

(2012) 12 GAU CK 0034
In the Gauhati High Court
Case No : Writ Petition (C) No. 4586 of 2008

Guwahati Carbon Ltd. and Another	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 12-12-2012

Acts Referred:

Central Excises and Salt Act, 1944 — Section 14, 14(ia), 14(iii), 15(a)

Citation : (2013) 58 VST 412

Hon'ble Judges : Adarsh Kumar Goel, C.J;N. Kotiswar Singh, J

Bench : Division Bench

Advocate : B.P. Todi, A. Nath and A. Todi, for the Appellant; K.N. Choudhury, D. Saikia and R. Dubey, for the Respondent

Judgement

Adarsh Kumar Goel, C.J.—These petitions seek direction for refund of the excess amount paid by the petitioner to the Sales Tax Department, Government of Assam. According to the petitioners, they are registered dealers under the provisions of the Central Sales Tax Act, 1956 and the Assam General Sales Tax Act, 1993, which has been replaced by the Assam Value Added Tax Act, 2003. They are engaged in conversion of calcined petroleum coke from raw petroleum coke and selling the same in the course of inter-State trade or commerce. The raw coke is purchased from different refineries on payment of tax. Section 30 of the Assam General Sales Tax Act, 1993 provides for refund where tax is levied on sale and purchases of declared goods which are subsequently sold in the course of inter-State trade. Accordingly, the petitioner applied for refund stating that local sales tax was not attracted and, therefore, the amount paid was required to be refunded. The application was rejected by the Government of Assam vide order dated September 25, 2008 (annexure 4 in W.P. (C) No. 4586 of 2008) as follows:

As indicated above raw petroleum coke (RPC) is a commercially distinct and different commodity from calcined petroleum coke (CPC). Raw petroleum coke (RPC) loses its original identity in the process of manufacture of calcined

petroleum coke (CPC). It may be mentioned herein that under the Central Excise Act, 1944 raw petroleum coke (RPC) and calcined petroleum coke (CPC) are treated differently and are being subjected to excise duty separately. The apex court in *Bharat Coking Coal Ltd. Vs. Steel Abrasers and Allied Products Ltd.*, while dealing with the definition of coke and coal under the Collieries Control Order, 1945 framed under the Essential Commodities Act, observed that though the definition clubs coke and coal together, in fact the two products are distinct and different. While coal is a stone like product excavated from earth, coke is the processed product of coal obtained by certain process. Similar distinction exists between raw petroleum coke (RPC) and calcined petroleum coke (CPC), in as much as, after process of calcinations a product which has distinct commercial identify, i.e., calcined petroleum coke (CPC) emerges.

The Constitution Bench of the apex court in the case of *A. Hajee Abdul Shakoore and Company Vs. State of Madras*, held that the fact that certain articles are mentioned under the same heading in a statute does not mean that they all constitute one commodity. Merely because different goods and commodities are listed together under the same sub-heading in section 14 does not mean that they are to be regarded as one and the same item. Listing of two or more products under the same category under the Central Sales Tax Act 1956 cannot and does not necessarily mean that the products are identical and that they are the one and same product. A category means a class of individual items which may differ from each other in various ways.

In the instant case also, although RPC and CPC are listed under one heading under the CST Act, it may be noted that calcined petroleum coke (CPC) as a product emerges after the raw petroleum coke (RPC) is subjected to the industrial process of calcinations. Since the product CPC has undergone an irreversible chemical change in the industrial process, it is chemically and physically a different item from RPC. In fact, CPC manufacturing industrial units based in the State claim different industrial incentives including transport subsidy by virtue of the fact that CPC is a finished product after industrial/chemical process using RPC as raw material.

2. We have heard learned counsel for the parties.

3. The learned counsel for the petitioners submits that the view taken above is directly in conflict with the judgment of the honourable Supreme Court in *State of Bihar and others Vs. M/s. Universal Hydrocarbons Co. Ltd. and another*, ; laying down as follows (pages 209 and 210 in 96 STC):

18. We are totally unable to accept this line of reasoning. Once the entry is "coke in all its forms" irrespective of the fact raw petroleum coke loses its original identity or in the process of manufacture calcined petroleum coke is produced, cannot take calcined petroleum coke out of the purview of this entry. In more or less identical situation, this court held in *Indian Carbon Limited Vs. Superintendent of Taxes, Gauhati and Others*, , that petroleum coke is one form

of coal governed by the expression "coal" within section 14(ia). The relevant extract of the judgment is as under:

It is not disputed that if petroleum coke is covered by clause (i) of section 14 which reads "coal including coke in all its forms" the State was not competent to levy tax at a rate exceeding the one given in section 15(a) of the Central Act.

...

The High Court was of the view that the word "coal" includes coke in all its forms in clause (i) of section 14 of the Central Act and must be taken to mean coke derived from coal. In other words it must be coke which had been derived or acquired from coal by following the usual process of heating or burning. The contention, therefore, of the appellant was negated that petroleum coke was covered by the aforesaid provision of the Central Act.

19. This decision fully supports the respondent. The fact that cabined petroleum coke is a different commodity is of little consequence. In interpreting the scope of hides and skins which fall u/s 14(iii) of the Act, this court in *State of Tamil Nadu Vs. Mahi Traders and Others*, , held at pages 236-237 of STC : 734-35 of SCC as under:

. . . According to him the products purchased and sold are not different even under the classification by way of the dichotomy between raw and dressed hides and skins under the Tamil Nadu General Sales Tax Act. Under the Central Sales Tax Act, the appellant is in a much better position, because all the hides and skins are brought together in one entry. Whether raw or dressed, the product falls under the same entry.

. . . The operations involved in leather manufacture however fall into three groups. Pre-tanning operations include soaking, liming, de-liming, bating and pickling, and post-tanning operations are splitting and shaving, neutralising, bleaching, dyeing, fat-liquoring and stuffing, setting out, samming, drying, staking and finishing. These operations bring about chemical changes in the leather substance and influence the physical characteristics of the leather, and different varieties of commercial leather are obtained by suitably adjusting the manufacturing operations. These processes need not be gone into in detail but the passages relied upon clearly show that hides and skins are termed "leather" even as soon as the process of tanning is over and the danger of their putrefaction is put an end to. The entry in the CST Act, however, includes within its scope hides and skins until they are "dressed". This, as we have seen, represents the stage when they undergo the process of finishing and assume a form in which they can be readily utilised for manufacture of various commercial articles. In this view, it is hardly material that coloured leather may be form of leather or may even be said to represent a different commercial commodity. The statutory entry is comprehensive enough to include the products emerging from hides and skins until the process of dressing or finishing is done.

(emphasis supplied)

4. It is clear from the above judgment that raw petroleum coke and calcined petroleum coke have been treated to be a part of one entry "coke in all its forms". The principle that different commercial commodities attract separate tax was distinguishable.

5. In view of the judgment of the honourable Supreme Court in respect of same commodity it is not necessary to go into the general principle whether different commercial commodities will attract separate tax as laid down in the judgment of the honourable Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, which was held to be distinguishable in its applicability to the entry of "coke in all its forms".

6. Accordingly, we set aside the impugned order and direct that a fresh decision be taken in the matter, in the light of above, within three months from the date of receipt of a copy of this order. The petitions are disposed of accordingly.