

M/S. UNITED COPIEX (INDIA) PVT. LTD.

v.

COMMISSIONER OF SALES TAX

MARCH 25, 1996

[B.P. JEEVAN REDDY AND SUHAS C. SEN, JJ.]

*U.P. Sales Tax Act, 1948 : Sections 3-A(a) to (e)—Schedule—Entry 43(1) and (2)—Interpretation of—'Rubber flap'—Used as a protective device between tube and rim—Held being an accessory of an article falling under sub-entry 2 it cannot be classified under sub-entry (1).*

The appellants are manufacturers of rubber flaps which are used for giving support to the rubber tubes used in the tyres of motor vehicles. Their turnover was taxed under sub-entry 2 of entry 43 of the Schedule to the U.P. Sales Tax Act, 1948, treating them to be an accessory of the motor vehicles. The assessee unsuccessfully challenged the levy before the Appellate Authority as well as the Tribunal. The High Court also upheld the view that the rubber flaps were taxable as accessory of motor vehicles.

In appeal to this Court it was contended for the appellant that the rubber flaps did not fall under any of the specific heads in the Schedule and therefore, the only way to tax them was by taking recourse to sub-clause (e) of Section 3A(1).

Allowing the appeal and setting aside the judgment of the High Court, this Court

**HELD :** 1. A flap being an accessory of an article falling under sub-entry (2) of Entry 43 cannot be classified as an accessory of an article falling in sub-entry (1). Entry 43 has been split up into two parts. The first part deals with motor vehicle etc. and the second part deals with components, parts and accessories of vehicles mentioned in the first part. Tyres and tubes are included in the phrase 'components, parts and accessories of vehicles'. A protective cover like a rubber flap may be treated as an accessory of something which is an accessory of the motor vehicle. But that will not make the protective cover an accessory of the vehicle itself.

2. 'Rubber flap' can hardly be described as an accessory of a vehicle. Meaning of 'accessory', is a person or thing that aids subordinately; an adjunct; appurtenance; accompaniment. The 'rubber flap', which is used to protect the tubes of the tyres, is not an adjunct, appurtenance or accompaniment to a motor vehicle. At the highest, it can be said that it increases the life of the tube by keeping it away from direct contact with the rim of a wheel. Sub-entry (1) does not include tyres and tubes or any other components, part or accessory within the description of 'motor vehicles'. Tyres and tubes have been specifically and separately in sub-entry (2) alongwith 'components, parts and accessories of vehicles specified in sub-entry (1)'. The flap may be used as an adjunct to the tyre or an extra piece of rubber to give additional protection to the tubes. It may be an accessory of an item falling under sub-entry (2) of Entry 43, but it cannot be treated as an accessory of the motor vehicle itself which falls in sub-entry (1). [830-C-F]

*Modi Rubber Ltd. v. State of Kerala Govt.*, (1991) 81 STC 225 and *State of Orissa v. Dunlop India Ltd.*, (1993) 91 STC 379, referred to.

**CIVIL APPELLATE JURISDICTION** : Civil Appeal No. 4821 of 1996 Etc.

From the Judgment and Order dated 18.1.94 of the Allahabad High Court in S.T.R. No. 1878 of 1993.

Harish N. Salve and Kailash Vasdev for the Appellant.

D.V. Sehgal and R.B. Misra for the Respondent.

The Judgment of the Court was delivered by

SEN, J. Special leave granted.

In this case we have to decide whether 'rubber flaps' manufactured by the appellant can be classified under sub-entry (2) of Entry 43 in the Schedule to the Uttar Pradesh Sales Tax Act, 1948. The relevant Entry in the Schedule has been set out in the judgment of the High Court as under:

"(1) Motor vehicles including motor cars, motor taxi cabs, motor cycles, motor cycle combinations, motor scooters, mopeds, motorettes, motor omni-buses, motor vans, motor lorries, motor

trucks, jeeps, station wagons and chassis of motor vehicles and bodies or tankers or motor caravans built or meant for mounting on chassis of motor vehicles, but excluding tractors whether on wheels or on tracts.

(2) Components, parts and accessories of vehicles specified in sub-entry (1) above, including tyres and tubes, batteries and trailers adapted for use along with the said vehicles, other than such trailers as are predominantly used along with any other vehicles."

The appellants are manufacturers of rubber flaps which are used for giving support to the rubber tubes used in the tyres of motor vehicles. The contention of the appellant is that such rubber flaps do not fall under any of the items specified in the Schedule and, therefore, they should be taxed as unclassified items for which the rate of tax is 8%. The Assessing Officer, however, taxed the turnover of the rubber flaps under sub-entry (2) of Entry 43 of the said Schedule, treating the rubber flaps to be an accessory of motor vehicles.

The assessee's first appeal to the Statutory Appellate Authority failed. The assessee thereafter appealed to the Tribunal. The Tribunal noted the argument of the assessee that the flaps were used between the wheel rim and the tyre tube of bus, trucks and other heavy vehicles, rubber flaps were manufactured from rubber and that the assessee had treated flaps taxable as unclassified item in the category of rubber products. The Tribunal also took note of the two judgments placed before it but distinguished them on facts. It was pointed out that in the case of *Modi Rubber Ltd. v. State of Kerala Government*, (1991) 81 STC 225, Kerala High Court held that rubber flaps came under the category of 'rubber products'. But in the Uttar Pradesh Act, there was no separate classification of rubber products as taxable goods. Hence no decision about taxability of rubber flaps could be taken in the light of the Kerala Judgment.

The case came before the Allahabad High Court for Revision under Section 11 of the U.P. Sales Tax Act. The High Court held that "in the face of the undisputed fact that the article in question is used for the protection and support of rubber tubes in the wheels of heavy automobiles there seems to be no escape from the conclusion that the rubber flap has to be treated as accessory of motor vehicle. Although there is no direct evidence about the sale of the rubber flap in automobile market yet in view of its

exclusive use it can be presumed that it is an item which is sold in the automobile market." In the case of *State of Orissa v. Dunlop India Ltd.*, (1993) 91 STC 379, it has specifically been mentioned that flap is commercially a distinct identifiable commodity available for sale in the automobile market. The High Court upheld the decision of the Tribunal that the rubber flaps were taxable as 'accessory' of motor vehicle.

This judgment is now under appeal in this Court.

Under sub-section (d) of Section 3A of the U.P. Sales Tax Act, 1948, a dealer has to pay tax on the turnover in respect of goods specified in the Schedule to the Act at such rate as the State Government may by notification declare. Sub-section (e) of Section 3A provides for goods other than those referred to in clauses (a), (b), (c), (d) of Section 3A will be charged the tax at the rate of 8%. The contention of the assessee is that rubber flaps manufactured by it do not fall under any of the specific heads in the Schedule and, therefore, the only way to tax rubber flaps is by taking recourse to sub-clause (e) of Section 3A(1).

Entry 43 of the Schedule is in two parts. The first part (sub-entry 1) deals with motor vehicles. Motor cars, motor taxi, cabs, motor cycles, motor cycle combinations, motor scooters, mopeds, motor trucks, jeeps, station wagons, chassis of motor vehicles etc. have all been included in this sub-entry. The second part (sub-entry 2) relates to components, parts and accessories of vehicles mentioned in sub-entry (1) including tyres, tubes, batteries and certain types of trailers.

Whether 'rubber flap' can at all be treated as an accessory is a debatable issue. From what has been brought on record rubber flap is a protective device. It is placed between the tube and the rim, possibly to save the tube from coming into direct contact with overheated rims on long drives. In the Central Excise & Tariff Act, flaps have not been treated as accessories of motor vehicles. Flaps are taxable under Tariff Item 40.12 under the Heading Solid or Cushion Tyres, Interchangeable Tyre Treads and Tyre Flaps of Rubber. That means the flaps will not come under the heading "parts and accessories" of motor vehicles in Entry 87.05 in Chapter 87 of that Act. It is well accepted that the entries in the Schedule to the Excise Act have been stated in the language of the market place and are to be understood as the market-people understand them. If the flaps are treated as Car accessories in market parlance, then there is no reason to

treat it separately and independently as an item of rubber product in Chapter 40.

This, however, cannot conclude the dispute raised in this case but is a good indication of the legislative intent. The flaps have not been understood or treated as accessories of motor vehicles by the legislature in another central revenue Act.

Be that as it may, the short question in this case is, having regard to Entry 43 in the Schedule to the U.P. Sales Tax Act, can it be said that the 'rubber flaps' manufactured by the assessee can come within the phrase 'components, parts and accessories of vehicles specified in sub-entry (1) ? 'Rubber flaps' can hardly be described as an accessory of a vehicle. Meaning of 'accessory', according to the Webster Comprehensive Dictionary, International Edition, is 'a person or thing that aids subordinately; an adjunct; appurtenance; accompaniment'. The 'rubber flap', which is used to protect the tubes of tyres, is not an adjunct, appurtenance or accompaniment to a motor vehicle. At the highest, it can be said that it increases the life of a tube by keeping it away from direct contact with the rim of a wheel. Sub-entry (1) does not include tyres and tubes or any other components, part or accessory within the description of 'motor vehicles'. Tyres and tubes have been specifically and separately mentioned in sub-entry (2) alongwith 'components, parts and accessories of vehicles specified in sub-entry (1). The flap may be used as an adjunct to the tyre or an extra piece of rubber to give additional protection to the tubes. It may, at the highest, be an accessory of an item falling under sub-entry (2) of Entry 43, but it cannot be treated as an accessory of the motor vehicle itself which falls in sub-entry (1). Even on the basis of facts as found, it cannot be said that the 'tyre flaps' will fall within the description of 'components, parts and accessories of vehicles specified in sub-entry (1)'.

This distinction was pointed out in the case of *Modi Rubber Ltd. v. State of Kerala*, (1991) 81 STC 225. In that case, Kerala High Court had to deal with the following two Entries :

#### "THE FIRST SCHEDULE

Goods in respect of which single point tax is leviable under sub-section (1) or sub-section (2) of Section 5.

Sl.	Description of goods	Point of levy	Rate of tax
39.	Rubber products other than those specifically mentioned in this Schedule.	At the point of first sale in the State by a dealer who is liable to tax under section 5.	8
138.	Motor vehicles, motor vessels, motor engines, chassis of motor vehicles, trailers, motor bodies built on the chassis of motor vehicles, bodies built for motor vessels, or engines, and spare parts and accessories thereof.	At the point of first sale in the State by a dealer who is liable to tax under section 5.	15."

Dealing with Entry 138, it was observed by the Court :—

"Counsel for the Revenue submitted that rubber flaps manufactured and sold by the revision-petitioner are accessories of the spare parts of motor vehicles, specified in entry 138 of the First Schedule to the KGST Act. We are of the view that entry 138 refers to motor vehicles, motor vessels, motor engines, etc., and spare parts and accessories thereof, which means spare parts of motor vehicles, motor vessels, motor engines, etc. The words 'accessories thereof' in entry 138 of the First Schedule have reference to motor vehicles, motor engines, etc., and not the 'spare parts', immediately preceding the words occurring in the entry. The Appellate Tribunal was in error in holding that rubber flaps manufactured and sold by the revision- petitioner are accessories of spare parts of motor vehicles, coming under entry 138 of the First Schedule to the KGST Act."

In the instant case, Entry 43 has been split up into two parts. The first part deals with motor vehicles etc. and the second part deals with components, part and accessories of vehicles mentioned in the first part. Tyres and tubes are included in the phrase 'components, parts and accessories of vehicles'. A protective cover like a rubber flap may be treated as an accessory of something which is an accessory of the motor vehicle. But

that will not make the protective cover an accessory of the motor vehicle itself.

A question may arise whether the accessory of a tyre tube can be anything but accessory of the motor vehicle itself. In other words the accessory of a part must of necessity be the accessory of the composite whole which is the motor vehicle in this case. This interesting question need not be pursued in this case. 'Tyres and Tubes' and 'Motor Vehicles' have been classified separately under Entry 37. That means tyres and tubes have not been included in motor vehicles. A rubber flap will be, if at all, an accessory of the tyre or the tube falling in sub-entry (2) and not of motor vehicles in sub-entry (1). The Legislature in its wisdom has classified the tyres and tubes separately in sub-entry (2) and not along with motor vehicles in sub-entry (1). A flap being an accessory of an article falling under sub-entry (2) cannot be classified as an accessory of an article falling in sub-entry (1).

At the conclusion of the hearing of the case, we were referred to some amendments made in sub-entry (1) which does not have any material bearing on the dispute raised in this case. It is not necessary to refer to these amendments.

We are of the view that this appeal must succeed and is allowed. The judgment of the High Court dated January 18, 1994 is set aside. There will be no order as to costs.

*CIVIL APPEAL NOS. 4822-25/96 OF 1996 (ARISING OUT OF S.L.Ps. (C) NOS. 11306, 11307, 11308 AND 11309 OF 1994).*

Special leave granted.

In view of our judgment in Civil Appeal No. .... of 1996 ( arising out of S.L.P. (C) No. 11305 of 1994), the above appeals are allowed. There will be no order as to costs.

Appeals allowed.