
(1980) 09 AHC CK 0027
In the Allahabad High Court
Case No : Sales Tax Revision No. 248 of 1980

Commissioner, Sales Tax

APPELLANT

Vs

Kamal Engineering Works

RESPONDENT

Date of Decision : 30-09-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 11, 14
Central Sales Tax Act, 1956 — Section 11, 14
Central Sales Tax Act, 1956 — Section 11, 14

Citation : (1981) 48 STC 394

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : R.C. Sharma and K.C. Verma, for the Respondent

Final Decision : Allowed

Judgement

R.R. Rastogi, J.—The question involved in this revision filed by the Commissioner, Sales Tax, Uttar Pradesh, Lucknow, u/s 11(1) of the U. P. Sales Tax Act is as to whether pulleys are liable to be taxed as iron and steel u/s 14(iv) of the Central Sales Tax Act or as hardware, machinery or an unclassified item.

2. The assessment year involved is 1973-74. The respondent-assessee carried on business in pulleys, agricultural implements, etc. For the aforesaid assessment year, the assessee disclosed intra-State sales of pulleys at Rs. 44,780 and of agricultural implements at Rs. 12,445. The assessing officer did not accept the book version nor did he agree with the assessee that the sales of pulleys purchased from U. P. were not taxable. He determined the total sales at Rs. 80,000 and allowed exemption in respect of sales of agricultural implements. It may be noted that pulleys were treated by him as "mill stores and hardware".

3. The assessee filed an appeal, but remained unsuccessful and then filed a revision. The revising authority accepted the assessee's contention that there was no proper reason for rejecting the accounts. It also agreed with the assessee that pulleys were liable to be assessed as iron and steel u/s 14(iv) of the Central

Act but did not accept the assessee's contention that the assessee did not carry on any manufacturing process. The revising authority found that the assessee used to purchase unfinished pulleys and then they were subjected to filing, chiseling and such other processes and that brought the assessee within the definition of a "manufacturer" u/s 2(e-l) of the U. P. Act. On this view the sales of pulleys disclosed by the assessee were directed to be taxed at 3 per cent. Being aggrieved, the department has filed the present revision.

4. The first question that thus falls for consideration is as to whether pulleys fall within the expression "iron and steel" as defined in Clause (iv) of Section 14 of the Central Act. Section 14 declares certain goods enumerated there to be "of special importance in inter-State trade or commerce" and Clause (iv), as originally enacted, was as under:

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

5. By Section 11(b) of the Central Sales Tax (Amendment) Act, 1972, with effect from 1st April, 1973, this clause has been substituted and now what constitutes "iron and steel" has been categorised in 16 heads, one of which, viz., Sub-clause (xiv), reads:

Wheels, tyres, axles and wheel sets.

6. According to Sri R.C. Sharma, the learned counsel for the assessee, pulleys are wheels falling in this particular category of iron and steel. I am not inclined to agree with the learned counsel. It is now settled by the decision of the Supreme Court in State of Tamil Nadu v. Pyare Lal Malhotra 1976 U.P.T.C. 282 (S.C.) that Clause (iv) of Section 14, as it originally stood, was meant to enumerate separately taxable goods and not just to illustrate what is just one taxable substance, namely, "iron and steel". Each sub-item in Clause (iv) is a separate taxable commodity for purposes of sales tax and each of them forms a separate species for each series of sales although they may all belong to the genus "iron and steel". The subsequent amendment clarifies the original intention of the Parliament. The expression "that is to say" occurring in this clause both before and after the amendment has been held to mean : "But, in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression was apparently meant to exhaustively enumerate the kinds of goods on a given list. The purpose of an

enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales."

7. In other words, therefore, the definition is exhaustive and so far as the disputed item is concerned unless it falls within the ambit of the expression "wheels" it cannot be treated as iron and steel within the meaning of Sub-clause (xiv) of Clause (iv) of Section 14 of the Central Act.

8. The word "wheels" has not been defined in the Central Act. Therefore, recourse will have to be taken to the dictionary meaning and the sense in which pulley is ordinarily understood by persons dealing in sales and purchases thereof. In Encyclopedia Britannica, Volume 18, page 860, this is how a pulley and belt has been described:

Pulley and Belt: a mechanical arrangement for transmitting torque from one shaft to another. The torque originates at a wheel or drum, called the drive pulley, that applies torque, to a continuous, flexible member called the belt. The belt passes around and delivers torque to a second wheel or drum, called the driven pulley.

9. In Oxford English Dictionary, Volume VIII, at page 1581, one of the meanings given to pulley is: One of the simple mechanical powers, consisting of a grooved wheel mounted in a block, so that a cord or the like may pass over it; used for changing the direction of power, especially for raising weights by pulling downwards.

10. Similarly in Webster's Third New International Dictionary, Volume II, page 1840, pulley has been stated to mean :

1 a : a small wheel with a grooved rim, sheave ;

b : a sheave with the pin on which it turns, the frame in which it runs, and the flexible rope, cord, or chain passing through the groove that is used singly to change the direction and point of application of a pulling force applied at one end of the rope, cord, or chain and singly or in any of various definite combinations to increase the applied force, esp. for lifting weights.

11. According to the dictionary meaning, therefore, a pulley is not a wheel, pure and simple, but it is a wheel with grooves at its rim and with something more so as to form a contrivance for lifting weights, etc. According to Sri R. C. Sharma, the dictionary meaning will not be very useful to determine the exact nature of this commodity and the sense in which it is understood in the commercial circles should be accepted. There can be no dispute in so far as this contention is concerned because certainly when a word or expression has not been defined in the Act, the sense in which it is understood in common parlance and by persons who carry on trade in the same, has to be accepted. However, what comes out from the above is that a pulley cannot be equated with a wheel. Wheel is certainly a component of the pulley, but I do not think that the pulley can be

equated with the wheel. A finished or a semi-finished product cannot be equated with any one of the components. For instance a tricycle is comprised of several parts, e. g., wheels, seat, frame, etc. It cannot be equated with any one of them. It shall have to be treated as different from wheels, seat, frame, etc., the parts of which it consists of. On this view of the matter it is not possible to accept the contention of the assessee that pulley falls within the category of "wheel" as mentioned in Sub-clause (xiv) of Clause (iv) of Section 14 of the Central Act. Therefore, pulleys are not wheels and as such they cannot be treated as iron and steel u/s 14 of the Central Act and the view taken by the revising authority is erroneous.

12. As for the question whether pulleys can be taxed as machine parts, the matter stands covered by a decision of this Court in Commissioner of Sales Tax v. Om Iron Foundry [1974] 33 S.T.C. 82. It has been laid down in that case that ordinary pulleys connecting shafts with electrical motor or oil-engine for transmission of power are not liable to be taxed as machine parts at the rate of six per cent under Notification No. ST-7098/X-1012-1965 dated 1st October, 1965. This leads me to consider the last question as to whether iron pulleys are liable to be taxed as hardware and mill stores. My attention has been invited to a decision in Commissioner of Sales Tax v. Suresh Iron Foundry 1974 U.P.T.C. 136 in which this question has been answered in the affirmative. Iron pulleys were held in that case as liable to be taxed as hardware and mill stores. An attempt was made by the assessee's counsel to distinguish this decision by contending that in this case what constitutes a hardware was not taken into consideration and hence the view aforesaid could not be said to be very correct. In my opinion, there is no merit whatsoever in this contention. It may be that the characteristics which go to make an item fall in the category of hardware were not discussed but that does not make any difference. In Commissioner of Sales Tax v. Aftab Husain Imdad Husain [1970] 25 S.T.C. 471, the question referred to this Court was as to whether steel trunks can be regarded as an item of hardware or not. The answer to that question was given in the negative. As regards characteristics of hardware the view taken was :

In the commercial world the term "hardware" refers to a well-defined section of trade. Every article that is made of iron or of other base metal is not regarded as an article of hardware. In the popular sense "hardware" would comprise small articles of base metals such as iron, copper, aluminium and their alloy like brass, etc. The meaning in the Shorter English Oxford Dictionary approximates to this popular meaning. There the term "hardware" means "small wares or goods of metal, ironmongery.

13. Further the view taken in that case was that in order to ascertain the true scope of the term "hardware", as understood in the commercial world, it would be helpful to look into some trade journals and catalogues of hardware items. On a perusal of trade journals like "British Empire Trade Index" and the "Bombay Market" and some catalogues of some leading hardware merchants, it was

observed:

- (i) that hardware and mill stores are allied trades;
- (ii) that mill stores comprise of items like small tools and spare parts of machinery ;
- (iii) that hardware trade by itself refers ordinarily to small items of base metals particularly building materials like nuts, bolts, hinges, rivets, latches, curtain railings, window grills, etc.; and
- (iv) that there is a separate classification of trade known as iron and steel trade.

14. On the basis of this material it was held that steel trunks cannot be regarded as an item of hardware. In my opinion, pulleys would clearly fall in the category of hardware and mill stores if the above criteria are kept in view and thus it would not be correct to say that the characteristics of mill stores and hardware were not taken into consideration in the case of Suresh Iron Foundry 1974 U.P.T.C. 136.

15. In regard to the nature of the mill stores and hardware the same view has been taken by a Full Bench of this Court in Commissioner of Sales Tax, U.P. v. Ram Niwas Puskar Dutt [1971] 28 S.T.C. 736 (F.B.). In that case weights and measures were not treated as the item of mill stores and hardware because they have nothing in common with mill stores and do not fall within the expression "mill stores and hardware". Hence, following the decision in the Suresh Iron Foundry case 1974 U.P.T.C. 136, I hold that pulleys are an item of mill stores and hardware liable to be taxed as such.

16. The revision is hence allowed. The Commissioner is entitled to costs which are assessed at Rs. 200.