KARNATAKA HIGH COURT

Supreme Motors

Vs.

State of Karnataka

STRP No. 42 of 81

(K. Jagannatha Shetty and S.R. Rajasekhara Murthy, JJ.)

10.08.1983

ORDER

K. Jagannatha Shetty, J.

1. This revision petition raises an important and interesting question as to whether "car seat covers" could be considered as accessories of motor vehicles within the scope of entry No. 73 of the Second Schedule to the Karnataka Sales Tax Act ("Act" called shortly).

> "Entry No. 73. Articles used generally as as parts 13 per cent" and accessories of motor vehicles.
> Note : Reduced to 12 per cent by Act No. 7 of 1981.

2. The counsel for the petitioner states that the car seat covers are accessories only of a part of the car, viz., the seats, and they, therefore, cannot be termed as accessories of motor vehicles.

3. The contention demands a close analysis but before we dissect that entry, it is necessary to state the facts of the case. They are as follows : The petitioner is a dealer registered under the Act. For the year ending 31st March, 1975, the petitioner filed a return with taxable turnover of Rs. 2,50,460 relating to the sale of car seat covers. The Assistant Commissioner of Commercial Taxes before whom the return was filed, assessed that part of the turnover at 3 1/2 per cent under section 5(1) of the Act on the ground that the seat covers are just accompaniments to the seats and they cannot be regarded as accessories of motor cars. If it is held to be an accessory of motor cars, then there is no dispute that that turnover ought to have been taxed at 13 per cent. The Deputy Commissioner of Commercial Taxes, Mangalore Division, in exercise of his suo motu revisional power under section 21 of the Act, called upon the petitioner to show cause why the turnover relating to the car seat covers should not be brought to tax at 13 per cent. In response to the said notice, the petitioner contended that the Commissioner of Commercial Taxes in his letter

No. MSR. 516/73-74 dated 13th March, 1974, had clarified that the sale of car seat covers were liable to be taxed at 3 1/2 per cent multi-point under section 5(1) of the Act plus additional tax at 2 per cent payable under section 6B and therefore it is not open to the department to tax at a higher rate. It was also contended that the car seat covers cannot fall within entry No. 73. The Deputy Commissioner however did not accept the submission and he directed the Assistant Commissioner to tax the disputed turnover at the prescribed rate under entry No. 73. Against the said order, the petitioner appealed to the Karnataka Appellate Tribunal. The Tribunal also agreed with the view taken by the Deputy Commissioner and dismissed the appeal. The Tribunal has stated that the seat covers are fitted for convenience and beauty of the motor car and therefore they are accessories of motor vehicles.

4. Entry No. 73 takes within its fold articles used generally as parts and accessories of motor vehicles. Whether they are parts or accessories, they must generally used as of motor vehicles (sic). "Generally as opposed in particular as a general rule or commonly." It must be, in other words, commonly used in motor vehicles including motor cars, cabs, motor cycles, motor scooters, motor buses, motor omnibuses, motor vans and motor lorries. Entry No. 70 gives us a variety of motor vehicles. Those parts and accessories which are generally used in such motor vehicles would fall under entry No. 73. So far as parts of motor vehicles are concerned entry No. 73 presents no problem. It covers every part of the motor vehicle.

5. But when we refer to accessories, the problem is not free from difficulty. Mr. Prasad for the petitioner submits that it is not that each and every accessory falls under entry No. 73. In the first place, according to the counsel, the accessories should be of aid or convenience at least to a class of motor vehicles if not to all types of motor vehicles. Secondly, the accessories must be of beauty, convenience or effectiveness of the vehicle as a whole and not a part of such vehicle which has no such effect. Mr. Babu for the department on the other hand contends to the contrary. He pleads as usual for "construction in its ordinary signification", and wants the meaning in its popular sense in common parlance.

6. In *Annapurna Carbon Industries Company v. State of Andhra Pradesh*[1], the Supreme Court while examining the meaning of the word "accessories" has observed :

> "We find that the term 'accessories' is used in the scheduled 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's Third New International Dictionary as follows : 'an object or device that is not essential in it self but that adds to the beauty, convenience, or effectiveness of something else.' Other meanings give there are : 'supplementary or secondary to something of greater or primary importance'; 'additional'; 'any of several mechanical devices that assist in operating or controlling the tone resources of an organ.' '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."

7. There are accessories and accessories. Some are in respect of the entire motor vehicle and some may be of use of only one or two parts of such motor vehicle. In the case of motor cars, we may take it without contradiction that windscreen, sun-shade, luggage carrier, bumper bars are accessories of motor cars since they are aid or additions for convenience or effectiveness of motor cars. But what about ash receivers, electric cigar-

[1](1976) 37 STC 378, 381 SC

lighters, steering-wheel coverings, seat covers and floor mat ? Are they not just supplementary or secondary to one of the many parts of the motor car without any effectiveness to the entire motor car ? And if so, whether the legislature intended to cover such accessories also within entry No. 73.

8. In *Commissioner, Sales Tax, U.P. v. Free India Cycle Industries*[2] the Allahabad High Court while considering the scope of the entry "bicycles, tricycles, cycle rickshaws and perambulators and parts and accessories thereof" observed :

> "....., there is not reason why seat covers of cycles should be regarded as accessories of cycles. We are, therefore, of the opinion that an article used for protection and decoration of one of the parts cannot be regarded as accessory of the vehicle"

9. In *Shadi Cycle Industries v. Commissioner of Sales Tax, U.P*[3]. the Allahabad High Court has reiterated the above view.

10. Coming nearer home, the view taken by this Court is not quite different. In *Kishindas Agencies v. The State of Mysore*[4] a Bench of this Court has to examine the scope of entry No. 72 as it then stood. It was in these terms :

> "72. Component parts of motor vehicles." In that case, the question was whether "felt washers" which are used as components in the manufacture of "micro filters" could be considered as component parts of motor vehicles. "Micro filter" is a part of motor vehicle and "felt washer" is one of the parts of the "micro filter". In that case, Govinda Bhat, C.J., speaking for the Bench observed that "felt washers" which are used as components in the manufacture of "micro filters" could not fall under entry No. 72. It was, therefore, held that a part of a part of the motor vehicle cannot be regarded as component parts of motor vehicles.

10. But the decisions of the Madras High Court are against the contentions urged for the petitioners. In *Khetty Traders v. State of Madras*[5] and *State of Madras v. E.A.N. Meerakasim Carnatic Seat Company*[6] the view taken was that upholstery items like seat covers are automobile accessories. It was observed that it is an accompaniment to the seat of the car, but unessential for the running of the car and one the canvass cloth has been converted into seat

covers, it becomes an auto-part of accessory. With respect, if we may say so, these principles are too broadly stated.

11. In *S. M. Brothers v. Deputy Commissioner of Commissioner Taxes, Hyderabad Division, Hyderabad*[7] the Andhra Pradesh High Court following the judgment of the Supreme Court in *State of Andhra Pradesh v. Sri Rama L.S. Rice Mill*[8], has observed that the seat covers are also "accessories" but we do not have the benefit of the entry in the Andhra Pradesh General Sales Tax Act which came up for consideration in that case. Therefore, that decision is neither helpful to the petitioner nor to the revenue in this case.

[2][1970] 26 STC 428 [4][1974] 33 STC 65 [6][1973] 32 STC 463
[3][1971] 27 STC 56 [5][1973] 32 STC 346 [7][1977] 39 STC 182
[8] AIR 1976 SC 1418

12. The best guide for this case, in our opinion, should be the words used by the legislature in entry No. 73 in contrast to the words used in the other entries of the Second Schedule. Here are some of such entries :

> Entry 15 : "Dictaphone and other similar apparatus for recording sound and spare parts thereof."
> Entry 18 : "Typewriters, tabulating machines, ... thereof."
> Entry 20 : "All machinery and spare parts and accessories thereof."
> Entry 22 : "X-Ray apparatus films and accessories required for use therewith."
> Entry 55 : "Cinematographic, photographic and other cameras, ... and other parts of and accessories to such cameras, projectors and enlargers and films, plates, paper and cloth required for use therewith."
> Entry 56 : "Binoculars, opera glasses, telescopes, microscopes and parts and accessories thereof."
> Entry 57 : "Gramophone of every description, records and needless, including accessories and spare parts thereof."
> Entry 57A : "Tape recorders, their parts and accessories."
> Entry 63 : "All clocks, time-pieces and watches and parts thereof."
> Entry 70 : "Motor vehicles including ... etc"
> Entry 71 : "Chassis of motor vehicles."
> Entry 73 : "Articles used generally as parts and accessories of motor vehicles."

13. It will be seen from these entries that the legislature has meticulously used the words "parts thereof", "accessories thereof", "accessories required for use therewith" in some of the entries while specifying the parts or accessories of articles for the purpose of levy under the Act. In some entries we do not find the reference to these words. The omission appears to be not accidental but deliberate and the inference is inevitable. It appears to us, when the legislature has intended to cover all parts and all accessories of an article, they had used the aforesaid words. When they had not used such words in any entry, the intention appears to be that accessory of every part was not intended to be covered. Entry No. 73 does not contain such words. Therefore,

the implied legislative direction is that that entry was not intended to encompass every accessory of every part.

14. Entry No. 73 covers "parts and accessories of motor vehicles". As with the parts, so with the accessories. Every part is useful to the car for its effective operation. Likewise should be the aid of the accessory in order to fall within the said entry. The accessory to a part which has no such convenience or effectiveness to the entire car as such cannot, in our opinion, fall within entry No. 73. The seat covers at best could make the seats more comfortable, but do not serve as aid to the vehicle as a whole, and therefore they must fall outside the ambit of the entry.

15. There is one other reason in support of our conclusion. The seat covers, particularly of motor cars, are made of different materials. Some like cloth covers, some want rexine, some like leather or velvet and some are fond of coverings with thin layer of foam. There is, therefore, no reason why these different articles should be uniformly charged at 13 per cent under entry No. 73. It would be contrary to the scheme of the Act itself. That was also perhaps the reason behind the clarification made by the Commissioner of Commercial Taxes in his letter dated 13th March, 1974, on which the assessee depended.

16. In the result, the revision petition is allowed; the orders of the Tribunal and of the Deputy Commissioner are set aside and that of the assessing authority is resorted.

17. The parties will pay and bear their own costs.

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