(1974) 06 GUJ CK 0013

In the Gujarat High Court

Case No : Sales Tax Reference No. 6 of 1973

State of Gujarat APPELLANT

Vs

Golden Metal Industries RESPONDENT

Date of Decision : 21-06-1974

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 52

Citation : (1975) 35 STC 349

Hon'ble Judges : T.U. Mehta, J;J.B. Mehta, J

Bench : Division Bench

Advocate : G.N. Desai, Government Pleader and H.V. Chhatrapati, Additional Government Pleader, of Bhaishanker Kanga and Girdharlal, for the Appellant; S.L. Modi and N.I. Modi, for the Respondent

Judgement

J.B. Mehta, J.—The Tribunal has posed the following question :

"Whether, on the facts and in the circumstances of the case, ''motor tube value checknut'' is covered by entry 42B of Schedule C or residuary entry 22 of Schedule E to the Bombay Sales Tax Act, 1959."

2. The assessee is a manufacturer of values, value caps and grease nipples and spare parts of stoves and petromax. The said articles are manufactured from metal and are also used for replacement of the original unserviceable rubber values of the motor tubes by the assessee. The assessee made an application u/s 52 for determining the rate of tax payable on the sales of "motor tube value with checknut" which he sold. As the said component part value has been held to be covered by the residuary entry 22 of Schedule E and not by the specific entry 42B of Schedule C to the Act, the Tribunal has sought this reference.

3. The Tribunal has seen the value in question. In the original car the tube would have the rubber value through which air would be pressed in for inflating the tube. Due to arrangement in the value, the pressed air would not escape. When the original rubber value is worn out, this metal value manufactured by the

assessee is vulcanised into the motor tubes and it served the same purpose as the original rubber value. The relevant entry 42B of Schedule C which is sought to be attracted runs as under :

"Component parts of motor vehicles specified in entry 44A in this schedule and other article (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."

4. Motor vehicles specified in entry 44A are 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. There is no dispute that this metal valve was not used for any other purpose than for use as a replaceable value in the motor tubes of motor vehicles and motor cars and scooters. Therefore, this is a spare or replaceable part of the motor vehicle specified in entry 44A.

5. A bare perusal of this entry 42B would show that it is not confined only to component parts of the specified motor vehicles, but other articles are covered. Those other articles are specified first by an inclusive clause of rubber and other tyres and tubes and batteries. The specification of those other articles is that they must be adapted for use as parts and accessories of such motor vehicles and the only limitation is that they must not be such articles as are ordinarily also used otherwise than as such parts and accessories. On the admitted facts, metal value in question is only used as a part and accessory for the motor tube of such motor vehicles. Therefore, the exclusion clause in this specification of articles is admittedly not attracted. The inclusion of tyres, tubes and batteries would illustrate the wide ambit of the specified other articles, adapted for use as parts and accessories, in addition to the original component parts, of motor vehicles which are covered in this entry 42B. The tyres and tube would be only a part of the motor wheel of the motor vehicle and still such a part of part is included. The specification which the other articles are required to answer is their adaptation for use as parts and accessories of motor vehicles. The expression "adapted" is defined in Black Law Dictionary as "capable of use or what is made suitable or made to conform to or made fit by alternation". Therefore, the legislature covers within the scope of entry 42B not only component parts but also other articles which are capable for use as parts and accessories of such motor vehicles, provided they are ordinarily not also used otherwise than as such parts and accessories. The expression "component parts" would mean as per Webster''s Dictionary what would serve as one of the parts of the whole vehicle or its constituent part. That would have reference to what goes in the composition of the original whole as its essential part. That description can be answered in the present case by the original rubber value which went into the composition of the original whole as its constituent part. The legislature has however widened the scope of entry 42B by including not only the component part but even other articles which are capable of being used as parts and

accessories of such motor vehicles. Therefore, even the spare parts which could by way of replacement be fitted into the whole satisfy this specific description of "other articles". The adaptation of the other articles for use may require some fitment or adjustment process of welding and vulcanising or any other process and that adaptation would have to be done after the spare part is purchased by the purchaser for fitting that part into the motor vehicle. Merely because a purchaser has to fit that article into the motor vehicle by proper process of adjustment or fitment would not mean that that article was not one capable for use as a spare part or was not adapted for use as a spare part.

6. Mr. Modi vehemently relied on the fact that a part of a part was not intended to be covered in this entry. There is inherent evidence in the very entry itself because it includes rubber and other tyres and tubes, which are only parts. Besides, the expression "other articles" is of the widest amplitude as it excludes only such articles which are ordinarily used otherwise than as parts and accessories of motor vehicle. A part may be a very humble part but it functions in the whole and without which the whole can never function or operate. Therefore, the distinction sought to be made by Mr. Modi is hardly justifiable by statutory language. Mr. Modi next argued that further process had to be put by vulcanising this value into the motor tube and that was to be done by the purchaser. We have already answered that objection by pointing out that it would not make any difference as the part still remains one capable of being used. Every such article which is adapting for such use would have to be fitted in the motor car by proper adjustment and fitment into the whole. Mr. Modi next argues that "adapted for use" should only mean that no other process should be necessary on it and it must be directly fitted into the motor car. That construction could hardly be justified on this statutory language because the legislature has not only covered the original component parts but also such spare parts or parts which replaced old worn out parts by using appropriate language that even other articles if they are capable for use as such spare parts and accessories of motor vehicles, they would fall within the ambit of this entry. That is why the legislature was careful to provide for the exclusion clause that such articles must not ordinarily be also used otherwise than as such parts and accessories of motor vehicles. Mr. Modi next relied upon the decision in Kishindas Agencies v. State of Mysore ([1974] 33 S.T.C. 65.) by the Division Bench of the Mysore High Court where the expression "component part" had to be considered in the light of the explanation which defined it as an article which formed an identifiable constituent of the finished product and which along with others went to make up the finished product. As we answer the present contention not by relying on "component parts" but by relying on the "other articles" which has wiser coverage so as to include even such parts which replace old worn out original parts, that decision would hardly have any bearing on the present question. Mr. Modi also relied upon the decision of the Division Bench of the Allahabad High Court in Agarwala Brothers v. Commissioner of Sales Tax ([1969] 23 S.T.C. 306.). There the relevant notification mentioned component parts of motor vehicles in item No. 1.

That item also mentioned separately 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. In that decision the diesel engine in question which could be ordinarily used for other purposes was held not to be covered by item No. 1 because it was a component part and because with the assistance of conversion kits only such diesel engines could be used as parts of motor vehicles. That is why the Division Bench in terms pointed out that they were not concerned with the diesel engines, which were constituted or adapted already, so that they were ready for se in motor vehicles. Special conversion kits were required and there was no evidence as to what degree of conversion was necessary to make a diesel engine capable of use for driving motor vehicle. As there was complete absence of material in that connection this view was taken. The Division Bench has also taken into account the fact that the diesel engine in question could ordinarily be used for other purposes and, therefore, it would be falling in the exclusion clause so far as other articles were concerned. Therefore, that decision is on its own special facts and could never be pressed into service in this case where admittedly these metal valves are not capable of any other use except being fitted into the tube of the specified motor vehicle in entry 44A. In that view of the matter, the Tribunal was obviously in error in disregarding this latter part of the entry which would specifically cover such metal value of motor tube and, therefore, the specific entry 42B of Schedule C would be attracted and there would be no question of residuary entry 22 of Schedule E. Therefore, our answer to the reference would be that the motor valves in question would attract duty under specific entry 42B of Schedule C and not under the residuary entry 22 of Schedule E. The respondents shall pay the costs of the petitioner-State for this reference.

7. Reference answered accordingly.

