(2014) 12 BOM CK 0235

In the Bombay High Court

Case No : Sales Tax Reference No. 6 of 2003 with Writ Petition No. 1157 of 1998

Commissioner of Sales Tax, Maharashtra State and Others APPELLANT

Vs

Berar Metal Processing Industries Pvt. Ltd. and Others RESPONDENT

Date of Decision : 20-12-2014

Acts Referred:

Citation : (2015) 79 VST 302

Hon'ble Judges : A.B. Chaudhari, J;P.R. Bora, J.

Bench : Division Bench

Advocate : Tapase and M.M. Agnihotri, for the Appellant; B.H. Dangre, Government Pleader, for the Respondent

Judgement

A.B. Chaudhari, J.?Following question was referred to this court by the Maharashtra Sales Tax Tribunal:

"Whether, on the facts and in the circumstances of the case and on a true and correct interpretation of sub-entry (xv) of entry 6 of Schedule B appended to the Bombay Sales Tax Act, 1959, was the Tribunal justified in law in holding that ''welding electrodes'' continue to be ''wire rods'' or ''wires'' even after they were coated with lime, sand and binding glue ?"

This court received the statement of case, drawn separately along with documents. The petitioner herein, M/s. Berar Metal Processing Industries Pvt. Ltd., had already filed Writ Petition No. 1157 of 1998 before this court and was pending for hearing.

2. We have taken up both the reference as well as writ petition for hearing together.

3. Counsel for both the parties were heard at length. We have perused the entire record. We have perused the impugned orders and the reference made. We have perused several decisions cited before us, so also the various provisions and the entries.

4. It is not necessary for us either to repeat the arguments raised by the counsel for the parties or the proposition of law stated before us and the various decisions of this court as well as various other courts.

5. We have carefully perused the relevant provisions, statement of case and the reasons recorded by the Tribunal. Instead of repeating the same, it would be appropriate for us to quote the relevant paragraphs containing the reasons given by the Tribunal in its order, which are as follows:

"11. The main question for our decision is that whether the goods in question are covered by the above-mentioned sub-entry of entry No. 6 ? It may be mentioned here that in sub-entry No. (xv) two items of iron and steel are mentioned. These are:

''Wire rod and wire''

If the pattern of entry No. 6 is examined in proper perspective it will be seen that there are separate sub-entries for different type of items of iron and steel. In each sub-entry the items are stated first and then their different derivatives are described. For example, in sub-entry (vi) of entry No. 6 the items mentioned are:

''Sheets, hoops, strips and skelp''

Thereafter, their derivatives are mentioned as ''both black and galvanised, hot and cold rolled, plain and corrugated in all qualities, in straight lengths and in coil forms as rolled and in revetted condition''. The pattern of entries in different sub-entries and also the wording of sub-entry (xv) which is relevant in this case, without doubt, shows that the derivatives described later in the entry referred to the main items stated in the beginning from sub-entry (xv) it is clear that both ''wire rods'' and ''wires'' obtained in any of the following condition ''rolled'' ''drawn'' galvanised, aluminised, ''tinned'' or ''coated'' such as by ''copper'' even if galvanised or tinned will fall within the same clause as ''wire rod''. Similarly, the ''wires'' whether galvanised or tinned will remain in the same clause as ''wires''. The last condition mentioned in the clause is one of ''coating''. It occurs in the following words:

''or coated such as by copper''.

In this clause the coated wire rods and wire are also included ''such as by copper'' is only added by way of example or illustration of coating. But, in our opinion, the coating is not limited to ''copper coating7 only. ''Such as by copper'' is added only by way of an example of coating : while ''coated'' forms main part of the description contained in the clause and the same cannot be artificially limited by saying that it is only the copper coated rod wire which can be covered by the entry. In our opinion, ''wire rods'' and ''wires'' whether coated with copper or any other material will be included in the same clause as coated wire rod or coated wire. If only the ''copper coating'' was contemplated by the Legislature the wording would have been different.

12.... In our opinion, such interpretation is not reasonable and proper. The entry does not indicate even by implication that coating mentioned in the clause is limited to non-ferrous metal coating. If such was the case, the entry in the clause would have been differently worded. This expression occurring in the clause ought to be given its natural and reasonable meaning and scope. The word ''coated'' is important which cannot be ignored. In the expression ''such as by copper'' the use of the words ''such as'' clearly indicate that ''coper coated'' is stated by way of an example. Similarly, absence of expression indicating that coating is limited to coating by non-ferrous metal cannot be ignored. Had the Legislature intended to restrict the meaning of the word ''coated'' used in the clause or the scope of coating contemplated by this clause, the wording in the clause would have been different. Considering the expressions occurring in this sub-entry (xv), it is not possible for us to give restricted meaning to the word ''coated''. We are, therefore, not inclined to agree with Mr. Bod-hade, that ''coating'' stated in the clause means coating of non-ferrous metal only. In our opinion, the coating contemplated here is not so restricted and it covers all types of coating.

15. Viewed from this angle, the point made in the order of determination that in sub-entry (xv) ''wire rod'' is not only ''wire'' is qualified by the words and adjectives that follow such as ''rolled, drawn, galvanised, coated, etc.,'' falls to the ground. This being a thick wire drawn from rod and then subjected to coating, etc., must necessarily be covered by the entry even if coated. Even if our view that these adjectives and qualifying words also apply to the first named noun ''wire rod'' in the sub-entry is not correct, this aspect supports the applicant.

16. It is not disputed that the appellant purchases iron rods and uses them after drawing through dies which is part and parcel of sub-entry (xv). It sells the same as a welding electrode. It is sold after it is subjected to drawing, cleansing and coating, as stated above. This coating is superficial. Coating of lime and sand with glue does not change the basic nature of item which is nothing but a drawn iron wire. In our opinion, such coated iron wire is covered by sub-entry (xv). The appellant has explained that this coating can be separated from the electrode simply by thrashing the electrode. It is so superficial, it does not basically affect the wire. We have perused the same ''electrode'' that was shown to us during the hearing and what is contended regarding the nature of coating appears to be true. This aspect is not at all disputed. According to the appellant the coating is, however, made in order to facilitate electro welding process for which the coated wires are used. It is unnecessary for us to reiterate that end-use of the product is of no consequence for deciding the nature of the item for the purpose of taxation. In the present case whether the coated wire or wire rod is used as electrode in welding process or not, the item is only a coated iron wire. Its character as iron wire or wire rod is not altered. Even otherwise, in the present case bare wire without coating or a coated wire both can be used for welding.

17. Mr. Bodhade cited the decision of the Supreme Court in the case of State of

Tamil Nadu Vs. Pyare Lal Malhotra and Others, . But the said decision is hardly of any use in the present appeal. The expression ''that is to say'' explained in this decision is not in dispute. In the present case we are restricting the sub-entry (xv) only to two items, namely, ''wire rods'' and wires made of iron. We are not enlarging the scope of the same. We agree with Mr. Bodhade that the expression ''iron and steel'' that is to say occurring at the beginning of entry No. 6 of Schedule B is meant for enumerating items of ''iron and steel'' exhaustively. There is no dispute over this aspect and reference to case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, decided by the Supreme Court is not of any help. In the present appeal we are required to consider the expressions occurring with sub-entry No. (xv) particularly the last part of it ''coated such as by copper''. The question of interpretation of the beginning of entry No. 6 does not arise.

22. Before parting with the case, we may state that Mr. Dawda the learned counsel for the appellant, has heavily relied on the decision of the Karnataka High Court in the case of Bahri Steel Wires Vs. Additional Commercial Tax Officer and another, in which the Karnataka High Court has held that since the wire and wire rods fall within the same sub-entry of the entry of ''iron and steel'' they cannot be taxed again. In the said decision of the Karnataka High Court, sections 14 and 15 of the Central Act are exhaustively discussed and with respect, we are in agreement with the same Mr. Dawda also argued and rightly so that it is two interpretations of the expression ''coated such as by copper'' occurring in sub-entry (xv) of entry No. 6 of Schedule B are possible and if it is doubtful whether the iron rod coated with lime and sand is covered by the same or not then interpretation in favour of the assessee should be preferred. In this respect also, reliance has been placed on the decision of the Bombay High Court in the case of New Nagpur Copra Industries. We are in agreement with the submission of Mr. Dawda. In fact, we have no doubt that this item ''welding electrode'' sold by the appellant is a coated iron wire or wire rod falling within the said sub-entry. But even if any doubt is to be entertained, the benefit of the same by interpreting the entry in favour of the assessee ought to be given.

ORDER

The appeal is allowed. The impugned order of the Commissioner of Sales Tax is hereby set aside. It is held that ''MAXWELD X-9'' welding electrode for electrical welding sold by the appellant are covered by sub-entry (xv) of entry No. 6 of Schedule B appended to the local Act. Impugned sale of ''MAXWELD X-9'' welding rods will not be liable to tax again as the corresponding purchase of wire rod was effected from M/s. Tata Iron and Steel Co. Ltd., a registered dealer''."

6. The above reasons given by the Tribunal, to our mind, are sound, legal and proper, and we fully agree with the aforesaid reasoning given by the Tribunal. Resultantly, our answer to the reference question sent to us is in affirmative.

7. In Writ Petition No. 1157 of 1998, no further orders are required to be made,

since the prayer clause (ii), which reads as under:

"(ii) declare that the welding rods are covered under entry 6(xv) of Schedule B of the Bombay Sales Tax Act, 1959, and the same be subjected to tax accordingly, and;"

is answered by us while answering reference aforesaid. Prayer clause (i) is redundant.

In the result, we make the following order:

ORDER

"(a) Sales Tax Reference No. 6 of 2003 is answered in the affirmative.

(b) Writ Petition No. 1157 of 1998 is disposed of in view of the answer to the reference."

