
(1995) 01 BOM CK 0045
In the Bombay High Court
Case No : Sales Tax Reference No. 25 of 1987

Indira Sales Corporation

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 13-01-1995

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 61(1)

Citation : (1995) 01 BOM CK 0045

Hon'ble Judges : D.K. Trivedi, J;B.P. Saraf, J

Bench : Division Bench

Advocate : B.C. Joshi and V.B. Joshi, for the Appellant; R.V. Desai, for the Respondent

Judgement

Dr. B.P. Saraf, J.—By this reference u/s 61(1) of the Bombay Sales Tax Act. 1959, the Maharashtra Sales Tax Tribunal, Pune, has referred the following question of law to this Court for opinion at the instance of the assessee :

"Whether, on the facts and circumstances of the case, the honourable Tribunal was right in law in holding the sales of PVC scooter and car covers as falling under entry 58 of Schedule C and not falling under entry 19A(c) of Schedule E or entry 22 of Schedule E of the Bombay Sales Tax Act, 1959 ?"

2. The assessee is a partnership firm. It carries on the business of manufacture of PVC goods. During the period April 1, 1980 to March 31, 1981, the assessee manufactured and sold "PVC scooter and car covers". The turnover of such sales during the above period amounted to Rs. 2,228. The assessee showed the sales of these goods as sales of goods falling under the residuary entry 22 of Schedule E to the Act (as it stood at the material time) and paid sales tax at the rate of five paise in the rupee, which was applicable to sales of such goods. The Sales Tax Officer did not agree with the assessee, as he was of the opinion that "PVC scooter and car covers" sold by the assessee could be regarded as "accessories of scooters and cars" specified in entry 58 of Schedule C which were taxable at the rate of 12 paise in a rupee. He, therefore, assessed the turnover of "PVC

scooter and car covers" at the rate of 12 paise in a rupee. The assessee appealed to the Assistant Commissioner of Sales Tax. The contention of the assessee before the Assistant Commissioner was that the Sales Tax Officer erred in treating "PVC scooter and car covers" as accessories of scooters and cars falling under entry 58 of Schedule C. According to the assessee, these goods were covered by the residuary entry 22 of Schedule E, or being an item made from plastics, by entry 19A(c) of Schedule E. The Assistant Commissioner rejected the above contention of the assessee and upheld the order of the Sales Tax Officer. The assessee went in further appeal to the Maharashtra Sales Tax Tribunal ("the Tribunal"). The Tribunal also upheld the action of the authorities below and dismissed the appeal of the assessee. Hence, this reference at the instance of the assessee.

3. We have heard the learned counsel for the parties. The real controversy in this case is whether "PVC scooter and car covers" can be regarded as accessories of scooters or cars. If they can be so regarded, then they would fall under entry 58 of Schedule C. If not, they would fall under either entry 19A(c) or the residuary entry 22 of Schedule E. It may be pointed out that we are concerned in the present case with the original Schedules A to E as they stood before their substitution by the existing Schedules A to C by Maharashtra Act 32 of 1981 with effect from July 1, 1981. Entry 58 of the original Schedule C, at the material time, read as follows :

"58. (1) Motor vehicles including motor cars, motor taxi-cabs, motor cycles, motor cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans and motor lorries and chassis of motor vehicles but excluding tractors, whether on wheels or tracts.

(2) Components and spare parts of motor vehicles specified in sub-entry (1) of this entry and other articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of such vehicles, not being such articles as are ordinarily also used otherwise than as such parts and accessories."

Entries 19A and 22 of Schedule E were in the following terms :

"19A. Goods made primarily from any kind of plastics (other than those. To which entry 53 in Schedule C or any other entry in that or any other Schedule applies, but including roofing, floor or wall plastic tiles)."

"22. All goods other than those specified from time to time in Schedules A, B, C and D and in the preceding entries."

4. According to the taxing authorities, PVC scooters and car covers are accessories of scooters and cars falling under entry 58 of Schedule C, whereas according to the assessee they can never be regarded as accessories of scooters and cars. We are, therefore, to decide whether the scooters and car covers sold by the assessee can be held to be accessories of scooters and cars or not.

5. The expression "accessories" is used in the Schedule with certain items of taxable goods to describe goods which might have been manufactured for use as an aid or addition to those goods. It is an object or device that is not essential in itself but adds to the convenience or effectiveness of something else. Other meanings given to this expression are : supplementary or secondary to something of greater or primary importance. This expression came up for interpretation before this Court in Commissioner of Sales Tax v. L. D. Bhawe and Sons [1981] 47 STC 318. The controversy in that case was whether gas stands, designed specially for keeping gas stoves and sold along with gas stoves by a dealer who deals in gas stoves, can be considered to be accessories of gas stoves. This Court held that such stands were additional items required for use along with the gas stoves, and hence were accessories of gas stoves. In Commissioner of Sales Tax v. Jayesh (India) Agencies [1984] 57 STC 128, this Court was required to answer the question whether car seat covers were accessories to the motor car. It was observed :

"..... The only question is whether such articles could be regarded as accessories of motor vehicles. In this regard, it is clear that the motor car seat covers as well as other covers made by the respondents were for use in motor cars and the use thereof would certainly contribute to the beautification of the motor vehicles in which they are used. It is also beyond dispute that seat covers in question would add to the passengers comfort in the motor vehicle and so also would the cowl pads. All the said articles would also in some degree help in better preservation of the motor vehicle and give a better show to the motor vehicle. In these circumstances it is clear that the said articles must be regarded as accessories to the motor vehicles as contemplated in clause (2) of entry 58 of Schedule C."

6. The true meaning of the word "accessories" came up before the Supreme Court in Mehra Bros. v. Joint Commercial Tax Officer [1991] 80 STC 233. The controversy in that case was also whether the car seat covers and upholstery manufactured and sold in the course of his business by a dealer were accessories of the motor vehicle. The Supreme Court observed (at page 237) that the correct test to decide the above controversy would be whether the article in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or add, to the beauty, elegance or comfort for the use of the motor vehicle. Applying the above test, the Supreme Court held that the car seat covers or upholstery being an addition, an adjunct or an accompaniment for comfortable use of the motor vehicle or for adding elegance to the seat, could be regarded as "accessories" of motor vehicles.

7. In the above decision, the Supreme Court also considered the decisions of the Allahabad High Court in Commissioner, Sales Tax v. Free India Cycle Industries [1970] 26 STC 428 and Shadi Cycle Industries v. Commissioner of Sales Tax [1971] 27 STC 56 and the decision of the Karnataka High Court in Supreme Motors v. State of Karnataka [1983] 54 STC 308, where it was held that an

article intended to serve as an aid to a part of a vehicle or a cycle could not be regarded as accessory thereof and that in order to be an "accessory" of a motor car, scooter or cycle, it must serve as an aid to the motor car, scooter or cycle as a whole and not to any part thereof. The Supreme Court held that the test laid down in the decision of the Karnataka High Court in *Supreme Motors* [1983] 54 STC 308, was not a correct test. The Supreme Court also referred to the decisions of the Allahabad High Court in *Free India Cycle Industries* [1970] 26 STC 428 and *Shadi Cycle Industries* [1971] 27 STC 56, and held that the Allahabad High Court also had not laid down the test correctly in the above decisions. The Supreme Court observed that the correct test would be "whether the article or articles in question would be an adjunct or an accompaniment or an addition for the convenient use of another part of the vehicle or add to the beauty, elegance or comfort for the use of the motor vehicle or a supplementary or secondary to the main or primary importance." Applying the above test, it was held that car seat covers and upholstery are accessories of motor vehicles.

8. Applying the test laid down by the Supreme Court to the facts of the present case, we find that "PVC scooter and car covers" manufactured and sold by the assessee cannot be regarded as accessory of scooter or cars. The analogy of car seat cover or scooter seat cover cannot apply to "scooter or car covers" which are used to cover the car or the scooter only when it is not in use. It does not add to the beauty, convenience or effectiveness of the scooter or the car or any part thereof. We are, therefore, of the clear opinion that PVC scooter and car covers cannot be held to be accessories of cars or scooters. Hence they would not fall under entry 58 of Schedule C.

9. We do not propose in this case to decide the further controversy whether the "PVC scooter and car covers" sold by the assessee would fall under entry 22 or entry 19A(c) of Schedule E, because the rates of tax applicable to goods falling under both these entries during the material period and thereafter till the substitution of the Schedule itself with effect from July 1, 1981 being the same, it would be a purely academic exercise.

10. In view of the above discussion, we are of the clear opinion that the Tribunal was not right in holding that the "PVC scooter and car covers" manufactured and sold by the assessee could be regarded as accessories of scooter and cars falling under entry 58 of Schedule C to the Act. Accordingly, we answer the question referred to us in favour of the assessee and against the Revenue.

11. In the facts and circumstances of the case, there shall be no order as to costs.

12. Reference answered in the negative.