

(1994) 04 AHC CK 0036

Allahabad High Court (Lucknow Bench)

Case No: Writ Petition No's. 3675 and 11932 of 1990 and 774 (MB) of 1994

Motor Industries Company Ltd.

APPELLANT

Vs

State of U.P. and Another

RESPONDENT

Date of Decision: April 11, 1994

Citation: (1994) 95 STC 490

Hon'ble Judges: S.H.A. Raza, J; B.K. Singh, J

Bench: Division Bench

Advocate: Bharatji Agrawal, D.B. Bhargava and S.M.K. Chaudhary, for the Appellant; The Standing Counsel, for the Respondent

Final Decision: Allowed

Judgement

S.H.A. Raza, J.

The petitioners by means of the aforesaid writ petitions have prayed that a writ in the nature of mandamus or prohibition be issued against the opposite parties to forebear them from assessing, imposing or realising any sales tax from the petitioners in excess of 6 per cent on the turnover of fuel injection equipments. They have also prayed for the quashing of the order dated March 24, 1990, for the assessment year 1985-86 contained in annexure 3, in so far as it relates to the imposition of sales tax on the fuel injection equipments in excess of 6 per cent. They have also prayed for issuance of a writ prohibiting the opposite party No. 2 from assessing the petitioner for the assessment years 1986-87 to 1990-91 on the turnover of fuel injection equipments in excess of 6 per cent, or realising any tax or making recovery of taxes in pursuance of the allotment order dated March 24, 1990, contained in annexure 3.

2. In short the contention of the petitioner is that fuel injection equipment is required for the manufacture of diesel engine and is not a part of the motor vehicle specified in entry 43(1) of the Schedule to the Act as there exists no notification or entry in the Schedule regarding the diesel engine ; fuel injection equipments are taxable under entry 38 of the Schedule and also the notification dated September 7,

1981, which provides for spare parts of the machinery, etc.

3. The Assistant Commissioner (Assessment), Sales Tax, in his assessment order has held that since the petitioner has shown in the catalogue published by it that fuel injection equipments have been sold by Ashok Leylands, who are manufacturers of Leyland trucks, hence these are taxable as motor parts at the rate of 10 per cent and not at the rate of 6 per cent as machinery parts. According to the assessing authority as the fuel injection equipment is used by the various purchasers who are manufacturing trucks, etc., it does become a part of the motor vehicles inasmuch as these purchasers are using these fuel injection equipments in the manufacture of diesel engines, which may or may not be ultimately used in the motor vehicles.

4. It was submitted on behalf of the petitioner that the fuel injection equipments can be treated as component part of the diesel engine, as it is not possible to conceive of a diesel engine without fuel injection equipment and fuel injection equipment cannot be treated as a part of the motor vehicles and any part which goes into the manufacture of the diesel engine can only be treated as part of motor vehicles, if such diesel engine is used in a motor vehicle. The petitioners further submitted that as the price list mentioned in the catalogue is concerned, it only refers to the various types of diesel engines manufactured by the different customers of. the petitioners and the Assistant Commissioner (Assessment) has committed an error of law apparent on the face of the record in relying upon the price catalogue for treating the fuel injection equipment as a part of the motor vehicle. The fuel injection equipment is nothing but a part of the diesel engine and not notified by any notification and is machinery which is not mentioned under any other entry of the Schedule. The word "part" means an integral portion essentially belonging to the main equipment in which it is used, Since the fuel injection equipment manufactured and sold by the petitioners is a part of diesel engine and is covered by entry 38 of the Schedule and also by the aforesaid notification dated September 7, 1981, hence such an item is liable to be taxed at the rate of 6 per cent and not under entry "component part of the motor vehicle" under entry 43(2) of the Schedule. Thus, the short question before this Court is to determine as to whether the fuel injection equipment is liable to be taxed at the rate of 6 per cent or is liable to be taxed under entry "component part of the motor vehicle" under entry 43(2) of the Schedule at the rate of 10 per cent.

5. In the case of COMMISSIONER OF Income Tax, MADRAS Vs. MIR MOHAMMAD ALI, ARUNA MILLS LTD. : INTERVENER., a three Judge Bench of the honourable Supreme Court held as under :

"What then is the test for determining whether a mechanical contrivance is machinery for the purposes of second paragraph of Clause (vi) and Clause (via) ? The Privy Council in the case of Corporation of Calcutta v. Chairman, Cossipore and Chitpore Municipality ILR (1922) 49 Cal 190 (PC) hazarded the following definition of "machinery".

"The word "machinery" when used in ordinary language *prima facie*, means some mechanical contrivances which, by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result."

They had already observed that the word "machinery" must mean something more than a collection of ordinary tools. The Privy Council case was not a tax case but *prima facie* the ordinary meaning of the word "machinery"--and the word "machinery" is an ordinary and not a technical word--must, unless there is something in the context, prevail in the Indian Income Tax Act also.

According to the above definition, a diesel engine is clearly "machinery". Indeed, Rule 8 of the Income Tax Rules treats aero-engines separately from aircraft. It is true that this rule cannot be used to interpret the clauses in the Act but it does show that components of an aircraft, which are machinery, can be treated separately."

6. In the case of *Agarwala Brothers v, Commissioner of Sales Tax* [1969] 23 STC 306 a Division Bench of this Court observed :

".....At the instance of the petitioner this reference has been made for the opinion of this Court on the following question :

"Whether diesel engines under these circumstances are to be regarded as component parts of motor vehicles so as to be covered by item No. 1 of the Notification No. 369/X-923-48 dated July 1, 1948, as aforesaid chargeable u/s 3A or whether these diesel engines are unclassified items chargeable u/s 3 of the Act."

Now, what we are concerned with in this case are the particular diesel engines sold by the petitioner. We are-not concerned with diesel engines which are so constituted or adapted already that they are ready for use in motor vehicles. Admittedly, the diesel engines sold by the petitioner could not be used for driving motor vehicles unless they were changed and converted to such purpose. For that, conversion kits were required. It was with the assistance of conversion kits that they were suitably converted or adapted for the purpose of driving motor vehicles. Apparently, in their unchanged or original condition they could not be used for that purpose. It is also not shown what is the degree of conversion which was necessary in order to make the diesel engines sold by the petitioner capable of use for driving motor vehicles. There is a complete absence of material in that regard. The Judge (Revisions) has expressed the view that diesel engines are ordinarily used in motors and motor lorries. That may be so, but the question here is whether the diesel engine sold by the petitioner was capable of use in a motor vehicle and was a component part of a motor vehicle. In *Commissioner of Sales Tax v. Pritam Singh* (Sales Tax Reference No. 486 of 1965 decided by this Bench on August 6, 1968) [1968] 22 STC 414, we held that an article is a component of another when it forms a

constituent part of that other and is essential for completing it. That presumes necessarily that the article as such must in its condition and functioning be capable of use in that other. The Judge (Appeals) has held that the diesel engines sold by the petitioner could ordinarily be used for other purposes, and that it was with the assistance of the conversion kits that they could be used in motor vehicles. This aspect of the matter has not been considered by the Judge (Revisions).

In our judgment, the diesel engines sold by the petitioner cannot be said to be components of motor vehicles. We, therefore, answer the question referred in the negative. There is no order as to costs."

7. In the case of Ghaziabad Engineering Co, (P.) Ltd. v. Commissioner of Sates Tax [1991] 80 STC 243 a Division Bench of the Delhi High Court held as under :

"A fuel injection pump is neither an accessory nor a spare part of motor vehicles. It is only a part or a component of a diesel engine. It has no independent use or utility in a motor vehicle without its being attached to an engine.

Therefore, for the years 1966-67 and 1967-68 fuel injection pumps and spare parts thereof are taxable at 5 per cent under the Bengal Finance (Sales Tax) Act, 1941 (as extended to the Union Territory of Delhi) and at 1 per cent under the Central Sales Tax Act, 1956, as general machinery, and not at 10 per cent as spare parts of motor vehicles under entry 1 of the First Schedule to the Bengal Finance (Sales Tax) Act, or at 3 per cent under the Central Sales Tax Act."

8. In view of the aforesaid decision it can be safely said that the fuel injection equipment is only a part or component of diesel engine. It has no independent use or utility in a motor vehicle without being attached to the engine and it is neither an accessory nor a spare part of the motor vehicle, hence it can only be taxed at the rate of 6 per cent and not at the rate of 10 per cent under entry 43(2) of the Schedule.

9. This aspect of the matter has been admitted by the opposite parties in paragraph 11 of the counter-affidavit where it has been admitted that fuel injection equipment is a part of diesel engine and diesel engine is not specified in any notifications issued under U.P. Sales Tax Act, but, however, it was denied that being so fuel injection equipment is taxable at the rate of 6 per cent under entry 38 of Notification No. 5784 dated September 7, 1981. It is submitted that as the fuel injection equipment is used in trucks, matadors, jeep, cars, etc., which are run by diesel, the fuel injection equipment is taxable at 10 per cent under entry 43(2) of Notification No. 5784 dated September 7, 1981.

10 .In view of the fact that the opposite parties have admitted in the counter-affidavit that fuel injection equipment is a component of diesel engine ; it has not been specified under any of the notifications issued under the U.P. Sales Tax Act, it cannot be subjected for purposes of sales tax at the rate of 10 per cent. It has

been rightly indicated by the Delhi High Court that the expression "spare parts of motor vehicles" would appear to be those types of spare parts which are used directly in the motor vehicles. The spare part, when fitted in a motor vehicle, should have its own use and utility. The fuel engine pump and its parts is an integral and necessary part of a diesel engine. Without the fuel pump the diesel engine cannot function and the fuel pump is of little value to a motor vehicle without a diesel engine.

11. The provisions of sales tax and various notifications and the Schedule should be strictly construed because they seek to levy sales tax. It was rightly held in the aforesaid case that if there be any ambiguity and doubt the interpretation which favours the assessee must be given.

12. In view of the aforesaid position we are of the view that the fuel injection equipment which is a spare part of the diesel engine cannot be regarded as a spare part of the motor vehicle merely because a diesel engine is also fitted in the motor vehicle.

13. In view of what has been indicated hereinabove the writ petitions succeed and are allowed. A writ in the nature of mandamus is issued prohibiting the respondents from assessing any sales tax from the petitioners in excess of 6 per cent on the turnover of fuel injection equipments. A writ in the nature of certiorari is issued quashing the order dated March 24, 1990 (contained in annexure 3) to writ petition No. 3675 of 1990. A writ in the nature of mandamus is further issued restraining the respondents from assessing the petitioners for various years prayed for in the writ petitions on the turnover of fuel injection equipments in excess of 6 per cent: No order is made as to costs.