

(1977) 01 BOM CK 0024

Bombay High Court

Case No: Sales Tax Reference No. 49 of 1972

Commissioner of Sales Tax

APPELLANT

Vs

Godrej and Boyce Mfg. Co. Pvt.
Ltd.

RESPONDENT

Date of Decision: Jan. 10, 1977

Acts Referred:

- Bombay Sales Tax Act, 1959 - Section 52, 61(1)

Citation: (1977) 39 STC 418

Hon'ble Judges: M.H. Kania, J; D.P. Madon, J

Bench: Division Bench

Judgement

Kania, J.

This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act"), made at the instance of the Commissioner of Sales Tax. The question referred to us for our consideration is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in the holding that the electric powered fork-lift truck sold by the respondent falls under entry 22 of Schedule E and not under entry 58 of Schedule C to the Bombay Sales Tax Act, 1959 ?"

2. The facts giving rise to this question can be very briefly stated. The respondent made an application dated 10th July, 1965, to the applicant, the Commissioner of Sales tax, u/s 52 of the said Act requesting him to determine the entry under which the sale of an electric powered fork-lift truck, made by the respondent under their sale memo No. CLR 38 dated 6th January, 1965, would fall. The contention of the respondent-company was that the fork-lift truck sold by them would fall under the residuary entry, viz., entry 22 of schedule E to the said Act. The Commissioner, however, came to the conclusion that the fork-lift truck would fall within entry 58 of Schedule C to the said Act. The respondent then appealed to the Sales Tax Tribunal,

which took the view that the fork-lift truck was not a truck in the sense in which they understood it and that the vehicles enumerated in entry 58 of Schedule C were vehicles meant for long distance transport. It was held by the Tribunal that the said fork-lift truck sold by the respondent did not fall within the purview of entry 58 of Schedule C and, as there was no specific entry under which it would fall, it was held that it was covered by the residuary entry 22 of Schedule E to the said Act. It is the correctness of this conclusion which is sought to be tested by way of the question raised before us.

3. Before going into the contentions urged before us it might be useful to set out the relevant portion of entry 58 of Schedule C to the said Act, as it stood at the material time, Sub-entry (1) of entry 58 read as follows :

"(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."

4. It may be mentioned here that the rest of the entry is admittedly not of any relevance for the determination of the question raised before us. The question which we have really to consider is whether the said fork-lift truck could be considered to be a motor vehicle as contemplated in the aforesaid entry. In this connection, it has been pointed out by the Tribunal that the materials on record, viz., the brochures tendered by the respondent, show that, although the said fork-lift truck carries goods for stacking, the distance covered by it is very limited and does not extend beyond the premises of the factory where the goods are manufactured. It is further pointed out by the Tribunal that in the case of a fork-lift truck the emphasis is on stacking which economies space, whereas in the case of a motor vehicle the emphasis is on the distance over which the goods are carried. It has also been pointed out by the Tribunal that in common parlance a truck is taken to mean a motor lorry, but what is of the essence in both the types of vehicles is that they are run on the road over long distances for transporting goods. In our opinion, the reasoning of the Tribunal is substantially correct. In the case of a motor vehicle, the main or the primary purpose of the vehicle is either to transport persons or goods over a sizable distance laterally or horizontally and a contrivance which is used primarily for stacking goods, viz., for moving them vertically for the purpose of stacking, cannot be regarded as a motor vehicle for the purpose of entry 58. This conclusion is borne out by the extremely limited speed at which the fork-lift truck is shown to be capable of travelling according to the brochures on record. This would itself indicate that the primary purpose of this contrivance is not to transport goods from place to place but to stack them with a view to economies the space. We are, to a certain extent, supported in our view by the decision of a Division Bench of this Court in *Commissioner of Sales Tax v. Voltas Limited* [1968] 22 S.T.C. 185, where it was held that a crawler-mounted gasoline-operated crane is not a motor vehicle

within the meaning of entry 58 of Schedule C to the said Act. It was held that essentially, it is a crane operated by use of gasoline and is mounted on a crawler. That the crawler is propelled by a motor is undoubtedly the feature of the machine, but that by itself would not make it a motor vehicle in the sense in which entry 58 has to be understood. It appears to us that, in a sense, a fork-lift truck of the type in question before us can be regarded as a sort of crane which is used to move goods vertically with a view to stack them.

5. As indicated above, in our view, the fork-lift truck cannot fall within entry 58 of Schedule C to the said Act. It is common ground that if it is not covered by this entry, it must fall within the residuary entry 22 of Schedule E to the said Act.

6. In the result, we answer the question referred to us in the affirmative. The applicant to pay to the respondent the costs of this reference fixed at Rs. 300.

7. Reference answered in the affirmative.