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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **08.07.2025**

CORAM

THE HONOURABLE **MR.JUSTICE SENTHILKUMAR RAMAMOORTHY**

C.M.A.No.2115 of 2021

TVS Motor Company Limited
"Jayalakshmi Estates"
No.29 (Old No.8), Haddows Road,
Chennai 600 006, India. ... Appellant

-vs-

The Deputy Controller of Patents and Designs,
The Patent Office,
Intellectual Property Building,
GST Road, Guindy,
Chennai 600 032. ... Respondent

PRAYER: Civil Miscellaneous Appeal is filed under Section 117-A of the Patents Act, 1970, pleased to set aside the order dated 18.01.2021 passed by the respondent in Indian Patent Application No.784/CHE/2012 and further allow Indian Patent Application No.784/CHE/2012.

For Appellant : Mr.S.Harish
for M/s.Thriyambak J.Kannan

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For Respondent : Mr.J.Madanagopal Rao, SPC

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JUDGMENT

This appeal is directed against the order dated 18.01.2021 rejecting Indian Patent Application No.784/CHE/2012 in respect of a claimed invention titled 'Accelerator Safety Control Device'. Upon request by the appellant, the respondent issued the First Examination Report (FER) on 06.07.2018 raising objections *inter alia* on grounds of lack of inventive step. Such objection was raised by citing prior art documents D1 to D3. The appellant replied to the FER on 25.12.2018. By hearing notice dated 07.08.2020, the hearing was fixed on 23.09.2020. Pursuant to such hearing, the appellant submitted written submissions on 06.10.2020, including by providing a table to distinguish the claimed invention from the cited prior art. The order impugned herein was issued in these facts and circumstances.

2. Learned counsel for the appellant invited my attention to the rejected claims and pointed out that only seven claims, including one

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independent claim and six dependent claims were made. He, however, submits that the respondent proceeded to examine the first amended claims submitted in response to the FER instead of examining the last amended set of seven claims. By referring to independent claim 1, learned counsel submits that it is a two part claim. By referring to figures 2 and 3 at pages 17 and 18 of the paper book, learned counsel submits that the claimed invention is directed at providing an accelerator safety control device in the handle bar of the two wheeler or three wheeler. For such purpose, he submits that various components such as a sliding carrier, slide guide, accelerator guide, brake link and guide stopper are used.

3. By inviting my attention to prior art D1, learned counsel submits that the summary of D1 reveals that the object of the said invention is to stop the motor vehicle even though the accelerator pedal may be mistakenly depressed or stuck in such depressed condition. By referring to figure II thereof, learned counsel points out that the safety accelerator brake control operates in relation to the brake pedal and the accelerator pedal. Similarly, as regards prior art D2, he submits that the said invention endeavours to

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resolve the problem associated with an automatic transmission vehicle, wherein the driver engages both pedals at the same time. Likewise, by referring to the abstract of prior art D3, learned counsel submits that it deals with an accelerator pedal control system.

4. By turning to the impugned order, learned counsel points out that the written submissions of the appellant were completely disregarded while passing such order. In fact, he submits that the controller has erroneously recorded that all the components of the claimed invention are present in prior arts D1 to D3. For these reasons, learned counsel submits that the impugned order is liable to be set aside.

5. In response, learned counsel for the respondent submits that the problem to be resolved by the claimed invention is disengaging the accelerator when the brake is engaged. As such, he submits that each of prior arts D1 to D3 confront and resolve the identical problem. As regards the contention that the claimed invention relates to a two or three wheeler and not a four wheeler, learned counsel submits that any variation on that

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account is no more than a workshop improvement. In support of this contention, learned counsel relies on the judgment of the Hon'ble Supreme Court in *Biswanath Prasad Radhey Shyam v. Hindustan Metal Industries, (1979)2 SCC 511*, particularly paragraphs 17 to 22 thereof. By relying on the extract therein from Encyclopaedia Britannica learned counsel contends that a monopoly cannot be created so as to interfere with the craftsman use of his skill and knowledge. He also places reliance on the judgment of the Delhi High Court in *Lummus Novolen Technology GMBH v. Assistant Controller of Patents and Designs 2025 SCC OnLine Del 4014*, particularly paragraphs 17 to 19 thereof, wherein the different tests for obviousness analysis were discussed.

6. At the outset, independent claim 1 of the rejected claims should be set out. It reads as under:

> *"We Claim:*
>
> 1. *An accelerator safety control device (201) comprises:*
> *a handlebar (202);*
> *an accelerator control grip (208) on one end of the handlebar (202); characterized in that,*

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a sliding carrier (210) having a slide guide (211) fixed to the handlebar (202);
an accelerator guide (212) held by the sliding carrier (210) for arresting the lateral movement of the accelerator guide (212) and a throttle cable (207) is connected to the accelerator guide (212); and a guide stopper (213) mounted between the accelerator guide (212) and the accelerator control grip (208),
wherein a brake link (203) from a brake lever (205) is connected to the sliding carrier (210) to disengage the accelerator guide (212) held by the sliding carrier (210) from the accelerator control grip (212) when brake is applied."

7. The above claim is evidently a two part claim. It is further clear that the claimed invention is intended to be deployed on the handle bar of a two or three wheeler. Learned counsel for the respondent, however, referred to dependent claim 6 to contend that the claims extend beyond the handle bar and take within its ambit a foot operated brake lever. Learned counsel is correct in contending that the said dependent claim extends to a foot operated brake lever. On a holistic examination, it is nonetheless clear

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that the monopoly claim is confined to an accelerator safety control device for use in two or three wheelers and not in four wheelers.

8. When the claimed invention is compared with the cited prior arts, it is evident that all three cited prior arts are intended to be applied to four wheelers. While the contention of learned counsel for the respondent that the problem to be solved in the claimed invention is identical to that resolved in the cited prior arts is partly correct, resolving a problem in one type of motor vehicle cannot be equated with resolving the same problem in a different type of motor vehicle.

9. If the controller was of the view that a person skilled in the art would be in a position to arrive at the claimed invention on the basis of one or more cited prior arts, the reasons for such conclusion should have been set out in the impugned order. On examining the impugned order, the operative portion thereof reads as under:

> *"Technical features of the present system as characterized like sliding carrier, slide guide, accelerator guide, sliding carrier, and throttle cable, guide stopper, brake*

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link, brake lever and control grip are already present in the cited documents D1, D2, and D3 and these are all common in any accelerator safety control device without which device will not function.

So claimed improvements are mere advantages rather than the advancement over the prior art."

10. The above extracts disclose that the Controller recorded the conclusion that components of the claimed invention were present in cited prior arts D1 to D3 and that the claimed invention cannot be said to be a technical advance over cited prior arts. The Controller is correct in stating that technical advance is a requirement under Section 2(1)(ja) but it should be noticed that it is open to the appellant to show economic significance as an alternative to technical advance. This aspect has also not been noticed in the impugned order.

11. For reasons set out above, the impugned order cannot be sustained. Therefore, impugned order dated 18.01.2021 is set aside and the matter is remanded for reconsideration on the following terms:

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(i) In order to preclude the possibility of pre-determination, an officer other than the officer who issued the impugned order shall undertake re-consideration.

(ii) After providing a reasonable opportunity to the appellant, a speaking order shall be issued within a period of ***three months*** from the date of receipt of a copy of this order.

(iii) For the avoidance of doubt, it is made clear that no opinion has been expressed on the merits of the patent application.

12. C.M.A.No.2115 of 2021 is disposed of on the above terms without any order as to costs.

08.07.2025

rna
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

The Deputy Controller of Patents and Designs,
The Patent Office,
Intellectual Property Building,
GST Road, Guindy,
Chennai 600 032.

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SENTHILKUMAR RAMAMOORTHY J.

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