

(1991) 12 GAU CK 0019
In the Gauhati High Court
Case No : Civil Rule No. 163 of 1987

India Carbon and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 16-12-1991

Acts Referred:

Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955 — Section 3, 3(1)
Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 286, 286(3), 366

Citation : (1992) 1 GLR 82

Hon'ble Judges : R.K. Manisana Singh, J;M. Sharma, J

Bench : Division Bench

Advocate : J.P. Bhattacharjee and A.K. Saraf, for the Appellant; A.R. Barthakur, General, D.P. Chaliha and U. Barua, Government Advs., for the Respondent

Judgement

Manisana, J.—The Petitioners have challenged the vires of Section 3 of the Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1955 in so far as it relates to the classification of the petroleum coke into two commercial commodities, namely, raw petroleum coke and claimed petroleum coke, for the purpose of taxation on the ground that it violates Article 286(3) of the Constitution and the Central Sales Tax Act, 1956.

2. M/s India Carbon Limited is a registered company having its registered office at Guwahati in Assam carrying on business of purchase and sale of petroleum coke. The company purchased raw, petroleum coke and paid tax under the provisions of the Assam (Sales of Petroleum and Petroleum Products, including Motor Spirit and Lubricants) Taxation Act, 1956 (for short "Assam Act"). Out of the said raw petroleum coke the company manufactured claimed petroleum coke and sold most of the claimed petroleum coke in the course of the inter-State trade or commerce and also paid tax under the Central Sales Tax Act, 1956. u/s 15(b) of the Central Sales Tax Act, the Government of Assam has to refund the tax levied under the Assam Act. But the Superintendent of Taxes Assam,

Guwahati refused to refund the same on the ground that raw petroleum coke and claimed petroleum coke are different commercial commodities. Hence this petition.

3. Before the amendment of 1986, Sub-section (1) of Section 3 of the Assam Act provided : "There shall be levied and collected, from every dealer a tax on his turnover for sales of the goods enumerated thereunder at the rate specified against each:

.....

4. (vi) Petroleum coke.....Three paise in the rupee

"... .."

After the subsequent amendment by the Assam (Sales of Petroleum and Petroleum Products including Motor Spirit and Lubricants) Taxation (Amendment) Act, 1986 (FOR SHORT "Amendment Act of 1986), in so far as the petroleum coke is concerned, the following have been inserted--

(vi) petroleum coke Four paise in the rupee Explanation.-Petroleum coke means raw Petroleum coke only and does not include calcined petroleum coke.

((vii) Calcined petroleum coke... Four paise in the rupee.

(emphasis added)

On a perusal of the Act after the amendment, it is seen that petroleum coke has been classified into two commercial commodities, viz, petroleum coke and calcined petroleum coke.

4. Learned Counsel for the Petitioner, Mr. J.P. Bhattacharjee, all Challenged the classification on the ground that the Legislature of Assam was not competent to make classification as it would violate Article 286(3) of the Constitution as well as Sections 14 and 15 of the Central Sales Tax Act.

5. The question which, therefore, arises for consideration is whether the Legislature of Assam was competent to classify the petroleum make into two commercial commodities, namely, raw petroleum coke and calcined petroleum coke.

6. Article 286 of the Constitution imposes certain restrictions on the power of the State as to imposition of tax on sale and purchase of certain goods which has termed as the "good declared". Clause (3) of Article 286 of the Constitution reads:

Any law of a State shall, in so far as it imposes, or authorizes the imposition of,--

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature, referred to

in Sub-clause (b), Sub-clause (c) or Sub-clause (d) of Clause (29A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

(emphasis added)

6. In exercise of the powers conferred by Article 286(3) of the Constitution, the Parliament enacted Central Sales Tax Act, 1956 (for the "Central Act"). In Section 14 of the Central Act, goods declared are enumerated. Item (i-a) of the list of goods declared under action 14 is relevant in the present case. The item (i-a) runs "coal, including coke in all its forms, but excluding charcoal" (emphasis supplied). With regard to the word "include", in *Dillworth v. Commissioner of Stamps* (1899) AC 99 it has been stated:

The word "include" is very generally used in interpretation clauses in order to enlarge the meaning of words or phrases occurring in the body of the statute and when it is so used these words or phrases must be construed as comprehending not only such things as they signify according to their natural import, but also these things which the interpretation, clause declares that they shall include.

The above quoted passage has been approved by the Supreme Court in a series of cases. We may refer to *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, and *Reserve Bank of India v. Peerless* AIR 1987 SC 1023 In view of the use of the word "include" in the expression "coal, including coke in all its forms" the expression means any product of coal or coke, in whatever form it may be. At this stage, it will be helpful to refer to an observation, made by the Supreme Court in *India Carbon Limited v. Superintendent of Taxes* (1971) 28 STC 603, in which the Supreme Court has stated that "at any rate, the language employed is so wide, viz, "coke in all its forms", that petroleum coke which is a form of coke cannot possibly be excluded merely by reference to the word "coal". For the reasons stated, the raw petroleum cock and/or the calcined petroleum coke will come within the meaning of the phrase "coke in all its forms" that is to say,--raw petroleum coke and calcined petroleum coke are to be treated as one and the same for the purpose of item (i-a) of Section 14 of the Central Act although the commodities are different physically.

7. Section 15 of the Central Act has been enacted to place restrictions and conditions pursuant to Article 286(3) of the Constitution on the power of the State to impose tax on a sale or purchase of the goods declared u/s 14.

8. Clause (a) of Section 15 imposes two restrictions on sales tax law of State-(i) the State law cannot impose a tax on a sale or purchase of the declared good inside the state at the rate higher than 4% of the sale or purchase price and (ii) the State law cannot impose tax on a sale or purchase inside the state of the declared goods at more than one stage. Under Clause (b) of Section 15, if the same declared goods are subsequently the subject matter of inter-state sale and

tax is paid on such transaction under the Central Act the dealer will be entitled to refund of the tax paid under the State law.

9. Mr. A.K. Saraf, in the absence of the leading counsel Mr. J.P. Bhattacharjee, has contended that in view of Clause (a) of section of the Central Act, State law cannot impose tax on a sale or purchase inside the State of raw petroleum coke as well as calcined petroleum coke, which are goods declared u/s 14 of the Central Act, as it would amount to taxation at two stages on declared goods.

10. As stated earlier, Clause (a) of Section 15 imposes restriction as the sales tax law of State that the State law cannot impose tax on a sale or purchase inside the State of declared goods at more than one stage. It has already been concluded that raw petroleum coke and calcined petroleum coke are goods declared and they are to be treated as one and same for the purpose of item (i-a) of the list u/s 14 of the Central Act, Therefore, although Assam Act has treated the raw petroleum coke and the calcined petroleum coke, which are goods declared, as different commodities for the purposes of sales tax law of the State, the treatment as two different commodities cannot prevail over Section 14 of the Central Act. The being the position, if the raw petroleum coke is purchased inside the State and the calcined petroleum coke is also sold inside the State, after-calcinations, and if the State law imposes tax on the raw petroleum coke as well as the calcined petroleum coke, it would be imposition of tax on a sale or purchase inside the State of goods declared at more than one stage, which is not permissible under Clause (a) of Section 15 of the Central Act. In that view of the matter, Assam Act cannot impose tax on the raw petroleum coke as well as calcined petroleum coke if a sale or purchase of both the raw petroleum coke and calcined petroleum coke takes place within the State of Assam is such imposition of tax will be unconstitutional in view of Article 286(3) of the Constitution read with the Central Act. We are therefore, of the view that the doctrine of "reading down" shall be attracted in the present case in order to save unconstitutionality when such a situation arises, and that, in entry (vii) of Clause (1) of Section 3 of the Assam Act, if the words, namely, which was not subjected to tax as raw petroleum coke, are added within bracket after the words "calcined petroleum coke, it will save the classification from being unconstitutional. Accordingly, we read down entry (vii) thus:

Calcined petroleum coke (which was not subjected to tax as raw petroleum coke.

11. With regard to refund of tax u/s 15(b) of the Central Act, Clause (b) provides that, if the same declared good are subsequently the subject-matter of inter-State sale and tax is paid on such transaction under the Central Act, the dealer will be entitled to refund of tax paid under the State law. As stated earlier, the raw petroleum coke and the calcined petroleum coke are declared goods and are to be treated as one and same for the purpose of item (i-a) of the list u/s 14 of the Central Act and that the treatment of such declared goods as two different commodities cannot over-ride Central Act. Therefore, the contention of learned Advocate General that they are two different commodities for the purpose of

sales tax law of the State and that tax paid cannot be refunded has to be rejected. For these reasons, the Petitioners are entitled to refund in those cases where the tax had been paid on a sale or purchase of raw petroleum coke under the Assam Act, and tax had been paid on a sale or purchase of calcined petroleum coke under the Central Act.

12. In the result, the petition is allowed to the extent indicated above, and the impugned communication refusing to refund tax paid in respect of raw petroleum coke (Annexure-IX series to the petition) is quashed. Learned Counsel for the Petitioners has prayed that, if the Court passes an order for refund of the tax paid on a sale or purchase of raw petroleum coke under the Assam Act, the same may be adjusted towards any sales tax payable by the Petitioners. Considering the facts and circumstances of the case and pendency of the case for more than 4 years, it is directed that the refund shall first of all be adjusted towards the tax payable by the Petitioners, and, thereafter, the balance, if any, shall be refunded to the Petitioners within a period of six months from today.

13. With the aforesaid observations and directions, the petition is disposed of. No costs.