
(1968) 06 GUJ CK 0003
In the Gujarat High Court
Case No : Sales Tax Reference No. 21 of 1965

State of Gujarat

APPELLANT

Vs

B.G. Batwara and Co.

RESPONDENT

Date of Decision : 19-06-1968

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 52, 61(1)

Citation : (1968) 22 STC 202

Hon'ble Judges : R.B. Mehta, J; B.J. Divan, J

Bench : Division Bench

Advocate : J.M. Thakore, A.G. and H.V. Chhatrapati, instructed by Bhaishanker Kanga and Girdharlal, for the Appellant; S.L. Mody, for the Respondent

Judgement

Diwan, J.—This reference arises before us u/s 61(1) of the Bombay Sales Tax Act, 1959, at the instance of the State of Gujarat. The facts leading to this reference are that the opponents, who are the assesseees, are registered dealers and are carrying on business at Ahmedabad in old tyres used in bullock-carts. An application was made by the assesseees to the Deputy Commissioner of Sales Tax u/s 52 of the Bombay Sales Tax Act, 1959 (hereinafter referred to as the Act) to determine the rate of tax payable by them on the sale of old tyres for bullock-carts as specified in their bill, a copy of which has been annexed to this reference. The assesseees contended in the said application that the goods sold by them were covered by entry 6 of Schedule A to the Act which provides that bullock-carts and spare parts thereof are not liable to any tax under the Act since all the items covered by the entries in Schedule A are exempt from the payment of any tax under the Act. The Deputy Commissioner came to the conclusion that the sale of old tyres would be covered by residuary entry 22 of Schedule E and the sale would be liable to tax accordingly subject to the other provisions of the Act. It has been found that the opponents purchased old and worn out tyres of the buses of the State Transport Organization and Ahmedabad Municipal Transport Service. The opponents themselves did not purchase these tyres directly either from the State Transport Organization or from the Ahmedabad

Municipal Transport Service; but they purchased such tyres from persons, who in their turn had bid at the auction either from the State Transport Organization or from the Ahmedabad Municipal Transport Service. The Deputy Commissioner observed that the old tyres sold by the opponents were not what are known as "ADV" (animal-drawn vehicles) tyres but were tyres which were initially meant for the buses of the State Transport Organization and Ahmedabad Municipal Transport Service and which tyres had been worn out by constant use. According to the Deputy Commissioner such tyres can be used for hand-carts and they could not be said to have been specifically designed for bullock-carts; and, in his view, the sale of the old tyres in question was covered by entry 22 of Schedule E, that being the residuary entry. Against this decision of the Deputy Commissioner, there was an appeal to the Sales Tax Tribunal and the Tribunal held that the tyres sold by the opponents should be treated as bullock-cart tyres and spare parts of bullock-carts and the sale would be covered by entry 6 of Schedule A; and hence no tax could be levied thereon. The Tribunal, therefore, allowed the appeal and set aside the order of the Deputy Commissioner of Sales Tax. Thereafter, at the instance of the State, the following question has been referred to the High Court by the Tribunal :

"Whether, on the facts and in the circumstances of the case, the sale of old tyres for bullock-carts as specified in Bill No. 54, dated 2nd May, 1963, is covered by entry 6 of Schedule A ?"

2. One of the factors which weighed with the Tribunal at the time when it reversed the decision of the Deputy Commissioner was that motor tyres when new would cost Rs. 550 each while the second-hand tyres which were still fit for use as motor tyres after retreading would cost Rs. 250 and the old tyres sold by the opponents were being sold at Rs. 65 each. The Tribunal also observed that once the tyres became unserviceable as motor tyres, the purpose for which they were designed by the manufacturers would not be a relevant factor. The Tribunal in its judgment relied upon the decision of the Allahabad High Court in *Bishambar Dayal Shri Niwas v. Commissioner of Sales Tax, Uttar Pradesh* [1963] 14 S.T.C. 184..

3. One important thing to be borne in mind in this case is that the opponents were dealers in old tyres and axles used in bullock-carts, and, therefore, so far as the opponents were concerned, they were dealers in materials and articles required as parts in bullock-carts, viz., axles and old tyres, each of which is used as a component part in bullock-carts. The Deputy Commissioner in his order has explained that the tyres in question are old tyres used in bullock-cart set and such set consists of axles, hubs, bearings, wheels and tyre-tubes which are also used in bullock-carts. The main contention which was urged before us on behalf of the State was that since there had been a residuary entry in Schedule E, viz., "all goods other than those specified from time to time in section 14B and in Schedules A, B, C and D and in the preceding entries", unless and until it could be predicated of these particular tyres that they were spare parts of bullock-

carts, they would not fall within entry 6 of Schedule A; and since these old tyres were not capable of falling under any other entry in the Schedules, they must fall within entry 22 of Schedule E.

4. In this connection, the principles to be followed while interpreting the entries in the Schedules to such taxation statutes have been laid down by the Supreme Court in *Commissioner of Sales Tax v. Jaswant Singh Charan Singh* [1967] 19 STC. 469.. In that case before the Supreme Court the question was whether "charcoal" was included in the word "coal" specified in entry 1 of Part III of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958. After examining the different authorities on the point, the Supreme Court has observed at page 473 of the report :

"The result emerging from these decisions is that while construing the word "coal" in entry 1 of Part III of Schedule II, the test that would be applied is what would be the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as coal according to the meaning ascribed to it in common parlance. Viewed from that angle both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal". It is only when the question of the kind or variety of coal would arise that a distinction would be made between coal and charcoal; otherwise, both of them would in ordinary parlance as also in their commercial sense be spoken as coal."

5. Therefore, in the particular case, the Supreme Court had resort not to the scientific or technical meaning of the term describing the items for the sales tax in question but had resort to the popular meaning or the meaning attached to them in the commercial sense.

6. A case like the present one arose before the Allahabad High Court in *Bishambar Dayal Shri Niwas v. Commissioner of Sales Tax* [1963] 14 S.T.C. 184.. There what happened was that the assessee was a manufacturer of glass-ware and a dealer in glass-ware, zinc oxide and red lead. The assessee imported zinc oxide and red lead, used some of them in manufacturing glass and sold the rest as a part of his business to glass manufacturers. On the question whether the zinc oxide and red lead sold by the assessee should be treated as "dyes and colours" or as "chemicals", it was held by the Allahabad High Court that zinc oxide and red lead sold by the assessee fell under the head "chemicals of all kinds"; and the ratio of the decision of the Allahabad High Court was that having regard to the intention of the Legislature to tax sales, any ambiguity as to the category in which an article should be placed should be resolved with reference to its sale. If an article is sold as an article belonging to one category it must be treated as a sale of an article of that category even though it answers the description of another category. If therefore an article is capable of being used as

a chemical and also as a colour, the answer to the question what was sold would depend upon how it was treated by the vendor. If he stocked and sold it as a chemical, it would be a sale of chemical and more so if it was bought by the vendee also as such. We may point out at this stage that the Allahabad High Court in that particular case went by the test of the vendor, i.e. stocking and selling by the vendor of the item in question as a chemical, and the Court accepted the sale as the sale of chemical and to add a greater emphasis to that conclusion it was observed that it would be more a sale of chemical if it was bought by the vendee as such. But the primary thing which appealed to the Allahabad High Court was how the item was stocked and sold by the vendor. It was contended before us by the learned Advocate-General on behalf of the State that this test laid down by the Allahabad High Court will not be applicable to a case like the present one where there is no conflict between two specified entries but here there is a question whether the sale in question would fall within a specified entry or within the residuary entry. It is obvious that if any particular article falls within any specified entry, it can never fall in the residuary entry. It appears to us, in the light of the principles laid down by the Supreme Court and by the Allahabad High Court in the cases referred to above, that the correct test in cases like the present one would be to find out whether the sale in question would fall within entry 6 of Schedule A and if it cannot fall in that entry, then necessarily on the facts and circumstances of the case, it would fall within the residuary entry 22 in Schedule E.

7. It was urged before us on behalf of the State that this particular commodity, viz., old tyres, was not essentially a bullock-cart tyre and that it could as well have been used as a camel-cart tyre or a tyre of any other animal-drawn vehicle. The conclusion which was drawn by the Deputy Commissioner, viz., that it was possible that these tyres can be used for hand-carts has not been accepted by the Tribunal because, according to the Tribunal, there was no evidence on the point as to whether the old tyres in question could be used for hand-carts. Under these circumstances, we will keep out of our consideration the possibility of old tyres of the type sold by the assesseees for hand-carts. It is possible that tyres of the type sold by the assesseees can be used either for bullock-carts or for camel-carts or other animal-drawn vehicles; but the question would still remain as to whether the assesseees, the vendors in question, stocked them as bullock-cart tyres and sold them as bullock-cart tyres or whether they stocked and sold them as tyres used for generally animal-drawn vehicles. It is true that in order to fall within entry 6 of Schedule A, the tyres in question must fit the description of spare parts of bullock-carts. As to what is meant by a spare part has been explained by a Division Bench of this Court in *Vithal Chhagan & Sons v. State of Gujarat* [1966] 17 S.T.C. 96. There the question was whether wrist watch-cases with chromo-steel back are spare parts of watches within the meaning of entry 10 of Schedule E to the Bombay Sales Tax Act, 1959; and the Division Bench at page 99 of the report has explained :

"A spare part would, therefore, mean any integral part of an article which is

carried, held or kept in reserve for future use or to supply an emergency or which is addition or extra It is implicit in this meaning that the part in question must be a part which is severable and capable of being substituted or replaced by another, for otherwise there would be no point in having an additional or extra part or carrying, holding, or keeping such part in reserve for future use or to supply an emergency."

8. Applying this meaning of the words "spare part" to the wrist watch-cases, the Division Bench held that the wrist watch-cases were spare parts of watches and would fall within entry 10 of Schedule E and, therefore, would not fall within entry 22 of Schedule E, that being the residuary entry. Applying the same meaning and same test as to what is meant by a spare part to the facts before us, the old tyres of the kind which were sold by the assesseees were certainly capable of being fitted to bullock-carts and were interchangeable parts, and when fitted would go to complete a whole bullock-cart.

9. It was urged before us on behalf of the State by the learned Advocate-General that if a particular article or commodity is capable of being used as a spare part of a bullock-cart and is also capable of being used as a spare part of any other animal-drawn vehicle, then it cannot be predicated for that particular commodity that it is a spare part of a bullock-cart and unless it can be so predicated, the commodity cannot be said to be a spare part of a bullock-cart. Now, in the instant case, we are not concerned with the abstract meaning of a spare part of a bullock-cart. What we are concerned with is whether the old tyres of the type which were referred to in the bill annexed to this reference, were spare parts of bullock-carts or not. We must not lose sight of the fact that the assesseees are dealers in old tyres for bullock-carts and axles and other parts for bullock-carts and it is these assesseees who are dealers in old tyres for bullock-carts, who were selling these goods as old tyres for bullock-carts. Under these circumstances, applying the tests which were laid down by the Allahabad High Court in the case referred to above, with which we are in agreement, it is clear that the stocking was done by the assesseees as tyres for bullock-carts, and the sale was also effected by the assesseees as tyres for bullock-carts; and under these circumstances, it is clear that these particular tyres referred to in the bill would necessarily be spare parts of bullock-carts. It is true that it is not open to any party to convert the goods of one category into goods of another category by giving wrong description to the goods but this is not a case of wrong description but this is a case of legitimate description by the assesseees, who were dealers in this particular commodity, and who stocked the goods as such and sold them as such; and hence it is clear that in this particular case, the old tyres fell within the description of spare parts of bullock-carts and would be covered by entry 6 of Schedule A to the Act.

10. We, therefore, answer the question in the affirmative. The State of Gujarat will pay the costs of this reference to the assesseees.

11. Reference answered in the affirmative.