
(2011) 06 MAD CK 0135

In the Madras High Court

Case No : Tax Case (Appeal) No. 1032 of 2006

Tools Machinery and Products

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 10-06-2011

Acts Referred:

Tamil Nadu General Sales Tax Act, 1959 — Section 12(3), 34, 55

Citation : (2011) 46 VST 512

Hon'ble Judges : P.P.S. Janarthana Raja, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : V. Sundareswaran, for the Appellant; R. Sivaraman, Special Government Pleader Taxes, for the Respondent

Final Decision : Allowed

Judgement

P.P.S. Janarthana Raja, J.—(Order of the Court was made by P.P.S. Janarthana Raja, J.) The Assessee is on appeal as against the order of

the Joint Commissioner, Chennai, in Ref. No. M2/MM2/18440/98 (SMR No. II/792/98) dated 27.03.2002.

2. The Petitioner/Assessee is a registered dealer under the provisions of the Tamil Nadu General Sales Tax Act, 1959 and also a dealer in Motor

bus Accessories. The relevant assessment year is 1994-95 and the Assessee had purchased the motor bus accessories such as glass from the local

registered and also from the dealers in other State and resold the goods inside the State of Tamil Nadu at 8% and remitted the same to the

assessing officer along with the returns. Later the assessing officer rectified the order u/s 55 of the Tamil Nadu General Sales Tax Act holding that

the motor accessories are subjected to tax at 12% and also levied penalty u/s 12(3)(b) of the Act. Aggrieved by that order, the Assessee filed an

appeal before the Appellate Assistant Commissioner, and disputed the same. The Appellate Assistant Commissioner allowed the appeal holding

that the glasses purchased by the Assessee squarely falls under cover of auto-parts and hence, the accessories used for motor bus dealers are

taxable only at 8% and not at 12%. To the great surprise of the Appellant, the Special Commissioner issued notice u/s 34 of the Act and proposed

to restore the order of the Assessing Officer passed u/s 55 of the Act. The Joint Commissioner held that the Assessing Officer has correctly

assessed the goods at 12% and restored the order of the assessing officer and set aside the order of the Appellate Assistant Commissioner.

Aggrieved by the said order, the Assessee filed present appeal.

3. Learned Counsel appearing for the Appellant/Assessee submitted that the order passed by the Joint Commissioner is not in accordance with

law and also wrong in setting aside the order of the Appellate Assistant Commissioner and restoring the order of the assessing officer. He further

submitted that the Joint Commissioner is wrong in holding that the automobile glasses falls under Item-11(I)/Part E of First schedule to the Tamil

Nadu General Sales Tax Act, 1959 and the Joint Commissioner ought to have considered that the goods sold were only used as automobile spare

parts and therefore, the same should be assessed only at 8% and they had collected tax only at 8% from the customer and sold the same to the

bus body builders and therefore, it will fall under entry 43(ii)/Part D of the First Schedule and hence, it will not come under Entry 11(1)/Part E of

First schedule and the order passed by the Joint Commissioner has to be set aside.

4. Learned Government Advocate appearing for the Revenue submitted that both the assessing officer and also the Joint Commissioner had

correctly held that the automobile glasses were only fall under Item 11(I)/Part E of first schedule and the same will not come under Entry 43(ii)/Part

D of the First Schedule and hence, the order passed by the Joint Commissioner is in accordance with law and the same has to be confirmed.

5. Heard the learned Counsel appearing for the Petitioner/Assessee and the learned Government Advocate appearing for the Revenue and

perused the documents on record. The assessing officer has originally completed the assessment levying the tax at 8% under Entry 43(ii)/Part D of

the First Schedule on the ground that goods dealt by the Assessee are auto parts and accessories. Later he was of the view that the goods dealt

with by the dealer will fall under Item E 11(i) of First Schedule and rectified the order u/s 55 of the Act and therefore, levied tax at 12%.

6. The relevant entries are as follows:

43(i) Motor cars, Motor taxi-cabs, Motor omni buses, Motor vans, jeeps and motor lorries, chassis of motor vehicles built on chassis of motor

vehicles belonging to others (on the turnover relating to bodies) all varieties of trailers by whatever name known (other than trailers of tractors).

(ii) Parts and accessories of motor vehicles and trailers including bulbs, fare meters but excluding batteries.

and Entry 11 of Part E of First Schedule reads as follows:

11. Glass and glassware, all sorts (other than those specified elsewhere in this Schedule) including

(i) Flat glass, including sheet glass, wired glass and rolled glass whether in the form of plate glass, figured glass or in any other form, coloured glass,

coollex glass, toughened glass, laminated safety glass, tinted glass.

(ii) Laboratory glasswares, hygienic or pharmaceutical glass wares (whether or not graduated or calibrated and glass micro slides)

(iii) Glass shells glass globes and chimneys for lamps and lanterns

(iv) Glass jars, glass bottles, glass marbles and glass beads

(v) Tablewares made of glass(For mirrors)

From a reading of the above, it is clear that Entry 11 specifically mentioned about glass and glassware, all sorts other than those specified

elsewhere in the schedule. So, it is crystal clear that when goods are specified elsewhere in the schedule, the same will not fall under Entry 11 part

E of the First Schedule. Entry 43 deals with other parts and accessories of the motor car. In this case, the dealer purchased automobile glass and

the same was sold to only motor buses operator. Even the invoice dated 15.03.1995 enclosed in page 8 of the typed set of papers shows that the

goods dealt with is ""automobile glasses". The Assessee purchased automobiles glasses from other dealers and therefore, the automobile glasses

shall be subjected to tax only at 8% under Entry 43 of Part D of the First Schedule. The Supreme Court in the case of Mehra Bros. v. Joint

Commercial Tax Officer, Madras reported in (1991) 90 STC 233, held as follows:

Having given our anxious consideration, with respect, we are of the considered view that the test laid down by the Karnataka High Court that the

accessories as a part must contribute for convenience or effectiveness in the use of the car as a whole is not a correct test. In our view 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 adds to the beauty, elegance or comfort for the use of the motor vehicle or a supplementary or secondary to the main or

primary importance. Whether an article or part is an accessory cannot be decided with reference to its necessity to its effective use of the vehicle

as a whole. General adaptability may be relevant but may not by itself be conclusive. Take for instance a stereo or air-conditioner designed and

manufactured for fitment in a motor car. It would not be absolutely necessary or generally adapted. But when they are fitted to the vehicle,

undoubtedly it would add comfort or enjoyment in the use of the vehicle. Another test may be whether a particular article or articles or parts, can

be said to be available for sale in an automobile market or shops or places of manufacture; if the dealer says it to be available certainly such an

article or part would be manufactured or kept for sale only as an accessory for the use in the motor vehicle of course, this may not also be a

conclusive test but it is given only by way of illustration. Undoubtedly some of the parts like axle, steering, tyres, battery, etc., are absolutely

necessary accessories for the effective use of the motor vehicle. If the test that each accessory must add to the convenience or effectiveness of the

use of the car as a whole is given acceptance many a part in the motor car by this process would fall outside the ambit of accessories to the motor

car. That would not appear to be the intention of the Legislature. Similarly in Free India Cycle Industries (1970) 26 STC 428 and Shadi Cycle

Industries (1971) 27 STC 56, the Allahabad High Court held that cycle covers, rexine saddle cover whether part or accessory of vehicle under

item 34 of the notification dated April 5, 1961, issued by the State of U.P. under Sections 3 and 3-A of the U.P. Sales Tax Act, 1948 (15 of

1948) with the same reasoning, as was given by the Karnataka High Court, to be not accessories. We express that the Allahabad High Court also

has not laid down the test correctly.

Considering the above principles, as the Assessee deals with automobile accessories and they purchased only automobile glasses and sold them in

the State of Tamil Nadu and as there is no dispute regarding the same, we, therefore, hold that the purchase of automobile glasses squarely falls

under Entry 43/Part-D of the First Schedule and shall be subjected to tax at 8% and not at 12% and the order passed by the Joint Commissioner

taxing at 12% under Entry 11/Part E of the First Schedule is set aside and the order of the Appellate Assistant Commissioner is restored.

Accordingly, the above appeal is allowed. No costs.