

Mehra Bros.

Vs

Joint Commercial Officer, Madras

Civil Appeal Nos. 1367-68 of 1975

(S. Ranganathan, K. Ramaswamy JJ)

14.11.1990

JUDGMENT

K. RAMASWAMY, J.:-

1. These appeals under Art. 136 arise against separate judgments dated October 15, 1974 and March 31, 1975 in Writ Petition Nos. 2106 of 1973 and 716 of 1974 respectively by a Division Bench of the Madras High Court. dismissing the writ petitions. The appellant is a registered dealer under Tamil Nadu General Sales Tax Act 1 of 1959 (for short 'the Act'). The appeals relate to the assessment years 1971-72 and 1972-73. The appellant has been carrying on business in the manufacture and sale of Auto seat covers, upholstery materials etc., in leather, plastics cloth and other materials. For the year 1971-72 his total turnover was Rs. 3,67,898.21 and the taxable turnover was Rs. 2,61,812.74. Similarly for the year 1972-73 his total turnover was Rs. 2,92,588.74 and taxable turnover at Rs. 1,31,650.05. He claimed car seat covers manufactured and supplied by him to the customers to be chargeable to sales tax at 3 1/2 per cent. The assessing authorities levied sales tax under S. 3(3) read with Item 3 of Schedule Ist of the Act at 13 percent and taxed accordingly. This was upheld on appeal; by the Asstt. Commissioner; on a further revision by the Appellate Tribunal and also by the High Court in the writ petitions. Assailing the legality thereof these appeals have been filed. Item 3 of Schedule Ist reads thus:

"Motor Vehicles, Motor Cars, Motor Taxi Cars..... all articles (excluding batteries) adapted to use generally as parts and accessories of motor vehicles."

The contention of the appellant ably argued by Shri R. P. Bhat, its learned counsel, is that car seat covers and upholstery cannot be considered to be accessories to automobiles. The levy of the tax at 13 per cent at single point rate is, therefore, illegal. According to the learned counsel it is not each and every accessory that falls under entry 3 as it stood in the Schedule Ist of the Act is taxable at 13%. Such of those accessories which would be convenient for use in the motor vehicle as a whole for an effective use of the vehicle and not as a part of such vehicle are exigible to tax at 13%. In support thereof he placed strong reliance on *Supreme Motors v. State of Karnataka* (1983) 54 STC 308; 1984 Tax LR 2908; *Commissioner, Sales Tax, U. P. v. Free India Cycle Industries* (1970) 26 STC 428 and *Shadi Cycle Industries v. Commissioner of Sales Tax, U. P.* (1971) 27 STC 56; Shri Krishnamurthy, learned counsel appearing for the respondent contended that the accessories for motor vehicle must be those that aid or an addition for convenience or use of the motor vehicle and

they may also be supplementar or secondary to any one or all the parts of the motor car even without effectiveness to the use of the entire motor vehicle. He also cited in support of his contention *Khetty Traders v. State of Madras* (1973) 32 STC 346; *State of Madras O E.A.N. Meerakasim Carnatic Seat Company* (1973) 32 STC 463; *S. M. Brothers v. Deputy Commissioner of Commercial Taxes, Hyderabad Division I, Hyderabad and others* (1 977) 39 STC 182 and *The Commissioner of Sales Tax v. Javesh (India) Agencies* (1984) 57 STC 128.

2. The question, therefore, is whether car seat covers are articles adapted generally as parts and accessories of the motor vehicle. In *Webster Comprehensive Dictionary International Vol. 1* the word 'accessory' has been defined as a thing that aids subordinately; an adjunct; appurtenance; accompaniment such items of apparel as complete an outfit, (2) aiding the principle design, or assisting subordinately the chief agent and (3) Contributory; supplemental; additional. This definition was approved by this Court in *Annpurna Carbon Industries Company v. State of Andhra Pradesh* (1976) 37 STC 378 at 381; AIR 1976 SC 1418; at p. 1421 of AIR; while examining the question whether "arc carbon" is an 'accessory' to cinema projectors or other cinematographic equipment under item 4 of Ist Schedule to Andhra Pradesh General Sales Tax Act, 1957 and laid the rule thus:

We find that the accessories used in the Schedule to describe goods which may have been manufactured for use as an aid or addition. A sense in which the word accessory is used is given in *Webster New International Dictionary* as an object or device that is not essential in itself but that adds to the beauty, convenience or effectiveness of something else. Other meanings given there are: supplementary or secondary to some thing or greater or primary importance. Any of several mechanical devices that assist in operating or controlling the tone resources of an order. The accessories are not necessarily confined to a particular machine for which they may 'serve as aids. The same item may be accessory of more than one kind of instrument. Thus this Court accepted the' meaning of the accessories as an object or device that is not essential in itself but that adds to the beauty or convenience or effectiveness of something else or is supplementary or secondary to something of greater or primary importance which assist in operating or controlling or may serve as aid are accessories. The 'arc carbon' was held to be an accessory.

3. In *Black's Law Dictionary, Fifth Edition* at p. 13 'accessory' has been defined as anything which is joined to another thing as an ornament, or to render it more perfect, or which accompanies it, or is connected with it .as an incident, or as subordinate to it, or which belongs to or with it, adjunct or accompaniment, A thing of subordinate importance. Aiding or contributing in secondary way of assisting in or contributing to as a subordinate."

4. In *State of Madras v. E.A.N. Meerakasim Carnatic Seat Company* case (supra), the question therein was Whether the cycle seat cover is an accessory to cycle exigible to tax under entry 38 of Schedule 1st of the Act. It was held that question whether the seat cover is an accessory or not cannot be decided with reference to the necessity or otherwise for such a cover for the effective use of the cycle. Seat cover is definitely an accessory or an accompaniment to the cycle seat. The assessee therein was a manufacturer of seat covers and offered them for sale just like other commodities he was dealing in. The fact whether the assessee deals in cycle or cycle parts will not decide the issue as to whether the seat covers 'sold by the assessee are accessories to the cycle. Accordingly it was held that seat covers are accessories to the cycle. In *Khetty Traders v. State of*

Madras (supra), the Division Bench held, though there is no elaborate discussion, that the seat cover of the car is certainly an accompaniment to the seat of the car but unessential for the running of the car. Once the canvass cloth has been converted into seat covers, it becomes an auto-part or accessory. Accordingly it was held that it would be exigible to sales tax under entry 3 of Schedule Ist of the Act. In *S. M. Brothers v. Dy. Commissioner of Commercial. Taxes case* (supra), the question therein also was whether car seat covers are accessories to the car and exigible to tax. The Andhra Pradesh High Court held that accessories are not necessarily confined to particular machines for which they may serve as aids. The same item may be an accessory of more than one kind of instrument. The deciding factor is that predominant or ordinary purpose as aid. It is not enough to show that the article can be put to other user also. It is its general or predominant user which determines the category in which an article will fall. It was, therefore, held that the car seat covers will also be accessories. The *Commissioner of Sales Tax v. Jayesh (India) Agencies case* (supra), the Bombay High Court also came to consider the same question, on whether car seat covers are accessories to the motor car. It was held that the article adapted for use in motor vehicles as they have been made for the purpose of being used in motor vehicles and according to the measurement of the customers' vehicles, motor car seat covers as well as other items for the use in motor car seat covers as well as other items for the use in motor car and the use thereof would certainly contribute to the beautification of the motor vehicle in which they are used. Car seat covers would add to the passengers' comfort in the motor vehicles. Accordingly it was held that car seat covers must be regarded as accessories to the motor vehicles as contemplated in clause (2) of entry 58 of the Bombay Sales Tax Act, 1959.

5. In *Supreme Motors v. State of Karnataka* case (supra), the Karnataka High Court has taken different view. It held that the car seat covers, at best could make the seat more comfortable, but do not serve as aids to the vehicle as a whole, and therefore, they must fall outside the ambit of entry 73 of the Second Schedule to the Karnataka Sales Tax Act, 1957 and was not exigible to sales tax at 13 per cent. Undoubtedly this ratio would help the appellant. The learned Judges laid emphasis thus (at page 311; (1983) 54 STC):-

"Every part is useful to the car for its effective operation likewise should be the aid of the accessories in order to fall within the said entry. The accessory to a part which has no convenience or effectiveness to be (the) entire car as such cannot in our opinion fall within entry 73". 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 has may be relevant but may not by itself be conclusive. Take for instance 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 enjoy merit 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 Indig, Cycle Industries and Shadi Cycle Industries cases (supra), 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 15, 1961 issued by the State of U. P. under Ss. 3,3-A of the U. P. Sales Tax Act (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.

6. Thus considered we hold that Car seat covers or upholstery are accessories as an addition; an adjunct; an accompaniment for comfortable use of the motor vehicles or for adding elegance to the seat. Admittedly the appellant manufactured car seat covers and upholstery for sale as an automobile part in the regular course of business. Therefore, they are exigible to sales tax at 13 per cent under entry 3-of Schedule Ist read with S. 3(3) of the Act. Therefore, we do not find any ground warranting interference. The appeals are accordingly dismissed but in the circumstances without costs.

Appeal dismissed.

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