
(2001) 10 AP CK 0113

In the Andhra Pradesh High Court

Case No : Tax Revision Cases No's. 11 and 22 of 1995

Allied Marketing Agencies

APPELLANT

Vs

State of A.P.

RESPONDENT

Date of Decision : 31-10-2001

Acts Referred:

Citation : (2002) 126 STC 98

Hon'ble Judges : S.R. Nayak, J;S. Ananda Reddy, J

Bench : Division Bench

Advocate : S. Dwarakanath, for P. Srinivasa Reddy, for the Appellant; The Special Government Pleader for taxes, for the Respondent

Final Decision : Dismissed

Judgement

S.R. Nayak, J.—T.R.C. No. 11 of 1995 is directed against the order of the Sales Tax Appellate Tribunal, Hyderabad (for short, "the Tribunal") dated October 21, 1993 passed in T.A. No. 126 of 1991 relating to the assessment year 1984-85 whereas T.R.C. No. 22 of 1995 is against the order of the Tribunal dated October 21, 1993 in T.A. No. 518 of 1991 relating to the assessment year 1985-86. Both the T.R.Cs. are against the same common order. Hence they were clubbed and heard together and they are being disposed of by this common order.

2. The petitioner, Allied Marketing Agencies, Guntur, is a dealer in wooden packing cases and bale boards used for packing tobacco and is registered under the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act"). For the assessment years 1984-85 and 1985-86, the jurisdictional Commercial Tax Officer allowed exemption on sales of bale boards treating them as "planks" falling under entry No. 145 of the First Schedule to the Act on the ground that they are second sales in the hands of the petitioner. The relevant turnovers are Rs. 9,16,046 and Rs. 3,58,341 during the assessment years 1984-85 and 1985-86 respectively. For the assessment year 1985-86 the Commercial Tax Officer levied tax at 5 per cent of sales on firewood cases and plywood cases treating them as containers falling under entry No. 19 of the First Schedule to

the Act, When the matter stood thus, the Deputy Commissioner (CT) acting u/s 20 of the Act withdrew the exemption granted by the Commercial Tax Officer on second sales of planks and brought them to tax treating the sale of bale boards as packing material treating them as unclassified goods exigible to tax at every point of sale for both the assessment years 1984-85 and 1985-86. The Deputy Commissioner (CT) also revised the rate of tax for the assessment year 1985-86 on sales of wooden cases and plywood cases treating them as coming under items Nos. 145 and 91 of the First Schedule to the Act levying tax at 7 per cent and 9 per cent respectively.

3. The petitioner being aggrieved by the orders of the Deputy Commissioner (CT), preferred appeals before the learned Tribunal in T.A. Nos. 126 of 1991 and 518 of 1991, The learned Tribunal, having regard to the contentions raised before it framed the following points for consideration and decision :

1. Whether the firewood cases and plywood cases sold by the appellant are to be considered as containers falling under entry No. 19 of the First Schedule and liable to be taxed accordingly as contended by the appellant ?

2. Whether the bale boards sold by the appellant are to be considered as general goods as opined by the revisional authority ?

4. In these T.R.Cs. we are not concerned with point No. 1. These T.R.Cs. are restricted to point No. 2 only.

5. The learned Tribunal, dealing with point No. 2, after watching demonstration of the production of the bale boards conducted before it, confirmed the finding recorded by the Deputy Commissioner (CT) that bale boards and cheap wood used in the production/manufacture of bale boards are altogether two different commodities and, therefore, bale boards should be treated as unclassified item of goods taxable at every point of sale during the relevant period.

6. Sri S. Dwarakanath, learned counsel appearing for the petitioner, placing reliance on the judgments in Sudhir Ch. Mukherjee Vs. Additional Commissioner, Commercial Taxes and Others, , Vaiswaner Trading Co. Vs. The State of Gujarat, , Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, , Commissioner of Sales Tax, Lucknow Vs. D.S. Bist and Sons, Nainital, , Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, , Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, , Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., and Divisional Deputy Commissioner of Sales Tax v. Bherhaghat Mineral Industries [2000] 120 STC 205 (SC), would contest the correctness of the above finding recorded by the Deputy Commissioner (CT) in revision u/s 20 of the Act as well as the finding recorded by the learned Tribunal. The learned counsel would maintain that the production of bale boards would not involve manufacture and, therefore, they cannot be treated as different goods and taxed treating them as unclassified goods. The

learned counsel would maintain that bale boards would fall under entry No. 63 or entry No. 145 of the First Schedule to the Act.

7. On the other hand, learned Special Government Pleader for Taxes, while supporting the order of the learned Tribunal would, in the first place, maintain that production of bale boards involves manufacturing activity and, therefore, it should be treated as different goods from the goods which are used as raw materials in its manufacture and, therefore, they should be treated as unclassified goods and they are liable to be taxed accordingly, Alternatively, learned Special Government Pleader for Taxes would contend that even assuming that production of bale boards does not involve manufacture as such, the bale boards produced and sold by the petitioner are undoubtedly different from the goods, i.e., the wooden planks, which are used for the production of bale boards. In support of his contention, the learned Special Government Pleader for Taxes would place reliance on the judgments in Vijayalaxmi Cashew Company and Others Vs. Dy. Commercial Tax Officer and Another, , Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, , A.P. Products, Hyderabad v. State of Andhra Pradesh [2001] 123 STC 619 (AP) : (2001) 32 APSTJ 197, Al-Kabeer Exports Ltd. v. Commissioner of Commercial Taxes [2000] 120 STC 543 (AP) : (2000) 31 APSTJ 58 and unreported judgments of this Court in Scindia Rubber Works v. State of A.P. (T.R.C. Nos. 76 and 80 of 1992 dated October 4, 2001) and in W.P. No. 23245 of 1996 and batch dated June 29, 2001. The learned Special Government Pleader also would contend that the learned Tribunal is the final fact finding authority under the Act and the factual finding recorded by the learned Tribunal cannot lightly be interfered with by the court unless there are weighty and substantive grounds to do so and such an interference is justified only where the factual finding recorded by the learned Tribunal is not based on any legal and acceptable evidence and is based on surmises and conjectures, and that is not the situation obtaining in the instant case.

8. Having regard to the rival contentions of the learned counsel for the parties, the only point that arises for our consideration and decision is whether the finding recorded by the Deputy Commissioner (CT) and the learned Tribunal that the bale boards produced and sold by the petitioner are to be considered as general unclassified goods, is correct and justified.

9. Before dealing with the specific point, it is appropriate to notice entries 63 and 145 of the First Schedule to the Act, because according to the learned counsel for the petitioner bale boards fall within those entries. They read--

63. Timber.

145. Timber and logs cut into sizes such as beams, rafters and planks.

10. In Sudhir Ch. Mukherjee Vs. Additional Commissioner, Commercial Taxes and Others, , it was held that making of garlands and bouquets out of the flowers grown by the petitioner-dealer was not manufacture and the petitioner was,

therefore, not a dealer and was not assessable to tax as a manufacturer under the Bengal Finance (Sales Tax) Act, 1941. The Calcutta High Court opined that the following ingredients are necessary to constitute "manufacture" :

(1) There must be a change in substance, and a different article must emerge having a distinctive character and use from the raw material by the use of physical labour or by mechanical process ;

(2) The articles produced either by physical labour or by mechanical process should be on a large scale and should pass as a commercial commodity from hand to hand.

If the aforementioned two tests are applied to the facts of this case, the above judgment of the Calcutta High Court, instead of supporting the case of the petitioner, would support the stand taken by the department. In *Vaiswaner Trading Co. Vs. The State of Gujarat*, , the question that arose for decision was whether riveted baling hoops which are nothing but pieces of rolled steel sections joined together by riveting, fall within entry 4 in Schedule AA of the Bombay Sales Tax Act, 1953. The Bombay High Court opined that despite the fact that pieces of rolled steel sections are joined together by riveting, they still retain the same form in which rolled steel sections are directly produced by the rolling mills. In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, , the Supreme Court held that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans there is no consumption of the original pineapple fruit for the purpose of manufacture and the case does not fall within Section 5A(1)(a) of the Kerala General Sales Tax Act, 1963, on the ground that though a degree of processing is involved in preparing the pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and, thereafter canning it on adding sugar to preserve it. In *Commissioner of Sales Tax, Lucknow Vs. D.S. Bist and Sons, Nainital*, , the assessee owning some tea gardens in the State of U.P. sold in the market the tea leaves grown by him in his gardens after processing and packing them. The question before the apex Court was whether the tea leaves sold by the assessee were agricultural produce grown by himself and the sales were, therefore, not liable to sales tax under the proviso to Section 2(i) of the U.P. Sales Tax Act, 1948. The contention of the Revenue was that the article ceased to be agricultural produce after processing and, therefore, exigible to sales tax. The process to which tea leaves were subjected by the assessee was described by the original authority as follows :

"The tea-leaves were first of all subjected to withering in shadow in rooms on a wooden floor for about 14 hours. Then they were crushed by hand or foot and were then roasted for about 15 minutes. Later they were roasted on mats for about 15 minutes and then they were covered by wet sheets for generating fermentation.... The leaves were then subjected to grading with sieves of various sizes. Fanning machines are also used in completing the grading process. The

produce was then finally roasted with charcoal for obtaining suitable flavour and colours...."

11. On appeal to the Supreme Court, the Supreme Court held that if the tea leaves sold by the assessee substantially retained the character of being an agricultural produce, the assessee's sales would not be exigible to sales tax. If, on the other hand, the leaves had undergone such vital changes by processing that they lost their character of being an agricultural produce and became a different commodity, then the sales made by the assessee were exigible to sales tax. The apex Court on appreciation of the findings recorded by the original authority opined that it could not be justifiably held in law that tea leaves lost their character of being an agricultural produce and became something different. The Supreme Court opined that all the processes applied by the assessee were necessary for the purposes of saving the tea-leaves from perishing, making them fit for transporting and marketing. In *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, , the word "processing" occurring in Section 8(3)(b) of Central Sales Tax Act, 1956 and Rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957 fell for interpretation in the absence of definition of that word in the statute. The Supreme Court, dealing with the question when an activity is said to involve process of manufacture, laid down a test to answer such question. The test is, does the processing of the original commodity bring into existence a commercially different and distinct commodity ? The purport of this test is that if the processing of the original commodity ultimately results into production of a commercially different and distinct commodity, it should be held that the said process involves process of manufacture. In *Sterling Foods case* [1986] 63 STC 239, the question that arose for decision before the apex Court was whether raw shrimps, prawns and lobsters after undergoing the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, retain their original character or identity or become a new commodity for the purpose of exigibility of State sales tax [e.g., 13a of Third Schedule to the Karnataka Sales Tax Act, 1957]. Answering that question positively, the apex Court held that the purchase of raw shrimps, prawns and lobsters by the appellant therein for the purpose of fulfilling existing contracts for export were exempt from purchase tax under the deeming provision of Section 5(3) of the Central Sales Tax Act, 1956 even though after making such purchase, the appellant subjected them to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing before export because they remained the same goods in commercial parlance after such process of freezing. In *Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd.*, , the Supreme Court construing the meaning of the word "stones" in entry 40 of the notification under the U.P. Sales Tax Act held that that word is wide enough to include various forms of stones like boulders, small stones, chips and, therefore, once tax is paid at the stage of purchase of boulders, no tax again could be levied on sale of small stones, chips, etc., crushed from boulders. In other words, boulders and crushed forms of boulders were not construed to be different

goods. Similarly in Bherhaghat Mineral Industries case [2000] 120 STC 205, the Supreme Court opined that crushing of dolomite lumps into chips and powder is not a process of manufacture and no new commercial commodity is produced out of that process.

12. What emerges from the above judgments of the apex Court noticed above is that unless an original commodity is subjected to some process which results into a commercially different and distinct commodity, such resultant commodity and the original commodity should be treated as the same, and in order to state that the resultant commodity is commercially a different and distinct commodity, there must be a change in substance, In other words, unless a different article, having a distinct character and use from the raw material by the use of physical labour and mechanical process, emerges out of the process, both the raw materials and the finished material should be treated as alike. In the premise of this well-settled position, when we look at the facts of this case, it cannot be said that bale boards, which are the end-products after processing, are similar to the raw materials used in their production. The process involved in the manufacture of bale boards is described by the Deputy Commissioner (CT) as follows :

"The commodity bale board is packing material made of cheap wood. The process of manufacture is that five or six pieces of wooden planks are joined together thereafter at both the ends reapers are put as a border and nailed together to keep them intact and form into a board. Thereafter all the four corners of the board so formed are severed and brought into round shape. As such it is altogether a different commodity and accordingly nothing to do with the planks which are used in its manufacture."

13. The raw material used in the production of bale boards is admittedly cheap wood. The process of making bale boards involves joining 5 or 6 pieces of wood planks together, putting reapers at the ends and nailing the boards to keep the planks jointed intact and in a good condition. It also involves severance of all the four corners in order to create a round shape bale board. The production of bale boards is on large scale and they have a distinct purpose for packing tobacco and, therefore, it cannot be said that the cheap wood which is used as raw material for production of bale boards retains the same character even after undergoing the process resulting in production of bale boards.

14. The Supreme Court in Vijayalaxmi Cashew Company and Others Vs. Dy. Commercial Tax Officer and Another, , after reviewing all the important decisions on the point, opined that cashew kernels and raw cashew-nuts are not the same goods. The Supreme Court held :

"Raw cashew-nut cannot be used as edible nut at all. Moreover it can be used for more purposes than one. Cashew-nuts and cashew-nut kernels have different markets altogether. A purchaser of raw cashew-nuts can extract oil and sell it in the domestic market. He can sell the husk locally, he can also extract the kernels after subjecting the raw cashew-nuts to an elaborate process and sell them with

or without further processing to the exporter to fulfil his export commitments. Cashew-nut kernels are not the same goods as raw cashew-nuts."

15. In the instant case also the raw material, i.e., cheap wood used in the production of bale boards can be used for more than one purpose. The process by which cheap wood is converted into bale boards involves several activities in stages. In Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, , the Supreme Court held that flour, maida and suji derived from wheat are not "wheat" within the meaning of item (iii) of Section 14(i) of the Central Sales Tax Act, 1956, and they are different and distinct goods from wheat. The Supreme Court opined that when wheat is consumed for producing flour, maida or suji, the commodities obtained are different from wheat and new goods emerging from the process have a higher utility than the commodity consumed. If that principle is applied to the present case, it can undoubtedly be said that the emerging goods, namely, bale boards, have a higher utility than cheap wood used in the production. In A.P. Products case [2001] 123 STC 619, this Court has opined that masala powder is a different and distinct goods from the raw materials, i.e., jeera, menthi, dalchina, khaskhas, shahjeera, etc., which are used in the manufacture of masala powder. In Al-Kabeer Exports Limited case [2000] 120 STC 543 (AP) : (2000) 31 APSTJ 58 and in K.A.K. Anwar & Co. v. State of Tamil Nadu [1998] 108 STC 258 (SC), it was held that raw hides and skins and dressed hides and skins are different goods for the purpose of claiming exemption of sales tax u/s 5(3) of the Central Sales Tax Act, 1956. In a recent judgment in Scindia Rubber Works case [2002] 125 STC 318 (AP), dealing with the question whether RMA rubber sheets are classifiable under entry 10 of the First Schedule to the Act or it is taxable as a general item, this Court has opined that RMA rubber sheets are different goods than latex or natural rubber and that RMA rubber sheets are the end-products of the process to which latex or natural rubber is subjected to. In the conspectus of the ratio of the judgments of the Supreme Court and of this Court noticed above, we have no hesitation to hold that bale boards are undoubtedly different and distinct commodities than cheap wood which is used as raw material in their production. In the light of this finding, no exception can be taken to the view taken by the learned Tribunal. The same reason holds good to reject the contention of the learned counsel for the petitioner that bale boards could be brought either under entry No. 63 or entry No. 145 of the First Schedule to the Act, because timber and logs cut into sizes such as beams, rafters and planks, and the bale boards cannot be treated as the same goods. Added to this, it is also relevant to notice that the learned Tribunal is the final fact-finding authority and the factual finding recorded by it cannot lightly be interfered with unless there are weighty and substantive grounds for the court to do so. The court can interfere with the factual finding recorded by the Tribunal only when it finds that such finding is based on surmises and conjectures and not on any acceptable legal evidence. That is not the situation obtaining in this case.

In the result and for the foregoing reasons, the T.R.Cs. should fail and they are

accordingly dismissed with no order as to costs.