

(2007) 03 KAR CK 0036

In the Karnataka High Court

Case No : Sales Tax Revision Petition No. 93 of 2004

Goetze (India) Limited, Bangalore

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-03-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Karnataka Sales Tax Act, 1957 — Section 5(4)

Citation : (2009) 67 KarLJ 467

Hon'ble Judges : Anand Byrareddy, J;R. Gururajan, J

Judgement

R. Gururajan, J.-The assessee is before us aggrieved by the order of the Tribunal dated 6-3-2004 passed in STA Nos. 833 of 1998, 1164 of 1998, 207 of 2001, 246 of 2001 and 350 of 2002 (Goetze India Limited, Bangalore v State of Karnataka, 2004(56) Kar. L.J. 542 (Tri.) (FB)).

2. The facts in brief are as under in terms of the synopsis made available to us:

The petitioner is engaged in the processing activity for conversion of Cast Iron Boring Chips and Scraps into unmachined and unpolished Cast Iron Castings in the form of Groove Insert Sleeves which were sold to M/s. Escorts Mahle Limited, Bangalore. The chemical composition and micro structure of the Cast Iron Boring Chips and Scraps are the same as that of the Groove Inserts Sleeves in unmachined and unpolished form. M/s. Escorts Mahle Limited after effecting purchases of such unmachined unpolished Cast Iron Groove Insert Sleeves converts the same by a series of processes into Groove Insert Sleeves in finished form which go into the Carrier Type Piston. M/s. Escorts Limited effected purchase of Cast Iron Groove Insert Sleeves only in unmachined and unpolished (crude) form which is already mixed/blended with nickel, silicon and copper etc. M/s. Escorts Mahle Limited, Bangalore, Cuts and Machines these groove insert sleeves in crude form to obtain the final saleable finished products in their hands.

3. Cast Iron Boring Chips and Scraps are used as the basic raw material for making the castings of Groove Insert Sleeves in crude form. The petitioner states

that as both input "scrap" and the output "Groove Insert Sleeves" in unmachined form are falling under single sub-entry of declared goods listed under Section 14 of the Central Sales Tax Act, 1956, they are to be treated as one and the same and consequently no tax should be levied on the "Groove Insert Sleeves in unmachined form" in the hands of the petitioner.

4. The rough castings which are obtained after the processes for conversion of Cast Iron Boring Chips and Scraps into cast iron resist scrap in unmachined and unpolished groove insert sleeves form will have to be further processed by M/s. Escorts Mahle Limited before the said goods can be used as end products or as marketable commodities.

5. According to the experts, Cast Iron Resist Scraps is nothing but Cast Iron Scrap and therefore, both goods namely cast iron boring chips and scraps and cast iron resist scraps in Groove Insert Sleeves in unmachined unpolished form are to be considered as declared goods. The Cast Iron resist scrap in unmachined and unpolished form namely, Groove Insert Sleeves continues to be cast iron as one of the declared goods enumerated under Section 14 of the CST Act thereby, attracting the provisions of Section 15 of the said Act. Cast Iron casting is only in its basic or crude form and the same continues to be Cast Iron as contemplated under Section 14 of the CST Act.

6. An assessment order was passed against the petitioner and thereafter, the matter was revised by the authorities. Ultimately, the matter reached the Tribunal. The Division Bench of the Tribunal has chosen to refer the same to a Full Bench of the Tribunal. A Full Bench after hearing has chosen to pass the following order at page No. 77 reading as under:

"In result, all the five appeals are allowed in part. The Assessing Authority is directed to issue revised demand notices for tax liabilities for all the 5 years in terms of this common judgment. It is also declared here that the matter of forfeiture of excess collected taxes if any are kept open to the Assessing Authority for action. In such an eventuality, the matters of consequential refund that may arise thereafter are to be considered. On the minor issues raised by the appellant, the Assessing Authority is instructed to follow the guidelines as noted in the body of this judgment at paras 62, 63 (sub-paras 1 to 5). The appellant is instructed to appear before the Assessing Authority on 2-4-2004 to prefer his minor claims and to furnish all details and certificates and assist and facilitate issuing of revised demand notices for all the 5 years.

The office is instructed to send back the LCRs immediately.

The appeals are disposed accordingly. No costs".

This order is challenged before us. The following four questions are raised by the petitioner in the light of the order of the Tribunal:

(1) Whether the order passed by the Appellate Tribunal is illegal and unsustainable in law as passed in contravention of the provisions of Section

15(a) of the CST Act, 1956, for holding that the purchase tax as well as sales tax is leviable under Entry 2 of Fourth Schedule of the KST Act, 1957, in respect of the declared goods, viz., on purchase of Cast Iron Scrap and on sale of cast iron rough castings in view of the judgment of the Supreme Court in the case of *Vasantham Foundry v Union of India and Others*, (1995)99 STC 87 (SC)?

(2) Whether the Appellate Tribunal was right in law in confirming the levy of purchase tax under Section 5(1) of the KST Act at 10% in the light of the provisions contained in Section 5(4) of the KST Act and the restrictions contained in Section 15(a) of the CST Act for the assessment year 1995-96?

(3) Having held in para 30 of the order that the purchase and sale being that of cast iron and cast iron rough castings as one and the same, whether the Appellate Tribunal was right in law in invoking two different entries in Entry 2 to the Fourth Schedule of the KST Act, 1957 for levying tax on purchase as well as on the sale of the declared goods?

(4) Whether the Appellate Tribunal was right in law in holding that a new commercial commodity came out of the processing as a commercial product and treating such process as manufacture as opposed to their finding at para 30 of the order, to invoke the levy of tax under two entries of Fourth Schedule to KST Act?

7. We have heard Sri Sarangan, learned Senior Counsel appearing for the petitioner.

8. He would take us through the provisions of the law as applicable to the facts and circumstances of the case to show that though the Tribunal has accepted the case of the petitioner, still the Tribunal in the light of explanation has chosen to levy tax in the case on hand. According to him, the levy of tax is not available and there is no power or jurisdiction in a matter like this. He would question the jurisdiction of the authorities in the light of the CST and KST Act in terms of the submissions made before us. He would say that his client is not liable to pay any tax as against the tax payable in terms of the impugned order.

9. Per contra, Smt. S. Sujatha, learned Government Advocate would support the order.

10. After hearing, we have carefully perused the material on record.

11. The Tribunal has chosen to frame five questions in para 31 reading as under:

(1) Is there a manufacturing activity in the level of the appellant? -Yes.

(2) An equation between input, scrap, etc., with the manufactured product i.e., sleeves, is it acceptable? -No.

(3) Whether the manufactured products mainly named as Groove Insert Sleeve, Cast Iron Sleeve can be considered as C.I. Rough castings? -Yes.

(4) Is the appellant liable for purchase tax on his consumption of scrap, borings,

turning, cuttings etc.? -Yes.

(5) What is the fitment of the manufactured products under the schedule or provision of the KST Act? -Declared goods falling under Entry 2(a)(i).

The Tribunal in its order has chosen to refer to various case-laws and thereafter, has considered issue by issue for the purpose of consideration of the case. The Tribunal has chosen to answer questions 1 and 3 to 5 in affirmative and question 2 in the negative and the Tribunal has finally chosen to allow the appeal in part. A reading of the order of the Tribunal would show that the Tribunal is fully justified in passing the order in the given circumstances. Mr. Sarangan, learned Senior Counsel would say that the findings are in his favour. But what is questioned is the jurisdiction and power in the case on hand. In the normal circumstances, we would have considered the same. But, it is unfortunate that this is only a revision petition filed by the petitioner against the order of the Tribunal. The revision petition cannot be enlarged to consider as sought to be argued before us. Moreover, the Tribunal after taking into consideration the material on record and in the circumstances has chosen to provide relief in terms of its findings while considering issue 3. In these circumstances, we accept the order of the Tribunal. However, we deem it proper to observe that it is open for the petitioner to work out its remedy with regard to want of jurisdiction or power in a manner known to law and according to law. We have not expressed any opinion with regard to that aspect of the matter. All the four questions are not answered in the given circumstances and in the facts and circumstances of the case. No costs.