BOMBAY HIGH COURT

The Commissioner of Sales Tax

Vs

Jayesh (India) Agencies

(M Kania and Shah, JJ.)

19.04.1984

JUDGMENT

Kania, J.

1. This is a reference under section 61(1) of the Bombay Sales Tax Act, 1959 (referred to hereinafter as "the said Act"), wherein an interesting question as to the interpretation of the entry 58(2) of the Schedule C to the said Act as it stood at the relevant time, is involved. The reference is made at the instance of the Commissioner of Sales Tax, Maharashtra State. The question referred to us for determination in the reference is as follows :

> "Whether on a proper and correct interpretation of entry 58(2) of Schedule C of the Bombay Sales Tax Act, 1959, the Tribunal was correct in holding that the sales of (i) seat covers in Bhor Rexine Special Imperial type in bamboo style padded with foam and (ii) covers with some special type Bhor Imperial Rexine for four doors, 2 centre pillars, 2 cowl pads and 1 rear glass shelf, effected by the respondents under their bill dated 16th January, 1973, to their customers for the customer's 'Fiat' make motor vehicle, fall under entry 22 of the Schedule E and not under entry 58(2) of Schedule C to the Act ?"

2. The relevant facts are as follows :The respondents were the dealers registered under the said Act. The respondents carried on the business of making rexine seat covers and rexine covers for doors, centre pillars, etc., of motor vehicles according to the measurements of the customer's motor vehicles. In the course of the said business, the respondents made certain seat covers and covers for 4 doors, 2 centre pillars, 2 cowl pads, 1 rear glass shelf, according to the measurements of a Fiat car of one of the respondents' customers. These articles are more particularly described in the respondents' Bill No. 6644 dated 16th January, 1973, under which the said articles were sold to the said customer by the respondents. By their application dated 22nd January, 1973, made to the Deputy Commissioner of Sales Tax, the respondents requested

the Deputy Commissioner to determine the rate of tax payable on the aforesaid sale of the said articles effected under the aforesaid bill. It was contended by the respondents that the said articles were covered under the residuary entry 22 of the Schedule E to the said Act. A copy of the said bill was enclosed with the letter. The said application was transferred to the file of the Commissioner of Sales Tax. After hearing the respondents, the Commissioner held that the said articles fell under entry 58(2) of Schedule C of the said Act on the ground that they were adapted for use as parts of motor vehicles, and therefore, were liable to the levy of sales tax at 12 per cent under section 8 of the said Act. On the respondents' appeal to the Tribunal, the Tribunal allowed the appeal and held that the said articles described in the said bill were covered by entry 22 of Schedule E of the said Act and not by entry 58(2) of Schedule C. The correctness of this decision of the Tribunal is sought to be challenged in this reference.

3. Before dealing with the contentions of the parties, it will be useful to refer to the material provisions of the said Act as they stood at the relevant time. Section 8 of the said Act deals with the levy of sales tax on the goods described in Schedule C. Column No. 1 of Schedule C contains the serial numbers. Column No. 2 contains the description of the goods. Column No. 3 prescribes the rate of sales tax on the goods in question and Column No. 4 prescribes the rate of purchase tax. The description of the goods set out in Column No. 2 of entry 58 of Schedule C at the relevant time which read thus :

> "(1) Motor vehicles including motor cars, motor taxi-cabs, motor cycles, motor cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans, and motor lorries and chassis of motor vehicles but excluding tractors, whether on wheels or tracts;
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> (2) Components and spare parts of motor vehicles specified in sub-entry (1) of this entry and other articles (including rubber and other tyres and tubes and batteries) adapted for use as parts and accessories of such vehicles, not being such articles as are ordinarily also used otherwise than as such parts and accessories."

The rate of sales tax prescribed for these goods in column No. 3 was 12 paise in the rupee.

4. The submission of Mr. Thakor, the learned counsel for the applicant, was that the seat covers and other items described in the said bill fall under the description "other articles ..... adapted for use as parts and accessories of such vehicles ....." used in clause (2) of entry 58 of Schedule C. It was submitted by him that these articles were adapted for use as parts and accessories in motor vehicles and were not ordinarily used for other purposes. They were, therefore, covered by the description contained in the said entry. It was urged by him that in order to fall within the said entry, it was not necessary that the articles in question must be a part or

accessory of the vehicle itself and even an accessory of a motor vehicle part was covered by clause (2) of the said entry. It was further urged by him that for an article to be considered a motor vehicle accessory, it was not necessary that it should facilitate the working of the motor vehicle or lead to the more efficient working of the motor vehicle. It was lastly contended that taking into account the commonly known purposes for which the said articles were used they could only be regarded as accessories of motor vehicles.

5. It was, on the other hand, contended by Mr. Gaitonde that the language of clause (2) of entry 58 of Schedule C itself shows that only articles like tyres, tubes and batteries were intended to be regarded as articles adapted for use as parts or accessories of motor vehicles. It was further contended that it was only an accessory of a motor vehicle itself that was covered by the said entry and an accessory of a motor vehicle part cannot be regarded as accessory of the motor vehicle itself.

> 6. We now propose to come to certain cases cited by the parties. Before doing so, however, it would be useful to bear in mind the caution sounded by the Supreme Court in *Annapurna Carbon Industries Co. Ltd. v. State of Andhra Pradesh* . In that case, Beg J. (as he then was), who delivered the judgment of the Court observed as follows :
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> "We do not think that any useful purpose is served by multiplying cases relating to entries which are so very different and could have only a very remote bearing, if any, upon any reasoning which could be adopted to support the submission that the arc carbons, under consideration here, fell within the relevant entry No. 4 of Schedule I of the Act."

This caution has to be borne in mind when considering decisions dealing with other entries in other Acts which are couched in different language. In the case before the Supreme Court, it was held that "arc carbons" fall under entry 4 of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957, inasmuch as that entry includes "parts" as well as "accessories", which are required for use in projectors or other cinematographic equipment and "arc carbons" are mainly used for production of powerful light used in projectors in cinemas and are known as "cinema arc carbons" in the market. The fact that "arc carbons" can also be used for searchlight, signalling, stage lighting, or where powerful lighting for photography or other purposes may be required, could not detract from the classification to which the carbon arcs belong". In that case, the Supreme Court cited with approval the relevant portion of the meaning of the term "accessory" contained in Webster's Third New International Dictionary which runs as follows :

> "an object or device that is not essential in itself but that adds to the beauty, convenience, or effectiveness of something else."

In Commissioner of Sales Tax, Maharashtra State, Bombay v. L. D. Bhave and Sons[1] a Division Bench of this Court had an occasion to consider the question whether the stands on which gas stoves are kept and which were designed specially for keeping gas stoves and sold along with the gas stoves by the dealers who deal in gas stoves could be regarded as "accessories" of such stoves and it answered the question in the affirmative. We may make it clear that we have not set out above the precise question referred to the Court in that case but only the substance thereof. It was held by the Division Bench that an accessory is considered as something that is an extra or additional item, an adjunct to the main item. It may add to the performance of the main item but it can also be for more convenient use of the main item. In order to decide whether an items is an accessory or not, it has to be considered along with the main item. There can be various types of accessories and whether an item constitutes an accessory or not would depend upon how the item is considered in common parlance more than in terms of its dictionary meaning. In that case, the Division Bench cited with approval the definition of the term "accessory" contained in Murray's Oxford English Dictionary which runs as follows :

> "Coming as an accession; contributing in an additional an hence subordinate degree; additional, extra, adventitious."
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> This meaning is further explained as :
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> "An accessory thing; something contributing in a subordinate degree to a general result or effect; an adjunct or accompaniment."

The Division Bench also cited with approval the meaning of the said terms contained in Webster's Third New International Dictionary which runs as follows :

> "a thing of secondary or subordinate importance (as in achieving a purpose or an effect) : an adjunct or accompaniment ..... : an object or device that is not essential in itself but that adds to the beauty, convenience or effectiveness of something else ....."

It was held by a Division Bench of the Madras High Court in *Khetty Traders v. State of Madras*[2] that upholstery items like seat covers are automobile accessories. There is, unfortunately, no reasoning in this judgment, nor does the judgment show as to which particular entry was in question before the Division Bench. This decision was followed by the same Court in *State of Madras v. E.A.N. Meerakasim Carnatic Seat Company*[3] where it was held that a seat cover of a cycle was definitely an accessory or an accompaniment to the cycle seat and hence it could be regarded as an accessory to the cycle and was chargeable to sales tax under item 38 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959. All the aforesaid decisions were cited by Mr. Thakor. As against this, Mr. Gaitonde referred to the decision in *Commissioner of Sales*

Tax, U.P. v. Free India Cycle Industries[4] where it was held by a Division Bench of the Allahabad High Court that a rexine saddle cover is neither a part nor an accessory of the vehicle and therefore the rexine saddle covers would not fall within entry No. 34 of the notification in question therein. It was held that when the said entry spoke of "parts and accessories" it referred to parts and accessories of the vehicle. The entry did not include the accessories, if any, of the individual parts or accessories of the vehicle. The Division Bench further observed that an article used for the protection and decoration of one of the parts of the vehicle cannot be regarded as an accessory of the vehicle. Another decision to the same effect was given by the Allahabad High Court in *Shadi Cycle Industries v. Commissioner of Sales Tax, U.P*[5]. In our view, it is not necessary for us to consider the above decisions in any detail. The articles in question before us are clearly articles 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 and that is not in dispute. It is again not in dispute that the said articles were not ordinarily capable of being used or used for other purposes. The only question is whether such articles could be regarded as accessories of motor vehicles. In this regard, it is clear that the motor car seat covers as well as other covers made by the respondents were for use in motor cars and the use thereof would certainly contribute to the beautification of the motor vehicles in which they are used. It is also beyond dispute that seat covers in question would add to the passengers comfort in the motor vehicle and so also would the cowl pads. All the said articles would also in some degree help in better preservation of the motor vehicle and give a better show to the motor vehicle. In these circumstances, and keeping in mind, the principles laid down by the Supreme Court in Annapurna Carbon Industries Co. v. State of A.P. and by the Division Bench of this Court in *Commissioner of Sales Tax, Maharashtra State, Bombay v. L. D. Bhave and Sons [1981] 47 STC 318(SUPRA),* it is clear that the said articles must be regarded as accessories to the motor vehicles as contemplated in clause (2) of entry 58 of Schedule C. As we have pointed out above, the Division Bench of this High Court cited with approval the definition of the term "accessory" contained in Webster's Third New International Dictionary which would show that anything which adds to the beauty or convenience of something else could be regarded as an accessory of that articles.

7. We may make it clear that we express no opinion on the controversy as to whether an accessory to a part or accessory of the main article could be itself regarded as an accessory of the main article, because in the view which we have taken, the articles in question could fairly be regarded as accessories to the motor vehicles themselves.

8. In the result, we answer the question referred to us in the negative and against the respondents-dealer. Looking to all the facts of the case, there will be no order as to the costs.

Cases Referred.

1[1981] 47 STC 318
2[1973] 32 STC 346
3[1973] 32 STC 463
4[1970] 26 STC 428
5[1971] 27 STC 56