

(1983) 03 MP CK 0010

In the Madhya Pradesh High Court

Case No : Miscellaneous Civil Case No. 16 of 1978

Govindji Jamunadas

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 23-03-1983

Acts Referred:

Central Sales Tax Act, 1956 — Section 14

Citation : (1983) ILR (MP) 417 : (1983) JLJ 376 : (1983) 28 MPLJ 339 : (1983) 53 STC 120

Hon'ble Judges : G.P. Singh, C.J.; J.S. Verma, J.; C.P. Sen, J

Bench : Full Bench

Advocate : R.K. Bhambari, for the Appellant; M.V. Tamaskar, Government Advocate, for the Respondent

Judgement

G.P. Singh, C.J.

This judgment shall also dispose of Misc. Civil Case No. 19 of 1978.

These are both references u/s 44(1) of the Madhya Pradesh General Sales Tax Act, 1958, referring for our answer the following question of law:

Whether iron hoops are declared goods as per Sub-section (iv) of Section 14 of the Central Sales Tax Act, 1956, and taxable at 3 percent under entry No. 5 of Part I of Schedule II to the Act ?

These cases first came up for hearing before a Division Bench and as the correctness of the decision of a Division Bench of this Court in Commissioner of Sales Tax v. Hirji Nainsee [1972] 29 STC 365 was doubted, the cases were referred to the Full Bench.

The periods with which we are concerned are 1967-68 and 1970-71. The statements in both the cases do not refer to the facts which can be gathered from the order of the Appellate Assistant Commissioner which forms an annexure to the statements. The assessee carries on business in steel strips. Its main

business is to supply steel strips of specified sizes to J. C. Mills, Gwalior. This it does by rivetting pieces of strips of different sizes and painting them. The strips so supplied are called iron hoops and are used for tying bales of cloth.

Sales of iron and steel were taxable at the relevant time under entry No. 5 of Part I of Schedule II to the State Act. This entry was identical with Clause (iv) of Section 14 of the Central Sales Tax Act, 1956, which at that time read as follows :

(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; sold in the same form in which (iii) steel bars and tin bars; they are directly produced by (iv) rolled steel sections¹; the rolling mill. (v) tool alloy steel;

The argument of the learned counsel appearing for the assessee is that iron hoops fall within the description of rolled steel sections as occurring in Clause (iv) (d)(iv) of Section 14 of the Central Act. The learned Government Advocate on the other hand has submitted that iron hoops do not fall within that clause and that they are entirely a new commercial commodity different from rolled steel sections.

The first question that arises before us is whether steel strips fall within the description of rolled steel sections. If this question is answered in the affirmative, the second question would be whether steel strips retain the same after they are joined by rivetting and are painted.

In accordance with their form, all rolled products in steel industry are divided into four main groups : (1) Steel shapes or sections ; (2) plate and sheet steel; (3) pipes and tubes and (4) special types of rolled products. Steel sections are available in the most extensive assortment of sizes and types. Sections which are used in numerous quantities include rounds, squares, flats, strips, wires, angles, channels, I-beams and Ors. (see *Rolling Mill Practice* by P. Polikhin, N. Fedosov, A. Korolyov and Y. Matveyev, translated by Nicholas Wrinstein, page 20). It is thus clear that steel strips fall within the description of rolled steel sections.

Coming to the next point whether steel strips after they are joined by rivetting and are painted continue to retain the description of rolled steel sections, it is first convenient to refer to the decision of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, , which construed the entry of "iron and steel". It was held in that case that each item specified in Section 14(iv) was a separate taxable commodity for the purposes of sales tax at a single point and served as a new starting point for a series of sales. The Supreme Court also dealt with the words "sold in the same form in which they are directly produced by the

rolling* mill" as they occur in the note against the bracket in Sub-clause (d) which covers five items including rolled steel sections. Referring to this note, the Supreme Court held that it made it clear that "even each sub-category of a sub-item retains its identity as a commercially separate item for purposes of sales tax so long as it retains the subdivision". It was also observed : "Object of taxation is the commercial commodity and not the substance out of which it is made. Each commercial commodity here becomes a separate object of taxation in the series of sales of that commercial commodity so long as it retains its identity as that commodity." It was further observed : "If the question is whether a new commercial commodity has come into existence or not, so that its sale is a new taxable event, in the sales tax law, it may also become necessary to consider whether a manufacturing process, which has altered the identity of the commercial" commodity, has taken place. The law of sales tax is also concerned with the goods of various descriptions. It, therefore, becomes necessary to determine when they cease to be goods of one taxable description and become those of a commercially different category and description." In view of this decision of the Supreme Court, steel strips falling within the category of rolled steel sections under Clause (iv)(d)(iv) will continue to belong to that category so long as they retain their identity as steel strips. The decision of the Supreme Court clearly points out that the words "sold in the same form in which they are directly produced" as they occur in the note against the bracket in Clause (iv)(d) (iv) do not mean that the moment a commodity falling within that clause is subjected to some process, it ceases to be in the same form. Change in form will result where there is a change in the identity or in other words, when a new commercial product comes into existence. It is then and then alone that it can be said that a commodity falling under Clause (iv)(d)(iv) has ceased to be in the same form. Applying this test to the facts of the instant case, we are unable to hold that when the strips are rivetted and painted, there is change in the identity and the strips are transformed into a new commercial commodity. It is always a question of fact and degree as to when application of certain processes leads to manufacture or production of a new commodity. If the commodity which is subjected to the processes retains its identity, it cannot be said that a new commodity has come into existence (*Khachhiram v. Commissioner of Sales Tax* 1982 MPLJ 134). The joining of strips by rivetting is to make them fit for use by the customer according to the specification supplied by him. The painting of the strips is to protect them against rusting and to make them last longer. None of these processes is such which brings about a substantial change in identity, and therefore, it cannot be said that the strips are transformed into a new commercial commodity and cease to be in the same form.

In *Commissioner of Sales Tax v. Hirji Nainsee* [1972] 29 STC 365 a Division Bench of this Court held that iron hoops which are thin strips of steel for tying bales of cotton or other material to keep the bundles in shape do not fall within the description of rolled steel sections. The learned Judges construed the words "rolled" and "section" separately and came to the conclusion that rolled steel

sections referred to certain well designed parts which could be used for structural construction. With great respect, the error committed by the learned Judges was in not referring to any book on steel industry or rolling practice in steel industry and by taking the words "rolled" and "sections" in the expression "rolled steel sections" separately. As pointed out by us earlier rolled steel sections are of various varieties and steel strips fall within that description. Rolled steel sections are not confined to structural material. The conclusion reached by us is in line with the decision of the Gujarat High Court in *Vaiswaner Trading Co. v. State of Gujarat* [1964] 15 STC 586, with which we respectfully agree. We may also refer to the decision of the Allahabad High Court in *Commissioner of Sales Tax v. Ashwini and Co.* [1973] 32 STC 618. In this case the question was whether iron hoops were covered by the term "iron and steel" as defined in Section 14(iv) of the Central Act. The learned Judges dissented from the view taken in *Hirji Nainsee's* case [1972] 29 STC 365 but they did not answer the question as the statement of case was incomplete.

The learned Government Advocate relied upon *State of Tamil Nadu v. Syam Steel Rolling Mills P. Ltd.* [1977] 40 STC 156, *Sales Tax Commissioner v. Jammu Iron and Steel Syndicate* [1980] 45 STC 99 and *Commissioner, Sales Tax v. Steel Engineering Corporation* [1981] 48 STC 432. These cases are merely illustrative as to when a commodity when subjected to certain processes ceases to retain its identity and thereby ceases to be in the same form. As earlier pointed out by us, such a question is one of fact and degree, and no useful purpose would be served by discussing these cases in detail.

The learned counsel for the assessee pointed out to us that Section 14 of the Central Act as amended by Act No. 61 of 1972 specifically includes "sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition". The learned counsel argued that this amendment should be taken to be explanatory of the section as it stood before its amendment. The Statement of Objects and Reasons of the amending Act show that the intention was to give a comprehensive list of declared iron and steel goods to remove the ambiguity, for the definition of "iron and steel" as originally enacted had led to varying interpretations. The Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, looked at the amending Act in order to find an indication of the original intention, because subsequent history of legislation is not irrelevant, yet, it did not base its decision on that and its decision was reached confining the attention to Section 14 as it originally stood. Another illustration where the amending Act No. 61 of 1972 has been used as an aid to construction is found in the case of *Manickam and Co. v. State of Tamil Nadu* 1977 TLR 1621 where the question related to construction of Section 15(b) as it stood before its amendment. The Supreme Court in this case observed that "an amendment which is by way of clarification of an earlier ambiguous provision can be useful aid in construing the earlier provision, even though such amendment is not given retrospective effect". In the light of these decisions, we can say that the

conclusion reached by us by confining our attention to Section 14(iv)(d), as it stood before its amendment, is also supported by the indication shown in the amending Act of the original intention.

For the reasons given above, we answer the question as follows :

Iron hoops are declared goods falling within Section 14(iv)(d)(iv) of the Central Act and are taxable at 3 per cent under entry No. 5 of Part I of Schedule II to the State Act.

There will be no order as to costs of these references.