
(2003) 09 CAL CK 0019
In the Calcutta High Court
Case No : W.P.T.T. No. 534 of 2002

Jindal (India) Ltd. and Another

APPELLANT

Vs

Assistant Commissioner, Commercial Taxes and Others

RESPONDENT

Date of Decision : 11-09-2003

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
West Bengal Sales Tax Act, 1994 — Section 17(3)

Citation : (2004) 136 STC 492

Hon'ble Judges : Joytosh Banerjee, J;Aloke Chakrabarti, J

Bench : Division Bench

Advocate : R.N. Bajoria, J.P. Khaitan and Swapna Das, for the Appellant; L.K. Gupta and Sumit Ghosh, for the Respondent

Final Decision : Dismissed

Judgement

Aloke Chakrabarti, J.—This writ petition was filed by the petitioner No. 1 company along with its one Joint Managing Director, being the petitioner No. 2 challenging the judgment and order dated February 28, 2002 of the Tribunal as also challenging the power of the respondents to levy tax on sale of cold rolled strips manufactured out of hot rolled strips and the assessment made on that basis.

2. Petitioner No. 1 company carries on business, inter alia, of manufacturing steel pipes. In extension of its business, the company was manufacturing cold rolled strips from hot rolled strips since September, 1993 and it is registered dealer u/s 26(7) of the West Bengal Sales Tax Act, 1994. On an application made by the petitioner, the Assistant Commissioner, Commercial Taxes granted an eligibility certificate to the company on January 20, 1995 for the purpose of availing remission u/s 10G of the Bengal Finance (Sales Tax) Act, 1941 which was initially valid for a period of one year ending on October 29, 1994 and was thereafter renewed up to October 29, 1995 and, therefore, the company was eligible for remission of tax to the prescribed extent.

3. Upon expiry of the eligibility period, the company no more was entitled to exemption from tax on the purchase of hot rolled strips in West Bengal. By a notice dated December 13, 1999 the company was asked to show cause why the amount specified in the notice should not be demanded from it. An order dated December 6, 1999 was also served on the company, whereby it was stated that tax was leviable on the sale of cold rolled strips manufactured out of hot rolled strips purchased locally and the claim of the company that no tax was payable on the cold rolled strips by virtue of Section 15(a) of the Central Sales Tax Act, 1956 was held to be not correct.

4. The company thereafter filed an application u/s 8 of the West Bengal Taxation Tribunal Act, 1987 challenging the legality and validity of the said notice as also the said order and by order dated March 16, 2000, the Tribunal quashed the said notice and the order and the respondent-Assistant Commissioner, Commercial Taxes, was directed to make assessment of tax payable by the petitioner-company according to law for the period of four quarters ending on March 31, 1998 and the said authority was given liberty to decide the question of taxability of cold rolled strips.

5. Following the aforesaid order of the Tribunal, the Assistant Commissioner, Commercial Taxes, passed order of assessment dated May 12, 2000 for the four quarters ending on March 31, 1998 levying tax on sales of cold rolled strips manufactured by the petitioner-company from hot rolled strips for which taxes were already paid. The said authority disallowed the claim of the petitioner-company for deduction of tax on sales of cold rolled strips u/s 17(3)(a)(vi) of the 1994 Act on the ground that hot rolled strips from which cold rolled, strips were manufactured were not purchased for resale and were not sold in the same form.

6. The said order was challenged before the Tribunal and ultimately by its judgment dated February 28, 2002, the Tribunal dismissed the said application filed by the petitioner. Challenging the said order, the present writ petition was filed.

7. Heard Mr. R.N. Bajoria, learned counsel for the petitioner and Mr. L.K. Gupta, learned counsel for the respondents.

8. The contention of the petitioner is that in Section 14 of the Central Sales Tax Act, 1956 both hot and cold rolled strips have been included in Sub-clause (vi) within Clause (iv) and therefore, both the items are to be treated as one commodity. Section 15 of the said Act was relied on for showing that intention of the Legislature is to levy taxes on any item at not more than one stage. It is contended that the two commodities mentioned in same sub-clause under any clause of Section 14 cannot be treated as two different commodities and therefore, levy of tax for the second time in respect of two such commodities is not permissible.

9. Learned counsel for the petitioner also relied on Section 17 of the West Bengal Sales Tax Act, 1994 for contending that levy and rates of tax on sale under the

State Act are provided in the said Section 17. Reliance was placed on Sub-section (3) of Section 17 for explaining the expression "taxable turnover of sales" and particular reference was made to Clause (a) of the said sub-section having Sub-clause (vi) for contending that the said sub-clause was earlier having the expression "in the same form" which was deleted by amendment and therefore, the consequence is any two items mentioned in same sub-clause are to be treated as one and not different commodity. It is also contended that the said amendment was introduced in the State Act with effect from May 1, 1995 for making the provision in conformity with the law as decided by the apex Court in the case of State of Tamil Nadu v. Pyare Lal Malhotra reported in [1976] 37 STC 319 (Mad) and Telangana Steel Industries v. State of Andhra Pradesh reported in [1994] 93 STC 187 (AP). It is further contended that the law in the aforesaid two cases were decided in the facts involving wire rods, wires which are governed by the same Clause (iv) of the relevant section and therefore, decision on such facts remains binding on subsequent cases particularly when the State Government being the assessing authorities even amended the law earlier prevailing to make it in conformity with the law so decided by the apex Court,

10. In this connection it is pointed out that the expression "in the same form" has not been deleted from the Rules as would appear from the Rule 83 of the said Rules framed under the said Act in force in the State. In this context, it is further contended that the view of the State Government apart from incorporation of the said amendment is also available from their letter dated March 31, 1999.

11. Learned counsel for the petitioner further contended that the law has been decided in this connection, from time to time, in the cases of A. Hajee Abdul Shakoor and Company Vs. State of Madras, , State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, , Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, , K.A.K. Anwar & Co. v. State of Tamil Nadu reported in [1998] 108 STC 258 (SC), Park Leather Industry (P.) Ltd. v. State of U.P. reported in [2001] 122 STC 82 (SC), all by the apex Court and Hyderabad Wire & Allied Products v. Commissioner of Commercial Taxes reported in [1999] 115 STC 286 by the division Bench of the Andhra Pradesh High Court and Precision Strips Private Limited v. C.T.O., Kadamtaala Charge reported in [1996] 102 STC 82 by the Taxation Tribunal.

12. It is the contention of the learned counsel for the petitioner that the cases of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, , Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, and Park Leather Industry (P.) Ltd. [2001] 122 STC 82 (SC) were decided in cases of iron and steel products considering the very question of law which falls for consideration in this matter and therefore, the law decided therein are to be followed strictly. The judgment in the case of Hyderabad Wire & Allied Products [1999] 115 STC 286 (AP) was relied on for showing that same view was taken by the division Bench of the Andhra Pradesh High Court. It is stated that the case of A. Hajee Abdul

Shakoor and Company Vs. State of Madras, , K.A.K. Anwar & Co. [1998] 108 STC 258 (SC) and Park Leather Industry (P.) Ltd. [2001] 122 STC 82 (SC), considered the law in respect of hides and skins and therefore, the law relating thereto cannot be applied in the present case involving iron and steel.

13. Further contention of the petitioner is that even if the judgment in the case of K.A.K. Anwar & Co. is accepted as a good law and applic[1998] 108 STC 258 (SC)able in the present case, the said law has to be applied prospectively and cannot be applied in the present case for an earlier period. In this connection the judgments in the cases of British Physical Lab India Ltd. Vs. State of Karnataka and Another, and Shree Cement Ltd. and Another Vs. State of Rajasthan and Others, have been relied upon.

14. Mr. Gupta, learned counsel appearing for the respondents, has advanced his argument contenting that assessment for the present case is admittedly under the State Act and therefore, the provision of the Central Act does not solely decide the issue. Relying on the provision contained in Sub-clause (vi) in Section 17, it has been contended that section itself provides that the purpose must be of resale and therefore, when admittedly the petitioners manufactured cold rolled strips from hot rolled strips, such hot rolled strips were not for resale of the same commodity and in such circumstances, the petitioners are not entitled to the deduction available under Clause (vi) of Section 17.

15. In respect of the provision of the Central Sales Tax Act relied on by the learned counsel for the petitioners, it is stated by Mr. Gupta for the respondents that Section 14 has clubbed various materials in various sub-clauses, but items therein have been described separately. As and by way of example it was mentioned that Clause (i) in Section 14 includes cereals whereunder paddy, rice, wheat, etc., were mentioned but without mentioning whether the paddy is husked or unhusked ; similarly rice has not been described as boiled or unboiled. Pulse has also not been described in Clause (via) indicating any processing on the items mentioned thereunder and therefore, in Section 15 certain provisions have been incorporated showing the restriction and condition in regard to tax on sale or purchase of declared goods in a State. It is stated that iron and steel mentioned under Clause (iv) of Section 14 includes in Sub-clause (vi) thereof sheets, hoops, strips and skelp mentioning further both black and galvanised, hot and cold rolled, plain and corrugated. Therefore, such specific mentioning was not required in Section 15 in respect of iron and steel. It is therefore, argued that any item not mentioned in Section 15 of the Central Act, cannot get any benefit in respect of exemption for levy of tax.

16. In respect of cases cited on behalf of the petitioners, it is stated by Mr. Gupta that in the case of A. Hajee Abdul Shakoor and Company Vs. State of Madras, , the matter was decided by a five-Member Bench and the said case though was decided on facts involving hides and skins, but law has been explained in general and therefore, the subsequent judgments in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and Telangana Steel Industries and others Vs.

State of Andhra Pradesh and others, decided by a smaller Bench contrary to the law laid down earlier by larger Bench, cannot be held as good law and the authorities, Tribunal and this Court are required to follow the law laid down by the larger Bench in the case of A. Hajee Abdul Shakoor and Company Vs. State of Madras, . The judgments in the case of K.A.K. Anwar & Co. [1998] 108 STC 258 (SC) and Park Leather Industry (P.) Ltd. [2001] 122 STC 82 (SC) have decided the law correctly following the judgment of the larger Bench as stated hereinabove.

17. Mr. Gupta relied on the meaning of resale as given in Oxford Dictionary and Whenton's Law Lexicon (14th Edition) 1976 (reprint). It has been argued on behalf of the respondents that upon manufacturing cold rolled strips from hot rolled strips, a different commodity admittedly emerges and therefore, hot rolled strips were not purchased for resale as required under Clause (vi) of Section 17 of the said Act.

18. It has been argued that law of precedents has been decided holding that a decision by a larger bench of the apex Court has to prevail and judgment by smaller Benches contrary thereto cannot be held to be good law. Reliance was placed on the judgment in the case of The State of U.P. Vs. Ram Chandra Trivedi, , Union of India (UOI) and Another Vs. K.S. Subramanian, and N. Meera Rani Vs. Government of Tamil Nadu and Another, .

19. With regard to the letter issued by the Finance Department relied on by the petitioners, it is contended that the said letter is purely administrative letter and cannot bind the authorities far less the Tribunal and the court in case the question of following the law is required to be decided.

20. Considering the aforesaid contentions, it appears that main consideration is of the law as to whether different items specified in different sub-clauses under any clause in Section 14 of the Central Sales Tax Act, 1956 are different commodities and therefore, sales tax whether can be charged for sale of a commodity though it emerges from another commodity mentioned in same sub-clause. Out of the cases cited the first one to be taken into consideration admittedly is the case of A. Hajee Abdul Shakoor and Company Vs. State of Madras, . The said judgment was delivered by a Bench of five honourable Judges of the apex Court wherein the petitioners were dealers in skin and they purchased raw skins from places both within and outside the State of Madras and tanned the same and sold through their agents in Madras. Assessment of sales tax under the concerned State Act and the Rules framed thereunder in respect of the turnover of hides and skins purchased in untanned condition outside the State but tanned within the State, was subject-matter of consideration. While writ petition challenging validity of the relevant rule was heard, the aspect which was considered by the said Bench will appear from the relevant portion of the judgment which are set out hereinbelow :

"The question whether tanned skins and hides are different commodities from

raw skins and hides has been considered by Courts a few times."

Considering various judgments ultimately came to the following conclusion :

"We therefore hold that raw hides and skins and dressed hides and skins constitute different commodities or merchandise and they could therefore be treated as different goods for the purposes of the Act."

21. The next case dealing with the similar subject-matter was a case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, decided by a Bench of four honourable Judges of the apex Court. In the said case though the writ petitions had been dismissed by the High Court of Madras on the ground that they involved an investigation into the question of fact whether the iron and steel scraps, out of which the manufactured goods sought to be subjected to sales tax, had been made, were already taxed or not, yet, the State of Tamil Nadu was aggrieved by the decision of the Madras High Court, holding that the manufactured goods, said to consist of "steel rounds, flats, angles, plates, bars" or similar goods in other forms and shapes, could not be taxed again if the material out of which they were made had already been subjected to sales tax once as iron and steel scrap as both were "iron and steel".

22. Section 14 of the Central Sales Tax Act was considered taking particular note of Clause (iv) thereof having 16 categories in the sub-division thereunder. Considering the law in this respect, both statutory provisions and the case laws referred to thereunder, following findings were recorded in the said judgment :

"As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type.

.....

It appears to us that the position has been simplified by the amendment of the law, as indicated above, so that each of the categories falling under "iron and steel" constitutes a new species of commercial commodity more clearly now. It follows that when one commercial commodity is transformed into another, it becomes a separate commodity for purposes of sales tax."

23. The next case referred was of Telangana Steel Industries [1994] 93 STC 187(mad) decided by two honourable Judges of the apex Court. This case related to question of taxability after conversion of wire rods into wire. Such being the question, Section 14 of the Central Sales Tax Act and Clause (iv) thereof was considered. Similarly the law decided in the case of State of Tamil Nadu Vs. Pyare

Lal Malhotra and Others, , was also taken into consideration. The argument which was considered therein was whether goods of one sub-item and in one sub-division have to be taken as one commercial commodity. In paragraph 14 of the judgment, it was held that State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, case ought to be treated as holding that goods of one sub-item should be taken as one taxable commodity. Ultimately in paragraph 18 of the judgment, it was held as follows :

"18. We, therefore, conclude by stating that iron wires cannot be taken as a separate taxable commodity and, if wire rods which were purchased by the appellants had suffered sales tax, the same could not be realised from the sale of wires."

24. The next case referred to in this connection was the case of K.A.K. Anwar & Co. v. State of Tamil Nadu reported in [1998] 108 STC 258(mad) decided by a Bench of three honourable Judges of the apex Court. In this case, according to the appellants they purchased raw hides and skins and after dressing they are sold in course of inter-State trade. The contention of the dealers before the assessing authority was of hides and skins, whether in a raw or dressed form, are declared goods u/s 14(iii) of the Central Sales Tax Act, 1956 and they are regarded by the said Act as a single commodity. It is stated that this being so Section 15 of the Central Sales Tax Act provides that the goods which have suffered tax once cannot be taxed again at the time of inter-State sale.

25. The relevant findings in the said judgment as contained in paragraphs 15 and 16 are as follows ;

"15. The language of Section 14(iii) of the Central Sales Tax Act is similarly worded as the language of aforesaid Sections 5(vi) and 5A of the Madras General Sales Tax Act. It is while interpreting this that it was held that raw and dressed hides and skins were different articles and that is why the Legislature could provide differently about their taxation. The fact that both the articles are mentioned under the same heading is also of no material consequence. After referring to Raghbir Chand Som Chand v. Excise and Taxation Officer [1960] 11 STC 149(Mad) (Punj) wherein it was held that ginned and unginned cotton constituted one commodity, inter alia, for the reason that ginned and unginned cotton were under the same head and thereby indicating that the Legislature looked upon ginned and unginned cotton as one and the same thing, it was held in A. Hajee Abdul Shakoor and Company Vs. State of Madras, that "the fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity. The inclusion of several articles under the same heading may be for a reason other than that the articles constitute one and the same thing". This means that merely being put under one head would not make two different commodities a single item for purposes of taxation.

16. When dressed hides and skins are different goods from raw hides and skins,

we do not find anything in the language of Section 14 of the Central Sales Tax Act which can lead us to the conclusion that these two different commodities were to be regarded as constituting a single commodity for the purpose of taxation. Sections 14 and 15 of the Central Sales Tax Act have to be read together as they constitute a scheme relating to taxation of goods of special importance in inter-State trade or commerce. While Section 14 enumerates the items which are regarded as being goods of special importance in inter-State trade or commerce, it is Section 15 which imposes the restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. Section 14, in other words, is not a taxing provision but it merely classifies different commodities under the same species under one entry. Merely because different goods or commodities are listed together in the same sub-heading or sub-item in Section 14 cannot mean that they are regarded as one and the same item. Whenever the Legislature wanted different goods placed in the same entry to be regarded as a single commodity it expressly provided for the same. By Act 103 of 1976, Sub-sections (c) and (d) were inserted in Section 15 of the Central Sales Tax Act. With the introduction of Section 15(d) "each of the pulses referred to in Clause (vi-a) of Section 14, whether whole or separated, and whether with or without husk, were to be treated as a single commodity for the purposes of levy of tax under that law". If the intention of the Legislature had been that the various commodities mentioned in the same clauses in Section 14 were to be regarded as a single commodity it would have specifically provided as such. The Legislature, however, chose to single out different types of pulses only to be regarded as a single commodity. Notwithstanding the fact that the raw hides and skins had been held by this Court in *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, as being distinct from dressed hides and skins the Legislature did not think it appropriate to insert a clause similar to Section 15(d) which may have had the effect of regarding raw hides and skins and dressed hides and skins as being treated as a single commodity for the purposes of levy of tax."

26. After above discussion, the Bench came to the conclusion that raw hides and skins and dressed hides and skins are two types of commodities and when appellants purchased raw hides and skins on payment of tax they would be liable to pay sales tax in respect of dressed hides and skins and such levy will not fall foul of Section 15 as the two goods are different taxable commodities.

27. Mr. Bajoria, learned counsel for the petitioner, contended that the apex Court followed one line in case of various items in iron and steel but followed another line in the cases involving hides and skins and therefore, in the present case involving sub-items of goods in iron and steel, the judgments in the cases of *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, and *Telangana Steel Industries and others Vs. State of Andhra Pradesh and others*, are to be followed and not the law in respect of hides and skins as decided in the cases of *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, and *K.A.K. Anwar & Co [1998] 108 STC 258 (SC)*. In support of such contention, Mr. Bajoria referred to special Bench judgment of the Andhra Pradesh High Court decided in the case of

Hyderabad Wire & Allied Products v. Commissioner of Commercial Tax reported in [1999] 115 STC 286(Mad), holding that the judgment of the Supreme Court directly dealing with the entries in question when doubted in later judgment dealing with different entry, cannot be treated as overruled the proposition and is binding.

28. In my opinion the law was decided by a Bench of five honourable Judges of the apex Court in the case of Hajee Abdul Shakoor and Co. [1964] 15 STC 719, which was followed in the subsequent case of K.A.K. Anwar & Co. [1998] 108 STC 258 (SC). But this case was not noticed in the judgment in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and Telangana Steel Industries [1994] 93 STC 187 (SC).

29. Therefore, law is to be followed as decided by earlier larger Bench in the case of A. Hajee Abdul Shakoor and Company Vs. State of Madras, and reiterated in K.A.K. Anwar & Co. case [1998] 108 STC 258 (SC).

30. A contention was made by the parties that whether in A. Hajee Abdul Shakoor and Company Vs. State of Madras, , it was decided that two commodities in one sub-item are necessarily treated as same commodity or it was decided there that commodities in one sub-clause are treated as same for exemption of sales tax liability although such commodities are not only different but one may emerge from another upon processing or manufacturing.

31. In my opinion in the said case it was clearly decided that articles mentioned under same sub-heading does not mean that they all constitute one commodity. Law was decided therein generally and not restricted to hides and skins only. Therefore, when finding on fact in the present case is that two articles in same sub-heading are two different commodities one having emerged from other on processing the product is not entitled to tax exemption even if for other item already tax has been levied.

32. Following the said general proposition of law held in A. Hajee Abdul Shakoor and Company Vs. State of Madras, by a larger Bench, the contention of the petitioner herein also cannot be accepted, as regards exemption of tax liability for cold rolled strips manufactured from hot rolled strips.

33. The omission of exemption "in the same form" in Section 17 of the Act of 1994 does not alter the effect of above interpretation of law as made by apex Court.

34. The letter dated March 31, 1999, relied on by the petitioner, written by an authority of the State Government also does not help the petitioner as such writings do not have any binding effect in respect of sales tax liability of the petitioners.

35. The contention of the petitioner is that Section 14(iii) of the Central Sales Tax Act was not considered in A. Hajee Abdul Shakoor and Company Vs. State of Madras, and the finding in K.A.K. Anwar & Co.'s case [1998] 108 STC 258 (SC),

to that extent is wrong. But in K.A.K. Anwar & Co.'s case [1998] 108 STC 258 (SC) it was specifically discussed that Section 14(iii) is similarly worded as the provision of law which was considered in the case of A. Hajee Abdul Shakoor and Company Vs. State of Madras, and so this contention of the petitioner is also having no force.

In view of above findings no interference is being made hereby and the writ petition is dismissed. No costs.

JOYTOSH BANERJEE, J.

36. I agree.