THE HON'BLE SRI JUSTICE C.V.NAGARJUNA REDDY
AND
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM

T.R.C.Nos. 141, 142, 149, 156 & 157 of 2002

DATE: 29th DECEMBER 2017

Between:
M/S. Automotive Manufactures Ltd.,
Hyderabad.

… Appellant

AND

Commercial Taxes Department & 2 Others

… Respondents

Counsel for the Appellant : Sri Dwarakanath

Counsel for the respondent : Special Government Pleader for Taxes (TG)

THE COURT MADE THE FOLLOWING:

COMMON ORDER: *(per Hon'ble Sri Justice Challa Kodanda Ram)*

These Revisions have arisen out of the common order dated 26.04.2002 passed by the Sales Tax Appellate Tribunal in T.A.Nos. 714 of 1998, 110, 111, 112 and 113 of 1999 raising the following questions of law:

(a) Whether the Tribunal was justified in not considering that Auto Track Chassis and Auto Trailer are two independent vehicles and cannot be treated as one 5 wheeler vehicle for the purpose of imposing tax by denying the benefit of concessional rate of tax of 4% on the Auto Track which is under G.O.Ms.No. 130 dated 14.02.1989 as well as Entry 50 of the I Schedule so far as the Trailer is concerned?

(b) Whether Tribunal below was justified in ignoring that the Revisional Order for the year 1989-90 purporting to be dated 31.03.1998 served on the petitioner on 23.09.19098 is not barred by time?

(c) Whether Tribunal below was not justified in considering Auto Track chassis as a separate Unit when it has been sold by the Manufacturer to the petitioner under a separate invoice with separate engine and chassis number and excise gate pass?

(d) Whether the Tribunal below was justified in refusing to treat the Auto Track Trailer as a separate vehicle even as per the dictionary meaning and whether it has not erred in assuming that what is sold by the petitioner is a 5-wheeler vehicle rather tan two independent vehicles having distinct identity?

The petitioner, a dealer registered under the A.P.G.S.T. Act, 1957 (for short, 'the Act') is engaged in sale of various types of motor vehicles and their accessories. The case of the

petitioner is that the tractor of three wheels attached with a trailor of two wheels cannot be termed as a 'five-wheeler'. During the relevant assessment periods 1989-90 to 1993-94, the petitioner claimed the rate of tax at 4% under G.O. Ms. No. 130, dated 14.02.1989 for the sale of both three-wheeled auto track and two-wheeled trailor. The Assessing Officer accepted the petitioner's returns. However, the Deputy Commissioner revised the assessment order and brought to tax the disputed turnover at a higher rate of 10%, on the ground that three-wheeled auto track and two-wheeled trailor constitute only one vehicle and they are taxable as per Entry 1 of Schedule-I. Assailing the same, the petitioner preferred Appeals to Tribunal. By the common order dated 26.4.2002, the Tribunal dismissed all the Appeals holding that the disputed turnovers relating to the sale of auto trailors by the petitioner are not covered by G.O.Ms. No. 130 and consequently, they are not entitled to the benefit of concessional rate of tax at 4%.

In all the Revisions, as the common questions of law arise, based on the identical facts, they are clubbed together and are being disposed of by a common order.

Though four questions of law have been raised, in these Revisions, principally, the issue, which falls for consideration, is 'in the facts of the present case, whether the sales undertaken by the petitioner of auto track (for convenience sake, referred to as three-wheeled auto track) and two-wheeled trailor can be considered as a five-wheeled motor vehicle, as described under Item 1 of the Schedule to the Act and thus, not entitled to be taxed at the rates notified in G.O.Ms.No. 130, dated 14.02.1989'. If the answer to this question were to be negative, the point that arises for consideration is at what rate, tax can be levied on the sales of auto track and trailor.

Sri S. Dwarakanath, learned counsel appearing on behalf of the assessee, diligently taking this Court through the various material filed before the Tribunal, particularly, the digital photographs of the auto track and the trailor, would contend that auto track and trailor are two independent bodies as the auto track is capable of being put to use for different purposes, i.e. for constructing body on the same, for utilising the same as food dispensary unit, auto carriage for transporting passengers, auto carrying various material and other varied uses, depending on the construction of the body which is permissible under the

Motor Vehicles Act. The learned counsel also emphasises that there is no compulsion for a purchaser to purchase the two-wheeled trailer, which is an independent unit and also detachable from the main auto unit, and in those circumstances, notwithstanding the fact that the petitioner had sold both auto track as well as trailor under a single invoice, they do not fit into the definition of a ' five-wheeled motor vehicle', sale of which satisfies the description in Schedule I of the A.P.G.S.T. Act., to attract the rate of tax as specified therein. The learned counsel would, on the other hand, assert that the auto track being a detachable and an independent unit, would squarely qualify to be taxed as per the rates notified in terms of G.O.Ms.No. 130, dated 14.02.1989. He would further contend that both the authorities below failed to appreciate that the auto track can independently be used and it is ultimately, the choice of the purchaser, in a given case, to purchase a trailor and in any event, the user test which is applied by the authorities below is not relevant as held by the Supreme Court in ***Mukesh Kumar Agarwal & Co. v. State of Madhya Pradesh***[1]***, Commissioner of Central Excise v. Carrier***

[1] (1988) SCC 232

Aircon Ltd.[2]***, Indian Aluminium Cables Ltd. V. Union of India***[3] ***and State of Haryana v. Dalmia Dadri Cement Limited***[4]. He would further submit that as a matter of fact, the manufacturer had sold the same to the distributor ie. the petitioner as two independent units and billed them separately which also would go to show that the auto track and trailor are two independent units and merely because the dealer sells the same in a single invoice, that, by itself, cannot justify the same being treated as a five-wheeler, to be taxed at a higher rate, denying the benefit under G.O.Ms.No. 130.

On the contra, Sri J. Anil Kumar and Sri M. Govind Reddy, learned Senior Standing Counsel appearing on behalf of the respondent State, would contend that G.O.Ms.No. 130, dated 14.02.1989, which was issued in exercise of the powers vested under Section 9 of the Act is required to be construed strictly as the said provision empowers the State Government to make an exemption or reduction in rate of any tax or interest payable, deviating from the higher rate of tax which was notified in terms of Item I of Schedule I of the Act. They would also further contend that the dealer had sold the auto

[2] (2005) 11 SCC 421
[3] (1985) 3 SCC 284
[4] (1987) SCC Suppl. 679

unit along with the trailor and in those circumstances, the authorities are justified in denying the benefit under G.O.Ms.No. 130 and bringing the sale item as a motor vehicle falling within the description of Item I of Schedule I. The question of charging the dealer at the concessional rate is subject to satisfying the conditions laid down in the G.O., in absolute and strict sense and there cannot be any instance to extend the benefits granting exemption, before the dealer establishes that it is eligible to be taxed at the concessional rate. In the facts of the present case, the authorities found, as a matter of fact, that what has been sold is a five-wheeled motor vehicles and hence, they are not entitled to be taxed at a concessional rate, in terms of G.O.Ms. No. 130.

Both the learned Standing Counsel have placed reliance on the judgment of the Supreme Court in ***Collector of Central Excise v. Parle Exports (P) Limited***[5]**,** wherein the decisions rendered in ***State Level Committee v. M/s Morgardshammar India Ltd.*** (1996 AIR 524) and ***Novopan India Limited, Hyderabad v. Collector of Central Excise and Customs*** (1994 Suppl. (3) SCC 606), have been relied on,

[5] 1989 AIR 644

to support the proposition that while interpreting the exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed, however, it must be borne in mind that absurd results of construction should be avoided. The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Further, the principle that in case of ambiguity, the statute should be construed in favour of the assessee assuming that the said principle is good and sound - does not apply to the construction of an exception or an exempting provision and they have to be construed strictly. A person invoking an exception or an exemption provision to relieve him of the tax liability must establish clearly that he is covered by the said provision. In case of doubt or ambiguity, benefit of it must go to the State.

The sum and substance of the contentions of both the learned Standing Counsel is that the petitioner is not entitled to concessional rate of 4% in terms of G.O., as it does not satisfy the conditions laid down therein.

Having considered the respective submissions, we are of the opinion that the matter lies in a narrow compass. The facts, as submitted before us, leave us in no manner of doubt that a three-wheeled auto track can be put to multiple uses, independent of the trailor. The auto track and the trailor can be sold independently and there is no compulsion that a buyer of one must buy the other. The fact that auto track and trailor are two independent units is evident from the very fact that the manufacturer itself is billing the same to the dealer as two independent units. In those circumstances, we are satisfied that both the units are independent and they can exist independent of the other and can be sold separately.

The question that at what rate, the units, which have been sold, are to be taxed, can be considered with reference to the description of the Entries in Schedule I and the addition of a supplemental Entry by virtue of G.O.Ms.No. 130, dated 14.02.1989. To appreciate this, one may notice Entry I of Schedule I and the description of the vehicle brought in by G.O.Ms. No. 130.

FIRST SCHEDULE

(Goods in respect of which single point tax is leviable under Section 5)

Entry 1 & Entry 50 Extracted herein below.

Sl.No.	Description of Goods	Point of levy	Rate of Tax	Effective From

(1)	(2)	(3)	(4)	(5)
1.	Motor vehicles, including motor cars, motor taxi-cabs, motor cycles and motor cycle combinations, motor scooters, motorettes, motor omnibuses, motor vans, motor lorries, chassis of motor vehicles, bodies built on chassis of motor vehicles belonging to others (on the turnover relating to bodies), component parts of motor parts of motor vehicles, all varieties of trailers, by whatever name known, and articles (excluding batteries) adapted for use generally as parts and accessories of motor vehicles and trailers, including seat covers (1001)	At the point of first sale in the State	10 paise in the rupee 16 -do-	1.8.1986 1.4.1995
50	Bull dozers, tractors and parts and accessories thereof including trailers and parts and accessories of tractor trailers and tyres and tubes made of rubber or other material (1050)	At the point of first sale in the State	12 paise in the rupee	1.4.1995

G.O.Ms.No.130 dtd 14-02-1989 is as follows:

In exercise of powers conferred by sub-section (1) of sec-9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957), the governor of Andhra Pradesh hereby directs that the tax leviable under clause (a) of sub-section (2) of section 5 of the said Act in respect of goods mentioned in column (2) thereof with effect from 15th February, 1989.

	Item Number in the First schedule and Description of Goods	Rate of Tax
1.	a) Motor cars, motor taxi-cabs, (b) Jeeps, (c) motor cycles and motor cycle combinations, (d) motorettes, motor omnibuses (e) motor vans, (f) motor lorries, (g) three wheelers, Tempos and Autorickshaws (h) chasis of motor vehicles.	4 Paise in the Rupee

A perusal of Entry I of Schedule I does not indicate there being any description with respect to number of wheels and in general sense and in normal circumstances, both the auto track as well as the trailor are required to be taxed under Item I of Schedule I. However, G.O.Ms. No. 130 which was issued in exercise of the power under Section 9 of the APGST Act, created a special category of motor vehicles under which three-wheelers, tempos and auto rickshaws are required to be taxed at a concessional rate of 4% , as against 10%, in terms of Entry I of Schedule I. In G.O.Ms. No. 130, there is no mention of trailor, whereas in Entry I, all varieties of trailers were mentioned specifically. Applying the well-settled principle of interpretation of Entries in a Schedule, particularly, under Taxing Statues, it is possible to resolve the dispute in the present case by applying the concessional rate of tax to the auto track which, admittedly, in all respects, fits into the description of 'three-wheeled motor vehicle' satisfying the description in G.O.Ms. No. 130 and 'two-wheeled trailer' squarely falling within Entry I of Schedule I. This view of ours is fortified by the judgment of the Division Bench of this Court in ***State of***

Andhra Pradesh v. Dunlop Industrial Limited*[6]*, wherein this Court had affirmed the view of the Tribunal that a trailor is not an inseparable or inherent part of a tractor;

> "9. It is relevant to mention that at the relevant time the trailers and their parts and accessories were not included in entry 50 of the first Schedule. A trailer is not an inseparable or inherent part or component of a tractor. A person purchasing a tractor may or may not purchase a trailer. A tractor does not necessarily include a trailer. Therefore, it is not possible to hold that even before 17th January, 1978, the trailers and their parts and accessories fell within entry 50 of the First Schedule. If they did not fall within entry 50 of the First Schedule, they naturally fell under entry 2(xiv) of the Third Schedule. This is the opinion expressed by the Tribunal and we agree with it."

The above decision gives a clear indication that the language employed in the Entry is relevant rather than the purpose for which it is put to use. Similar to the effect is the judgment cited by the learned counsel for the petitioner in ***Mukesh Kumar Agarwal's*** case (cited supra). It may also be noted that in ***Indian Aluminium Cables Limited's*** case (cited supra), while dealing with the Aluminium wire (technically termed as Properzi rods), the Supreme Court held as under:

> "To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that produce under a fiscal

[6] (1989) 75 STC 44

> schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff."

We may also notice that in the context of deciding the controversy as to whether the dry batteries (dry cells) and storage batteries are same products, making reference to various material, both scientific as well as technical data, this Court in ***Indo National Limited. V. State of Andhra Pradesh***[7]**,** held as under:

> "We find it not possible to agree with the learned Government Pleader that while construing the entries in the First Schedule to the Andhra Pradesh General Sales Tax Act, reference to scientific/technical dictionaries, or ordinary dictionaries is not permissible. While construing these entries, our object is not to find out their scientific/technical/literary meanings; they are being looked to merely as aids to find out the correct meaning, scope and ambit of a given entry. It is well-settled that the words in these entries have to be understood and interpreted as they are understood in commercial parlance, i.e. as a man normally dealing with these goods, would understand them. While construing entry 137 we have not only referred to the scientific/technical/literary meaning, but we have also referred to the Manual issued by the Central Excise Department of the Government of India itself, which treats dry-batteries (dry-cells) and storage batteries as different, goods, though falling under the same tariff item. The Central Government publications also make it clear that dry-batteries and storage batteries are entirely different and distinct goods……"
>
> (emphasis supplied)

[7] (1987) 64 STC 382

As stated supra, in the present case, the manufacturer itself is treating auto track and trailor as two separate units, notwithstanding the fact that the dealer is selling them together under a single invoice. In the light of the above, we hold that three-wheeler auto track is eligible to be taxed at the rate specified in G.O.Ms.No. 130 and the trailor, squarely falling within Entry I of Schedule I, is taxable at the rate specified therein. Hence, the decision of the authorities below taxing the sales of the petitioner treating the sale of auto track with trailor under Entry I of Schedule I, is erroneous. The issue involved in all the questions of law is answered accordingly.

In the result, all the Revisions are allowed directing the respondents to revise the assessments in terms of this judgment. No costs.

C.V. NAGARJUNA REDDY, J

CHALLA KODANDA RAM, J

December, 2017

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