(1991) 03 AP CK 0019

In the Andhra Pradesh High Court

Case No : S.L.P. (Civil) No''s. 15898 and 15899 of 1991

Deccan Engineers — APPELLANT

Vs

State of Andhra Pradesh — RESPONDENT

Date of Decision : 06-03-1991

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20, 22(1), 42, 42(2)
Central Sales Tax Act, 1956 — Section 14, 15, 6

Citation : (1992) 84 STC 92

Hon'ble Judges : Yogeshwar Dayal, C.J;Upendralal Waghray, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy and S. Dasaratharama Reddi, for the Appellant; M. Ramaiah and Government Pleader for Commercial Taxes, for the Respondent

Judgement

Yogeshwar Dayal, C.J. and Upendralal Waghray, J.—This revision u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957, is filed by the assessee against the judgment of the Sales Tax Appellate Tribunal dated August 5, 1988, in Tribunal Appeal No. 714 of 1987. The relevant assessment year is 1980-81 and the assessing authority, i.e., the Commercial Tax Officer, had granted exemption from State sales tax in respect of sales by the assessee of C.I. specials, bends, ties, tail pieces, manhole covers, etc. The Deputy Commissioner, however, in exercise of his powers u/s 20 of the Act, after giving notice to the assessee held that the exemption granted on the turnover in respect of these items was not correct and levied tax on it. The assessee carried the matter in appeal to the Tribunal, which has dismissed this and another appeal of the same assessee for another assessment year by a common judgment. The Tribunal has relied upon its several previous decisions on this question.

2. The controversy is about the interpretation of the entry relating to an item of section 14 of the Central Sales Tax Act, 1956 and it is useful to extract it :

"14. Certain goods to be of special importance in inter-State trade or commerce. - It is hereby declared that the following goods are of special importance in inter-

State trade or commerce :-

(i) to (iii) ....

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

(i) pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;

(ii) ...."

3. The Andhra Pradesh General Sales Tax Act provides for levy of tax on the declared goods in accordance with its section 6 read with Schedule III. Item 2(i) of Schedule III is identical to the entry in section 14 of the Central Act referred to above.

4. The counsel for the petitioner has also referred to (1) letter No. 24/14/76-ST, Department of Revenue and Banking dated February 28, 1977; (2) letter from Government of India in F. No. 24/10/80-CT dated January 31, 1984 and (3) Order of the Government of Andhra Pradesh issued u/s 42(2) of the State Act in G.O.Ms. No. 383, Revenue (S) Department dated April 17, 1985, which are extracted hereunder :

(1) "Letter No. 24/14/76-ST, Department of Revenue and Banking dated February 28, 1977.

To

The Finance/Revenue Secretaries of all State Governments/Union Territories.

Subject : Clarification as to whether the term ''cast iron'' mentioned in section 14(iv)(i) of the Central Sales Tax Act, 1956, would cover iron castings.

In continuation of the marginally noted communication and with reference to this department''s letter No. 24/3/73, dated November 20, 1973, I am directed to say that the question whether the expression ''cast iron'' used in section 14(iv)(i) of the Central Sales Tax Act, 1956, will include ''cast iron castings'' has been re-examined in consultation with the Director-General of Technical Development, Chief Chemist and the Ministry of Law, Justice and Company Affairs. This department has been advised that the existing expression ''cast iron'' in the aforesaid section will cover ''cast iron castings'' also.

Yours faithfully, Sd/- O. P. MEHRA, Deputy Secretary to the Government of India." (2) "The Government of India in their letter F. No. 24/10/80-CT dated January 31, 1984, clarified after consulting the Ministry of Law and Director-General, Technical Development, that cast iron castings are covered under the term ''cast iron''. The reference read as under :

According to the Supreme Court judgment in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, the fact that the substance or 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 the purposes of the law of sales tax. The object appears to us to be to tax sale of goods of each variety and not the sale of the substance out of which they are made. Therefore, even without the circular cast iron castings are covered by cast iron.

5. Further Clause (i) says that ''cast iron including ingot'' and since the expression including is used, it does not mean that the list of items enumerated is exhaustive but to give extensive meaning to cast iron, therefore, cast iron castings are covered with the words ''cast iron''.

6. Advice given by Director-General, Technical Development, vide their U.O. Note dated November 19, 1983, is also reproduced below :

''Cast iron is an alloy iron of carbon, silicon and other alloying elements if required, i.e., cast iron castings are covered under the term "cast iron". It may also be clarified that "cast iron" includes grey iron, white iron, chilled malleable and nodular iron. Ingot moulds and bottom plates are nothing but cast iron castings.''"

(3) "G.O. Ms. No. 383, Revenue (S) Department dated April 17, 1985.

The Andhra Pradesh Small Scale Industries Association, Vijayawada, requested the Government to clarify whether ''cast iron'' and ''cast iron casting'' are one and the same commercial commodity.

(2) This matter was examined at length by the Government of India in consultation with the Ministry of Law (Department of Legal Affairs) and Director-General of Technical Development. The Ministry of Finance, Department of Revenue, Government of India, clarified, in their letter F. No. 24/10/80-CT dated January 31, 1984 to the effect that ''cast iron castings'' are covered within the term ''cast iron''.

(3) Government have examined in detail the legal aspects of the issue and observe that the term ''cast iron including ingot moulds, bottom plates'' as in sub-item (i) of item 2 in the Third Schedule to the Andhra Pradesh General Sales Tax Act covers ''cast iron castings'' and as such ''cast iron castings'' is not a different commercial commodity from the commodity ''cast iron including ingot, moulds, bottom plates''.

(4) Under sub-section (2) of section 42 of the Andhra Pradesh General Sales Tax Act, 1957, the Government hereby clarify that the ''cast iron castings'' are covered within the term ''cast iron including ingot moulds, bottom plates'' occurring in sub-item (i) of item 2 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957.

7. (By order and in the name of the Governor of Andhra Pradesh)

G. R. NAIR, Principal Secretary to Government." 8. It is also useful to extract section 42 of the State Act :

"42. Power to remove difficulties. - (1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the corresponding provisions of the Acts in force immediately before the commencement of this Act, the State Government may, by order in the Andhra Pradesh Gazette, make such provisions as appear to them to be necessary or expedient for removing the difficulty.

(2) If any difficulty arises in giving effect to the provisions of this Act otherwise than in relation to the transition from the provisions of the corresponding Act in force before the commencement of this Act, the State Government may, by order make such provisions, not inconsistent with the purposes of this Act, as appear to them to be necessary or expedient for removing the difficulty."

9. The assessee manufactures and sells various goods mentioned earlier made from cast iron which has suffered sales tax. The controversy is whether these several goods sold by the petitioner continue to be the same declared goods covered by the aforesaid entry or are different commercial commodity liable to levy of State sales tax. The case of the Revenue is that, items sold by the petitioner are commodities different from cast iron, though made out of it and are, therefore, exigible to tax as a distinct commercial commodity. It is contended by the learned counsel for the assessee that the relevant entry in section 14 of the Central Act and also the Third Schedule of the State Act speak of cast iron including ingot moulds and bottom plates, iron scrap, etc., which indicates that any casting made out of cast iron also should be treated as included in the entry because of the word used "including" in the entry. It is further contended that the Government of India in their letters have clarified that cast iron castings are covered by cast iron and the State Government has also issued the aforesaid G.O. subsequently u/s 42(2) of the State Act clarifying that the cast iron castings are covered within the term cast iron. It is contended that the said G.O. is binding on the various assessing authorities in the State as the goods sold by them are cast iron castings. The learned counsel for the petitioner has relied upon the decision of the Supreme Court reported in Gujarat Steel Tubes Ltd. etc. Vs. State of Kerela and others, where it has been held that steel tubes even after undergoing a process of galvanising continue to be the same commodity for the purpose of levy of sales tax on declared goods. He has also referred to the decision of the Supreme Court reported in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai and Co., where the controversy was whether under the Kerala General Sales Tax Act, 1963, G.I. pipes are sanitary fittings. These two decisions do not help us in resolving the controversy.

10. He has next relied upon a decision of the West Bengal Taxation Tribunal reported in Indian Wire & Steel Products v. Additional Commissioner of Commercial Taxes [1991] 80 STC 21. As seen from para 8 of that judgment the controversy there was whether goods like manhole covers and cast iron pipes after being subjected to Central sales tax in the course of inter-State sales were

again liable to local sales tax at the stage of subsequent local sale. It has been clarified by the Tribunal, after referring to the Supreme Court decision in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, that where an assessee manufactures articles like G.I. pipes and manhole covers out of cast iron purchased by him, he is liable to pay sales tax on them because they are distinct commodities. The earlier part of the decision of the Tribunal is not relevant and the latter part of para 8 goes against the case of the petitioner.

11. The Government Pleader has referred to the decision of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and a Bench decision of this Court in Surana Industries v. State of A.P. (1985) II APSTJ 282. The Supreme Court in its decision reported in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, , examined the position regarding the declared goods - iron and steel - both prior to its amendment by Act 61 of 1972 and also subsequent to it and held that every sub-item could be a different commercial commodity, and will be liable to sales tax separately. A Bench of our High Court in the decision reported in Surana Industries v. State of A.P. (1985) II APSTJ 282 has taken the view that wire made out of wire rod is a distinct commercial commodity and liable to be taxed separately. Coming to the entry in this case the language used is "cast iron including ingot moulds, bottom plates ...." The entry does not speak of any cast iron castings, and uses the word "including". Admittedly what the assessee is selling are not cast iron ingot moulds or bottom plates. This particular entry (iv)(i) indicates a reference to declared goods which are in an unfinished form, like pig iron, cast iron, including ingot moulds, bottom plates, iron scrap, etc. Commodities like C.I. pipes or manhole coverings or C.I. bends are finished products for use.

12. The question is whether by the use of the words "cast iron including ingot moulds, bottom plates, etc." the Parliament intended to give an extended meaning to cast iron, so as to include the products made out of cast iron like manhole covers and C.I. pipes for the purposes of entry (iv)(i). The word "includes" may be employed by the Legislature to extend the meaning given in a definition clause. But it is also to be noticed that "includes" is also used to indicate an exhaustive list of items mentioned therein. It will, therefore, depend upon the context in which the Legislature has used the words. In this case, the word used is "including" and not "includes" and we are not dealing with a definition clause. It is used in section 14 of the Central Sales Tax Act which declares certain goods to be of special importance in inter-State trade or commerce. In view of article 286 of the Constitution of India the effect of a declaration contained in section 14 is that the powers of the State Legislature are fettered by provisions of Central law like section 15 of the Central Sales Tax Act. The distribution of legislative lists under article 246 of our Constitution indicates that sales tax is essentially a State subject with limited overriding powers for Parliament. Keeping these considerations in view, can the goods like manhole covers and C.I. pipes which are distinct commercial commodities were meant to be included in declared goods ? The opening words of section 14 indicate that

only certain goods specified therein have been declared to be of special importance in inter-State trade or commerce. The Supreme Court has in a decision reported in The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another, , while considering the definition of "employment in potteries industry" and the Explanation given therein in Schedule to the Minimum Wages Act, 1948 and while noticing that "includes" is generally used as a matter of extension, held in para 5 as follows :

"...... there cannot be any inflexible rule that the word ''include'' should be read always as a word of extension without reference to the context ...."

13. After referring to the decision reported in Dilworth v. Commissioner of Stamps [1899] AC 99 and examining the relevant provisions of that Act, their Lordships of the Supreme Court held that the manufacture of Mangalore pattern roofing tiles is outside the purview of entry 22, viz., employment in pottery industry though the word "includes" was used in the definition. A Bench of this Court presided over by the learned Chief Justice in a recent decision in W.P. No. 1679 of 1987 dated November 26, 1990 (Hakim & Co. v. Government of India) also held that in the context of a legislation "includes" could also be exhaustive. In the light of what is said above, the word "including" in the said entry in section 14 cannot be said to extend to any commodity other than specified therein. Cast iron will include its form in ingots, billets and bottom plates. It will not take in any other separate commodity made from cast iron, like C.I. pipes or manhole covers. Therefore, the contention of the counsel for the petitioner that the goods sold by them should be treated as cast iron which is a declared goods is rejected.

14. The next contention is based on the letters of the Government of India and the G.O. issued by the State Government u/s 42(2) of the State Act, which are already extracted above. It is seen from the letters of the Government of India that they were dealing with cast iron and cast iron castings. The word "cast iron castings" is not used in section 14 or Schedule III. The effect of the letters and the G.O. has to be examined keeping in view the statutory provisions of the Central Act which are repeated in Schedule III. Section 42(2) of the State Act contemplates a clarification where a difficulty is found in giving effect to the provisions of the State Act in the circumstances mentioned therein. We find no difficulty in giving effect to the provisions of the State Act which has merely copied the Central Act. The G.O. is issued based on the letters of Central Government. The letters of the Central Government and the G.O. are with reference to cast iron and cast iron castings, while the entry is "cast iron, including ingot moulds, bottom plates, etc.". It is open for the State Government to exempt any particular goods from the levy of tax, but this has not been done.

15. The counsel for the petitioner placed reliance on two Bench decisions of this Court reported in Munaga Singaraiah Sreshty and Sons v. State of Andhra Pradesh [1977] 40 STC 89 and Adarsh Foundries v. Commissioner of Commercial Taxes [1988] 70 STC 151, on the effect of the Government instructions. In view

of what we have pointed out above, the ratio of the said decisions does not apply to the present case. Therefore, neither the letters of the Government of India nor the G.O., issued by the State Government help in resolving the controversy in this case.

16. The counsel for the petitioner has relied upon a decision of a learned single Judge of the Allahabad High Court reported in Commissioner of Sales Tax v. Vishwa Engineering Co. (see below); 1985 UPTC 950 where relying on the two letters of the Government of India it is held that manhole covers are same as iron castings and cast iron. We are not able to agree with the said decision. As discussed earlier, neither the letters lead to such a conclusion nor do they have any effect of amending the statutory provision.

17. The conclusion of the Tribunal that articles sold by the petitioner, like C.I. pipes, manhole covers are different commodities from cast iron which is the raw material and are liable to tax is correct and not liable to be interfered with.

18. A subsidiary grievance is made in this revision that the Deputy Commissioner, while passing the final order, has brought to tax a larger amount of turnover than what was exempted by the Commercial Tax Officer and in respect of which a show cause notice was issued. The complaint of the counsel for the petitioner is that the Deputy Commissioner has brought to tax a turnover in excess of what was actually exempted by the assessing authority and what was mentioned in the show cause notice is justified. Such excess turnover than what was exempted by the Commercial Tax Officer will, therefore, be deleted by the assessing authority while giving effect to the orders in this T.R.C.