(1996) 11 AP CK 0072

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 73 of 1990

Bharat Steel Industries APPELLANT

Vs

State of Andhra Pradesh RESPONDENT

Date of Decision : 21-11-1996

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20, 22(1), 9(1)

Citation : (1997) 106 STC 318

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

Bench : Division Bench

Judgement

B.S. Raikote, J.—The petitioner has challenged the order of the Sales Tax Appellate Tribunal, dated October 4, 1989, passed in T.A. No. 33 of 1986 by which an appeal filed by the petitioner against the order of the Deputy Commissioner (C.T.), Secunderabad, dated October 29, 1985, vide R.R. No. 12 of 1985-86, is dismissed.

2. We heard the learned counsel for the petitioner as well as the learned counsel for the respondent.

3. In order to appreciate the rival contentions we have summarily noted the facts of the case, The petitioner is a registered dealer under the Andhra Pradesh General Sales Tax Act, 1975 (hereinafter referred to as "the Act"). The petitioner is a re-roller making products out of ingots, billets etc., such finished products are rounds, angles, flats, etc. The matter relates to the assessment year 1980-81. For that year the petitioner claimed exemption on sale of its products under G.O.Ms. No. 88, dated January 28, 1977. The Commercial Tax Officer exempted such finished products from the payment of tax under the Act on the ground that the raw material purchased by the petitioner suffered already tax and accordingly the petitioner was entitled for the exemption of tax under G.O.Ms. No. 88, dated January 28, 1977, vide its proceedings dated January 2, 1982. While the things stood as that the Deputy Commissioner, Secunderabad Division by exercising powers u/s 20 of the Act revised the assessment by

withdrawing the exemption vide his order dated October 29, 1995 in proceedings R.R. No. 12 of 1985-86 and accordingly levied tax on Rs. 25,34,971. In an appeal preferred by the assessee before the Sales Tax Appellate Tribunal the said Tribunal also vide its judgment and order dated October 4, 1989 dismissed the appeal in T.A. No. 33 of 1986. It is in these circumstances the petitioner has approached to this Court by way of revision u/s 22(1) of the Act.

4. The learned counsel appearing for the petitioner strenuously contended that the finished products in question are exempted under G.O.Ms. No. 88, dated January 28, 1977, in view of the fact that the raw material used already suffered the tax. Therefore, the petitioner was entitled to the exemption of the tax under the said Government order. On the other hand the learned counsel for the respondents contended that the said exemption is possible only if the raw material suffered the tax but in the instant case the raw material was ingots and billets, for the purpose of re-rolling into rounds, angles, etc. But these ingots and billets did not suffer any tax and according to the petitioner it is only the scrap that suffered the tax out of which the ingots and billets were manufactured and therefore the petitioner is not entitled to the exemption.

5. It is not in dispute in this case that but for the alleged exemption under G.O.Ms. No. 88, dated January 28, 1977 the petitioner would be liable to pay the tax. In order to show that the petitioner was entitled for such an exemption the petitioner should necessarily prove that the raw material out of which the finished goods was manufactured suffered the tax. It is relevant at this context to extract the G.O.Ms. No. 88, dated January 28, 1977 and the same is as under :

"In exercise of the powers conferred sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (A.P. Act 6 of 1957), the Governor of Andhra Pradesh hereby makes an exemption with effect from the 1st April, 1976, the re-rolled finished products of the steel re-rollers from the tax payable under the said Act, subject to the condition that the tax has been levied under the said Act on the sale or purchase of the raw material from which such finished products were obtained."

6. From this Government Order it is clear that re-rolled finished products would be entitled to the exemption "subject to the condition that the tax has been levied under the said Act on the sale or purchase of the raw material from which such finished products were obtained. The preposition "from which" used in the Government Order refers to the raw material already suffered tax and if out of such raw material finished products are made they would be exempted from the payment of tax. In other words if the scrap suffered tax and if that scrap is used for manufacturing ingots and billets such ingots and billets would be exempted from the tax. In that event ingots and billets would be the finished products produced out of the scrap which suffered tax and such ingots and billets would be exempted from tax. But in the instant case those ingots and billets are not the commodity under sale but in turn such ingots and billets are used as raw material for re-rolling them into finished products like rounds, angles, flats, etc.

If such raw material, i.e., ingots and billets suffered tax the finished products like rounds, angles, flats, etc., would stand exempted under the said Government Order. In fact, this position has been made clear vide subsequent G.O.Ms. No. 729, Revenue(S) dated June 17, 1977 by which G.O.Ms. No. 88, dated January 28, 1977 was amended with effect from April 1, 1976 and the same is extracted as under :

"In exercise of the powers conferred by sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act 6 of 1957), the Governor of Andhra Pradesh hereby makes an exemption with effect from 1st April 1976, the re-rolled finished products of the steel re-rollers from the tax payable under the said Act, subject to the condition that the tax has been levied under the said Act on the sale or purchase of the steel scrap or ingots or billets from which such finished products were obtained."

7. Even in this Government Order also the same condition is provided for exemption. The preposition from which refers to the raw material used either scrap or ingots or billets from which such finished products are obtained. In other words if the tax suffered scrap is used to manufacture ingots or billets such a finished product namely, ingots and billets could be exempted from the tax and if such ingots and billets are used to re-roll them into finished products like rounds, angles, flats, etc., such rounds, angles, flats, etc., would be exempted from tax provided the raw material, i.e., ingots or billets suffered tax. In order to avoid any kind of ambiguity a further amendment also is issued in G.O.Ms. No. 1305, Revenue (S-1), dated November 8, 1979, with effect from July 1, 1977 to the same effect, which reads as under :

"In exercise of the powers conferred by sub-section (1) of section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Act VI of 1957), the Governor of Andhra Pradesh hereby exempts the sales of steel ingots/billets produced by Andhra Pradesh Steels Limited, Hyderabad; Andhra Steel Corporation, Visakhapatnam; A. K. Corporation, Visakhapatnam; Poddar Projects Limited, Hyderabad and Pratap Steel Re-rolling Mills Limited, Patancheruvu (and Padmavathy Steel Melters, Lakshminarayanapuram, East Godavari District) from the liability to tax under the said Act, subject to the condition that steel scrap used by the above mini-steel plants in the State for the manufacture of such ingots/billets has been subjected to tax under the said Act."

8. From the Government Orders issued from time to time as referred to above it is clear that the Government Orders contemplate the three stages of production process. The first is the scrap stage, the second is the ingots and billets and the third stage is of re-rolled rounds, angles, flats, etc. The first stage is used as raw material for the second stage (as a finished product) and the second stage is used as raw material for the third stage as finished product. If the stage used as raw material is subjected to tax the next stage is exempted from tax. Hence for the last stage of re-rolled rounds, angles, flats, etc., it is not enough if at the scrap stage it suffered tax since the scrap stage was not used as raw material for

the re-rolled rounds, angles, flats, etc. It is at the stage of ingots and billets they serve as a raw material for the final finished products of re-rolled rounds, angles, flats, etc. Therefore, if the ingots and billets suffered tax and they are used as raw material for re-rolled rounds, angles, flats, etc., the finished re-rolled rounds, angles and flats would be exempted from this tax. In the instant case, the product that fell for consideration before the tax authorities was re-rolled angles, rounds, flats, etc. It is not the case of the petitioner''s firm that the ingots and billets used as raw material suffered any tax under the Act. From the finding recorded by the assessing authority it is clear that it was only the scrap that suffered the tax from which ingots and billets were manufactured and ingots and billets used as raw material for the re-rolled rounds, angles and flats, etc., did not suffer any tax. In these circumstances, the re-rolled rounds, angles, flats, etc., cannot be exempted from the payment of tax in the terms of G.O.Ms. No. 88, dated January 28, 1977 as held by the Sales Tax Appellate Tribunal. In this view of the matter the impugned order of the Sales Tax Appellate Tribunal does not call for any interference. Accordingly this tax revision case is hereby dismissed with costs.

9. Petition dismissed.

