**(2011) 01 AHC CK 0109**

**In the Allahabad High Court**

**Case No :** Writ Tax No''s. 358, 359, 360 and 361 of 2007

Manohar Lal Hira Lal Ltd. APPELLANT

Vs

State of U.P. and Others RESPONDENT

**Date of Decision :** 18-01-2011

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 14, 14(3), 3
Constitution of India, 1950 — Article 226
Uttar Pradesh Trade Tax Act, 1948 — Section 21, 21(2), 4B(2)

**Citation :** (2011) 01 AHC CK 0109

**Hon'ble Judges :** Yatindra Singh, J;Prakash Krishna, J

**Bench :** Division Bench

**Final Decision :** Dismissed

## Judgement

Prakash Krishna, J.—Raising the common questions of law relating to four different assessment years 2000-2001 to 2003-2004 in respect of interstate sales, the Petitioner has questioned the sanction granted to reopen the assessments by the Additional Commissioner Grade-I, Trade Tax, Ghaziabad Zone, Ghaziabad u/s 21(2) of the under the U.P. Trade Tax Act (the Act).

2. The facts are not much in dispute. The Petitioner is carrying on the business of manufacture and sale of steel wire and is holding a recognition certificate u/s 4-B (2) of the Act. For the purposes of manufacturing and selling of steel wires, it purchases raw material namely wire rods against Form 3-B on payment of tax at the rate of two per cent to its selling dealer. In all these assessment years, regular assessment orders were framed on 8.1.2003, 16.2.2004, 17.3.2005 and 30.3.2006 respectively. The turnover of interstate sales of steel wire was exempted therein on the ground that it was manufactured out of tax paid steel rod.

3. The Assessing Officer approached the Additional Commissioner Grade-I, Trade Tax, Ghaziabad for grant of permission to reassess the turnover of steel wire in respect of interstate sales on the ground that the said turnover has escaped the

 

assessment. The Petitioner does not fulfil the conditions as provided by the notification dated 13th of September, 1990 for grant of exemption on the said turnover.

4. Consequently, show cause notices were issued by the Additional Commissioner Grade-I to the Petitioner. The said Officer after taking into consideration the reply of the Petitioner by the impugned order dated 19.1.2007 has sanctioned initiation of reassessment proceedings. Challenging the said sanction order passed u/s 21(2) of the Act, the above writ petitions have been filed.

5. Heard Sri Bharat Ji Agrawal, learned Senior Counsel along with Sri Piyush Agrawal and Sri Subham Agrawal for the Petitioner and Sri S.P. Kesarwani, Additional Chief Standing Counsel and Sri U.K. Pandey, Standing Counsel for the department.

6. Sri Bharat Ji Agrawal submits the following two points for consideration:

1. On true and proper interpretation of the notification dated 13th of September, 1990 and Section 14(iv)(xv) of the Central Sales Tax Act, steel wire made from the steel rod are one and the same commodity. Elaborating the argument, it was submitted that admittedly, the Petitioner purchases the steel rods within the State of U.P. and therefrom the Petitioner manufactures the wire. Since the steel rod was tax paid goods, no Central Sales Tax shall be payable on the interstate sales on wire, thus, manufactured from the steel rod.

2. Secondly, the question with regard to the taxability of steel wire manufactured by the Petitioner was examined by the Assessing Authority while framing the assessment order. The said issue cannot be re-examined in the proceeding u/s 21 of the Act even if the view taken by the Assessing Authority is legally erroneous. Although the submission is that the view taken by the Assessing Authority in the assessment order in view of the decisions referred by him which will be noticed at appropriate place is perfectly justified.

7. In reply, Sri S.P. Kesarwani, learned Additional Chief Standing Counsel, submits that firstly, in various pronouncements the Apex Court has held that the steel wire is totally a different commodity than the wire rod wherefrom the wire was manufactured by drawing it. On a true and proper interpretation of Section 14(iv)(xv) of the Central Sales Tax Act, no other conclusion is possible. The Assessing Officer was not justified in granting the exemption from tax on the interstate sales of wire on the ground that the conditions as laid down in the notification referred to above are satisfied. The Petitioner on his own showing in paragraph 3 of the writ petition in particular, is a manufacture of wire. He has purchased the wire rods as a raw material which is different from wire.

8. Secondly, there is no application of mind to the point in issue by the Assessing Officer in the assessment order. The assessment order proceeds on the footing that the judgment delivered by the Apex Court in Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, supports the contention of the

 

Petitioner. Besides above, reliance was placed by him upon an interim order passed by the High Court in a writ petition wherein the effect and operation of the Commissioner''s circular on the issue was stayed, as an interim measure. Elaborating the argument, it was submitted that the attention of the Assessing Authority was not drawn towards the fact that in the subsequent decision by the Apex Court it was laid down in no uncertain terms that the decision given in Telangana Steel Industries (supra), is not a good law. The decision given by the Apex Court is a binding precedent and since the assessment order was framed in ignorance of the subsequent binding precedent of the Apex Court, no case for interference under Article 226 of the Constitution of India has been made out.

9. Considered the respective submissions of counsel for the parties. Before proceeding further, it is desirable to have a look into the assessment order in question. The Court was taken through the assessment order relating to the assessment year 2000-2001 and was given to understand that similar kind of assessment orders have been passed in respect of all other assessment years. It was admitted that the Petitioner has purchased the wire rods within the State of U.P. on furnishing Form 3-B and the wire was manufactured there from and he claimed that it is not liable to pay tax on the interstate sale of wire , in view of Section 14(iv)(xv) of the Central Sales Tax Act. Reliance was placed on a decision of Apex Court in Telangana Steel Industries (supra) as also on interim order dated 27.11.1998 passed by this Court whereby the operation of circular/letter dated 31.7.1998 was stayed.

10. A bare perusal of the assessment order would show that the Assessing Authority did not apply his mind with regard to the taxability of interstate sale on wire in view of the above and has granted exemption to the Petitioner on the turnover of the wire. This being so, it is not correct to say that the Assessing Authority had applied its mind to the point in issue with regard to the taxability of such manufactured wire. The controversy was very much there during the course of assessment proceedings but it was not addressed in view of the pronouncement of the Apex Court in Telangana Steel Industries (supra).

11. At this stage, the argument of the learned Additional Chief Standing Counsel for the Department that the attention of the Assessing Officer was not drawn towards the other binding precedents of the Apex Court holding that Telangana Steel Industries (supra) was not correctly decided, requires consideration. In short, the controversy up for consideration is whether steel wire and steel rod are one and the same commodity within the meaning of Section 14(iv)(xv) of the Central Sales Tax Act. The peripheral issue is whether the decision of Apex Court in the case of Telangana Steel Industries (supra) is still a good law in view of its subsequent judgment in the case of TVL K.A.K. Anwar and Co. v. State of Tamil Nadu 1998 U.P.T.C. 447.

12. However, it is desirable to notice the judgment of Telangana Steel Industries (supra) first.

 

13. We are concerned here with the products of iron steel. Section 14 of the Central Sales Tax Act deals with 13. certain goods to be of special importance in interstate trade or commerce. The relevant portion of Section 14 is reproduced below:

Section - 14. Certain goods to be of special importance in inter-State trade or commerce --It is hereby declared that the following goods are of special importance in inter-State trade or commerce:

(i) ...

(ii) ...

(iii) ...

(iv) iron and steel, that is to say,

(i) pig iron, sponge iron and cast iron including ingot the moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap ;

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes) ;

(iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars ;

(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths) ;

(v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections) ;

(vi) 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 ;

(vii) plates both plain and chequered in all qualities ;

(viii) discs, rings, forgings and steel castings ;

(ix) tool, alloy and special steels of any of the above categories ;

(x) steel melting scrap in all forms including steel skull, turnings and borings ;

(xi) steel tubes both welded and seamless, of all diameters and lengths, including tube fittings ;

(xii)tin-plates, both hot dipped and electrolytic and tin free plates ;

(xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails-heavy and light crane rails ;

(xiv) wheels, tyres, axles and wheels sets ;

 

(xv) wire rods and wires-rolled, drawn, galvanised, aluminised, tinned or coated such as by copper ;

(xvi) defective, rejects, cuttings or end pieces of any of the above categories ;

14. In Telangana Steel Industries (supra) the Apex Court took the view that iron rods and iron wires cannot be taken as two separate taxable commodity and if the wire rods which were purchased by the dealer has suffered Sales Tax, the sale of wire will be exempt from sales tax. The aforesaid judgment proceeds on the footing that the Legislature did not want wires, even if same was a separate commercial commodity to be taken as a commodity different from the rods from the purposes of permitting the imposition of Sales Tax once again on wires despite the rods having been subjected to Sales Tax. The two goods rods and wires are so closely knit in the sub item that any separation of these does not seem permissible. This is a decision rendered by the two Hon''ble Judges of the Apex Court.

15. The Apex Court in TVL K.A.K. Anwar and Company v. State of Tamil Nadu 1998 U.P.T.C. 447, was faced with the aforesaid pronouncement given in Telangana Steel Industries (supra).

16. TVL K.A.K. Anwar & Co. v. State of Tamil Nadu 1998 U.P.T.C. 447 Section 14(3) deals with Entry ''hides and skins, whether in a raw or dressed state, in Section (3) of the Central Sales Tax Act. It was argued by the Appellant therein that ''raw hides and skins'' are not different from ''dressed hides and skins''. To support the said argument, the decision of the Apex Court in Telangana Steel Industries (supra) was relied upon. The Apex Court on consideration it found that in the case of Telangana Steel Industries (supra) (as noticed in paragraph 15 of its judgment ) the attention of the Court was not drawn towards the Constitution Bench judgment in A. Hajee Abdul Shakoor and Company Vs. State of Madras,

17. Thereafter, in paragraph 16 of the report it recorded its own conclusion that the Constitution Bench had, in no uncertain terms, had come to the conclusion that ''raw hides and skins'' and ''dressed hides and skins'' were not one and the same commodity. The relevant para 16 of the report is reproduced below:

16. From the aforesaid observations it clearly follows that the Constitution Bench had, in no uncertain terms, come to the conclusion that raw hides and skins and dressed hides and skins were not one and the same commodity. Therefore the first contention raised in the present case by the learned Counsel for the Appellant cannot be accepted notwithstanding the reliance placed by them on the aforesaid decision in the case of Telangana Steel Industries case. It may here be noted that in none of these decisions was the attention of the Learned Judges drawn to the aforesaid observations of the Constitution Bench in Abdul Shakoor''s case.

18. It follows that the Apex Court has clearly laid down in the case of TVL K.A.K. Anwar and Company (supra) that the decision rendered by it in the case of

 

Telangana Steel Industries (supra) cannot be treated as a binding precedent for the simple reason that the said decision was delivered without taking into account the earlier binding precedent of larger bench in the case of Abdul Shakoor (supra). In TVL K.A.K. Anwar and Company (supra) the Apex Court has laid down clearly that ''raw hides and skins'' and ''dressed hides and skins'' both are different commodities. It has also been laid down that merely because in an Entry the separate items are mentioned, they cannot be treated as one. Reliance was placed upon its earlier judgment in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, that sales tax law is intended to tax sales of different commercial commodities and not to tax the production or the 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.

19. This appears to be crux of the decision of the Apex Court referred to above. A reading of the subsequent judgment of the Apex Court in the case of TVL K.A.K. Anwar and Company (supra) would show that the judgment delivered by it in the case of Telangana Steel Industries (supra) was not approved.

20. At this stage, strong reliance was placed by the learned Counsel for the Petitioner on a Division Bench decision of this Court given in the writ petition No. 3732 of 1998, Engineering Association of Northern India and Ors. v. State of U.P. and another. In this case, the Division Bench has preferred to follow the judgment of the Apex Court in the case of Telangana Steel Industries (supra) . The learned Counsel for the Petitioner has placed reliance upon a the following observations of the Division Bench:

We are of the view that as wire rods and wires having been mentioned in one sub-item, they shall be treated as one goods and not different goods. The contention of the learned Counsel for the Respondent that the judgment in Telangana Steel Industries v. State of Andhra Pradesh (Supra)is per incurium cannot be accepted.

21. Thereafter, the judgment proceeds to quote paragraph 14 from the judgment of the TVL K.A.K. Anwar and Company (supra). For the sake of convenience the said paragraph is reproduced below:

14. In Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, the question was whether iron wires were separate commercial goods from wire rods from which they were produced. Without deciding whether both the goods was one commercial commodities or not and after referring to the decision of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, ,this Court held that as both the rods and wires form part of one sub item viz., (iv)(xv), they could not be taken as separate taxable commodity and wire rod which had been purchased by the dealers had already been subjected to sales tax, then wires which were drawn from the said rods could not be taxed again. In arriving

 

at this conclusion, it was observed that when the sub-item spoke of wires "rolled, drawn, galvanized, aluminized, tinned or coated" it showed that even if they were separate commercial commodities, the Legislature nevertheless did not want wires to be taken as a commodity different from rods for the purpose of permitting imposition of sales tax once again on wires, despite rods having been subjected to sales tax.

22. In reply, Sri S.P. Kesarwani, learned standing counsel submits that the attention of the Division Bench was not drawn towards the aforesaid paragraphs wherein in no uncertain terms the Apex Court has observed in the case of Telangana Steel Industries (supra) .... whether dressed hides and skins and raw hides and tanned skins are different commodities and, secondly, whether Section 14(iii) of the Central Sales Tax Act regards them as the single commodity, appear to have been decided differently by a Constitution Bench of this Court in A. Hajee Abdul Shakoor and Company Vs. State of Madras,

23. The further submission is that the case of Engineering Association of Northern India and Ors. v. State of U.P. and Anr. (supra) cannot be treated as a binding precedent.

24. We are leaving the aforesaid question open to be considered by the authority concerned.

25. With regard to the second point, the learned standing counsel submits that, as a matter of fact, the assessing authority while framing the assessment order failed to examine the relevant issue and preferred to follow the judgment of the Apex Court in the case of Telangana Steel Industries (supra). The said approach of the assessing authority is clearly erroneous in view of two authoritative pronouncements of the Apex Court of the larger bench referred to above.

26. We are leaving this question open to be considered if so raised by the authority concerned in the reassessment proceedings.

27. In view of the above discussion, we do not find any merit in the petition. All the petitions are hereby dismissed.