(1970) 11 GUJ CK 0009

In the Gujarat High Court

Case No : Sales Tax Reference No. 13 of 1969

Vicas Tractors APPELLANT

Vs

Commissioner of Sales Tax RESPONDENT

Date of Decision : 21-11-1970

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

Citation : (1971) 27 STC 203

Hon'ble Judges : T.U. Mehta, J;P.D. Desai, J

Bench : Division Bench

Advocate : K.H. Kaji and S.L. Modi, for the Appellant; B.R. Shah, M.G. Doshit and H.V. Chhatrapati, Additional Government Pleaders, for the Respondent

Judgement

Desai, J.—The question which arises for our consideration in this reference is whether the Massey-Ferguson farm tractor sold by the

assessee is an ""agricultural machinery"" within the meaning of entry 12 of Schedule C to the Bombay Sales Tax Act, 1959 (hereinafter referred to as

the Act"").

2. The assessee is a firm carrying on business as a dealer in the goods manufactured by Messrs Tractors and Farm Equipment Private Limited,

Madras. The manufacturers are successors to Messrs Massey-Ferguson (India) Limited and are associated with Messrs Massey-Ferguson (U.K.)

Ltd. They are engaged in the manufacture and marketing of Massey-Ferguson farm machinery in India including Massey-Ferguson farm tractors

and farm implements of various kinds. The assessee sold a tractor of the above-mentioned variety to one Bhikhabhai Hamirbhai under bill No.

TF/140 dated 24th March, 1965. The assessee then made an application to the Commissioner of Sales Tax u/s 52 of the Act for determination of the question as to what was the rate of tax payable on the sale of the said tractor. Along with the application, the assessee submitted a copy of the

bill and later on the assessee produced before the Deputy Commissioner of Sales Tax, who heard the said application, additional evidence in the

shape of certain booklets and pamphlets describing the essential characteristics of Massey-Ferguson tractors. The contention of the assessee

before the Deputy Commissioner of Sales Tax was that the tractors in question were manufactured with the object, design and mechanism which

made them more suitable for being used for agricultural purposes. The assessee, therefore, contended that the tractor in question was ""agricultural

machinery"" covered by entry 12 of Schedule C and was liable to be taxed at the rate mentioned in the said entry. The Deputy Commissioner of

Sales Tax by his order dated 30th November, 1965, held that the tractor in question was not ""agricultural machinery"" within the meaning of the

said entry but was covered by the residuary entry 22 of Schedule E and was liable to be taxed accordingly. In coming to this conclusion, the

Deputy Commissioner of Sales Tax relied upon the decision of the Gujarat Sales Tax Tribunal (hereinafter referred to as ""the Tribunal"") in the case

of M/s. Vicas Corporation (vide Appeal No. 31 of 1960 decided on 22nd February, 1961) and also upon the decision of the Madhya Pradesh

High Court in M/s. Agrawal Bros. v. Commissioner of Sales Tax, Madhya Pradesh ([1965] 16 S.T.C. 860). According to the Deputy

Commissioner of Sales Tax, the question was covered by the said two decisions and it was, therefore, not possible to accept the contention of the

assessee that the tractor in question was ""agricultural machinery"" within the meaning of entry 12 of Schedule C to the Act.

3. Dissatisfied with the order above-mentioned, the assessee preferred an appeal to the Tribunal. Before the Tribunal, the assessee once again

relied upon the booklets and pamphlets produced by it before the Deputy Commissioner of Sales Tax and also upon a certificate dated 15th

February, 1961, issued by Mr. Alexander Behr, Marketing Manager, Tractors and Farm Equipment Private Limited, Madras, who as stated

above, were the manufacturers of the tractor in question, in support of its contention that the tractor sold by them was ""agricultural machinery

within the meaning of entry 12 of Schedule C to the Act. The assessee contended before the Tribunal that the tractor in question was manufactured for agricultural purposes and having regard to its design and special features and its general and common use for agricultural purposes, it was

agricultural machinery"" within the meaning of entry 12 of Schedule C. The Tribunal observed that the literature produced by the assessee did show

that there were certain tractors which could be called farm tractors and that certain special arrangements were undoubtedly made in the tractor in

question for attaching thereto the agricultural implements manufactured by the said manufacturer. The Tribunal, however, pointed out that the fact

still remained that it was only when agricultural implements were attached to the tractor in question that the tractor could be used for agricultural

purposes and that if such implements were not attached, it could also be used for purposes other than agriculture. The Tribunal further observed

that merely because certain contrivances were made in the tractor in question because of which agricultural implements could be fitted to the

tractor and the tractor could work in a better way for agricultural operations it would not be a sufficient factor to turn the tractor into ""agricultural

machinery"". The Tribunal accordingly found that it could not be said that the principal and primary use of the tractor in question was agricultural

and hence the tractor in question would not fall within entry 12 of Schedule C. In arriving at its decision, the Tribunal relied principally upon the

decision of the Bombay High Court in Pashabhai Patel and Co. (P.) Ltd. v. Collector of Sales Tax, Maharashtra State ([1964] 15 S.T.C. 32].

4. The assessee being dissatisfied with the order of the Tribunal made an application to the Tribunal requiring it to refer to this court the question of

law arising out of its order, namely, whether the tractor in question was an agricultural machinery within the meaning of entry 12 of Schedule C to

the Act and the Tribunal has accordingly referred the following question to this court :

Whether on the facts and in the circumstances of the case the sale of Massey-Ferguson tractor sold by bill No. TF/140 dated 24th March, 1965,

is an agricultural machinery covered by entry 12 of Schedule C to the Bombay Sales Tax Act, 1959, and liable to tax accordingly ?

5. Along with the statement of the case, the Tribunal has annexed at annexure 3 a copy of the said bill, at annexure 4 a list of books referred to in

the statement of the case and cited before the Tribunal and at annexure 5 a copy of the certificate dated 15th February, 1961, given by the marketing manager of the Tractors and Farm Equipment Private Ltd., to which we have referred above.

6. Before we proceed to answer the question which has been referred to us for our opinion we would like to make a few preliminary observations.

A tractor is generally speaking a self-propelled vehicle worked either on diesel or petrol and is commonly used to provide motive force. The

following passage in the Encyclopaedia Americana, 1958 Edition, Vol. XXVI, at page 744, throws light on the features and functions of a tractor :

Tractor, trakter, a self-propelled machine that travels on roads or rough ground and, as a rule, draws a load. It is a vehicle designed to perform a

great variety of mechanical operations. It may carry its own equipment or be constructed to haul either accessory machinery or other vehicles.

Tractors do not only replace horse-power in locomotion, but take over many functions - such as loading, picking, spraying, threshing, logging -

formerly executed by manual labour. Their widest use is in farming, landscaping, all kinds of hauling, and construction work. At the same time, they

often serve as a mobile power source. The modern tank and other armoured vehicles represent basically their conversion to military purposes.

According to their mode of locomotion, tractors are of two different types, mounted either on wheels or on tracks (crawlers).

7. There are different varieties of tractors and they are used at different places for a variety of purposes. There are farm or agricultural tractors

which are used on farms. There are industrial tractors which are used in factories for the purposes of reducing to a great extent the manual labour

required in handling freight and baggage at the terminals and warehouses. There are road-tractors which are sometimes used for road building and

sometimes in place of the conventional lorry for the purpose of carrying load. There are military tractors (tanks) which are used in military

operations and warfare (vide Encyclopaedia Britannica, 14th Edition, Vol. XXII, page 342, and the Encyclopaedia Americana, 1958 Edition, Vol.

XXVI, page 744). It would thus be seen that a tractor is used on farms, on highways, on warfields, in factories and such other and numerous

places.

8. With the modern technological advancement, however, tractors of different varieties have appeared in the market and each variety of tractors is

manufactured to achieve a particular object and render more useful service in a particular field. These different varieties of tractors have their own

distinct features and special designs which make them adaptable for use for the designated purpose. Whenever, therefore, a question arises

whether a tractor in a given case is an agricultural machinery or an industrial machinery or machinery of any other type, the question must

necessarily be answered by reference to its design, mechanism, distinct features and special adaptability, if any, to any particular use out of the

diversity of uses to which a tractor is capable of being put. It would indeed be difficult, if not impossible, to answer the question in the abstract

without reference to the intrinsic character and design of the tractor in question. If a question arises in a given case, as here, as to whether a

particular tractor is agricultural machinery, it must be first determined whether the tractor in question can be more suitably and advantageously used

for agricultural purposes having regard to its special design and features and if it is found that it is so adapted, then it would indeed be a farm

tractor and would be agricultural machinery notwithstanding the fact that it may occasionally or incidentally be capable of being used or may even

be actually used for ancillary purposes which may be non-agricultural. Such occasional or ancillary user for a different purpose cannot alter or

affect its essential character as a farm tractor and cannot render it any the less agricultural machinery. It is in this background that we shall answer

the question which has been referred to us for our opinion.

9. As stated above, the assessee had produced the relevant material and literature before both the lower authorities to show that the tractor in

question is designed specially to work in farms. The certificate of the marketing manager of the company which manufactures the tractor in question

is in fact a part of the statement of the case. We find, however, that the literature produced before the lower authorities has not been annexed to

the statement of the case. We have, therefore, taken two booklets and a pamphlet, which were produced before the lower authorities and which

throw some light on the essential characteristics of the tractor in question, on the record of this case as a part of the statement of the case with the

consent of the parties.

10. The certificate of the marketing manager of M/s. Tractors and Farm

Equipment Private Limited shows that the company which manufactures

the tractor in question is engaged in the manufacture and marketing of Massey-Ferguson farm machinery in India which includes farm tractors and

farm implements of various kinds. The tractor in question was designated by the late Mr. Harry Ferguson with a view to meet the need of a suitable

tractor to work in the majority of farms all over the world. The certificate further points out that there are over a million Ferguson system tractors

all over the world and that a vast majority of them were being used in agriculture. Massey-Ferguson (India) Ltd., predecessors to M/s. Tractors

and Farm Equipment Private Limited, had, according to the certificate, marketed more than 15,000 Ferguson system tractors in India over a

period of ten years and a vast majority of the said tractors are being used in agriculture in India. It is further pointed out in the certificate that the

company has obtained a licence from the Government of India to manufacture farm machinery including the tractors of the type with which we are

concerned, to meet the growing demands from the Indian agriculturists during the third and subsequent five year plans and that for the purposes of

customs duty and excise duty, the tractors are exempted as agricultural tractors on production of the ""end-use"" certificate by farmers.

11. The pamphlet entitled ""TAFE ..... and Indian Farming"" published by the manufacturers claims that the company has accepted the challenge of

providing India''s farmers with the efficient and economic farm tractors and implements essential in the struggle to raise India''s farm productivity

and that since 1949, 16,000 Ferguson system tractors have been sold to the Indian farmers. Another pamphlet entitled ""Facts about Farming with

Ferguson"" contains the following information :

Essentially, the Ferguson system is an entirely new way of farming, revolutionary in design and operation. Tractor and implement are ''tailored'' for

mutual efficiency ...... It is a system in which only a light weight tractor is needed to suit all types of farms, all kinds of jobs and every variety of soil

...... It is a system whereby tractor and implement work together as an integrated whole to do the job of farming without in-built weight or ballast.

The implement and its work provide weight for traction in proportion to the need for weight.

12. As illustrated pamphlet entitled ""Massey Ferguson 1035"" pinpoints the

special features of this tractor and claims that it is most adaptable for

agricultural use having regard to its distinct design and equipment. It is pointed out in the pamphlet that the tractor in question has adjustable front

axle and the object thereof is to achieve the following result : ""In farming for sowing and intercultivation, it is necessary to set the wheel track (chilo)

to suit the work. By just 4 bolts, without any change in the steering connection, the wheel track can be increased from 48"" to 80"" in steps of 4"".

Then follows the following description of the special features of this tractor :

Transference of weight of the implement and the resistance of the soil on the tractor, helps to increase the traction of its rear wheels. It maintains

the depth of the implement irrespective of the condition of the soil.

Thrust of the implement through top link helps to keep the front end down. Hence there is no danger of overturning. It also helps in accurate

steering.

Hydraulic control system responds automatically to maintain uniform depth, whether the implement is pulling or pushing the control spring.

Position control holds the implement at any desired height. Levelling the land, backfilling or hitching the implement becomes easier with the device.

This system achieves consistent working depth of the implement across undulations.

13. We may, before proceeding further, point out that in the Encyclopaedia Americana, 1958 Edition, Vol. XXVI, to which we have referred

above, at page 745 under heading ""Farm Tractors"", there appears the following passage which substantially supports the statements made in the

documents above-mentioned :

The 3-point hitch, as introduced by Harry Ferguson in the late 1930''s, was one of the great advances in tractor-implement design and control. It

is now used by several manufacturers. The hitch made it easy to attach equipment. Through the mechanics of its attachment to the tractor, weight

from the drawn tool is partially transmitted to the rear wheels, producing more traction, thus enabling the lighter tractor to do more work. The 3-

point hitch is coupled with the hydraulic lift system, which may also be automatically controlled through the draft of the implement (1) to control

depth, (2) to regulate draft to fit the tractor power and (3) to add weight to the tractor by lifting on the implement.

14. Besides drawing our attention to the special features and design of the tractor in question, as described in the above-mentioned booklets and

pamphlets, counsel for the assessee drew our attention to an order dated 30th March, 1967, issued by the Ministry of Industries Development and

Company Affairs, Department of Industrial Development and published in the Gazette of India, Extraordinary, part II, section 3, sub-section (ii),

dated 30th March, 1967. The order is made in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955, by the

Central Government principally with a view to controlling and fixing the sale price of tractors. ""Tractor"" has been defined in the said order to mean

an agricultural machinery known by that name and fitted with a diesel engine of a capacity not exceeding fifty horse-power."" In Schedule I of the

said order, which is called ""The Tractors (Price Control) Order, 1967"", at item No. 1, the sale price of Massey-Ferguson Engine-driven tractor,

model MF 1035 is given and it is not in dispute that the tractor with which we are concerned is a tractor of this variety.

15. Having regard to the special features and characteristics of the tractor in question, as referred to in the pamphlet and booklets referred to

above, as well as to the certificate issued by the marketing manager of the manufacturer and the inclusion of this kind of tractor in the Price Control

Order issued by the Government, there is no doubt in our mind that the tractor in question is a farm tractor specially designed and adapted for use

in agricultural farms with the object of introducing mechanical farming in India. It must, therefore, be held that the tractor in question is ""agricultural

machinery"" within the meaning of entry 12 of Schedule C.

16. Counsel for the revenue, however, contended that the assessee had not shown that the special features which are allegedly present in the

tractor in question are not present in other tractors marketed in India which could be put to any of the varieties of uses to which a tractor can

ordinarily be put and, therefore, it cannot be said that the tractor in question is agricultural machinery within the meaning of entry 12 of Schedule C.

He invited our attention to the observations of the Tribunal to the similar effect in para. 11 of its order. The argument, in our opinion, is not well

founded. Firstly there is no warrant to assume, in the face of the overwhelming material placed on the record of the case, that the special features and design of the tractor in question may also be present in other tractors marketed in this country. No attempt has been made by the revenue to

counter the claim made by the the assessee before the lower authorities that the tractor in question has certain special features and distinctive

characteristics of its own and is adapted for agricultural use. In the absence of any such material, we do not with to make any assumption in favour

of the revenue that the claim made by the assessee is not just and proper. Secondly, and this is more important, the question whether such special

features are present in other tractors or not, appears to our mind to be an irrelevant question in that, should other tractors also have such distinctive

features, such other tractors may as well fall within the description of ""agricultural machinery"" within the meaning of entry 12 of Schedule C. The

test propounded by the counsel is not the correct test for determining the question put before us and in any event there is no material on the basis

of which the test could be applied in the facts and circumstances of this case.

17. Counsel for the revenue also invited our attention to the judgment of the Maharashtra High Court in the case of Pashabhai Patel and Co. (P.)

Ltd. v. Collector of Sales Tax, Maharashtra State ([1964] 15 S.T.C. 32) and to the decision of the Madhya Pradesh High Court in the case of

M/s. Agrawal Bros. v. Commissioner of Sales Tax, Madhya Pradesh ([1965] 16 S.T.C. 860), and contended that the said two cases furnish the

correct test for determining whether the tractor in question is an ""agricultural machinery"" within the meaning of the relevant entry of the schedule.

Counsel for the assessee, on the other hand, drew our attention to the decision of the Mysore High Court in State of Mysore v. Santoomal

Kishnomal ([1962] 13 S.T.C. 313), and contended that the decision of the Mysore High Court lays down the correct test for answering the

question which has been referred to us for our opinion. The question as to which of the tests, viz., whether the test of ""principal and primary use

evolved by the Maharashtra High Court or that of ""exclusive use"" evolved by the Madhya Pradesh High Court or that of ""general use"" evolved by

the Mysore High Court in the aforesaid decisions is correct, is in our opinion, not necessary to be decided in this reference because in the said

three cases, there was no evidence to show that the tractors with which the courts were there concerned were specially designed or adapted for agricultural use and there being no such material on the record of the case, the court had to approach each case from a particular angle in order to

determine whether the tractor in question was ""agricultural machinery"". As stated above, in the present case we have ample material by reference

to which the question which has been referred to us for our opinion, can be answered and it is by reference to the said material that we propose to

answer the question referred to us in the light of the test which we have indicated at the outset in this judgment.

18. Counsel for the revenue also relied upon a decision of the Financial Commissioner (Taxation), Pepsu, in Hindson Automobiles, In re ([1955] 6

S.T.C. 660), and the decision of the Allahabad High Court in Delta Engineering Co. v. Commissioner of Sales Tax ([1963] 14 S.T.C. 515). In the

first case the question was whether a tractor was an ""agricultural implement"" and in the second case the question was whether centrifugal water

pumps were ""agricultural implements"". The decisions in both these cases turn upon the interpretation of the term ""agricultural implement"" and are

based upon the facts and circumstances of the case. In neither case there was material of the type which we have in this case to show that the

tractor or the centrifugal water pump, as the case may be, was specially designed and adapted for agricultural use and those two decisions, in our

opinion, have therefore no bearing on the question which we have to answer.

19. In the result, we answer the question referred to us for our opinion, in the affirmative; the opponent-Commissioner of Sales Tax to pay the

costs of the assessee and bear his own.

20. Reference answered in the affirmative.

