
(2007) 04 AHC CK 0094
In the Allahabad High Court

Verma Tractors

APPELLANT

Vs

State of U.P. and Scooters India Limited

RESPONDENT

Date of Decision : 16-04-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 226

Citation : (2007) 04 AHC CK 0094

Hon'ble Judges : R.K. Agrawal, J;Bharati Sapru, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner, M/s Verma Tractors, seek the following reliefs:

(i) issue a writ, order or direction in the nature of certiorari calling for the record for the case of the petitioner in respect of the provisional assessments for the months from April, May, June, July and August 06 and quashing the notices, proceedings and provisional assessment orders dated 26.12.06 (Annexure -15) to this petition.

(ii) Issue a writ, order or direction in the nature of Mandamus and direct the respondent No. 2 not to proceed to assess the petitioner and to impose trade tax on the petitioner under the notification issued u/s 3-A of the Act relating to motor vehicles in respect of transactions in regard to which he has already paid trade tax u/s 3-A of the Act on the chassis and fabricated bodies to be mounted on the chassis to the persons from whom they had been purchased.

(iii) Award cost of this petition to the petitioner.

(iv) Pass such other and further writ, order or direction in favour of the petitioner, as this Hon''ble Court may deem fit and proper in the circumstances of the case.

2. Briefly stated, the facts giving rise to the present petition are as follow:

The petitioner is a partnership firm and is engaged in the business of sale of three wheelers. It is a registered dealer under the provisions of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the U.P. Act"). The petitioner purchases Vikram three wheeler chassis of different models from M/s Scooters India Ltd., Lucknow. It pays applicable trade tax on the purchase of the said chassis. M/s Scooters India Ltd. has appointed some persons as their authorised Vikram Body Fabricator who make the bodies fitted over the Vikram three wheeler chassis. The body as fitted over the chassis is tested and approved by the Automotive Research Association of India, Pune. The Fabricator issues a certificate in Form 22-B that it complies with the provisions of the Motor Vehicles Act, 1988. The petitioner after purchasing the three wheeler chassis from M/s Scooter India Ltd., gets the body fabricated and mounted on the said chassis from one of the authorised Body Fabricators, namely, M/s Himanshu Traders. The petitioner purchases and pays for the body fabricated by the approved Fabricator and also pays the trade tax on such bodies. The duly completed Vikram three wheelers are thereafter sold by the petitioner as per the demand in the market. According to the petitioner, it raises two bills to the purchaser, i.e., one for the chassis and the other for the bodies. As the petitioner had separately paid applicable taxes on the three wheeler chassis and body fabricated and mounted on it to the respective sellers, namely M/s Scooter India Limited and M/s Himanshu Traders, while filing the return under the provisions of the U.P. Act, it did not admit any liability for payment of tax on the sales of three wheelers. The Assessing Authority did not impose any tax on the sale of Vikram three wheelers during the assessment years 1998-99 to 2002-03, both under the U.P. Act and the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"). However, the Deputy Commissioner, Trade Tax, Kanpur, respondent No. 2, issued separate notices dated 13.11.2006 calling upon the petitioner to show cause as to why provisional assessment for the months of April to August, 2006 be not made as it had not deposited any tax on the disclosed turnover of the three wheelers. The petitioner submitted its reply dated 4.12.2006 claiming before the respondent No. 2 that it is not liable to pay any tax whatsoever on the sale of three wheelers as it had paid due trade tax on three wheelers chassis and body to its sellers. The respondent No. 2, vide separate orders, all dated 26.12.2006, had passed provisional assessment order wherein he has imposed tax on the admitted turnover of Vikram three wheelers. In respect of the aforesaid five months, a total demand of Rs. 15,70,716/- has been raised. He has held the petitioner to be a manufacturer u/s 2(ee) of the U.P. Act as after the purchase of three wheeler chassis and getting the body fabricated and mounted on it, a new commercial commodity has come into existence, which is liable to tax. In the supplementary affidavit filed by the petitioner, it has been stated that in respect of another authorised body fabricator of M/s Scooter India Ltd., i.e. Hindustan Steel Industries, Lucknow, which has admitted liabilities on sale/fabrication of bodies at the rate of 10%, the Assessing Authority, in that case, had issued a

notice on 22.9.2006 calling upon the said M/s Hindustan Steel Industries, to pay taxes at the rate of 12% on the ground that it is a component of motor vehicle. The provisional assessment orders dated 26.12.2006 are under challenge in the present petition on the ground that the transaction of sales of Vikram three wheelers, i.e., auto rickshaw, by the petitioner are second transaction of sale of motor vehicle and on the first transaction of three wheeler chassis and body, the trade tax had already been paid by the petitioner, therefore, in view of the provision of Section 3A of the U.P. Act, no tax is payable by the petitioner on the second sale. The expression "motor vehicle" under Entry 18 of the notification dated 9.5.2003 is very wide and it covers within its fold the chassis as well as bodies and what the petitioner has purchased, namely, the chassis and body mounted on the chassis and sold by the petitioner, are all motor vehicle and, therefore, the second sale is not taxable. The decision of the Apex Court in the case of Kumar Motors, Bareilly v. Commissioner of Sales Tax, U.P., Lucknow 2007 NTN (33) 172, in which the Apex Court has held that by mounting of auto rickshaw body on the chassis, a new product comes into being, has been sought to be distinguished on the special facts of that case.

3. We have heard Sri S.P. Gupta, learned senior counsel, assisted by Sri S.D. Singh, Advocate, on behalf of the petitioner, and Sri S.P. Kesarwani, learned Standing Counsel, appearing for the respondent Nos. 1 and 2.

4. Sri S.P. Gupta, learned senior counsel, submitted that the petitioner having paid taxes under the provision of the U.P. Act on the purchases of three wheeler chassis from M/s Scooter India Ltd. and on the body fabricated and mounted on it to M/s Himanshu Traders separately, it was not liable to pay any tax on the sale of three wheelers as it is covered under the Entry 18 of the notification dated 9.5.1993. The item "motor vehicle" in the aforesaid entry is very wide as it has given an inclusive meaning. It includes chassis of motor vehicle. Thus, once the tax has been paid on the chassis, there is no liability of payment of tax on motor vehicles as the two fall under the same entry. He further submitted that the three wheelers also falls under the aforesaid entry and the same principle would be applicable. He placed reliance upon a decision of the Apex Court in the case of Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, wherein the Apex Court while considering the levy of tax on iron wire drawn from wire rods under the provisions of the Central Sales Tax Act, 1956, has held that the legislature did not want wires even if the same be a separate commercial commodity, to be taken as a commodity different from the rods for the purpose of permitting imposition of sales tax once again on wires despite rods having been subjected to sales tax. He further submitted that the decision of the Apex Court in Kumar Motors (supra) was concerned with a situation where a dealer has purchased chassis and body against separate declaration Form 3A, which implied that he was liable to sell the goods so purchased in the same form and condition whereas the dealer had sold the three wheelers after getting the body mounted on the chassis which was held by the Apex Court to be not in the same form and condition and, therefore, the liability for payment of purchase tax

for submitting wrong declaration was upheld. According to him, in the present case the petitioner had not purchased the chassis and the bodies against Form 3A and there is no question of imposition of purchase tax as it had already paid taxes on its purchases. He further submitted that in respect of the assessment years upto the year 2002-03, the Assessing Authority himself had not imposed any tax on the sale of three wheelers and granted exemption holding that there is no tax liability on such sales, therefore, the petitioner did not collect any tax from its customers and if it is made to pay the huge amount of Rs. 15,70.716/-, so imposed for five months, the petitioner's entire capital would be wiped off and it would be completely ruined. The respondent Nos. 1 and 2 are, therefore, estopped from realising any tax on the sale of the three wheelers from the petitioner.

5. Sri S.P. Kesarwani, on the other hand, submitted that the Apex Court in the case of Kumar Motors (supra) has specifically held that the auto rickshaw is a different commercial commodity than chassis or body and the chassis and the body are not sold in the same form and condition when three wheelers is sold. Thus, the petitioner is liable to pay tax on the sale of three wheelers notwithstanding the fact that it has already paid taxes on the purchase of chassis and body separately. He further submitted that the decision of M/s Telengana Steel Industries (supra) related to an interpretation of an entry u/s 14(iv)(xv) of the Central Act, which dealt with declared goods. There being a restriction u/s 15(a) of the Central Act, that tax cannot be imposed on declared goods at more than one stage and that too, not more than 4%, the Apex Court while taking into consideration the legislative intent, had held that the tax on wires manufactured from wire rod is not payable. The aforesaid decision, according to him, is not applicable in the facts of the present case. He further submitted that admittedly the petitioner being a manufacturer of three wheelers under the provision of Section 2(ee) of the U.P. Act and the sale of three wheelers after purchasing the chassis and getting the body mounted being a manufacture u/s 2(e-l) of the U.P. Act, the petitioner is liable to pay tax under the notification dated 9.5.1993. He further submitted that no advantage can be taken from the inclusive definition of the words "motor vehicle" given in the said entry, as it is only enlarging the scope of the entry and each item if it is a different commercial commodity, though falling under the same entry, is liable to tax again. He further submitted that merely because several articles under the same heading have been included in one entry, it does not mean that the articles constituted one and the same thing and, therefore, the fact that the petitioner had paid taxes on chassis and body-separately, would not absolve him from paying tax on the sale of three wheelers which is a different commercial commodity. In support of his aforesaid pleas, he has relied upon the following decisions:

- (i) A. Hajee Abdul Shakoor and Co. v. The State of Madras AIR 1964 SC 1729 ;
- (ii) TVL K.A.K. Anwar and Co. Vs. State of T.N.,
- (iii) M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others,

(iv) Ashirwad Ispat Udyog and Ors. v. State Level Committee and Ors. 1999 UPTC 93; and

(v) Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow,

6. Sri S.P. Gupta, learned senior counsel, in rejoinder, submitted that the decision of the Apex Court in A. Hajee Abdul Shakoor and Co. (supra) related to hides and skins in raw condition and sale of hides and skins in tanned condition, which were separately notified. They were not under one entry and, therefore, the aforesaid decision cannot be pressed into service by the respondents. He further submitted that the decision of the Apex Court in the case of Telengana Steel Industries (supra) holds the field and, therefore, the petitioner is not liable to pay any tax on the sales of three wheelers.

7. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties.

8. We find that it is not in dispute that the petitioner has purchased the chassis from M/s Scooter India Ltd. after paying the due trade tax thereon. It had also got the body fabricated from the authorised body fabricator and had paid due taxes on its fabrication. The body was got mounted on the chassis and the petitioner had sold the three wheelers in a complete form. Upto the year 2002-03, the Assessing Authority had held the petitioner to be not liable to pay tax on such sales of three wheelers and the tax liability was determined at nil. However, after the decision of the Apex Court in the case of Kumar Motors (supra), even though it has not been mentioned in the notice issued for provisional assessment, the Assessing Authority had called upon the petitioner to show cause as to why tax on the sale of three wheelers have not been deposited. After considering the explanation/reply submitted by the petitioner, he has passed provisional assessment order for the months of April to August, 2006 imposing the tax at the rate of 12% on the sale of three wheelers notwithstanding the fact that the petitioner had already paid the tax on the purchase of chassis and body separately.

9. The Apex Court in the case of Kumar Motors (supra) has considered the question as to whether mounting of bodies on the chassis amounts to manufacture or not in the light of the definition of word "manufacture" given in Section 2(e-I) of the U.P. Act. It has held that it amounts to manufacture. It has further held that auto rickshaw in ordinary common parlance cannot be said to be only chassis and it has a definite connotation. According to the Apex Court, there is no doubt that when the sale is made by the assessee of the chassis with mounted body, it would be selling a product which is in a different condition from the chassis or the body. The commodity is identified by ordinary common parlance and an auto rickshaw is an auto rickshaw. It could be sold only as a combination of chassis and the body mounted thereupon and not body or chassis separately and if it is so done, the consequence may be different. In para 21 of the report, the Apex Court has not accepted the opinion of the Tribunal that as

both chassis and auto rickshaw being under the same entry, no tax would be payable even though by mounting the auto rickshaw body on the chassis, a new product comes into being. This view of the Tribunal has specifically been repelled by the Apex Court. Thus, the Apex Court has clearly held that mounting of a body on a chassis amounts to manufacture and a new commercial commodity comes into existence, which is different from chassis and body.

10. In the case of Telengana Steel Industries (supra) the Apex Court was considering the question of taxability of wires manufactured from wire rods falling u/s 14(iv)(xv) of the Central Act. The Apex Court has held that each of the items mentioned in the sub-category of a sub-item retain its identity as a commercially separate item so long as it retains the sub division and taking into consideration the legislative intent has held that the wires were thought of as integral part of rods and not distinct from rods, because the sub-item speaks about wires rolled, drawn, galvanised, aluminised, tinned or coated and the legislature, therefore, did not want wires, even if the same be a separate commercial commodity, to be taken as a commodity different from the rods for the purpose of permitting imposition of sales tax once again on wires despite rods having been subjected to sales tax. The Apex Court has further held that indeed, the two goods - rods and wires - are so closely knit in the sub-item that any separation of these does not seem permissible. It has further been held that it would bear repetition to say that multipoint sales tax on the declared goods being in interdiction of Section 15 of the Central Act. The principles laid down in the aforesaid case would not be applicable to the facts of the present case as the motor vehicle is not a declared goods u/s 14 of the Central Sales Tax Act, 1956. The words "motor vehicle" has been given an inclusive meaning under entry 18 of the notification dated 9.5.1993. Each of the goods mentioned in the said entry if have a commercial identity, which is different from the other, is liable to tax under the provision of the U.P. Act. No exemption is permissible merely because taxes have been paid on one of the items which after manufacture becomes a commercially different commodity but falls under the same entries.

11. In the case of A. Hajee Abdul Shakoor and Co.(supra) the Apex Court has held that the hides and skins in untanned condition are undoubtedly different articles of merchandise than tanned hides and skins and they constitute different commodities of merchandise and can be treated as different goods for the purposes of the Central Sales Tax Act, 1956.

12. In the case of TVL K.A.K. Anwar and Co. (supra) the Apex Court has held as follows:

17. When dressed hides and skins are different goods from raw hides and skins, we do not find anything in the language of Section 14 of the Central Sales Tax Act which can lead us to the conclusion that these two different commodities were to be regarded as constituting a single commodity for the purpose of taxation. Sections 14 and 15 of the Central Sales Tax Act have to be read together as they constitute a scheme relating to taxation of goods of special

importance in inter-State trade or commerce. While Section 14 enumerates the items which are regarded as being goods of special importance in inter-State trade or commerce, it is Section 15 which imposes the restriction and conditions in regard to tax on sale or purchase of declared goods within a State. Section 14, in other words, is not a taxing provision but it merely classifies different commodities under the same species under one entry. Merely because different goods or commodities are listed together in the same sub-heading or sub-item in Section 14 cannot mean that they are regarded as one and the same item. Whenever the legislature wanted different goods placed in the same entry to be regarded as a single commodity it expressly provided for the same. By Act 103 of 1976 Sub-sections (c) and (d) were inserted in Section 15 of the Central Sales Tax Act. With the introduction of Section 15(d) "each of the pulses referred to in Clause (vi-a) of Section 14, whether whole or separated and, whether with or without husk, were to be treated as a single commodity for the purposes of levy of tax under that law". If the intention of the legislature had been that the various commodities mentioned in the same clauses in Section 14 were to be regarded as a single commodity it would have specifically provided as such. The legislature, however, chose to single out different types of pulses only to be regarded as a single commodity. Notwithstanding the fact that the raw hides and skins had been held by this Court in Abdul Shakoor's case (AIR 1964 SC 1729) (supra) as being distinct from dressed hides and skins the legislature did not think it appropriate to insert a clause similar to Section 15(d) which may have had the effect of regarding raw hides and skins and dressed hides and skins as being treated as a single commodity for the purposes of levy of tax.

13. Referring to the decision of the Apex Court in the case of Telengana Steel Industries (supra), the Apex Court has observed as under:

Even though the aforesaid decisions seem to support the contentions urged on behalf of the appellants, we find that the two questions involved in these cases, namely, whether dressed hides and skins and raw hides and tanned skins are different commodities and, secondly, whether Section 14(iii) of the Central Sales Tax Act regards them as the single commodity, appear to have been decided differently by a Constitution Bench of this Court in A. Hajee Abdul Shakoor and Company Vs. State of Madras,

14. It further held as under:

18. The words "hides and skins, whether in a raw or dressed state" in Section 14(iii) of the Central Sales Tax Act clearly seem to indicate that the legislature recognised that raw hides and skins was an item different from dressed hides and skins. As has already been noticed hereinabove it is after undergoing a manufacturing process involving various stages that raw hides and skins becomes dressed hides and skins. As observed in the State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, that "sales tax law is intended to tax sales of different commercial commodities and not to tax the production or the manufacture of particular substances out of which these commodities may have

been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely jointed together, they may remain commercially the same goods which cannot be taxed again, in a series sales, so long as they retain their identity as goods of a particular type. In the present case dressed hides and skins is a separate commercial commodity which emerges after raw hides and skins has been subjected to manufacturing process and, therefore, Section 14(iii) deals with two different types of goods which unlike the case of pulses referred to in Section 15(d), is not regarded by the Act as one and the same commodity.

15. In the aforesaid case the Apex Court which is a Bench decision three Hon''ble Judges (whereas the decision of the Apex Court in the of Telengana Steel Industries is a Bench decision of two Hon''ble Judges), it has been observed that whether Section 14(iii) of the Central regards them as the single commodity appears to have decision differently by a Constitution Bench in the case of Hajee Abdul Shakoor & Company (supra). In view of the decision of the Apex Court in the aforementioned two decisions even if an item falls under the same entry but is a separate commercial commodity then it is liable to be taxed.

16. In the case of B.P.Oil Mills Ltd. (supra) the Apex Court has held that refining of crude oil amounts to manufacture within the meaning of the word "manufacture" as given in Section 2(e-l) of the U.P. Act and a dealer may be liable to tax on the sale of any goods he manufactured by processing the goods he purchased by complying with the requirement of Sub-clause (ii) of Clause (b) of Sub-section (3) of Section 3 of the U.P. Act.

17. In the case of Ashirwad Ispat Udyog (supra) the Apex Court while considering the definition of the word "manufacture" given in Section 2(j) of the Madhya Pradesh General Sales Tax Act, 1958, has held that treating iron and steel scrap by cutting it down by mechanical processes into pieces that may be conveniently utilised in rolling mills and foundries, fall within the wide definition of "manufacture" u/s 2(j) of the said Act.

18. In the case of M/s Sonebhadra Fuels (supra) the Apex Court has held that making of coke briquettes from coal by using various processes/treatments amount to manufacture and a new commercial commodity other than coal comes into existence.

19. In the case of Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., , the Apex Court while considering the provision of Section 2(e-l) of the U.P. Act and entry 40 of the notification dated 7.9.1981, which levied tax at the point of sale to the consumers on the items, namely, Ramraj, geru, surkhi. sand, lime, bajri, marble-chips, moram, gitti, kankar, stone-ballast, stone and articles of stone except of glazed stone, has held that each one of the items enumerates various goods, which could be brought to tax. The purpose of sales

tax is to levy tax on sale of goods of each variety and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which cannot be taxed,, again, in a series of sales, so long as they retain their identity as goods of a particular type.

20. It has further held that, in that case, however, stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different. Even if gitti, kankar, stone-ballast, etc. may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that Entry 40 of the notification is intended to describe the same as not stone at all. In fact the term "stone" is wide enough to include the various forms such as gitti, kankar, stone ballast.

21. From the aforesaid decisions, the following principles emerges:

(i) the definition of the word "manufacture", as given in Section 2(e-I) of the U.P. Act, is very wide;

(ii) it covers those cases also where as a result of one or the several processes mentioned in Section 2(e-I) a separate commercial commodity does not come into existence;

(iii) if a distinct commercial commodity has come into existence as a result of process of manufacture falling u/s 2(e-I) of the U.P. Act, the manufactured goods would be liable to tax under the U.P. Act;

(iv) the fact that certain articles are mentioned under the same heading in a statute does not mean that they all constitute one commodity and its inclusion may be for a reason other than the article constitute one and the same thing; and

(v) The manufacturer cannot take the plea of claiming non-liability for payment of tax merely on the ground that it had paid taxes on the items used in the manufacture of new product which falls under the same entry.

22. Applying the aforesaid principles to the facts of the present case, we have no manner of doubt that the three wheelers sold by the petitioner after getting the body mounted on the chassis purchased after paying the taxes, do constitute a process of manufacture and a separate commercial commodity comes into existence. In common parlance also the auto rickshaw is treated differently than its chassis or its body. Therefore, merely because entry 18 of the notification dated 9.5.1993, which mentions "motor vehicle" including chassis would not make the motor vehicle and the chassis which are two commercially different commodities, one so as to make the dealer effecting sale of three wheelers where tax had been paid on the chassis and body, not liable to tax under the Act. In a nut shell, the imposition of tax on the sale of three wheelers, in the present

case, is wholly in accordance with law.

23. The plea of estoppel or acquiescence, raised by the petitioner has no legs to stand in the facts and circumstances of the present case on the liability of tax is to be judged according to the statutory provisions and the concept of equity in a taxing statute, cannot be imported.

24. In view of the foregoing discussions, we do not find any merit in this petition. It is dismissed in limine.