(2012) 07 CHH CK 0011

In the Chhattisgarh High Court

Case No : S. T. R. No. 202 of 1997 and S. T. R. No. 201 of 1997

Commissioner of Commercial Tax Madhya Pradesh APPELLANT

Vs

Ms Fixopan Engineering P Ltd Korba RESPONDENT

Date of Decision : 24-07-2012

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 44

Citation : (2012) 07 CHH CK 0011

Hon'ble Judges : Gulam Minhajuddin, J;Abhay Manohar Sapre, J

Bench : Full Bench

Advocate : Vinay Harit Dy A.G. for the State in both the S. T. R. s, for the Appellant;

Judgement

Hon''ble Mr. Abhay Manohar Sapre, J.—The decision rendered in this Sales Tax Reference shall also govern the disposal of the connected Sales Tax Reference being S.T.R. No. 201/1997 because both the references involve common question of law and relates to one assessee. This is a Sales Tax Reference made at the instance of the Commissioner Sales Tax u/s 44 of the M.P. General Sales Tax Act (for short hereinafter called "the Act") by the Board of Revenue to this Court to answer following question of law:-

Whether under the facts and circumstances of the case, the Tribunal was justified in holding that the conversion of angle iron into steel structure does not amount to a process of manufacture and therefore are liable to tax at 4% and not 12%?

2. The respondent (assessee/dealer) at the relevant time was working as Contractors. They were awarded contract for supply of item called - "drift eliminator" to N.P.C.C. - a Government of India undertaking having their plant at Korba. This item which in technical term is known as "drift eliminator" is made of steel and angle iron. The respondent used to purchase the raw material (iron and angels) from one company- Sunrise Steel Industries from Nagpur.

3. The respondent (dealer) was assessed to tax in relation to this item (drift

eliminator) for the period (29.3.87 to 5.1.88) (6.1.88 to 30.9.88) and (1.10.88 to 30.9.89) under the provisions of M. P. General Sales Tax Act (for short hereinafter called "The Act"). The A.O. while making the assessment applied the rate of 12% applicable to residuary items under the schedule for this item to determine the tax liability of the respondent (assessee/dealer) and accordingly framed the assessment. The respondent felt aggrieved of this assessment order filed appeal to Commissioner of Sales Tax (Appeals). The case of the respondent before the CST (Appeal) was that the item in question is in fact "iron and steel" and hence liable to be taxed accordingly at the rate of 4% in place of 12% as wrongly assessed by the assessing officer under the residuary clause of the Schedule. The CST (Appeal) found substance in the contention of the respondent and while allowing the respondent''s appeal and setting aside of the assessment order, held that the item in question has to be taxed at the rate of 4% for the period in question treating the same as falling in the entry relating to "iron and steel" as specified in the Schedule for determining the tax liability of the assessee for the period in question.

4. The Revenue (Commissioner of Sales Tax) then felt aggrieved of this order filed second appeal before the Board of Revenue. The Board of Revenue dismissed the appeal and upheld the order of the CST (Appeals). It was held that since the item in question did not undergo any manufacturing process or/and any processing activity and retained its original identity of iron and steel and hence it was liable to be taxed at the rate of 4 % as "iron and steel" specified in schedule. It is against this order of the Board of Revenue, the Commissioner of Sales Tax sought reference to this Court u/s 44 of the Act. The Board of Revenue acceded to the prayer made by Revenue and accordingly made the reference to this Court to answer the aforementioned question of law.

5. Relying upon the decision rendered in the case of Ashirwad Ispat Udyog and others Vs. State Level Committee and others reported in [(1999) STC 207 (SC)], the learned Counsel for the State contended that the item in question known as "drift eliminator" was the out come of the manufacturing process undertaken by the dealer/assessee (respondent) and since it underwent sea change in its constitution in the hands of dealer /assessee by means of process of manufacture before its dispatch to NPCC by the assessee thereby loosing its original identity out of which it was made (iron and steel) and hence it was liable to be taxed at the rate of 12 % as an commodity falling in the residuary entry as specified in the Schedule appended to the Act and not under the entry of iron and steel.

6. None appeared for the respondent/assessee despite repeated notices sent to them in last more than 15 years. The process server report revealed that place of the respondent business is closed and hence it is not possible to serve them at the address mentioned in the notice. No other address is available in the record for sending notice of this reference. Since more than 15 years has passed, we do not wish to keep this reference pending any more and nor we consider it proper

to send any fresh notice to the respondent on the same address again which is not going to serve any purpose. It is with this back ground, we proceed to answer the question referred to this Court by the Board of Revenue.

7. Having heard the learned counsel for the State and on perusal of the record of the case (statement of case), we are inclined to answer the referred question in negative i.e. against the Revenue and in favour of the assessee.

8. This is what the Board held on facts while deciding the issue in favour of the assessee in the appeal and against the Revenue.

(Vernacular matter deleted)

9. In our view, this is a case where there was no evidence brought on record to show as to what was the actual manufacturing process undertaken by the respondent/assessee/dealer while producing the item in question. In the absence of any evidence, the finding of the Board quoted supra that no manufacturing process was undertaken for bringing into existence the "Drift eliminator" and the same was produced only by use of steel rod and angle iron by molding them and without undertaking any manufacturing process much less systematic and extensive one resulting in retaining their (iron/steel) original identity as it is deserves to be upheld.

10. In order to show that new item (commodity) came into existence as a result of undertaking some kind of systematic manufacturing process, it was necessary for the revenue to have at least brought on record clinching evidence in support of their case. It was not done and nor there was any factual finding to support it. On the other hand, the factual finding is that it did not undergo any manufacturing process and while selling the commodity by name "drift eliminator", the iron, angle irons and steel were used for moulding them to give shape and in this process the commodity did not loose its original identity in any respect.

11. In the light of this admitted position emerging from the record of the case, and keeping in the view the factual finding of the authorities below on this vital issue, and further in the absence of any kind of oral or documentary evidence not being brought on record by the State, we can not accept the contention of the learned counsel for the State that the commodity in question should have been taxed at the rate of 12% as falling under the residuary entry in place of 4% as falling under the entry relating to "iron and steel" as specified in schedule.

12. The decision relied upon by the learned counsel for the State referred supra is distinguishable on facts and hence it is of no help to the State. In that case, the manufacturing process used by the assessee was explained in detail and the same was taken into consideration for holding that due to extensive manufacturing process undertaken by the assessee, the new commodity has come into existence thereby loosing the original identity of the raw material used in its manufacturing and hence the new commodity has to be taxed accordingly

and can not be treated as "iron and steel". Such is not the case here because as stated supra, in the present case, no evidence was brought on record to show and nor any finding was recorded as to what was the manufacturing process undertaken by the assessee for bringing into existence the "drift eliminator".

13. Before parting with the case, we consider it apposite to mention that we have answered the question on the basis of the finding recorded by the authorities below on what ever facts brought on record coupled with the facts stated in the statement of case sent to us by the Tribunal.

14. In this view of the matter, the question has to be confined as being binding only on the assessee of this case for taxing purpose and hence our decision rendered should be treated as the "judgment in persona" and not "judgment in rem" so far as the interpretation of commodity in question is concerned.

15. In the light of foregoing discussion, we answer the question by saying that Board of Revenue was justified in holding that the commodity in question known as "drift eliminator" was liable to be taxed at the rate of 4% meant for taxing "iron and steel" as specified under the Schedule and that conversion of angle iron into a steel structure does not amount to manufacture so as to attract the tax liability at the rate of 12% as specified for residuary entry. The original order shall be kept in the records of S.T.R. No. 202/1997 and the copy of the same shall be kept in the records of another connected S.T.R No. 201/1997.

No order as to costs.

