dictionary meaning, but how those entries are understood in common parlance, specially in commercial circles. Sales tax primarily deal with the dealers who are engaged in commercial activity. Therefore, what is of the essence is to find out whether in commercial circles rickshaw is considered as identical with tricycle. In this connection, reference may be usefully made to the decision of the Supreme Court in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, The Supreme Court in this case was called upon to consider whether the betel leaves can be considered as vegetables. Dictionary meaning showed that betel leaves are a class of vegetables but yet the Supreme Court rules that the word vegetable should be considered in its popular sense, meaning that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. On that basis the Supreme Court came to the conclusion that betel leaves cannot be considered as vegetable.

7. In Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, the Supreme Court held that the word "coal" included charcoal on the ground that in ordinary parlance "coal" includes "charcoal".

8. In State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, the Supreme Court held that "cotton" is distinct from cotton seeds though before the

seeds were separated the cotton and the seeds were part of one commodity.

9. Recently Supreme Court has reiterated its above view in the case of *Alpine Industries Vs. Collector of Central Excise, New Delhi*, . The question was regarding duty of the product known as "Lip salve" where its "preparations for the care of the skin and is not medicaments". The Supreme Court has followed the theory of "Commercial parlance theory" and has held that product cannot be called as medicine as it is neither prescribed by any doctor nor obtainable from the chemist of a chemist shop in the market. Para 5 of the said judgment reads as under:

5 It is well-established that in interpreting tariff entries in taxation statute like the Excise Act where the primary object is to raise revenue and for that purpose various products are differently classified, the entries are not to be understood in its scientific and technical meaning. The terms and expressions used in tariff have to be understood by their popular meaning, that is the meaning that is attached to them by those using the product. See the decision of the Supreme Court on the dispute regarding classification for excise duty, the product--Dant Manjan Lal manufactured by Shree Baidyanath Ayurved Bhavan Ltd. reported in the case of *Shree Baidyanath Ayurved Bhavan Ltd. Vs. Collector of Central Excise, Nagpur*, . The manufacturer claimed the product to be an Ayurvedic medicinal preparation product for dental care. The view of the Tribunal was upheld by this court by holding (at SCC pp 404-05, para 3) that "ordinarily a medicine is prescribed by a medicals practitioner and it is used for a limited time and not every day unless it is so prescribed to deal with a specific disease like diabetes".

10. In *Uttar Pradesh rickshaw* in common parlance is not understood in the sense of tricycle. A reading of the notification referred to above show that rickshaw is not included in the aforesaid notification. In this connection reference can be made to the notification No. ST-187/X-900-(15)-61 dated May 13,1963. Entry No. 34 of the notification, dated May 13,1963 states:

Bicycles, tricycles, cycle rickshaw and perambulators and parts and accessories thereof other than tyres and tubes.

11. The said notification was issued under the U.P. Sales Tax Act, 1948 u/s 3-A. From this notification it is clear that in U.P. rickshaws are treated differently than bicycles, tricycle and perambulators. The aforesaid notification is almost similar to the notification under consideration except that it includes cycle rickshaw and "other than tyres and tubes".

12. In *Shanker Rubber Industries v. State of A.P.* [1977] 39 STC 415(SC) it has been held:

...There is a fundamental and essential difference between cycles and cycle rickshaws. In common parlance as also in commercial sense, they have come to assume different meanings. The designs of the two vehicles are different. The

tyres and tubes used for cycle rickshaws are of a different variety and thicker make, which are not ordinarily used for cycles. The fact that the tyres and tubes used for cycle rickshaws could also be used by cyclists is not a ground for holding that cycle tyres and tubes are the same as cycle rickshaw tyres and tubes. The tyres and tubes of cycle rickshaws are manufactured having regard to the weight a cycle rickshaw has got to bear. That is why they are much thicker and made more durable than the cycle tyres and tubes.

13. From the above discussion it is clear that the tyres and tubes of cycles rickshaw are manufactured having regard to the weight of cycle rickshaw it has got to clear. Tyres and tubes of rickshaws are much thicker and made more durable than the cycle tyres and tubes.

14. The assessing authority in the present case further examined the bills of the dealer and has come to the definite findings that the dealer has manufactured super heavy tubes. u/s 4B of the Act manufacturing of super heavy rickshaw tubes would not be permissible. They are different from the cycle tubes. This part of the finding has not been specifically set aside by the tribunal. The view of the Tribunal that tyres of tricycle will cover the tyres meant for rickshaw cannot be accepted. The tricycle as mentioned in the aforesaid notification is meant for children and it will not include rickshaw. Some assistance can be taken from the fact that in the notification under consideration "tricycles" is used alongwith "perambulators" and "bicycles". Perambulators means a light carriage for a child. Tricycles here means a light carriage for a child having three wheels. Rickshaw in common parlance is not called or treated tricycle. The order of the Tribunal cannot be sustained.

15. The revision is allowed and the order of the tribunal is set aside. No 15 order as to costs.