(1996) 07 AP CK 0040

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 209 of 1988

Andhra Light Castings APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 01-07-1996

Acts Referred:
Central Sales Tax Act, 1956 — Section 14, 20(2)

Citation : (1997) 107 STC 146

Hon'ble Judges : S.S. Mohammed Quadri, J;B. Sudershan Reddy, J

Bench : Division Bench

Advocate : V. Venkataramana and V. Srinivas, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

Syed Shah Mohammed Quadri, J.—The question that arises for consideration in this T.R.C. is :

"Whether the machinery parts manufactured by the petitioner-assessee from cast iron, are only cast iron castings within the meaning of entry 2(i) of the Third Schedule to the Andhra Pradesh General Sales Tax Act ?"

2. Entry 2 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (for short "the Act") reads :

THIRD SCHEDULE
-- S. No. Description of goods Point of levy Rate of tax
-- (1) (2) (3) (4)
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1. .... 2. Iron and steel, that is say, - At the point of 4 paise in the first sale in rupee. (i) pig iron and cast iron the State. including ingot moulds, bottom, plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap. (ii) to (xvi).........

The said entry includes, inter alia, "cast iron" in clause (i) among the other declared goods in respect of which only a single point tax is leviable u/s 6 of the Act. The question, whether various sub-items in an entry are one the same commercial commodity or are separate commercial goods for purposes of levy of sales tax, has been the subject-matter of various judicial pronouncements.

3. In Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, , the question which fell for consideration of the Supreme Court, was whether "iron wires" which were produced from "wire rods" were separate commercial goods from "wire rods" and turnover of their sales was exigible to single point tax. Their Lordships of the Supreme Court left that question open but held that those two goods were mentioned under the same sub-item viz., (iv) (xv) and that the sub-item showed that "wires" were thought of as integral part of "rods" and not distinct from "rods", because the sub-item spoke about wires "rolled, drawn, galvanised, aluminised, tinned or coated" and that iron wires could not be taken as separate taxable commodity and if the "wire rods" which had been purchased by the appellants therein suffered sales tax, the same could not be realised from the sales of "wire". The case before the Supreme Court arose u/s 14 of the Central Sales Tax Act, 1956.

4. The position is further made clear in the latest judgment of the Supreme Court in Vasantham Foundry Vs. Union of India and others, . There entry 4(i) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959 fell for consideration. The Supreme Court held as follows :

"........ ''cast iron casting'' in its basic or rough form must be held to be ''cast iron''. But, if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, man-hole covers or bends, these cannot be regarded as ''cast iron casting'' in its primary or rough form, but products made out of cast iron castings. Such products cannot be regarded as ''cast iron'' and cannot be treated as ''declared goods'' u/s 14(iv) of the Central Sales Tax Act. This view is not in conflict with the view taken in the case of Bengal Iron Corporation and another Vs. Commercial Tax Officer and others, , but it is in consonance with the decision in that case."

Relying on those observations of the Supreme Court, the learned counsel for the petitioner submits that the present Tax Revision Case should be allowed.

5. In the instant case the turnover of machinery parts, for the assessment year 1979-80, was assessed to sales tax under the Act. The petitioner preferred an appeal to the Assistant Commissioner, Commercial Taxes (Appeals), Division-1, Hyderabad, who upheld the contention of the appellant that the "machinery parts" were nothing but "cast iron casting" and relying on the clarification issued by the Government of India in Letter No. F/24/14/75 dated February 28, 1977, granted exemption and allowed the appeal. That order of the appellate authority was revised by the Deputy Commissioner, Commercial Taxes, u/s 20(2) of the Act. He held that what was sold by the petitioner was "machinery parts" and,

therefore, they could not be treated as "cast iron casting". On further appeal by the petitioner to the Sales Tax Appellate Tribunal, the order of the revising authority was confirmed on May 9, 1988. The present revision is filed against that order of the Tribunal.

6. Applying the test laid down by the Supreme Court in Vasantham Foundry Vs. Union of India and others, , namely, whether the goods in question are being bought and sold i.e., dealt with and understood in commercial parlance as "cast iron" or as different goods for example man-hole covers, pipes, motor parts, etc., the answer, from the finding of the Tribunal, is clear that what was sold by the petitioner was not merely, "cast iron casting" as such but were different goods like machinery parts.

7. The Tribunal pointed out that in the returns, the petitioner described the goods as "machinery part" and also disclosed the sales tax collected on the sale of such "machinery parts" and that it was only at the stage of replying to the show cause notice issued by the assessing authority that the petitioner is claimed exemption and took the plea that it undertook casting of machinery parts, tiles and man-hole covers out of pig iron and cast iron melting.

8. In State of Andhra Pradesh Vs. Venkatesh Foundry, , speaking for the Division Bench of this Court of which one of us (Syed Shah Mohammed Quadri, J.) was member, our learned brother Parvatha Rao, J. while dealing with the question whether goods sold by the assessee as the cast iron casting, manufactured under the tax suffered pig iron and cast iron, were covered by item 2(i) of the Third Schedule to the Act, observed :

"........ it can be stated in a simplistic way that objects resulting by casting cast iron are ''cast iron castings''. The process of casting can be complicated and highly specialised especially in the case of precision casting which may result in the final product which can be used in the ''as cast'' condition that means the resultant product is a commercial commodity in itself and can be directly marketed as a distinct commodity known to the market. ......Thus there can be a variety of cast iron castings some of which can be directly marketed as end-products with specific commodity names and some others which are rough castings and which have to be further processed and finished before then can be marketed as specific commodities as items of machine parts, etc."

It was held that cast iron from pig iron and iron scrap by the respondent therein was liable to be taxed as "declared goods" and that when separate commercial commodities are made out of cast iron like C.I. pipes, and man-hole covers or machine parts, they cease to be cast iron and cannot any longer be treated as cast iron under sub-item (i).

9. From the above discussion it follows that when castings of cast iron are marketed in the crude form they would be within the meaning of "cast iron" under sub-item (i) of entry 2 of the Third Schedule but if the cast iron castings are converted after necessary refinement into separate commercial goods like

machine parts, etc., they cannot be treated as "cast iron castings" so as to fall within the said entry and cannot be treated as "declared goods."

10. Having applied the test down by the Supreme Court, referred to above, in the light of the findings of the Tribunal, we held that the answer to the question can only be in the negative.

11. The T.R.C. is, therefore, dismissed. No costs.

12. Petition dismissed.

