(1999) 11 KAR CK 0013

In the Karnataka High Court

Case No : S.T.R.P. No''s. 198 and 199 of 1996

Gemini Steel Tubes Ltd. — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 15-11-1999

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 21 (2), 5, 5 (4)

Citation : (2000) 119 STC 30

Hon'ble Judges : V.K. Singhal, J;T.N. Vallinayagam, J

Bench : Division Bench

Advocate : P.A. Bhat, for the Appellant; S. Sujatha, High Court Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

V.K. SINGHAL, J.—In these revision petitions the following questions have been raised by the Trial Court :

"(a) Whether, under the facts and in the circumstances of the case, the Tribunal is justified in holding that the defective coils and defective steel pipes which was not subjected to any manufacturing process, which were purchased locally and sold as such is liable to tax u/s 5 of the Karnataka Sales Tax Act, 1957 ?

(b) Whether the Tribunal is justified in ignoring the contentions with regard to non-application of the mind by the revisional authority on the question of taxing defective pipes when it was specifically brought that there was no mention in the notice ?

(c) Whether there is any material to the Tribunal to hold that the petitioner is liable to tax on the sales of defective pipes and coils purchased locally when the assessing authority has held that these goods were not subjected to any process of manufacturing ?

(d) Whether the Tribunal is justified in holding that the end cuttings are different from what is being purchased ?

(e) Whether the Tribunal is right in holding that end cutting are not subjected to any manufacturing operation though there is a difference between the purchased and sold goods ?

(f) If the end cuttings are different from what is being purchased, whether the Tribunal is justified in refusing to give set-off on the purchases ?

(g) Alternatively as the end cuttings are not different from the purchased goods, whether the Tribunal is justified in holding that the end cuttings are different from the purchased goods and hence liable to tax ?

(h) Whether the Tribunal is justified in levying tax on defective coils, pipes, when there is no physical or chemical change from that of the goods purchased?

(i) If answer to the above is in affirmative, whether the Tribunal is justified in refusing the set-off on the local purchase of the goods which became defective?"

2. The facts of the case are that, the petitioners are the manufacturers of steel tubes. Assessment for the period January 1,1987 to December 31, 1987, i.e., 1987-88 and April 1, 1988 to March 31, 1989, i.e., for 1988-89 was made. It has not come on record as to what has happened for the period from January 1, 1988 to March 31,1988. The assessing authority has given exemption while finalising the assessment in respect of sale of cuttings of defective coils and sheets as the petitioner has already paid the full tax while purchasing the coils and it was considered to be the second sale in the State of Karnataka. There were purchases from outside as well. The petitioner purchased the steel tubes and raw materials from the State of Karnataka as well as from outside. The steel tubes are manufactured and sold. Revisional proceedings u/s 21(2) of the Karnataka Sales Tax Act, 1957 were initiated on the ground that there were no classification of raw material and finished product and, therefore, it cannot be inferred that steel tubes manufactured and sold within the State of Karnataka were out of the raw materials which has suffered tax under the Karnataka Sales Tax Act. The set-off allowed as per explanation II of the Fourth Schedule was considered improper and the exemption given by the assessing authority on the end cuttings and defective and rejected coils and sheets was also found improper. The revising authority observed that the defective, rejected cuttings are different commodities specified in item XVI of entry 2(a) of the Fourth Schedule to the Karnataka Sales Tax Act, 1957 which are derived in the process of manufacture and constitute different and separate taxable goods. Relying on a judgment in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, , it was found that the petitioners are not entitled for set-off of tax paid on purchases to set tax at the rate of 4 per cent u/s 5(4) of the Karnataka Sales Tax Act, 1957 was levied.

3. In the appeal before the Karnataka Appellate Tribunal, it was contended that the end cuttings are not new commodities and as such cannot be liable to tax

again. An alternative plea was also taken that set-off of the tax payable on the local purchases in accordance with explanation II of the Fourth Schedule should have been given. Both the contentions were rejected and the appeals were dismissed.

4. Arguments of both the learned counsel for the parties heard.

5. Under entry 2(a) of the Fourth Schedule iron and steel have been classified in "9" of its clauses. The sale by the first or the earliest of the successive dealers in the State is liable to tax under this Act. In respect of the purchases made by the petitioner, from the dealer of Karnataka he has already paid the tax while purchasing the steel coils. The steel coils so purchased are used in the manufacture of steel tubes. Explanation to the Fourth Schedule provides set-off of tax already paid under the Karnataka Sales Tax Act if the goods are manufactured in Karnataka.

6. According to the evidence which has come on record, it is not in dispute that the items have been sold and for which exemption was given by the assessing authority were not manufactured by the petitioner. They were the end cuttings or defective or rejections in the process of manufacturing of steel tubes. According to the Tribunal no manufacturing activity was carried to obtain end cuttings, defectives or rejections. The defective and rejections would be out of the raw material purchased and sold as it is, as at the time of manufacturing it was found that such raw materials are not fit for manufacturing. The end cuttings are those portions of the coil or raw material which are not fit for manufacturing end cuttings from the length of the coil. The end cuttings may be in big pieces. The Tribunal found that the manufacturing activity were not carried on in obtaining these items. So far as the question of set-off is concerned, in view of the explanation since no manufacturing was done, the Tribunal was right in not giving any set-off. But the question which remains is that if the goods have already suffered the levy of tax, then whether they can be subjected to tax again. The tax has been levied on the petitioner on the ground that the end cuttings, defective and rejections falls in different category of the classification of iron and steel as given in the Schedule.

7. Reliance was placed on a judgment given in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, referred to above.

8. According to the said decision, if there is a manufacturing of iron and steel and the category is changed to any other sub-item then it is considered to be a different species in the iron and steel. This judgment is not applicable to those cases where iron and steel which has already suffered levy of tax is segregated or cut and items are sold as defective. In the cases where no manufacturing activities are carried on and tax is paid already, the commodity cannot be subjected to tax again. It may also be observed that because of lapse of time, change of technology or unsuitability of raw material in the use of manufacturing it can be considered to be defective. Simply because the item is defective or

rejected, it will not be changing the basis nature or character of the commodity which has already been subjected to tax. If the tax is already been paid in the State of Karnataka, while purchasing such raw material, tax cannot be levied again, since the tax is payable at the first point.

9. It is also contended that the revising authority has given a decision on the point of steel tubes without proper notice to the petitioner. That point may now be considered by the revising authority.

10. In these circumstances, the order of the Tribunal is set aside to this extent and the matter is referred back to the revising authority to exclude the local purchases of defectives, rejections and end cuttings on which tax has been paid. Petitioner would however be liable to pay tax under the Karnataka Sales Tax Act in respect of purchases made from outside the State of Rajasthan and sold in the State of Karnataka.