

PETITIONER:
M/S. DEWAN ENTERPRISES

Vs.

RESPONDENT:
COMMISSIONER OF SALES TAX, U.P.

DATE OF JUDGMENT: 24/04/1996

BENCH:
KIRPAL B.N. (J)
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KIRPAL B.N. (J)
VERMA, JAGDISH SARAN (J)
G.B. PATTANAIAK (J)

CITATION:
1996 AIR 2029 1996 SCALE (3)789

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T

KIRPAL, J.

The appellant carries on the business of manufacturing and sale of rims of cycles. The Assessing Officer, under the Uttar Pradesh Sales Tax Act, made provisional assessment treating the rims as cycle parts and taxed the same under the said Act @ 8%. Before the Assessing Officer, the contention of the appellant was that cycle rims were declared goods under clause (xiv) of sub-section (iv) of Section 14 of the Central Sales Tax Act (hereinafter referred to as 'the Act') and according to Section 15 of the Act the tax payable under the said law in respect of any sale or purchase of declared goods inside the State could not exceed 4% of the sale or purchase price thereof and such tax shall not be levied at more than one stage. The Assessing Officer, however, made provisional assessments under the U.P. Sales Tax Act treating these rims as cycle parts @ 8% separately for each month from June, 1990 to March, 1991. The appellant then filed appeals before the Deputy Commissioner (Appeals) who accepted the appellant's contention and come to the conclusion that the rims manufactured by the appellant could not be taxed at the rate higher than 4%. The respondent then filed appeal to the Tribunal which reversed the decision of the Deputy Commissioner (Appeals) and restored the decision of the Assessing Officer.

The appellant then filed revision petitions before the Allahabad High Court. In support of its contention that the rim manufactured by it was a declared good, it placed reliance on a decision of a Single Judge of the Rajasthan High Court in the case of Assistant Commercial Taxes Officer Vs. Ashok Tyres 1988 (68) STC 123 wherein it was held that the cycle rim came within the ambit of 'wheel' and was a declared good. The Single Judge of the Allahabad High Court from which the appeal arises, while dissenting from the

aforesaid judgment of the Rajasthan High Court, came to the conclusion that a rim and a wheel are different things and a rim could become a wheel only using spokes, hub and/or other things. The rim manufactured by the appellant, it was held, was not capable of revolving by itself and, therefore, it could not be called a wheel. The High Court, therefore, concluded that cycle rim was not commercially known as 'wheel' and, therefore, it could be taxed under the U.P. Sales Tax Act @ 8% and it was not a declared good.

The only question which arises for consideration in these appeals is whether a cycle rim is a declared good or not. Sub-clause (xiv) of sub-Section (iv) of Section 14 of the Act reads as follows:

"It is hereby declared that the following goods are of special importance in inter-State trade or commerce:

(iv) iron and steel, that is to say,-

(xiv) wheels, tyres, axles and wheel sets".

It is not in dispute that according to Section 15 of the Act in respect of the declared goods which are enumerated in Section 14 of the Act, the tax on their sale or purchase inside the State cannot exceed 4%.

Section 14 of the Act, as is evident, specifies the goods which are of special importance in interstate or commerce. Sub-section (iv) enumerates, in different sub-clauses, the different types of iron and steel products which are declared goods. Sub-clause (xiv) specifies "wheels, tyres, axles and wheel sets". The rim of a cycle, manufactured by the appellant, is admittedly a part of a wheel. Without a rim the other parts cannot be regarded as a wheel. More over the entry has to be read as a whole and the meaning also assigned to the words "wheel sets" in the said entry and a rim which is admittedly a part of a wheel set would fall in the said entry.

In ASHOK TYRES CASE (SUPRA), this very entry came up for consideration before the Rajasthan High Court where the Tribunal held that the rims and axles fell within the ambit of entry [xiv] of clause [iv] of Section 14 of the Act. While dismissing the petition filed by the Assistant Commercial Taxes Officer, it was observed as follows:

"So far as the 'axles' are concerned the same are expressly mentioned in the above entry (xiv). For this reason the Tribunal's decision relating to axles cannot be challenged. The question is only of the "rims" used in wheels of cycles and other vehicles. This being so, the Tribunal's view that rims are an intergral component or part of a wheel or at least a wheel set, cannot be treated as unjustified. There is no other competing entry. This being so, if the above quoted entry (xiv) is wide enough to include rims within its ambit, then the applicability of the residuary entry would automatically been excluded. Taking into account the ordinary meaning of "wheel" in the manner in which it is understood amongst persons

dealing with the same, it is reasonable to hold that rim is included within the expression "wheel" in the above entry, particularly when there is no other competing specific entry for it. This being a plausible view to take a construction which favours the tax-payer must be preferred."

The aforesaid reasoning of the Rajasthan High Court correctly interprets the said entry and we affirm the same. Applying the test of common parlance, a rim which is admittedly round and an essential part of the wheel of the cycle would come within the said entry [xiv] and being a declared good the same cannot be taxed at the rate in excess of 4%. The view taken by the Single Judge of the Allahabad High Court in the judgment under appeal gives a very narrow meaning to the said entry and cannot be upheld.

For the aforesaid reasons, the appeal is allowed, the judgment of the High Court is set-aside and it is held that the appellant is only entitled to be taxed @ 4% on the sale price of the cycle rims. The appellant will also be entitled to costs.

