
(1990) 08 DEL CK 0024

In the Delhi High Court

Case No : S.T.R. No's. 28 to 30 of 1977

Ghaziabad Engineering Co. (P.) Ltd.

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 22-08-1990

Acts Referred:

Citation : (1990) 08 DEL CK 0024

Hon'ble Judges : S. Duggal, J; B.N. Kirpal, J

Bench : Division Bench

Advocate : Randhir Chawla, for the Appellant; M.K. Arora, for the Respondent

Judgement

B.N. Kirpal, J.—In respect of the assessment years 1966-67 and 1967-68, the Sales Tax Appellate Tribunal, Delhi, has referred the following questions of law to this Court :

"Whether, on the facts and in the circumstances of the case, the learned Financial Commissioner was justified in holding that the fuel injection pump and its spare parts dealt with by the applicant was covered under entry 1 of the First Schedule appended to the Bengal Finance (Sales Tax) Act, 1941, as then extended to the Union Territory of Delhi and was liable to tax at 10 per cent under that Act and not at 5 per cent as claimed by the applicant, and at the rate of 3 per cent under the Central Sales Tax Act, 1956, and not 1 per cent as mentioned in Notification No. S.R.O. 2717 dated 23rd August, 1957 ?"

2. Briefly stated the facts, as per the statement of case, are that the assessed is a registered dealer which is engaged in the business of selling motor parts, tractor parts, tractors and agricultural implements. During the year 1966-67, the assessed had sold fuel injection pumps and their spare parts and the same were, as per the assessed, covered by the item of general machinery and it was liable to pay tax at 1 per cent under the Central Sales Tax Act. The assessed had been selling the goods to parties dealing in fuel injection spares required for diesel engines or to parties manufacturing diesel engines used for agricultural purposes.

3. Initially the assessed paid under the Bengal Finance (Sales Tax) Act, 1941, as extended to Delhi, local tax at 10 per cent treating the fuel injection pumps, etc., as spare parts of motor vehicles. Before the assessing authority, however, it was contended that payment of sales tax at 10 per cent was a mistake and the said equipment could not be regarded as spare parts of motor vehicles.

4. The assessing authority held that the goods were mostly sold to parties who dealt with motor vehicles and the goods were nothing else but motor parts though the possibility of their double use with or without slight alteration or modification was not ruled out. - The assessing authority rejected the claim that the said goods should be taxed at 5 per cent. Under the Central Sales Tax Act, by regarding the said equipment as spare parts of motor vehicles, the same was subjected to tax at 3 per cent.

5. Appeals were filed both under the Central Act as well as the local Sales Tax Act to the Assistant Commissioner but without success. Revision before the Additional Commissioner of Sales Tax was also dismissed. Second revision petition was then filed before the Financial Commissioner who observed that in the instant case it had been proved by evidence that all the sales of fuel injection pumps had been made by the assessed to the parties dealing in motor spare parts and that it had been charging tax at 10 per cent, meaning thereby that the assessed had been treating it as motor spare parts. For that reason, the revision petition was dismissed.

6. Being aggrieved, the assessed filed an application for reference to the Tribunal, who succeeded the Financial Commissioner, and the aforesaid question of law has been referred to this Court.

7. Before us two contentions have been raised by the learned counsel for the assessed. It has been submitted by Mr. Chawla that the fuel injection pump is not a spare part and is, Therefore, not covered by the entry in question. In the alternative, it is submitted that even if it be held that the fuel injection pump is a spare part, then it will be a spare part of the diesel engine and not of a motor vehicle.

8. Mr. Arora, on the other hand, has submitted that the fuel injection pumps are parts of motor vehicles and have been rightly taxed at 10 per cent under the local Sales Tax Act and 3 per cent under the Central Act.

9. Before dealing with the rival contentions, it is necessary to refer to the relevant entries. Under the Bengal Finance (Sales Tax) Act, 1941, as extended to Union Territory of Delhi, during the relevant assessment years, tax at 10 per cent was livable in respect of those items mentioned in the First Schedule. Item 1 of the First Schedule, with which we are concerned in the present case, reads as follows :

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

10. For the period 1st December, 1956 to 30th September, 1959, the said entry was replaced by the following entry :

"1. (a) Motor vehicles including motor cars, motor cycles, and motor cycle combinations, motor taxi cabs, motor scooters, motor omnibuses, motor vans, motor lorries and motor trucks.

(b) Chassis of motor vehicles.

(c) Component parts of motor vehicles.

(d) Accessories of motor vehicles including rubber tyres, tubes and batteries."

11. After 30th September, 1959, the entry which has been first quoted was brought back, the effect of which was that in the year in question there is no reference to component parts of motor vehicles. With promulgation of Delhi Sales Tax Act, 1975, a new entry in the First Schedule, pertaining to motor vehicles, etc., has been inserted, which reads as follows :

"Motor vehicles, including chassis of motor vehicles, motor tyres and tubes, accessories, component parts and spare parts of motor vehicles and motor bodies."

12. A perusal of the aforesaid three entries will show that initially, prior to 1st December, 1956 and after 30th September, 1959, till the promulgation of the Delhi Sales Tax Act, 1975, in the entry pertaining to motor vehicles, there was no reference to component parts. Component parts were covered by this entry between 1st December, 1956 to 30th September, 1959 and after the promulgation of the 1975 Act.

13. It is not in dispute that the fuel injection pump is used as a part of the diesel engine. The diesel engine is, inter alia, used for being fitted in the trucks. According to the respondent the assessed has sold diesel engines mostly to the consumers or dealers of motor parts. It is, Therefore, submitted by the respondent that the fuel injection equipment, which consists of fuel pump and its spare parts, has been used in diesel engines and thus those diesel engines have been used and fitted in motor vehicles alone. It is sought to be contended that the equipment in question has to be regarded as a spare part of motor vehicle.

14. Looking at the relevant entry in the Schedule it is evident that the spare part has to be of motor vehicle and of nothing else. It is not necessary, for the view which we are taking, as to what is the full scope and effect of the expression "spare part". For the purposes of this reference, we will proceed on the assumption that the equipment in question is a spare part and not a component of diesel engine.

15. The expression "spare parts of motor vehicles" would appear to be those types of spare parts which are used directly in the motor vehicles. The spare part, when fitted in a motor vehicle, should have its own use and utility. The fuel engine pump and its parts is an integral and necessary part of a diesel engine.

Without the fuel pump the diesel engine cannot function and the fuel pump is of little value to a motor vehicle without a diesel engine. It would appear to us that a fuel pump is a part of a diesel engine.

16. It is not disputed before us that the diesel engine is not covered by entry 1. Diesel engine is not taxed at the rate of 10 per cent but is taxed as a residuary item, which at the relevant point of time, was being subjected to 5 per cent tax. It would appear that if the diesel engine itself was being taxed at 5 per cent then its part like a fuel pump should not be taxed at a rate different than that. Be that as it may, even if it be assumed that the fuel pump is a spare part but it is a spare part of a diesel engine. The various items in the First Schedule have to be strictly construed because they seek to levy a higher rate of tax. Furthermore, if there be any ambiguity of doubt then the interpretation which favors the assessed must be given. As diesel engine is regarded as a distinct and a separate taxable item than a motor vehicle then, it would appear to us, that a spare part of a diesel engine cannot be regarded as a spare part of the motor vehicle merely because the diesel engine is subsequently fitted in the motor vehicle.

17. It would be helpful to refer to some decided cases where similar questions had come up for consideration. In the case of *Commissioner, Sales Tax v. Free India Cycle Industries* [1970] 26 STC 428 the Allahabad High Court was concerned with an entry "bicycles, tricycles, cycle rickshaws and perambulators and parts and accessories thereof other than tyres and tubes". The assessed was a dealer in cycle and cycle goods and the question arose whether rexene saddle covers manufactured and sold by it would fall within that entry. It was observed by the Division Bench that the expression "parts and accessories" qualified the word "bicycles, tricycles, etc." The entry was regarded as referring to parts and accessories of the vehicles and did not include accessories of individual parts or accessories of the vehicle. Dealing with the question of rexene covers, it was held that "rexene covers in question are used as a covering of the saddle or seat of a cycle. The seat or saddle of a cycle is, of course, a part of the cycle because without it the cycle is not complete. A rexene cover in that sense is not a part of the vehicle". A similar question again came up for consideration before the Allahabad High Court in the case of *Shadi Cycle Industries v. Commissioner of Sales Tax* [1971] 27 STC 56. One of the questions which arose there was whether leather covers were accessories of cycle or could be taxed as cycle parts. Dealing with this contention, it was observed by the Allahabad High Court as follows :

"A cycle seat, no doubt, is a cycle part but it becomes a cycle part only when it takes the shape of a cycle seat. A cycle seat comes into being only when the leather cover is mounted upon the springs and is fixed in place with nuts and bolts. The component parts of a cycle seat like springs, nuts and bolts and the leather covers separately cannot be called as cycle parts. The leather covers, no doubt, can be used only in the manufacture of cycle seats but by themselves they are not cycle parts."

Applying the analogy of the aforesaid observations, the fuel pump, like the springs and nuts and bolts of a cycle seal, is a part of the diesel engine and cannot be regarded as a spare part of the motor vehicle. In the diesel engine various parts are used including fuel pump.

18. In the case of COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI. ARUNA MILLS LTD. : INTERVENER., the Supreme Court, after referring to the Privy Council decision in the case of Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipality (1922) 49 Cal 190, held that a diesel engine was machinery because the Privy Council had observed that machinery meant some mechanical contrivances which, by themselves or in combination with one or more contrivances, by the joint movement and interdependent operation of their respective parts generate power or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result. The diesel engine was, Therefore, regarded as a self-contained unit even though it was installed in motor vehicle. It is precisely for this reason that in the Sales Tax Act in Delhi, diesel engine is taxed separately and, as per Mr. Chawla, is regarded as a machinery or part of a machinery and taxed, under the 1975 Act, at the rate of 5 per cent. Irrespective of the fact as to under what entry sales tax is levied on a diesel engine, there can be no manner of doubt that a fuel pump, with which we are concerned in the present case, is only a part or a component of a diesel engine. It has no independent use or utility in a motor vehicle without its being attached to an engine.

19. Mr. Arora has drawn our attention to the judgment of the Bombay High Court in the case of Commissioner of Sales Tax v. Acme Mfg. Co. Ltd. [1990] 78 STC 79. The question which arose in that case was with regard to the taxability of valves. It was held by the Bombay High Court that valves are component parts of diesel engine and that diesel engines were components or parts of motor vehicles. The relevant entry in the Schedule of the Bombay Sales Tax Act described the goods taxable under entry 58(2) as "component and spare parts of motor vehicles specified in sub-entry (1) not being such articles as are ordinarily also used otherwise than as such parts and accessories." It was held by the court that a component part of a component part of a motor vehicle was a component part of the motor vehicle. The Bombay High Court was not concerned with an entry like the present where the expression "component part" is absent. In entry I in the Delhi Act, as it stood at the relevant point of time, reference was to spare parts of vehicles. Fuel pump is neither an accessory nor a spare part of motor vehicle. It is, on the other hand, a part of an engine.

20. It was contended by the learned counsel for the respondent that in interpreting the various entries common parlance test has to be used. In other words, in common parlance what does an entry mean ? There can be no dispute with the proposition put forth by Mr. Arora but applying that test to the present case we find that, in common parlance, a fuel pump has to be regarded as a part of the engine and not a part of the motor vehicle. It is an admitted fact that

diesel engines are of various types and they are put to use in motor vehicles, tractors and other uses also. Diesel engines invariably have fuel pumps, though the sizes of the fuel pumps may change depending upon the ultimate use to be put to the different types of diesel engines. Be that as it may, a fuel pump can only be regarded as a part of a diesel engine and cannot be regarded as a spare part of a motor vehicle or a tractor merely because the diesel engine, to which the fuel pump is fitted, is ultimately installed in a motor vehicle or a tractor. Diesel engine is machinery which is self-contained but may or may not be used in conjunction with other mechanical parts or items. When it is installed in a motor vehicle it does not cease to be machinery of which fuel pump is a necessary or an integral part. Diesel engines cannot be regarded as a spare part of a motor vehicle.

21. Lastly it had been contended by Mr. Arora that the test to determine whether a marketable product falls under a specific item or not is to see the way in which the product is identified by people dealing with it or using it, that is to say what is its functional character. It was contended that the assessed had sold the fuel pumps to various motor part dealers and, Therefore, applying the functional test, the fuel pumps in question should be regarded as spare parts of motor vehicles. We are unable to accept this contention. It is an admitted case that the parts which are sold by the assessed, namely, the fuel pumps, are used for being fitted on to the diesel engines and the functional character of the fuel pump is that it is used as an integral part of the diesel engine. Diesel engine is a machinery by itself and a fuel pump may be regarded as a spare part of the diesel engine but it is not possible for us to accept that it has to be regarded as a spare part of the motor vehicle. !!! 22. For the aforesaid reasons, we answer the question of law referred to us, by the Sales Tax Tribunal, in the negative and against the Revenue. The parties will, however, bear their own costs.