
(1968) 02 BOM CK 0030

In the Bombay High Court

Case No : Sales Tax Reference No. 35 of 1965

Commissioner of Sales Tax

APPELLANT

Vs

Amar Wire and Rolling Mills

RESPONDENT

Date of Decision : 07-02-1968

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 10, 12, 13, 2(26), 52

Citation : (1968) 22 STC 294

Hon'ble Judges : Vimadalal, J;N.L. Abhyankar, J

Bench : Division Bench

Judgement

Abhyankar, J.—This is a reference at the instance of the Commissioner of Sales Tax made by the Sales Tax Tribunal, referring the following three questions for our answer. The questions are as follows :-

"(1) Whether on the facts and in the circumstances of the case the sale of "fabricated mild steel round/flat bars" is a "resale" within the meaning of section 2(26)(iii) of the Bombay Sales Tax Act, 1939 ?

(2) Whether there was any evidence before the Tribunal to justify it in law in coming to the conclusion that fabricated mild steel bars are used for the same purpose for which mild steel bars directly produced from the rolling mills are used ?

(3) Whether in the facts and circumstances of the case fabricated mild steel round/flat bars fall within the scope of clause (c) of entry No. 3 of Part I of Schedule B to the Bombay Sales Tax Act, 1959 ?"

Before we proceed to answer the questions necessary to be answered and which, in our opinion, are questions Nos. (1) and (3) only, because, it is not now disputed that the 2nd question, though framed and referred to us for decision is really not required to be answered, because the answers to questions which really arise out of the controversy between the parties, viz., questions Nos. (1) and (3), do not depend for their answers on finding the purpose to which the

article is put. We, therefore, do not think it necessary to answer question No. (2), though it has been referred to us.

2. The respondents are running a re-rolling mill. They purchase mild steel materials from the registered dealers and subject them to re-rolling process in their mill and sell the goods as "fabricated mild steel round/flat bars". The respondents moved the Commissioner of Sales Tax u/s 52 of the Bombay Sales Tax Act, 1959, to decide whether the sale of this fabricated material - "mild steel round/flat bars" - would amount to resale within the meaning of section 2(26)(iii) of the Bombay Sales Tax Act, 1959.

3. In order to properly understand the controversy the provisions of the law under which the questions arise have to be noticed. Section 2(26) of the Bombay Sales Tax Act, 1959, which defines "resale" is as follows :

"In this Act, unless the context otherwise requires "resale", for the purposes of sections 7, 8, 9, 10, 12 and 13, means a sale of purchased goods -

(i) in the same form in which they were purchased, or

(ii) without doing anything to them which amounts to, or results in, a manufacture, or

(iii) being goods specified in any entry in Schedule B, without doing anything to them which takes them out of the description thereof in that entry, and the word "resell" shall be construed accordingly."

As sub-clause (iii) in the above definition of "resale" refers to Schedule B, that provision with which we are concerned is really entry No. 3 in Part I of Schedule B. Entry No. 3 is as follows :

"Iron and steel, that is to say -

(a).....

(b).....

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

(d) (i) steel plates, | sold in the same form in | which they are directly (ii) steel sheets, | produced by the rolling | mill." (iii) sheet bars and tin bars, | | (iv) rolled steel sections, | | (v) tool alloy steel. |

4. Now, there is no dispute between the parties that in respect of mild steel round bars and mild steel flat bars which are fabricated by the respondents, they further subject such bars to the process of bending at either end or drilling holes in such bars. This perhaps is necessary to facilitate their use in concreting work in which these bars are generally utilised. The respondents themselves have stated in their application that these are described as fabricated mild steel bars and fabricated mild steel round bars. It is, therefore, contended by the department that on a proper construction of entry No. 3 in Schedule B, the

articles so fabricated by the respondents, fall more properly under sub-entry (b) rather than sub-entry (c) of item No. 3 of Part I of Schedule B. We may point out that no articles included in sub-item (b) of item No. 3 of Part I of Schedule B speaks of steel bars. They undoubtedly speak of other articles and not of steel bars. There is one more entry below this entry. This is entry No. (d). But we do not think that it would be permissible to have recourse to it when it is established that steel bars are specifically referred to in item (c) of entry No. 3 in Part I of Schedule B. It will have, therefore, to be seen whether merely because mild steel round/flat bars fabricated by the respondents are subjected to a process of bending or drilling of holes therein, is enough to take these articles out of entry 3(c) of Part I of Schedule B. We are impressed with the contention of the respondents that in spite of being bent on either end or holes having been drilled in the bars, they would scarcely cease to be described as steel bars. That is how they are known apparently in the inter-State trade. Here we may point out that whereas the articles mentioned in entry 3(d) of Part I of Schedule B have to satisfy a further test, viz., such articles should be sold in the same form in which they are directly produced in the rolling mill, there is no such qualification attached to the articles described in item 3(c) of Part I of Schedule B. We, therefore, fail to see why the articles produced and in respect of which the question has arisen in this reference, viz., the fabricated mild steel flat/round bars produced by the respondent, did not fall within the description of steel bars. They are steel bars and merely because they are subjected to bending or drilling of holes, we do not think that for that reason they have ceased to be steel bars.

5. Once it is found that the articles in respect of which the question has been raised are steel bars within the meaning of item 3(c) of Part I of Schedule B, there is no further difficulty to answer the question. Section 2(26) defines "resale" for the purposes of sections 7, 8, 9, 10, 12 and 13, as meaning sale of purchased goods in three different categories. But these conditions are not required to be cumulatively applied and are disjunctive. The goods may be in the same form in which they are produced or the goods may be subjected to process, but that will not take them out of the description in entry 3(c) of Schedule B, Part I. The respondents' contention is, it is the third clause of section 2(26) of the definition of "resale" which is attracted in their case. The respondents say that the fabricated mild steel round/flat bars produced by them are goods mentioned in item 3(c) of Part I of Schedule B and nothing is being done to them to take them out of the description in the entry. We are also impressed with the contention of the respondents that the object of inclusion of these articles in Schedule B, which are declared goods in the inter-State trade, is to give exemption from payment of double sales tax. These goods are of every day commerce in the inter-State trade and vital to the national economy, and therefore, the State did not intend that the taxing power of the State should be used in subjecting them to tax over again when once tax is paid at the time of the first purchase.

6. Similar question arose for decision before the Gujarat High Court in the case

reported in *Vaiswaner Trading Co. v. The State of Gujarat* [1964] 15 S.T.C. 586. In that case pieces of rolled steel sections were joined together by riveting and the question was whether the steel retained the same form in which the rolled steel sections were produced by the rolling mills within the meaning of entry 4 in Schedule AA of the Bombay Sales Tax Act, 1953. That entry 4 in Schedule AA of the Bombay Sales Tax Act, 1953, is identical with entry No. 3 in Part I of Schedule B of the Bombay Sales Tax Act, 1959.

7. At page 590, the Court observed as follows :

"Riveted baling hoops are really nothing else but pieces of rolled steel sections joined together by riveting. The description "Riveted baling hoops" is a little confusing for it diverts the mind from the basic fact that what we have to consider are plain and simple rolled steel sections joined together by riveting and not any articles different from rolled steel sections. It is merely because they can be used for the purpose of baling hoops and are sold as such that they are described as Riveted baling hoops but in essence and substance they are just rolled steel sections joined together by rivetting. The question to which we must, therefore, address ourselves is whether pieces of rolled steel sections joined together by riveting can be said to be in the same form in which the rolled steel sections are directly produced by the rolling mills."

There seems to have been some confusion in interpreting an entry similar to entry in item 3(d) of the Bombay Sales Tax Act, 1959. The question was answered in favour of the applicants that by merely riveting, the form is not changed. Even if the article like steel bar is subjected to this process of bending or of drilling of holes, that would not by itself take the article out of entry 3(c). The contention is well-founded and must be accepted. We, therefore, agree with the view taken by the Tribunal that the articles produced by the respondents are well within entry 3(c) of Part I of Schedule B, and, therefore, will be governed by section 2(26)(iii) of the Bombay Sales Tax Act, 1959.

8. In the result, we answer both the questions, viz., questions Nos. (1) and (3) in the affirmative.

9. Thus, the reference is decided in favour of the assessee. The Commissioner must pay the costs of the respondents. We fix the costs of this reference at Rs. 250.

10. Reference answered accordingly.