(1984) 05 RAJ CK 0025

In the Rajasthan High Court

Case No : Sales Tax Reference No. 22 of 1976

Commercial Taxes Officer APPELLANT

Vs

Ramdas Amritlal RESPONDENT

Date of Decision : 11-05-1984

Acts Referred:
Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1984) RLW 550 : (1984) WLN 664

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Judgement

S.K. Mal Lodha, J.—The Board of Revenue for Rajasthan, Ajmer (The Board herein) has referred the following question of law for our decision:

Whether on the facts and circumstances of this case the galvanised corrugated sheets corrugated sheets come within the definition of iron and steel for the relevant assessment period?

2. The dealer-assessee (respondent) was assessed by the CTO Pali (Assessing Authority) in respect of the year 1964-65 u/s 10 of the Rajasthan Sales Tax Act (No. XIIX of 1984) (for short ''the Act'' herein) and held that the sale of galvanized corrugated sheets were liable to tax at general rate for the relevant assessment period. The dealer-assessee was unsuccessful in appeal. A revision was filed before the Board. The Board by its order dated September 18, 1974 held that the sale of galvanised corrugated sheets are taxable @ 2% and not @ 6% as decided by the Assessing Authority and the Deputy Commissioner, (Appeals) Commercial Taxes, Jodhpur, in appeal. It was further held that the excess tax of 4% charged, if collected, be refunded to the dealer. The Board while doing (sic) relied on Radha Ballabh & Sons v. State of Rajasthan 1974 Kanoon Saptahik (KS) :35 which is a decision tendered by the three learned Members of the Board. According to the Bears the galvanised corrugated shouts fall within the definition of Iron arid Steel within the meaning of Section 14 of the Central Sales Tax Act (No. 74 of 1956) (hereinafter to be referred as ''the CST

Act''). An application to reference u/s 15(1) of the Act was filed by the Assessing, Authority. The Board thought it proper to make a reference to this Court for deciding the question aforesaid.

3. We have heard Mr. A.K. Mathur, learned Counsel for the Assessing Authority. No body has appeared on behalf of the dealer-assessee.

4. The only question which we are called upon to decide is whether in the case on hand the galvanised corrugated sheets come within the definition of "Iron and Steel" in respect of the relevant assessment period.

5. The relevant portion of Section 14 of the CST Act as it stood at the relevant time reads as under:

It is hereby declared that the following goods are of special importance in inter-state trade or commerce:

(i) coal-including coke in all(sic)its form;

(ii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste;

(iii) hindes and skins, whether in a raw or dressed state;

(iv) iron and steel, that is to say,

(a) pig iron and iron scrap;

(b) iron plates sold in the same form in which they are directly produced by the rolling mill:

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

(d) (i) steel plates,) (ii) steel sheets,) (iii) sheets bars and tic bars,) sold in the same (iv) rolled steel Sections) form in which (v) tool alloy steel:) they are directly) produced by the) rolling mill;

6. A Division Bench of the Board in the case of M/s. Raj. Iron & Steel Merchants ASSO, Pvt. Ltd., Jaipur v. State 1969 RRD 20 observed as follows:

We find that all these items of CP & CC sheets and CI wires have one thing is common in that they are all galvanised i.e. they are galvanised plain sheets and galvanised I, wires. As corrugation is only a change in the shape of sheet, it does not really change the property of the matter and so the main point at issue remains, whether galvanisation does make any fundamental difference in the nature of the item. In the Chamber''s Twentieth Century Dictionary, galvanised iron is defined as ''iron coated with zinc''. It would, thus be seen that galvanisation is the process by which sheets or wires of iron got a coating of zinc. In our opinion, such a process where the entire rural area of the iron item is coated with another metal (zinc). In the present case there occurs a basic change in the nature and properties of the iron sheets or wires, and accordingly after this process of galvanisation they could not be strictly called merely items of ''Iron & Steel''. In view of this position, we find that it has been rightly held that galvanised plain sheets or galvanised corrugated sheets of galvanised I, wires no longer fall under the category of ''Iron & Steel'' u/s 14 of the Central Sales Tax Act and as notified vide Government Notification dated 2-3-63. Thus, they attract sales tax at the rate of 6% instead of 2%.

7. The Board held that CP and CC sheets and CI wires are liable to sales tax at the rate of 6%. In that case the assessment year was 1963-64 and the accounting period was from 1-4-63 to 31-3-64. In Radha Ballabh & Sons case 1974 Kanoon Saptahik (KS) : 35 the Larger Bench of the Board did not subscribe to the view taken in the Rajasthan Iron & Steel Merchant''s case 1969 RRD 20. As there was no decision of the reference made to this Court, the Board referred the matter to a Larger Bench. The question in M/s. Radha Ballabh & Son''s case 1974 Kanoon Saptahik (KS) : 35 was whether galvanised corrugated sheets fall within the term "Iron and Steel" occurring in Section 14(iv) of the CIT Act as it then stood and it opnied that galvanised corrugated sheets fall under the definition of ''iron and steel'' within the meaning of Section 14 of the CST Act and galvanised or corrugation does not affect their basic character as iron and steel. As a necessary consequence of that the Larger Bench in M/s. Radha Ballabh & Son''s case 1974 Kanoon Saptahik (KS) : 35 was of the view that the later view of the two Division Benches of the Board opining that the process of galvanising the iron sheets do not lose their basic character and they still fall within the term ''Iron and Steel'' u/s 14(iv) of the CST Act is the sound view and it dissented with the view taken in Raj. Iron & Steel Merchant''s case 1969 RRD 20. Here we may mention that in coming to the aforesaid conclusion, the Board, inter alia, noticed the cases of State of Gujarat v. Shah Veljibhai (1969) 83 STC 288, Algu Ram Shrinarayan Ram v. ACST Stores Cuttak (1971) 27 STC 385, Hukamchand Rabendra Kumar v. Commissioner of Sales Tax (1972) 29 STC 395 C.S.Y.U.P. v. Agarwal Commercial Corp. (1973) 31 STC 32 and State of U.P. v. Sri Durga Hardwares Stores (1973) 32 STC 322.

8. It relied on State of A.P''s case (7) in which it was held;

that the galvanised plain or corrugated sheets and B.P. sheets fall within the ambit of "Iron and Steel" in entry 2 of the Third Schedule to the Madhya Pradesh Central Sales Tax Act.

9. The entry No. 2 in that Act was in pari materia with Section 14(iv) of the CST Act as it stood before the assessment.

10. The Larger Bench of the Board agreed with the view taken in the case of State of A P.''s case (1973) 32 STC 322.

11. It is the correctness of the decision of the Larger Bench of the Board reported in Radha Ballabh & Sons'' case 1974 Kanoon Saptahik (KS) : 35 that precisely comes up for our consideration while answering the question referred to

us. For this purpose we will only confirm ourselves in noticing the cases of State of A.P.''s case 1973 32 STC 322, State of Tamil Nadu v. Pyare Lal Malhotra (1976) 37 STC 319 and Dy. Commissioner v. Mohammed Ibrahim Sarakuyar Sons (Madras) (1980) 46 STC 22.

12. We may state at once that State of A.P.''s case (1973) 32 STC 322 is no more a good law in view of State of Tamil Nadu''s case (1976) 37 STC 319 by which it was reversed.

13. In State of Tamil Nadu''s case (1976) 37 STC 319 the scope of Section 14(iv) of CST Act was examined in connection with the term "iron and steel" in respect of "steel rounds, flats, angle, plates, bars" of similar goods in other forms and shapes and the question arose whether they 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. The expression ''that in to say'' used in Section 14(iv) of the CST Act was considered and their Lordships have observed as follows:

...ordinarily, the expression "that is to say" is employed to make clear and fix the meaning or what is to be explained or defined. Such words are not used, as a rule, to amplify a meaning while removing a possible doubt for which purpose the word ''includes'' is generally employed. In unusual cases depending upon the context of the words "that is to say", this expression may be followed by illustrative instances.

...But, in the context of the single point sales tax, a subject to special conditions when imposed on separate categories of specified goods, the expression was apperantly meant to exhaustively assessments the kinds of goods as a given list. The purpose of an enumeration in a statute dealing with sales tax of a single point in a series of sales would, very naturally be to indicate the type of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it.

(Emphasis added)

14. After considering some of the terms, their Lordships have expressed themselves in the following words:

We, however, prefer the more natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item. This means that some item so specified forms a separate species for each series of sales although they may all belong to the genus; ''iron and steel''. Hence, if iron and steel "plates" are melted and converted into "wire" and then sold in the market, such wire would only be taxable once as long as it retains its immunity as commercial goods belonging ?o the category "wire" made of either iron or steel. The mere fact that the substance and 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 appears to be to tax sales of goods of each variety and not the sale of the substance out of which they are made.

(Italics is ours)

15. The Supreme Court, therefore, concluded that the expression ''iron and steel'' used in Clause (iv) of Section 14 of the CST Act and the categories specified therein are exhaustive.

16. Before a Division Bench of the Madras High Court in Dy Commissioner''s case (9) a question arose whether the Galvanised plain sheets, are ''iron and steel'' and liable to be taxed at the multipoint rate in accordance with the entry 4 or the Second Schedule to the Tamil Nadu General Sales Tax Act, (No. 1 of 1939).

17. The learned Judges examined the meaning of Galvanized plain sheets'' and after referring to State of Tamil''s case (8) held that Galvanized plain sheets, referred to as G.I. Sheets or G.C. sheets would not fall within the category of ''iron and steel'' under entry 4 of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959 as it stood during the assessment year 1958-59 and, therefore, they are taxable at multi-point rate. The reason given in support of the aforesaid conclusion by the learned Judge is that Galvanized plain sheets were previously known as zinc sheets and merely because a different expression has come to be used it does hot mean that they retain the character of iron and steel plates as they are actually materials different from steel, plates and their use is also different, and commercially they are different goods. The learned Judges dissented from the view taken in State of MP''s case(7) and stated that it was taken at a time when the decision in State of Tamil Nadu''s case(6) by the Supreme Court had not been rendered The learned Judges did not subscribe to the view taken in A.P.''s case(7) also as the reasoning given was that galvanization was nothing but casting the iron sheet with zinc by electrical process or some other process, to prevent if from oxidation and galvanisation improved the utility of the raw material of iron. The reasoning given in Tamil Nadu''s case (8) was adopted for coming to the conclusion that the turnover in that case was liable to the taxed at the multi-point rate.

18. We agree with the view taken in Deputy Commissioner''s case (9) and are of opinion that the reasoning given in A.P.''s case (7) is no more available to the deafer assessee for holding that the Galvanised corrugated sheets, come within the definition of ''iron and steel'' in respect of the assessment year 1964-65.

19. It clear from State of Tamil Nadu''s case (8) that the ordinary meaning to be assigned to a taxable item in a list of specified items, so that each item so specified should be considered as a separately taxable item for purposed of single-point taxation in a series of sales unless the contrary is shown. It was also held therein that the more fact that the substance or raw material out of which it is made has also been taxed in some other form when it was held as a separate commercial commodity, would make no difference for purposes of the law of sales tax. It has authoritatively been laid down by the Supreme Court in the

aforesaid decision that the object is to tax sale of each commercial commodity and not the sale of the substance out of which they are made and that 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. Galvanised corrugated sheets are actually different from the material of iron and steel of which they are made, their use is also different and they are commercial goods. For all these reasons, the view taken in Dy Commissioner''s case (9) appears to be sound and we respectfully follow it. We would like to state here that the contrary view taken in M/s Radha Ballabh & Son''s case 1974 Kanoon Saptahik (KS) : 35 and the two later Division Benches of the Board after M/s Raj Iron & Steel Merchant''s case 1969 RRD 20 is not correct as it is no according to the decision in State of Tamil Nadu''s case(8).

20. For the aforesaid reasons, the order of the Board dates September 18, 1974 holding that the sale of Galvanised corrugated sheets are taxable @ 2% and not @ 6 per cent for, galvanised corrugated sheets are not `iron and steel'' within the meaning of Clause (iv) of Section 14 of the CST Act is erroneous. In our opinion the Galvanised corrugated sheets do not come within the definition of `iron and steel'' for the relevant assessment period.

21. We, therefore, answer the question stated here in above in the negative and in favour of the Department (Assessing Authority) and against the dealer assessee (respondent).

22. We leave the parties to bear their own cost of this reference.

23. The office shall take action in accordance with Section 15 of the Act.

