

(1979) 10 MAD CK 0038

In the Madras High Court

Case No : Tax Cases No"s. 205 and 218 of 1976 (Appeal No"s. 20 and 23 of 1976 respectively)

Arkay's National Engineering and Foundry Co.

APPELLANT

Vs

The State of Tamil Nadu

RESPONDENT

Date of Decision : 18-10-1979

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Tamil Nadu General Sales Tax Act, 1959 — Section 34, 4

Citation : (1980) 46 STC 394

Hon'ble Judges : Sethuraman, J; Balasubrahmanyam, J

Bench : Division Bench

Advocate : T. Srinivasamoorthi, for the Appellant; The Additional Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Sethuraman, J.—These two appeals, T. C. Nos. 205 and 218 of 1976, arise from the order of the Board of Revenue dated 22nd October, 1974, relating to the assessment years 1967-68 and 1969-70. The assessee purchased M. S. steel rounds and bars locally paying local sales tax thereon. The engineering industry requires straight steel rods of uniform diameter. The assessee therefore draws the rods purchased by it through special machine dies made for that purpose. Before rods can be inserted into the dies and drawn by the use of the machines the ends have to be pointed and cut. This results in M. S. bar cuttings which are disposed of periodically to avoid accumulation. In respect of the assessment year 1967-68 the assessing officer included in the taxable turnover of the assessee a sum of Rs. 9,949.87 relating to these cuttings. The assessee preferred an appeal to the Appellate Assistant Commissioner contending that these sales of cuttings are only second sales of declared goods falling under item 4(c) of the Second Schedule to the Tamil Nadu General Sales Tax Act and that they are not liable to be taxed again in the hands of the assessee. The Appellate Assistant Commissioner allowed the claim and the Board took up suo motu revision of the

proceedings of the Appellate Assistant Commissioner. The Commissioner, Commercial Taxes, Board of Revenue, by his order dated 22nd October, 1974, u/s 34 of the Tamil Nadu General Sales Tax Act, held that these cuttings constituted steel scrap and that they did not fall under item 4(c) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959. This scrap obtained in manufacturing the finished goods would not, in the view of the Commissioner, fall under item 4(c) of the Second Schedule and that the further sale of such items would be in the course of and incidental to the assessee's business.

2. For the assessment year 1969-70, the taxable turnover determined by the assessing officer included a sum of Rs. 9,412.27 relating to the sales of scrap such as cuttings of steel rods, borings, etc., and a sum of Rs. 537.60 relating to the sales of empty tins and jars. The Appellate Assistant Commissioner on appeal accepted the assessee's claim for exemption under these items and the Board in suo motu revision has restored the assessment of these items. The assessee has filed the above appeals as against these orders of the Board.

3. In these appeals the first question arises for determination is whether the sales of these cuttings and the incidental leavings would fall within the scope of item 4(c) of the Second Schedule to the Tamil Nadu General Sales Tax Act. The declared goods in respect of which the single point tax is leviable under item 4(c) are serialised. Item 4(c) reads as follows:

4 Iron and steel, that is to say,-

(c) steel scrap, steel ingots, steel billets, steel bars and rods.

4. The Supreme Court in *State of Tamil Nadu v. Pyare Lal Malhotra* [1976] 37 S.T.C. 319 had to construe entry No. (iv) in Section 14 of the Central Sales Tax Act, 1956, which corresponds to entries in the Second Schedule to the Tamil Nadu General Sales Tax Act. The question was whether the manufactured goods consisting of "steel rounds, flats, angles, plates, bars" or similar goods in other forms and shapes could be taxed again even if the material out of which they were made had already been subjected to sales tax once as iron and steel scrap as both were "iron and steel". The Supreme Court held :

Entry No. (iv) in Section 14 of the Central Sales Tax Act, 1956, as originally worded (prior to its amendment by Amendment Act 61 of 1972) was meant to enumerate separately taxable goods and not just to illustrate what was just one taxable substance, viz. , "iron and steel.. Each sub-item in entry No. (iv) is a separate taxable commodity for purpose of sales tax and each of them forms a separate species for each series of sales although they may all belong to the genus, "iron and steel". Therefore, manufactured goods consisting of "steel rounds, flats, angles, plates, bars" or similar goods in other forms and shapes could be taxed again even if the material out of which they were made had already been subjected to sales tax once as iron and steel scrap.

(emphasis added)

5. It was also held:

The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object is to tax sale of each commercial commodity and not the sale of the substance out of which they are made. Each commercial commodity becomes a separate object of taxation in a series of sales of that commercial commodity so long as it retains its identity as that commodity.

The expression "that is to say" (occurring in Section 14 and also in the Second Schedule) is meant to exhaustively enumerate all kinds of goods and make it clear and fix the meaning of what is to be explained or defined.

(emphasis added)

6. This judgment of the Supreme Court came up for application in State of Tamil Nadu v. S. Syam Steel Rolling Mills (P.) Ltd. [1977] 40 S.T.C. 156 In that case the assessee, having its factory in Bangalore, purchased in the State of Tamil Nadu M. S. rounds and transported them to Bangalore. The assessee subsequently sold in the State of Tamil Nadu M. S. rounds, M. S. angles and M. S. squares and claimed that no tax was payable on these sales since the goods were liable only to single point taxation and that the M. S. rounds purchased by it earlier in Tamil Nadu had already suffered tax. This claim was negatived by the assessing officer and the appellate authority on the ground that the assessee had not proved that the goods sold by it in Tamil Nadu had come out of the earlier purchases made by it in Tamil Nadu and such purchases had suffered tax. The Tribunal found that the goods sold by the assessee were rolled by it at its factory in Bangalore out of the purchases made by it earlier and also held that M. S. rounds, M. S. angles and M. S. squares would fall within the ambit of entry 4 of the Second Schedule, namely, "iron and steel", read with Section 4 of the Tamil Nadu Act and, therefore, the turnover was exempt from tax. On revision it was held that out of the three articles sold by the assessee in the State of Tamil Nadu, viz., M. S. rounds, M. S. angles and M. S. squares, only M. S. rounds would be entitled to the benefit of the exemption from tax on the ground that the M. S. rounds had suffered tax already and that the M. S. angles and M. S. squares would not get the benefit of such exemption. In the course of the judgment it was observed:

For the purpose of enjoying the benefit of single point taxation, the various articles mentioned in entry 4 of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959, must retain their identity as a commercial commodity. Once that identity is lost and a different commercial commodity emerges as a result of a manufacturing process or as a result of any other process, then the resultant commodity cannot be said to be the same commodity as the one from which it resulted and, therefore, the assessee cannot claim exemption from tax in respect thereon on the ground that the original commodity suffered tax.

7. What is thus necessary for the benefit of a single point taxation is either the

retention of the identity of the goods or its identity as commercial commodity in trade. Merely because the goods undergo the process of cutting, it may not follow that the goods have lost their identity. But when they are scrap, they have lost their identity. The question whether in any particular case the goods are identical or not will have to be considered in the light of the facts and circumstances.

8. The learned counsel for the assessee contended that even within item 4(c) there is an interchangeability and that so long as the goods would fall within the scope of any of the specifications of the said entry then the goods would be eligible for a single point taxation. We are unable to agree with this submission also. Clearly, steel scrap cannot be the same as, e.g., steel ingots, steel bars, etc. If steel ingots are manufactured out of steel scrap, then, the two being two different commercial commodities, they are separate objects of taxation. In *Venkateswara Metal Industries, Madras-1 v. State of Tamil Nadu*, represented by the Joint Commercial Tax Officer, Sowcarpet I Division, Madras reported as *State of Tamil Nadu v. India Metal Industries* [1980] 46 S.T.C. 304 (W. P. No. 689 of 1968 dated 6th March; 1979), and in *India Metal Industries, Madras-1 v. State of Tamil Nadu*, represented by the Joint Commercial Tax Officer, Peddunaickenpet (South) Division, Madras reported as *State of Tamil Nadu v. India Metal Industries* [1980] 46 S.T.C. 304 (W. P. No. 966 of 1969 dated 6th March, 1979), decided by us, it was held that the specifications in the particular entries are not interchangeable. It would therefore follow that the steel scrap arose from the same steel bars and rods. The assessee himself dealt with his goods as scrap and, therefore, he cannot claim with any justification that they are sales of steel rods.

9. The learned counsel for the assessee drew our attention to the decision of the Gujarat High Court in *Vaiswaner Trading Co. v. State of Gujarat* [1964] 15 S.T.C. 586. In that case, the pieces of rolled steel sections were joined together by riveting and sold as baling hoops. The riveted baling hoops were considered as nothing but pieces of rolled steel sections joined together by riveting, which fell within the same entry. Relying on this decision it was contended that in the present case what was subsequently sold by the assessee is the mild steel cuttings from and out of the steel rods. It was not denied that there were some scrapings and leavings in the process, though there were some small pieces of rods left which were the result of the process of cuttings. Even in the Gujarat case [1964] 15 S.T.C. 586, it is a matter of doubt whether the goods retained the same character as steel sections when they were different commercial goods and sold as riveted baling hoops. It may also be observed that this decision of the Gujarat High Court was rendered prior to the decision of the Supreme Court in *State of Tamil Nadu v. Pyare Lal Malhotra* [1976] 37 S.T.C. 319. The sales here are of scrap as shown in the bills issued by the assessee, and such scrap, which are commercially different goods from the rods, had not borne any tax.

10. The result is that the claim for exemption on the part of the assessee cannot

be sustained and, therefore, there is no error of law committed by the Board of Revenue in dealing with the appeal filed by the assessee. The sales are incidental to the business carried on by the assessee. The principle of *State of Tamil Nadu v. Burmah Shell Oil Storage and Distributing Co. of India Ltd.* [1973] 31 S.T.C. 426 would clearly apply. The sales of empty tins and jars for 1969-70 would also be taxable in view of the same decision.

11. Hence these appeals are accordingly dismissed with costs. The counsel fee is Rs. 250 (rupees two hundred and fifty only) one set.