

(2004) 08 P&H CK 0162

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No's. 60 to 62 of 1986

Haryana Conductors Pvt. Ltd.

APPELLANT

Vs

State of Haryana

RESPONDENT

Date of Decision : 23-08-2004

Acts Referred:

Central Sales Tax Act, 1956 — Section 9, 9(2)

Haryana General Sales Tax Act, 1973 — Section 3(1), 34(1), 40, 42(1), 5(2)

Income Tax Act, 1961 — Section 147(1)

Citation : (2006) 147 STC 48

Hon'ble Judges : N.K. Sud, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Deepak Thapar, for the Appellant; B.D. Sharma, Additional Advocate-General, for the Respondent

Judgement

Adarsh Kumar Goel, J.—These references have been made u/s 42(1) of the Haryana General Sales Tax Act, 1973 (hereinafter referred to as "the State law") read with Section 9 of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central law"), for opinion of this Court on the following questions of law, arising out of order of the Sales Tax Tribunal, Haryana dated February 5, 1980 in respect of assessment years 1970-71, 1971-72 and 1973-74 :

(i) Whether, on the facts and circumstances of the case, the Deputy Excise and Taxation Commissioner after the assessment of the assessee had become final, could suo motu on an audit objection raised subsequently, revise the assessments on the basis of a judicial pronouncement made subsequently in some other case ?

(ii) Whether, on the facts and circumstances of the case, the electricity conductor manufactured by the applicant-firm is a wire and entitled to concessional rate of tax within the meaning of Government Notification dated July 7, 1972 ?

2. Facts stated in the statement of the case are that the petitioner is a registered dealer in respect of State and Central law and is engaged in manufacture and

sale of electrical conductors, wires of aluminium of various types and specifications and sizes for transmission and distribution of electricity. The assessee made inter-State sales in the year 1970-71 and furnished returns in accordance with the Central law. It was granted exemption u/s 5(2)(a)(iv) of the State law read with Section 8(2-A) of the Central law. Subsequently, vide, judgment dated November 5, 1973, in *The State Vs. Indian Aluminium Cable Ltd.*, it was held that exemption on supply to electricity undertaking was not applicable. It was held that exemption was subject to certain conditions in absence of which the same could not be available. The Deputy Excise and Taxation Commissioner (Sales), Ambala initiated suo motu revision proceedings u/s 40 of the State Act read with Section 9(2) of the Central Act, vide, notice dated June 28, 1975 on account of audit objection. Assessment was reopened by setting aside original order of assessment and liability was ordered to be worked out afresh. The assessing authority accordingly reassessed tax liability to the tune of Rs. 99,655.50, vide, order dated January 16, 1976. On appeal, the said order was quashed but a direction to reassess the assessee was issued. The assessee preferred an appeal which was dismissed by the Tribunal.

3. The Tribunal held that in view of judgment of this Court in *Prem Raj and Sons v. Sales Tax Officer* [1967] 19 STC 531, a subsequent decision of the honourable Supreme Court would be a valid ground for suo motu revision. It was held :

In the present case, however, the opinion in question is not of just another person but that of the superior authority that is, High Court and it is an accepted principle of law that an authority while deciding an issue is bound by an opinion expressed on that issue by a superior court. In fact, in the ruling reported at *Prem Raj and Sons v. Sales Tax Officer* [1967] 19 STC 531, the Punjab High Court held that a subsequent order of the Supreme Court would be a valid ground even for reviewing of order. In the circumstances, I must hold that the revision proceedings taken up by the Deputy Excise and Taxation Commissioner were perfectly valid.

4. The assessee was, however, given an opportunity to produce "C" forms to avail of concessional rate of tax.

5. It was further held that lower rate of 1 per cent was applicable to wires, vide notification dated July 7, 1972 but the articles sold by the assessee were conductors "made out of twisting six strands of aluminium wire and one strand of steel wire together to form a conductor capable of transmitting electricity". It was held that the said item was not covered by the notification applicable to wires. Contention that even after twisting, the wire did not lose its basic character as wire merely because more than one strand was necessary for the purpose, it is worthwhile to extract paras 12 and 13 of the order :

12. After hearing the contesting parties and studying the various rulings quoted by the counsel for the appellant, I do not find the contention of the appellant-firm plausible. In my opinion the article in question in this case, namely,

electricity conductor manufactured and sold by the appellant-firm cannot be regarded as wires within the meaning of Government Notification dated July 7, 1972. It is a well-known fact that wire is an intermediate product which finds its use mainly as a raw material for the manufacture of various articles of industrial and other uses. One such articles is electricity conductor. The process of converting simple wire into electricity conductor is a substantial manufacturing process which changes the end use of the articles from one as a raw material to another as a medium for transmission of electricity. In its original form it will answer to the description "wires" but after the process of twisting and binding together strands of wire its basic character as raw material is changed and it becomes a finished product. The conversion in this case is not as simple or nominal as that of G.I. sheets into corrugated sheets which was the issue before the Calcutta High Court in *Phanindra Nath Manna and Company v. Commercial Tax Officer* [1974] 33 STC 292. Nor can the relationship between the wire and electricity conductor be described as one between genus and species such as between coal and charcoal which was the subject-matter of a Supreme Court case reported in *Commissioner of Sales Tax v. Jaswant Singh Charan Singh* [1967] 19 STC 469. Rather, as mentioned above, the relationship here is one of raw material and finished product. An electricity conductor is as much a finished product made from wire as are, let us say, cork, screws, steel ropes, wire gauges and hundreds of other items made from wire.

13. The ruling of the Madras High Court reported as *M. Muthusavari Pillai & Sons v. State of Tamil Nadu* [1977] 39 STC 359 and quoted by the counsel for the appellant does not help the appellant's case either. In that case the court did hold that even after twisting together various strands of yarn, the product may still remain yarn. However, the court went on to add that at the same time, a bunch of spun thread irrespective of the purpose for which it is intended to be used cannot be held to be yarn. Whether the yarn lost its character or retained it depended upon whether the end use of the yarn remained intact or changed also. The basic end use of yarn is textile and if twisting together of yarn changed its use from textile to some other then the product would not remain yarn at all. Thus, it will be seen that the court upheld the end use of the yarn. This test when applied to the present case, as discussed above, can only lead to the conclusion that the end use of wire is different from that of electricity conductor.

6. We have heard learned Counsel for the parties.

7. Mr. Thapar, learned Counsel for the petitioner referred to notification dated January 22, 1971, relevant part thereof is as under :

... tax payable by any dealer having his place of business in the State of Haryana (hereinafter referred to as the "selling dealer") in respect of the sales made by him in the course of inter-State trade or commerce of metal wires, metal sheets and circles, commercial sheets and industrial sheets to any dealer having his place of business in any State/Union Territory in India (hereinafter referred to as the "purchasing dealer") shall be calculated at the rate of one per cent of his

turnover

8. The learned Counsel for the petitioner submitted that if an article merely changes its physical appearance or undergoes some process, it retains its basic character and has to be given the same treatment. The metal wires remained the same even after being converted into conductor which was nothing but combination of certain wires and, therefore, the exemption was applicable. He relied upon decisions of the apex Court in Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher (P.) Ltd. [2000] 118 STC 287, Park Leather Industry (P.) Ltd. v. State of U.P. [2001] 122 STC 82 and Real Optical Co. v. Appellate Collector of Customs [2001] 122 STC 555. He also relied upon entry 33B of the Schedule to the Central Excises and Salt Act, 1944 (since amended) to the following effect :

33B. Electric wires and cables, all sorts, not otherwise speci- 15 per cent fied: ad valorem. (i) Insulated wires and cables of copper, aluminium or other metals and alloys, whether sheathed or unsheathed, the conductor of any core of which, not being one specially designed as a pilot core, has a sectional area not exceeding 1.5 square millimetres in the case of copper, or not exceeding 2.5 square millimetres in the case of aluminium or of not more than equivalent conductivity as of copper in the case of other metals and alloys. (ii) All others. 5 per cent Explanation. -- The expression "electric wires and cables, ad valorem. all sorts" used in this item shall not include square or rectangular conductors, whether insulated or not.

9. The learned Counsel for the Revenue on the other hand submitted that conductors were a different article than wires and since exemption was applicable only to wires, the same could not be extended to conductors which was commercially a different commodity. He supported the reasoning of the Tribunal.

10. As regards the first question, it is clear that u/s 40 of the State Act read with Section 9(2) of the Central Act, the power of suo motu could be exercised. Section 40 of the State Act is as under :

(1) The Commissioner may on his own motion call for the record of any case pending before, or disposed of by any officer appointed under Sub-section (1) of Section 3 of the Act to assist him or any assessing authority or appellate authority, other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit :

Provided that no order shall be so revised after the expiry of a period of five years from the date of the order :

Provided further that the aforesaid limitation of period shall not apply where the order in a similar case is revised as a result of the decision of the Tribunal or any court of law :

Provided further that the assessee or any other person shall have no right to invoke the revisional powers under this Sub-section.

(2) The State Government may, by notification, confer on any officer the powers of the Commissioner under Sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard, (see Rule 60).

11. Apart from *Prem Raj and Sons v. Sales Tax Officer* [1967] 19 STC 531 (P&H) relied upon by the Tribunal, reference may also be made to judgment of the apex Court in *R.B. Bansilal Abirchand Firm Vs. Commissioner of Income Tax, Madhya Pradesh*, wherein it was observed :

The correct conclusion was brought to his notice by the decision of the Tribunal and the High Court and that must be held to be information, as a consequence of which he came to believe that the provisions of Section 34(1)(b) were attracted. In a recent decision of this Court in *Commissioner of Income Tax, Gujarat Vs. A. Raman and Company*, dealing with the corresponding provision contained in Section 147(1)(b) of the Income Tax Act, 1961, the court held :

The expression "information" in the context in which it occurs must, in our judgment, mean instruction or knowledge derived from an external source concerning facts or particulars, or as to law relating to a matter bearing on the assessment." It was further held :

"that information must, it is true, have come into the possession of the Income Tax Officer after the previous assessment, but even if the information be such that it could have been obtained during the previous assessment from an investigation of the materials on the record, or the facts disclosed thereby or from other enquiry or research into facts or law, but was not in fact obtained, the jurisdiction of the Income Tax Officer is not affected."

These principles clearly support our view that in this case the Income Tax Officer had jurisdiction to proceed u/s 34(1)(b), because he had a reason to believe that income chargeable to tax had escaped assessment or had been under-assessed or excessive relief had been granted as a consequence of the information which came to him from the external source of the decisions of the Tribunal and the High Court in the assessment proceedings of Bisesar House.

12. We are, thus, of the view that on the facts and in the circumstances of the case, suo motu power of revision could be exercised on the basis of a subsequent judicial pronouncement. Accordingly, answer to the first question has to be in favour of the Revenue and against the assessee.

13. As regards the question whether in the term "wires" entitled for concessional rate, the term "conductors" was included, we are of the view that the Tribunal

rightly held that the conductors were different commercial items.

14. Contention on behalf of the assessee is that where the article in question retains its basic character and is given the same treatment, it could not be held that it was a different article liable to different rate of tax.

15. This contention misses the point that mere retaining of the same characteristic was not enough for holding that the article remained the same. Reference may be made to decision of the apex Court in *State of Andhra Pradesh v. Modern Proteins Ltd.* [1994] 95 STC 181, wherein it was observed :

Sales tax law is intended to tax sale or supply of different commercial commodities and not to tax the production or manufacture of particular substance out of which the commodities may have been made. As soon as separate commercial commodity comes into existence or emerges from the production or manufacture, it becomes a separately taxable entity or goods for the purpose of sales tax.

16. In *Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd.*, , it was held that various forms of stone, i.e., gitti, kankar, etc., continue to be stone for purposes of entry 40 of notification in question. At the same time, it was observed :

... The purpose of sales tax is to levy tax on sale of goods of each variety and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sales tax." (para 4).

It was further observed :

Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type." (para 4).

17. Thus, in every case, question is whether a separate commercial commodity emerged or whether the goods were merely subjected to some processing and remained commercially the same goods without a separate commercial commodity coming into existence. So viewed, the decision does not help the assessee. Applying the test laid down in this decision, the "conductors" have to be held to be commercially different commodity than "wire". The Tribunal, thus, applied correct test for determining whether the conductors could be held to be wire entitled to concessional rate.

18. Coming to *Park Leather Industry's* case [2001] 122 STC 82 (SC), the question was what is agricultural produce. The definition in U.P. Krishi Utpadan Mandi Adhiniyam was inclusive and covered all items of animal husbandry specified in the Schedule. Entry of animal husbandry included hides and skins. It was held that tanned leather will also be covered by the hides and skins. The

context in which interpretation of the term "tanned leather" was made, was different.

19. In Real Optical's case [2001] 122 STC 555 (SC), it was held that rough ophthalmic blanks were not covered by entry of other glass and glassware including tableware. This judgment does not help the assessee.

20. Accordingly, electricity conductors manufactured by the assessee cannot be held to be "wire".

21. For the above reasons, we are of the view that order of the Tribunal is in accordance with law. Accordingly, question No. (i) is answered in the affirmative, i.e., in favour of the Revenue and against the assessee. Question No. (ii) is answered in the negative, i.e., against the assessee and in favour the Revenue.