

(1983) 09 MAD CK 0030

In the Madras High Court

Case No : Tax Case (Revision) No. 24 of 1978 (Revision No. 16 of 1978)

Premier Instruments Coimbatore Limited

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 14-09-1983

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 17

Citation : (1984) 57 STC 167

Hon'ble Judges : Ratnam, J;G. Ramanujam, J

Bench : Division Bench

Advocate : N. Inbarajan, for C.S. Chandrasekara Sastri, C. Venkataraman and C. Natarajan, for the Appellant; K.S. Bakthavatsalam, Additional Government Pleader, for the Respondent

Judgement

1. The petitioners in this tax revision case are dealers in speedometers and other auto parts. In the course of the assessment proceedings for 1975-

76 under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Act), the assessing officer levied 15 per cent tax on a

turnover of Rs. 97,227.40 relating to the sales of speedometer as sales of accessories and not spare parts in automobiles. Against this, the

petitioners preferred an appeal to the Appellate Assistant Commissioner (Commercial Taxes), Coimbatore, contending that the sales of

speedometer were taxable at 13 per cent, but the appeal was dismissed on the ground that such sales were sales of accessories in an automobile

and as such taxable at 15 per cent. On further appeal by the petitioners to the Tribunal, the classification of speedometers sold by the petitioners as

an accessory to an automobile and the levy of tax on the turnover relating to such sales at 15 per cent were upheld and the appeal was dismissed.

2. In this revision, the learned counsel for the petitioners contended that the sales of speedometer by the petitioners were sales of spare part within the meaning of Notification No. 86 of 1970 dated 18th March, 1970, and therefore, the reduced rate of sales tax at 13 per cent on the turnover could alone be levied and not at 15 per cent as was done by the assessing and the appellate authorities. Placing reliance on the clarification issued by the Board of Revenue (Commercial Taxes), Madras, to the effect that several items used in an automobile including a luggage carrier had been treated as spare part falling within the scope of the notification, the learned counsel for the petitioners contended that a fortiori, a speedometer would be a spare part in an automobile and would, therefore, be governed by the lower rate of tax at 13 per cent. In addition, the decisions in Commissioner, Sales Tax v. Kohinoor India Pvt. Ltd. [1980] 45 STC 332, Govindarajan & Brother v. Government of Pondichery [1977] 40 STC 169, State of Uttar Pradesh and Another Vs. Kores (India) Ltd., an Acme Plastic Industries v. State of Maharashtra [1981] 48 STC 29 were also relied upon.

3. On the other hand, the learned counsel appearing on behalf of the department would contend that the notification, as it stands, does not include a speedometer used in an automobile and sold by the petitioners and that would also not be included in the expression "automobile spare parts found in the notification. According to him, a speedometer would be an accessory in an automobile and not a part as that is not essential for an automobile, though it may contribute and add to the convenience or effectiveness of the automobile. In this connection, our attention was drawn to the decisions in N. A. V. Naidu v. Commissioner of Commercial Taxes, Bangalore [1970] 25 STC 381 and Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh, .

4. We have carefully considered these rival submissions. Under item 3 of the First Schedule to the Act, articles (excluding batteries) adapted for use generally as parts and accessories of motor vehicles and trailers are chargeable to sales tax at 15 per cent at the point of first sale. In the exercise of the powers conferred by section 17 of the Act, a Notification No. 86 of 1970 dated 18th March, 1970, was issued with effect from 1st April, 1970, reducing the rate of tax from 15 per cent to 13 per cent in

respect of the tax payable by any dealer under the Act on the sales of automobile tyres, batteries (excluding dry cells) and automobile spare parts. It is not in dispute that if at all the petitioners can claim the benefit of the reduced rate of tax, their sales of speedometer should fall within the expression "automobile spare parts : in the notification. Essentially, a speedometer is a device or an appliance fitted to a vehicle with a view to indicate the speed at which the vehicle is driven or travels. Naturally, such a device would be a minor fitting or attachment to the vehicle and not an integral, essential or indispensable part of the vehicle itself. In a very broad sense and in a general way, anything that is fitted to a vehicle or any component of it may be described as a part of it, but that is not how the notification should be read. What is contemplated by the notification is a vital, essential and an integral part of the vehicle replaced by a spare. It is common knowledge that a vehicle can run without a speedometer, but it is difficult to conceive of a vehicle running without tyres or battery which are found in the notification. The inclusion therefore, of batteries and tyres within the notification is significant. Equally, the omission of speedometer in the notification is significant, the best guide to ascertain the intentions of those who issued the notification being the language actually employed therein. The description "automobile spare parts" found in the notification would, therefore, be applicable to that part or component which is an integral and essential part of the vehicle without which the vehicle cannot at all be used or run and which is replaced on account of its being lost or damaged in the machine by a spare part. In other words, an automobile spare part, to fall within the scope of the notification, must be a duplicate part of an integral, essential, indispensable and a vital part of the vehicle, without which it cannot be run or used and kept for use in an emergency or replaced in lieu of a lost or damaged part. Earlier, we had noticed that it is possible to use a vehicle without a speedometer, and therefore, it is not an essential or a vital part of the vehicle, but is one that merely adds to the convenience of the use of the vehicle in the sense that the speed of the vehicle can be observed and kept within desired limits. Prima facie, therefore, we are of the view that a speedometer is in the nature of an accessory and cannot be held to fall within the expression "automobile spare parts" in the notification referred to earlier.

5. We may now briefly refer to the decisions cited at the Bar. In Commissioner, Sales Tax v. Kohinoor India Pvt. Ltd. [1980] 45 STC 332, the

question arose whether windscreen wiper and oil gauge manufactured and sold by the assessee and utilised in diesel locomotives were spare parts

of machinery liable to tax at 6 per cent. Dealing with windscreen wiper, the Court held that though such wipers are used in motor vehicles, yet

every part of a motor vehicle is not machinery nor all of its parts can be known as parts of machinery and if wipers are not machinery or part of

machinery, they cannot be considered to be spare part of the machinery. With reference to oil gauge, the Court took the view that that item was

part of the locomotive unit and cannot, therefore, be considered to be an accessory. We do not see how this decision affords any support to the

contention of the petitioners. We have already held that speedometer is only in the nature of an accessory and not a part of the vehicle and if that

be so, even according to this decision, it cannot be considered to be an automobile spare part within the scope of the notification. Govindarajan &

Brother v. Government of Pondicherry [1977] 40 STC 169 had to consider whether a leather case for transistor is an accessory and whether

leakproof battery cells are spare parts of transistors. Regarding the first question, the Court was of the view that a leather case is not essential for a

transistor because a transistor can be used even without such a leather case and further a leather case merely adds to the convenience of the

transistor and would, therefore, be only an accessory. Dealing with the leakproof batteries, it was held that such batteries were not parts of

machine or apparatus and cannot be said to be part of the transistor itself and therefore, leakproof cells cannot be said to be spare parts. This

decision again cannot be pressed into service by the petitioners, as the decision on the first question with reference to the leather cases would be

apposite in the instant case and in that view a speedometer would only be an accessory to a vehicle. Even on the other ground, it cannot be said

that speedometers are in the nature of spare parts, as such devices cannot be said to be part of the vehicle. In State of Uttar Pradesh and Another

Vs. Kores (India) Ltd., , the Supreme Court had occasion to consider the questions whether carbon paper is paper within the purview of a

notification issued in the exercise of the powers vested in the Government of Uttar Pradesh u/s 3-A of the U.P. Sales Tax Act and whether ribbon

used in the typewriters is an accessory or part of the typewriter. With reference to the latter, the Supreme Court took the view that ribbon used in

a typewriter is only an accessory and not a part of the typewriter and therefore, the turnover of ribbons could not be subjected to sales tax at the

rates prescribed for typewriters and parts thereof. In doing so, the Supreme Court observed at page 12, as under :

Regarding ribbon also to which the abovementioned rule of construction equally applies, we have no manner of doubt that it is an accessory and

not a part of the typewriter (unlike spool) though it may not be possible to use the latter without the former. Just as aviation petrol is not a part of

the aeroplane nor diesel is a part of a bus in the same way, ribbon is not a part of the typewriter though it may not be possible to type out any

matter without it.

The very same question with which we are here concerned came up for decision before the High Court of Mysore in *State of Mysore v. Kores*

(India) Ltd. [1970] 26 STC 87 where it was held :

"Whether a typewriter ribbon is a part of a typewriter is to be considered in the light of what is meant by a typewriter in the commercial sense.

Typewriters are being sold in the market without the typewriter ribbons and therefore, typewriter ribbon is not an essential part of a typewriter so

as to attract tax as per entry 18 of the Second Schedule to the Mysore Sales Tax Act, 1957. "

6. These observations established that even though vehicles are being sold in the market with the speedometer fitted to them, it is clear that it is not

a part of the vehicle and it is quite possible to use the vehicle, even if it is supplied without a speedometer being fitted to it. The aforesaid

observations of the Supreme Court would equally apply to the case on hand and a speedometer cannot, therefore, be characterised as a part

replaceable by a spare part, but would only be an accessory. This decision also, far from supporting the petitioners, would strengthen the stand

taken by the respondent. *Acme Plastic Industries v. State of Maharashtra* [1981] 48 STC 29 dealt with the question whether a plastic grill fitted on

to a transistor can be considered as something in the nature of an accessory to a transistor radio. The Bombay High Court took the view that the

grill supplied was a part of the transistor radio as its mechanism and therefore,

the plastic grill cannot be considered to be an accessory. In view of the conclusion reached that the plastic grill was an integral part of the transistor radio, the decision arrived at was quite correct, but, in this case, it has earlier been pointed out that speedometer is not an integral part of the vehicle and therefore, this decision cannot have any application to the present case.

7. We find that the decision in *N. A. V. Naidu v. Commissioner of Commercial Taxes, Bangalore* [1970] 25 STC 381 relied on by the learned counsel for the department is of some assistance. Though in that case, the question whether the printing types are accessories to the printing machinery and as such liable to sales tax u/s 5(1), (3)(a) read with serial No. 20 of the Second Schedule to the Mysore Sales Tax Act, 1957, arose, the meaning of the expression "accessory" was gone into and while illustrating the import of the expression "accessory", the example of a speedometer in a motor car had been referred to and it had been stated that a speedometer would be an accessory. The following observations at page 382 are apposite :

Webster's New International Dictionary gives, among others, the following meaning to the word accessory :

"An article or device that adds to the convenience of something else, but is not essential as a speedometer on automotive vehicle."

The above meaning, in our opinion, is the one that is appropriate in the context of the word "accessories" occurring in serial No. 20 of the Second Schedule. In order to constitute an accessory to a machinery, the article or device must be one that adds to the convenience or effectiveness of the main machinery, but is not essential. Speedometer in a motor car is an example of an accessory to a motor vehicle. The motor vehicle can be run without a speedometer; but for its convenience, a speedometer is helpful. A printing machinery cannot be worked without printing types.

8. We are of the view that the above observations, though made in the context of considering the question whether the printing types would be accessories to the printing machinery, would be applicable in the present case.

9. We may also in this connection usefully refer to the following observations of the Supreme Court in *Annapurna Carbon Industries Co. Vs. State of Andhra Pradesh*, . The Supreme Court was considering the question whether

sales of arc carbons were rightly subjected to sales tax under entry 4 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957, which read as cinematographic equipment, including cameras, projectors, and sound recording and reproducing equipment, lenses, films and parts and accessories required for use therewith. In explaining the scope of the expression ""accessories"" used in entry 4, the Supreme Court observed at page 381 as follows :

We find that the term "accessories" is used in the schedule to describe goods which may have been manufactured for use as an aid or addition. A

sense in which the word "accessory" is used is given in Webster's Third New International Dictionary as follows : "an object or device that is not

essential in itself but that adds to the beauty, convenience, or effectiveness of something else." Other meanings given there are : "supplementary or

secondary to something of greater or primary importance"; "additional"; "any of several mechanical devices that assist in operating or controlling

the tone resources of an organ." "Accessories" are not necessarily confined to particular machines for which they may serve as aids. The same item

may be an accessory of more than one kind of instrument.

10. In view of the aforesaid observations, it is clear that a speedometer is not a device which is an essential or integral part of a vehicle but merely

adds or supplements in operating or controlling the speed of the vehicle and in that sense, would only be an accessory, and not a part, which, when

it becomes faulty or is lost, can be replaced by a spare part. The clarificatory notification relied on does not at all assist the petitioners in any

manner. We, therefore, agree with the authorities below that the sales turnover of the petitioners relating to speedometers should be assessed at 15

per cent and not at 13 per cent as claimed by the petitioners. Consequently, the tax case is dismissed. There will be no order as to costs.