

(2004) 03 KAR CK 0043
In the Karnataka High Court
Case No : T.A.E.T. 1 of 2001 C/w 2 of 2001

Bhandari Metals

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 08-03-2004

Acts Referred:

Karnataka Entry Tax Act, 1979 — Section 15 (2), 16 (1)

Citation : (2004) ILR (Kar) 2025 : (2004) 136 STC 292

Hon'ble Judges : R.V. Raveendran, J;H. Billappa, J

Bench : Division Bench

Advocate : K.S. Ramabadran, for the Appellant; B. Anand, GA, for the Respondent

Judgement

R.V. Raveendran, J.—These two appeals are filed u/s 16(1) of the Karnataka Entry Tax Act, 1979 ("Act" for short) against the order dated 31-01-2001 passed by the Additional Commissioner of Commercial Taxes, Zone II, Bangalore in SMR/KTEG/20-BD/2000-01/1420-2000-2001 passed in exercise of suo moto revision power u/s 15(2) of the Act, in regard to 1995-96 and 1996-97.

2. The Appellant is a manufacturer of non-ferrous metal (copper/ brass) Rods and wires. The appellant purchases non-ferrous metal scrap from outside the State and causes their entry into local area for being used in the manufacture of rods and wires. For the assessment year 1995-96, the appellant filed a return disclosing the entry of non-ferrous metal scrap of the value of Rs. 1,73,93,625/- and paid entry tax at the rate of 1% under the Act in regard to the said value. In regard to assessment year 1996-97, the appellant filed a return disclosing the entry of non-ferrous metal scrap of the value of Rs. 1,86,78,549/- and paid entry tax at the rate of 1% under the Act on the said Act. The Assessing Authority accepting the returns and passed two orders of assessment dated 28-3-2000 in regard to the years 1995-96 and 1996-97.

3. Section 3(1) of the Act, which is the charging Section provides that there shall be levied and collected a tax on entry of any goods specified in the First schedule

to the Act, into a local area for consumption, use or sale therein, at such rates not exceeding the specified percentage of the value of the goods, from such date as may be specified by the State Government by Notification. Sub-section (6) of Section 3 provides that, no tax shall be levied under the Act on any goods specified in the Second Schedule on its entry into a local area for consumption, use or sale therein. Between 1-5-1992 to 31-3-1994, the I schedule to the Act contained following Entry at Sl.No. 60:-

"Non-ferrous castings and ingots and scrap base metals (other than iron and steel scrap) and alloys thereof.

From 1-4-1995, Entry 60 in the First Schedule was deleted and the following entry was added as Entry 29(A) in the Second schedule (which enumerates the goods which are exempt from entry tax):-

"All non-ferrous metal including ores and concentrates."

4. The appellant submits that the effect of deletion of Entry-60 in First schedule and insertion of Entry-29A in the Second schedule is that no entry tax was leviable on the entry of non-ferrous metal scrap from outside the State into local area for use. Appellant claims that the said amendments made with effect from 1-4-1995 was not known to it immediately. Therefore, in ignorance, it submitted returns for the years 1995-96 and 1996-97 proceeding on the assumption that the non-ferrous metal scrap continued to be exigible to entry tax. The appellant submits that its mistake resulted in paying the Entry tax also on the turnover; and that when it learnt about the said amendments and realised that it was not liable to pay tax, it filed appeals before the Joint Commissioner in regard to the assessment years 1995-96 and 1996-97. The Appellate authority by a common order dated 29-11-2000 allowed the appeals holding that the turn over relating to non- ferrous metal scrap was exempt from tax.

5. The Additional Commissioner of Commercial Taxes Zone 11, Bangalore exercising his suo moto power u/s 15(2) of the Act issued a notice to appellant proposing to revise the order of the Joint Commissioner in regard to assessment years 1995-96 and 1996-97, being of the view that the order of the Appellate authority was erroneous and prejudicial to the interest of the revenue. The appellant filed objections dated 27-01-2001. Thereafter, the revisional authority passed the impugned order dated 31-01-2001 in regard to both the years, setting aside the order of the Appellate authority and restoring the order of the Assessing Authority subjecting the turn over relating to purchase of non-ferrous metal scrap to entry tax for the years 1995-96 and 1996-97, The said order of the revisional authority is under challenge in these two appeals.

6. On the contentions urged, the following questions of law arise for consideration:

(i)whether non--ferrous metal scrap falls under Entry-29A of the IT schedule to the Karnataka Entry Tax Act, 1979?

(ii) Whether the appellant having voluntarily filed returns offering the turn over relating to entry of non-ferrous metal scrap to tax and paying the entry tax thereon, and the assessing authority having passed the assessment order by accepting such returns, whether the appellant could challenge the levy and collection of entry tax, by filing appeals?

Re: Point No. (i):

7. The term non-ferrous metal refers to any of a class of chemical elements which are solid minerals, other than iron and its alloys. The word "scrap" refers to unwanted bits, pieces, shavings and fragments which however are of some value as metal "scrap" also refers to metal or other raw material recovered from old/discarded/ unused and condemned machinery, ships, vehicles etc., "Scrap metal" is defined in the New Encyclopedia Britannica (15th Edition Vol.10 at Page 568) as "used metals that are an important source of industrial metals and alloys, particularly in the production of Steel, Copper, Lead, Aluminium and Zinc Scrap is usually blended and remelted to produce alloys similar to or more complex than those from which the scrap was derived".

8. In *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*, , the Supreme Court held that a word describing a commodity in a (sales) tax statute should be interpreted according to its popular sense, that is the sense in which the people conversant with the subject matter, would attribute to it. It was further held that words of every day use must be construed not in their scientific or technical sense, but as understood in common parlance. In *Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another*, , the Supreme Court pointed out the other side of the principle, that is, where different entries are made in regard to goods of a common origin which have transformed into different products, then the meaning and intent should be arrived at contextually.

8.1) In *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, , the Assessee who owned a Re-Rolling Mill purchased iron scrap and iron plates and converted them into bars, plates and flats for sale. The Assessing Authority subjected the assessee's Sales turnover to tax. The Assessee challenged it contending that bars/plates/flats were exempt from tax. Two Notifications issued under Madhya Bharat Sales Tax Act were relevant. "Iron and Steel" were exempt from sales tax under entry 39 of the first Notification dated 24-10-1953. On the other hand, "Goods prepared from any metal" were made liable to tax, under notification dated 24-10-1953. The question was whether the bars/ plates/flats sold by the Assessee were "Iron and Steel" which were exempt from tax or were "goods prepared from any metal" which was liable to tax. A three Judge Bench of the Supreme Court held:

"Learned Counsel for the State contends that the expression "iron and steel" means iron and steel in the original condition and not iron and steel in the shape of bars, flats and plates. In our view, this contention is not sound. A comparison of the said two Notifications brings out the distinction between raw materials of

iron and steel and the goods prepared from iron and steel; while the former is exempted from tax, the latter is taxed. Therefore, iron and steel used as raw material for manufacturing other goods are exempted from taxation. So long as iron and steel continue to be raw materials, they enjoy the exemption. Scrap iron purchased by the respondent was merely re-rolled into bars, flats and plates. They were processed for convenience of sale. The raw materials were only re-rolled to give them attractive and acceptable forms. They did not in the process lose their character as iron and steel. The dealer sold "iron and steel" in the shape of bars, flats and plates and the customer purchased "iron and steel" in that shape. We, therefore, hold that the bars, flats and plates sold by the assessee are iron and steel exempted under the Notification. The conclusion arrived at by the High Court is correct."

In other words both "scrap" and scrap converted into flats/bars/ plates for manufacture of a product or article, were considered as "metal"; and that the term "metal" refers to any "metal" used as raw material as contrasted from the finished product produced/manufactured from such raw material.

8.2) The decision in HIRALAL was followed in Commissioner of Income Tax, Haryana Vs. M/s. Krishna Copper Steel Rolling Mills, Jagadhri etc. etc., , the Supreme Court held that the words "Iron, and Steel (metal)" denote not only the metal in its pristine form as an ore or as an extraction from the ore, but in the context of manufacturing industry, refers to any metal used as a raw material in the manufacture of various articles in contra- distinction from the commercial articles made therefrom.

8.3) In Commissioner of Sales Tax, Gujarat Vs. Bharat Iron and Brass Foundries, , the Gujarat High Court considered the meaning of the word "scrap" in common parlance as understood by persons dealing in scrap:

"We are of the opinion that the machinery which is totally unserviceable as such, is referred to even in common parlance as "scrap". A piece of machinery, which is admittedly unserviceable and which cannot be put to any use even after some repairs, is always referred to as "scrap" in common parlance. When every hope of putting it to its original use even after repair is given up, the only use to which it can be put to use is as a "scrap". Therefore, when such machinery is made of some metal, it is purchased not as machinery but as metal and is also put to use as metal simpliciter."

9. The State placed strong reliance on the decision of the Supreme Court in Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another, . In that case the Supreme Court was interpreting two notifications issued u/s 3A(2) of the U.P.Sales Tax Act, 1948, extending the benefit of a concessional rate of tax in regard to goods described therein. Item No. 6 of the first notification dated 1-12-1973 referred to "All kinds of minerals, and ores, and alloys except copper, tin, zinc, nickel or alloy of these metals only". Item No. 1 of the second notification dated 30- 5-1975 (amended on 14-8-1975 with effect from

30-5-1975) referred to "All kinds of minerals, ores, metals, and alloys including sheets and articles used in the manufacture of brasswares and scraps containing only any of the metals, copper, tin, zinc, or nickel except those included in any other notification under the Act." The commissioner of Sales Tax issued a circular dated 15-10-1975 instructing that only "aluminium ingots" should be treated and taxed at the concessional rate as "metal" and rods, bars, rolled products, extrusions, sections shall be subjected to tax at regular rate. The Sales Tax Officer accordingly applied the concessional rate of tax only to aluminium ingots and regular rate of tax to other items (billets, rolled products, extrusions and other aluminium products). The Appellant challenged the assessment order in a Writ Petition and contended that all items were eligible for concessional rate of tax. The High Court held that aluminium ingots, wire bars and billets would be "metals and alloys" attracting a lower rate of tax. The High Court held that rolled products prepared by rolling ingots and extrusions manufactured from billets must be regarded as different commercial commodities from ingots and billets and therefore outside the category of "metals and alloys". The Appellant challenged the decision of the High Court holding that rolled products and extrusions were to be taxed at regular rates and not as "metals and alloys". While upholding the said decision of the High Court, the Supreme Court held thus:

"We are concerned with the manner in which these and similar expressions have been employed by those who framed the relevant notifications, and with the inference that can be drawn from the particular arrangement of the entries in the notification. We must derive the intent from a contextual scheme."

"Section 3A of the UP Sales Tax Act empowers the State Government to prescribe, by notification, the rate and the point, at which the tax may be imposed on the sale of a commodity. A consideration of the notifications issued from time to time will show that the expression "metal" has been generally employed to refer to the metal in its primary sense. The reference is to the metal in the form in which it is marketable as a primary commodity."

In all those notifications, the framers of the notifications followed the scheme that one clause dealt with the metal in its original saleable form and another separate clause dealt with fabricated forms in which it was saleable as a new commodity. It is admitted before us on behalf of the appellant that aluminium ingots and billets are saleable commodities as such in the market. In the circumstances, the inference is irresistible that when such a notification refers to a metal, it refers to the metal in a primary or original form in which it is saleable and not to any subsequently fabricated form."

The said decision was rendered with reference to the manner in which the words were used in a series of notifications, interpreting them in a contextual manner. The basic principle evolved in the decision supports the contention of the assessee in this case. The Supreme Court in that case was concerned with metal in pristine form (Ingots and Billets) as contrasted from fabricated products

(extrusions). The Supreme Court held that what is used for manufacture of products/ fabricated forms is to be treated as "metal", whereas the fabricated forms/products made of "metal" are not "metal". This is exactly what we have held in this case. The further question whether "scrap" is to be treated as metal in primary form or metal in fabricated form was not considered. The decision in Hindustan Aluminium therefore does not assist the Revenue to contend that non-ferrous metal scrap is not "non-ferrous metal" for the purpose of Entry 29A of the Act.

10. In this context we may again usefully refer to KRISHNA COPPER (Supra) where the Supreme Court distinguished the decision in HINDUSTAN ALUMINIUM and two other earlier decisions is Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others, and State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, which were relied on in HINDUSTAN ALUMINIUM:

"The above decisions were rendered in the context of the Sales Tax Act and notifications thereunder. They, however, bring out two points. First, they make it clear that there is a real and clear dichotomy between "Iron and steel" and "Products or Goods made of iron and steel" and, indeed, between any metal as such and the products or goods fabricated therefrom."

Then the Supreme Court proceeded to formulate the following question in the context of points urged before them, that is whether Assessee (Steel Rolling Mills engaged in the manufacture of Mild Steel Rods, bars and rounds) were entitled to a higher development rebate specified in Section 33(1)(b)(B)(i)(a) of Income Tax Act and to relief u/s 80I of Income Tax Act as it then stood:

"Having regard to the nature of the iron and steel industry and its processes, do mild steel bars, rods and rounds represent the raw material for the manufacture of articles of iron and steel or are they themselves articles made of iron and steel?"

The Supreme Court answered the said question thus:

"We would like to emphasise, at the cost of repetition, that what we should examine is not the nature of the mill which yields the article but the nature of the article or thing that is manufactured and ask ourselves the question whether such article or thing can be considered as raw material for manufacture of other articles made of the metal or is it itself an article made of the metal. On this issue our view is, as we have already stated that the goods in the present case fall in the former category. We think Sri Ramachandran is right in pointing out that the mild steel rods, bars or rounds which are manufactured by the assessee here are only finished forms of the metal and not articles made of iron and steel. They only constitute raw material for putting up articles of iron and steel such as grills or windows by applying to them processes such as cutting or turning. The rod or the wire rods (with which some of the decisions were concerned) are likewise not products of iron and steel but only certain finished or refined forms of the metal itself."

11. Keeping in view the aforesaid principles of interpretation, we will consider the meaning of words "all non-ferrous metal" in entry 29A of second schedule to the Entry Tax Act. Pristine metal is "metal". Plates, bars, wires, flats of a metal, used for manufacture or fabrication of metal products, being refined forms of metal itself, are "metal". Scrap which is melted to produce metal which is used to produce metal products is also "metal". But a fabricated product of metal is not a "metal". Therefore the words "non-ferrous metal" refers to any "metal" (other than iron and its alloys) which is used or intended to be used as a raw material for the manufacture or fabrication of any metal product. When bars, wires, flats, plates are used in manufacture of metal products, bits, pieces, shavings, fragments are generated as waste. Such metal "scrap" is purchased by the appellant from outside the State and brought into the State for the purpose of melting it and produce rods, wires etc., Such metal "scrap" will therefore be metal. Therefore non-ferrous metal scrap intended to be melted to produce metal or metal product is also "non-ferrous metal" falling under Entry 29A of II Schedule of the Act, exempt from Entry Tax. If the, contention of the State is accepted, it would result in metal scrap being treated as a "finished product". "Scrap" by no stretch of imagination can be termed as a "finished product". It is "metal".

Re: Point No. (ii):

12. The appellant does not dispute the fact that it had voluntarily filed a return offering the value of non-ferrous metal scrap brought by it into the local area to entry tax or that it had paid the entry tax on the said value or that the assessing authority had accepted the said return and passed the assessment orders. But the question is whether the said action on the part of the appellant bars the appellant from challenging the order of assessment in appeal when once it realises that the goods in question were exempt from tax.

13. The question is covered by the decision of a Division Bench of this Court in NARASOPALLI OIL MILLS v. STATE OF MYSORE (1973) 32 STC 599 Mys : 1973 (2) Mys 367 where an identical question was considered. The Division Bench held:

"The petitioner cannot ascribe any error in the order of the Commercial Tax Officer since his own return was accepted by the assessing authority and there was no dispute that the sales were not exigible to tax under the Central Sales Tax Act, If the assessee makes in a return and submits to be assessed to tax before the assessing authority, he is not estopped or precluded by any law from preferring an appeal and showing to the appellate authority that the sales are, in fact, not exigible to tax. If such a contention is taken, the appellate authority is under a duty to examine the matter and determine the question whether or not the sales are exigible to tax. There is no question of invoking the doctrine of estoppel. In our opinion, the Deputy Commissioner of Commercial Taxes as also the Tribunal have failed to exercise the jurisdiction vested in them."

The second question therefore has to be answered in the affirmative in favour of

the assessee.

The Revisional Authority was not therefore justified in holding that the order of Appellate Authority was erroneous. Consequently the question whether the order was prejudicial to revenue does not arise. The appeals are therefore allowed. The common order dated 31-1-2001 of the revisional authority is set aside and the order of the appellate authority is restored. Parties to bear their respective costs.