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In the Karnataka High Court

Case No : Writ Petition No. 3525 of 1997

M/s. Mysore Foundries, Bangalore — APPELLANT

Vs

The Additional Deputy Commissioner of Commercial Taxes (Assessments), Bangalore and Another — RESPONDENT

Date of Decision : 02-03-1999

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 5(1)

Citation : (1999) 46 KarLJ 483

Hon'ble Judges : V. K. Singhal, J

Judgement

1. The petitioner has prayed for declaring the proviso to Section 5(1) of the Karnataka Sales Tax Act, as inserted by Act No. 18 of 1994 as unconstitutional.

2. Proviso added by the Act No. 18 of 1994 are as under:

"Provided further that if and to the extent to which such turnover relates to cast iron castings, all the provisions of this Act including the rate of tax applicable to goods mentioned in sub-item (i) of item (a) of Entry 2 of Fourth Schedule shall apply mutatis mutandis, in respect of tax payable under this Act for sale of cast iron castings:

Provided further that if and to the extent to which such turnover relates to cast iron castings, all the provisions of this Act including the rate of tax applicable to goods mentioned in sub-item (i) of item (a) of Entry 2 of Fourth Schedule shall apply mutatis mutandis in respect of tax payable under this Act for sale of cast iron castings".

3. The petitioner is a manufacturer of iron castings. In the assessment order for the year 1993-94 sale of rough iron castings for the period 1-4-1993 to 31-8-1993 assessed under Sl. No. 2 of the Fourth Schedule to the Act at 4 per cent, while in respect of the period from 1-9-1993 to 31-3-1994 it is assessed to tax under Section 5(1) of the Act at 8 per rent. The petitioner was not given the benefit of set off on the purchase of cast iron scrap used in the manufacture of

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finished goods on which the tax was paid for the period from 1-9-1993 to 31-3-1994.

4. The Supreme Court in Bengal Iron Corporation and Another v Commercial Tax Officer and Others, 2 SCST 1907, held that cast iron was different from iron castings like manhole covers, bends, cast iron pipes, etc., manufactured or sold. The decision of Andhra Pradesh High Court was affirmed. The expression ''cast iron'' used in Entry 2(i) of Third Schedule to the Andhra Pradesh Sales Tax Act, as well as the provisions of Section 14(iv)(i) of the CST Act were held not covering the cast iron castings manufactured by the appellants.

5. In Vasantham Foundry v Union of India and Others, (1995)99 STC 87 (SC), rough unmachined cast iron castings were held to be covered by the term ''cast iron''. The finished products made therefrom were not considered to be the ''cast iron''. It was observed that.-

"When Section 14 declared certain goods as of special importance in inter-State trade or commerce, it could not have the molten metal in contemplation. It is nobody''s case that the molten metal is bought and sold in the market. What is bought and sold is cast iron, which is obtained by pouring molten metal in the moulds. The moulds may be of various shapes or sizes, but the type or nature or the size of the mould will not decide the question whether the end product will be ''cast iron'' or not. Cast iron has to be in some shape, whether as a bar, as a billet or in some other form. The molten metal has to be poured into some mould to obtain ''cast iron'' so that it can be traded, transported and used in obtaining finished goods out of it. It is not the shape of this rough mould that is determinative of the issue. What is determinative is whether it is finished produce or only a rough mould approximates in shape to the finished goods that will be ultimately made out of it does not make it any the less a rough mould. What emerges from the moulds is a cast iron casting in its primary form, that is to say, rough cast iron casting. But, that will not take it out of the ambit of declared goods. If cast iron or cast iron casting in the primary form is not to be treated as declared goods, then the whole purpose of including cast iron in the list of declared goods will be defeated".

6. Machining or polishing or any other process is done to rough cast iron castings but end-products like pipes, man-hole covers or bends, were held as not cast iron castings in its primary or in other form, but the products made of cast iron castings. Such products were held not cast iron and hence out side the ambit of declared goods.

7. In the case of Electrosteel Castings Limited v West Bengal Commercial Taxes Tribunal and Others, (1994)93 STC 255 (WBTT), grinding media, sleeves, gears and hammers made of cast iron were considered not falling within the category of steel casting or declared goods.

8. Section 14 of the CST Act, 1956, declare iron and steel to be the goods of special importance in inter-State trade and commerce. Clause (iv) specifies iron

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and steel and sub-item (i) of the said clause refers to pig iron and cast iron including ingot moulds,.etc. Section 15 of the CST Act, has put the restriction with regard to rate of tax on sale or purchase of declared goods within the State. The tax shall not exceed 4 per cent on the sale or purchase price and the tax is not to be levied more than at one stage.

9. After the decision in Bengal Iron Corporation, provisos referred to above were inserted by Act No. 18 of 1994 retrospectively and were omitted with effect from 1-4-1993. The second proviso inserted by Act No. 18 of 1994 with effect from 1-4-1993 was deemed to have been omitted with effect from 1-9-1993. The effect of these provisos was that for the period from 1-4-1993 to 31-8-1993, though the tax was levied on cast iron castings at 4 per cent but these castings were not considered to be within the category of iron and steel. The net result of this was that the manufacturers were not entitled to have a set off of the tax paid on purchase of scrap which is used in the manufacture of iron and steel and also that they were subject to turnover tax. Turnover tax under Section 6-B is not leviable on declared goods. Section 15 of the CST Act also imposes restriction on the State Legislature not to levy tax at more than 4 per cent.

10. Entry 5-A in Part ''C'' of Second Schedule prescribes 4 per cent of tax for the period from 1-4-1994 to 31-3-1996. The grievance of the petitioner is that for the period from 1-4-1993 to 31-8-1993 the petitioner was subjected to turnover tax and benefit of set off was not given in view of the proviso to Section 5(1) as cast iron castings were considered as not declared commodity and for the period from 1-9-1993 to 31-3-1994, the petitioner was subjected to tax at 8 per cent under Section 5(1) of the Act.

11. I have considered over the matter. The controversy in the present matter is covered by the decision given in Vasantham Foundry case, supra, wherein unmachined cast iron castings were considered to be iron and steel. The proviso to Section 5(1) of Karnataka Sales Tax Act has not made a distinction between unmachined and machined cast iron castings. On proper interpretation of the provisions of Section 14 of the Central Sales Tax Act and the judgment in Vasantham Foundry case, supra, unmachined cast iron castings have to be considered as declared commodities falling under Section 5(4) and Fourth Schedule, in which the tax is to be charged at the rate of 4 per cent only. The sales of the petitioner of unmachined cast iron castings cannot be subjected to tax as unclassified item or taxable under Section 5(1) of the Karnataka Sales Tax Act. In the assessment year, the Assessing Authority has not considered the transaction of machined and unmachined cast iron separately. The assessment orders are, therefore, quashed and Assessing Authority is directed to treat the sale of unmachined cast iron castings as that of declared commodities falling under Section 14 of the Central Sales Tax Act and covered by Entry 2 of Fourth Schedule of the Karnataka Sales Tax Act.

12. In view of the above explanation regarding the scope of proviso with regard to machined cast iron castings as held in Bengal Iron Corporation case, supra

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and further clarified in Vasantham Foundry case, supra, I do not consider it necessary to declare the provision as ultra State Legislative.

13. Petition is allowed with above observations.

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