

(1993) 10 KL CK 0002
In the High Court Of Kerala
Case No : T.R.C. No. 91 of 1993

Aravind Tin Industries

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 26-10-1993

Acts Referred:

Citation : (1994) 95 STC 36

Hon'ble Judges : K.S. Paripoornan, J;K.P. Balanarayana Marar, J

Bench : Division Bench

Advocate : N.N. Divakaran Pillai, for the Appellant; V.C. James, Senior Government Pleader, for the Respondent

Judgement

K.S. Paripoornan, J.—The petitioner is a firm. It is a registered dealer under the Kerala General Sales Tax Act, 1963. It is a small-scale industrial unit. It is engaged in the business of manufacture and sale of tin containers. We are told that the containers are used for packing and storing vegetable oil. In this revision, we are concerned with the assessment year 1986-87. The respondent is the Revenue.

2. The two aspects mooted before the statutory authorities and before us are as follows :

(a) What is the rate at which the tin containers sold by the assessee are liable to be taxed ?

According to the assessee, it will come under entry 45 of the First Schedule to the Kerala General Sales Tax Act and liable to tax only at 6 per cent. The Revenue contended that it will come under entry 116 of the First Schedule to the Act and will be taxable at 8 per cent.

(b) What is the rate at which the scrap is liable to be taxed ?

According to the assessee, it is only at 4 per cent. On the other hand, according to the Revenue, it will be taxable at 6 per cent under entry 121-A of the First

Schedule to the Act.

3. The Sales Tax Officer, the Appellate Assistant Commissioner as also the Appellate Tribunal held against the assessee. The Appellate Tribunal, by its order dated June 9, 1993, held that tin containers sold by the assessee will come under entry 116 of the First Schedule to the Act and taxable at 8 per cent. It was also held that the scrap is taxable at 6 per cent. The assessee assails the order so passed by the Sales Tax Appellate Tribunal dated June 9, 1993.

4. We heard counsel for the assessee, Mr. N.N. Divakaran Pillai, and also counsel for the Revenue, Senior Government Pleader Mr. V.C. James.

5. Before us, counsel for the assessee placed reliance on entry 45 of the First Schedule to the Act, as it stood before it was substituted by the Finance Act (Act 18 of 1987). Entry 45 of the First Schedule to the Act reads as follows :

Sl.No.	Description of goods	Point of levy	Rate of tax
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45.			
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	Iron and steel articles, not mentioned elsewhere in this Schedule or the Second Schedule.		
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	At the point of first sale in the State by a dealer who is liable to tax u/s 5		
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On the other hand, the learned Government Pleader placed considerable reliance on entries 116 and 121 of the First Schedule to the Act and submitted that tin containers are taxable at 8 per cent. Entries 116 and 121 of the Act read as follows :

Sl. No.	Description of goods	Point of levy	Rate of tax
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116.	Tin including tin sheets and tin plates		
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	At the point of first sale in the State by a dealer who is liable to tax under section 5.		
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121.			
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	All metallic products (or articles made of iron or steel in combination with other metals) other than those specified elsewhere in this Schedule or the Second Schedule.		
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	At the point of first sale in the State by a dealer who is liable to tax u/s 5.		
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6. The Appellate Tribunal has discussed generally about "tin", tin plates, etc. It has not entered a definite finding as to the composition of the "tin containers" in

this case. The specific plea of the assessee, in reply to the pre-assessment notice, was that tin containers are iron and steel articles. This is evident from the objection to the pre-assessment notice filed by the assessee dated February 5, 1992. It is seen repeated subsequently also.

7. Prima facie, we feel that it is difficult to hold that tin containers will come under entry 116 of the First Schedule to the Act. The tin containers sold by the assessee cannot be called "tin". It is not either "tin sheet" or "tin plate". As a final fact-finding authority, the Appellate Tribunal should first find the composition. It should find what the tin containers sold by the assessee is composed of. Is it an article made of iron and steel or is it an article made otherwise ? Only after entering into a definite finding on that score, the further question, under which entry the goods sold by the assessee will fall, will arise. The Appellate Tribunal has not cared to enter a definite finding on that score. After advertizing generally to tin, tin plates, iron and steel, the Appellate Tribunal has abruptly held that tin containers are to be taxed at 8 per cent and falls coming within entry 116 of the First Schedule to the Act. There is no finding as to how the tin containers sold by the assessee will come within entry 116 of the First Schedule to the Act. As we stated earlier, the tin containers cannot be called either tin or tin sheets or tin plates. Then what is it ? That is the question that falls for consideration. It is for the Appellate Tribunal, as a final fact-finding authority, to enter a definite finding, as to what the tin containers sold by the assessee is made of. Based on that finding, the Appellate Tribunal should further evaluate the various entries and find at what rate it is taxable. Since the order of the Appellate Tribunal is vague and does not contain a specific finding on that score, we are constrained to set aside the order of the Appellate Tribunal and order a remit of the matter. We hereby do so.

8. Regarding scrap, the plea of the assessee is that it is taxable only at 4 per cent. The Appellate Tribunal has held that since it is not iron and steel, it is taxable at 6 per cent. No reason is stated as to why it is so. On that aspect also, the Appellate Tribunal should make a specific finding and give reasons as to why and under what entry the scrap is taxable. On this matter also, the finding of the Appellate Tribunal is far from satisfactory and so, we order remit on this count as well. The order passed by the Appellate Tribunal dated June 9, 1993, is set aside. The matter is remitted back to the Sales Tax Appellate Tribunal for passing fresh orders, in accordance with law.

9. Counsel for the assessee submitted that since this Court had passed an order of stay pending the revision, this Court may be pleased to pass appropriate orders regarding recovery proceedings. This is a matter for the Appellate Tribunal to consider since the appeal filed before it is restored. It is for the Appellate Tribunal to pass appropriate orders in this behalf. It shall do so.