(1998) 07 KAR CK 0074

In the Karnataka High Court

Case No : Writ Petition Nos. 23910 of 1997; 29638, 29639, 28324 and 28325 of 1995 and 26399 and 26400 of 1997

M/s. Shivani Galvanizing and Engineering, Bangalore — APPELLANT

Vs

The Deputy Commissioner of Commercial Taxes, (Assessments) II, City Division, Bangalore and Another — RESPONDENT

Date of Decision : 09-07-1998

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 2(1)(VI), 5B

Citation : (1999) 46 KarLJ 11

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

Judgement

1. All these petitions involve a common question of law therefore they are disposed of by this common order. Petitioners are carrying on the business of hot-dip galvanising. The two questions which have been raised before me is that galvanising does not amount to works contract and that only when galvanising is done by electric current it is liable to tax under Sixth Schedule under Entry 28 from 1-4-1992 to 4-9-1996 and if it is not by electric current then the item of the petitioner may fall under Entry 55 of the Fifth Schedule where the transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract and other than those specified in the Sixth Schedule have been exempted. It is submitted that the nature of service rendered by the petitioner does not fall under Entry 28 of the Sixth Schedule to the Karnataka Sales Tax Act but falls under Entry 55 of the Fifth Schedule of the Act therefore the petitioner is entitled for exemption.

2. Whether the work of galvanising is a works contract or not, reliance is placed on the decision of the Apex Court in Gujarat Steel Tubes Limited v State of Kerala and Others, 2 SCST 2039, wherein it was observed as under.-

"The purpose of galvanising a pipe is merely to make it weather proof. It remains a steel tube. By being put through the process of galvanising it is made rust-proof. Neither its structure nor function is altered. As a commercial item it is not different from a steel tube. That galvanising is done on steel tubes or pipes as a protective measure only was the basis of the decision of the Karnataka High Court in Associated Mechanical Industries v Commissioner of Commercial Taxes, Bangalore, 1986 Kar. L.J. (Tri. Supp.) 200 (HC). Merely because the steel tube has been galvanised does not mean that it ceases to be a steel tube".

3. The limited purpose of galvanising does not bring a new commodity into existence. As a commercial item it is not different from the steel tube. On the basis of the judgment it is stated that since the commodity remains the same there is no works contract involved. In order to examine the contention of the learned Counsel for the petitioner, the definition of works contract as given in Section 2(1)(v-i) of the Karnataka Sales Tax Act is relevant which is as under.-

"(v-i) "works contract" includes any agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property";

From the perusal of the above definition, it would be evident that even ''processing contracts'' are considered as works contract.

4. Galvanising has been defined in "Encyclopaedia Britannica" as under.-

"Galvanising, protection of iron or steel against exposure to the atmosphere and consequent rusting by application of a zinc coating. Properly applied galvanising may protect from atmospheric corrosion for 15 to 30 years or more. As discontinuities or propensity develop in the coating, galvanic or electrolytic action ensues; the iron or steel, however is protected by sacrificial corrosion, a phenomenon in which, as long as the zinc and the iron are in contact, atmospheric oxidation spares the iron and affects the zinc.

Zinc may be applied by two general methods, hot-dipping and electrolytic deposition.

In hot-dip processes, cleaned iron or steel, usually in sheet form, is passed through a flux such as a zinc-ammonium chloride and guided through a bath of molten zinc. In wire galvanising, the wire is drawn through successive pickling, annealing, and washing operations. It is dried before passing into the galvanising pan and is drawn out through wipers of charcoal, coke, sand, or asbestos.

In one hot-dip process, inter-metallic compounds of iron and zinc are formed on the surface of the steel or iron being treated by heating it in the presence of finely divided zinc below the melting point of the zinc. In another, molten zinc is applied in a fine spray to the surface of the cleaned iron or steel; the zinc adheres tightly to the surface.

In electrolytic deposition, or electroplating, a pure coating of completely controlled thickness of zinc may be applied without heat. More care is required, and for articles that must be watertight, the electrolytic process do not have the soldering effect of the hot process. The zinc coating, however, has greater adherence than that formed in the hot-dip process. See also sherardizing".

5. In a process the commodity may remain the same or may change. But that is not the determinative factor to conclude that whether it amounts to works contract or not. The only thing which is to be seen is that there should be processing. The petitioners themselves have admitted that they have adopted hot-dip processing for galvanising. The process of galvanising by hot-dip method will fall within the definition of works contract.

6. In order to examine the contention of the learned Counsel for the petitioner as to whether hot-dip galvanising without use of electric current falls under Entry 28 of the Sixth Schedule or under Entry 55 of the Fifth Schedule, the legislative intent is necessary to be examined.

7. The process which have been contemplated by definition of works contract are those works contracts where there was some transfer of property in the course of execution of the works contract. Article 336 of the Constitution of India was amended by a new Entry 29-A extending the scope of ''tax on the sale or purchase of goods'', including the tax on the transfer of the property in goods whether as goods or in some other form involved in the execution of the works contract. This amendment in the Constitution was made by 46th Amendment Act. In the case of Gannon Dunkerley and Company and Others v State of Rajasthan and Others, (1993)88 STC 204 (SC), it was considered that the nature of the tax in respect of works contract is value of the goods involved in the execution of contract as such the contention that the petitioner is not undertaking the works contract and is purely a service contract cannot be accepted.

8. The second contention of the petitioner which has been raised is that the petitioner is galvanising by hot-dip zinc coating process and it is neither electroplating nor electrogalvanising, anodising and the like. It is stated that Entry 28 refers to those process only where the coating is done by electric processing. It is submitted that coke and coal alone have been used and electric process is not undertaken as is contemplated under the said entry. It is submitted that before 5-9-1996, transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract other than those specified in the Sixth Schedule and on the same date Entry 43 has been added in the Sixth Schedule which provides all other works contract not specified in any of the above categories. The controversy therefore to be examined is whether hot-dip galvanising by the petitioner falls under Entry 28 of the Sixth Schedule so as to exclude it from the exemption granted by Entry 55 of he Fifth Schedule.

9. In order to see the history of legislation in this regard, Entry 28 from 1-4-1990 provided 5% tax on electroplating and anodising only. This entry was

amended w.e.f. 1-4-1992 by Act No. 4 of 1992 and the entry was "electroplating, electrogalvanising, anodising and the like". The contention of the learned Counsel for the petitioner is that hot-dip zinc coating in a manner other than the electric aid is not covered because the words "and the like" should be interpreted in the sense the other items of the entry exists. In this regard reliance is placed on the decision in Nagar Mahapalika, Bareilly v State of Uttar Pradesh, (1988)70 STC 97 (SC), wherein it was observed by the Apex Court that while giving a meaning to an item contained in the schedule of articles, the Court should normally give it a meaning intended by the framers of the schedule, by looking at the various articles mentioned in a particular group. All the items in a group should be considered in a generic sense. The dispute in this case was regarding the liability of octroi on "methylated, denatured and rectified spirit". There were two entries, one was of methylated, denatured and rectified spirit classified under "articles of fuel and lighting" and charged at low rate and the other entry was of "foreign imported liquor and all kinds of wines made in India" classified under Tobacco and other intoxicating goods" and charged at high rate. The normal meaning of the expressions "foreign imported liquor or all kinds of wines made in India" would not fit in the description of the rectified spirit, and it was held liable to octroi under the heading "methylated, denatured and rectified spirit" at a low rate.

10. Reliance is placed on the decision in the case of Deputy Commissioner of Commercial Taxes, Madras Division, Madras v Ambika Stores, (1963)14 STC 688 (Mad.). On the basis of which it is submitted that the principles of ejusdem generis rule should be made applicable and on that basis hot-dip process could not come under Entry 28 of the Sixth Schedule. In this case it was observed that the rule of ejusdem generis is not one of universal application. It is only a rule of construction to be applied as an aid in ascertaining the correct meaning of words when there is uncertainty or ambiguity. It may be resorted to not to obscure and defeat the intent and purpose of the legislature but to elucidate its words and effectuate its intent. In order to apply this rule it must clearly appear that the Legislature was thinking of a particular class of persons or objects.

11. It is not in dispute that so far as hot-dip process is concerned it does not fall under electroplating or electrogalvanising or anodising. The question remains as to whether it could be considered to fall in the category of "and the like".

The word "like" has been defined in Stroud''s Judicial Dictionary as ''not equivalent to the same''.

12. In Rao and Company v State of Karnataka, 1981 Kar. L.J. (Tri. Supp.) 22 (HC), the entry was "industrial gas such as oxygen, acetylene, nitrogen and the like". The Court held that the principles of ejusdem generis is not at all attracted. In order to attract the said principle there must be a genera followed by specification of some of the species which belong to the said genera. It is only in such circumstances, the subsequent words would have to be interpreted in the light of the preceding word which indicates the genera. But when two or more

words used one after another are independent of each other and do not fall within one genera, the rule of ejusdem generis cannot at all be invoked. The dispute was whether carbon dioxide could be included in the category of industrial gases, as it is non-combustible. It was found that the entry included Nitrogen, which is an inert i.e., non-combustible gas, and therefore the words "and the like" would cover carbon dioxide.

13. Learned Counsel for the petitioner has submitted the words ''and the like'' should be interpreted only in respect of those process where the galvanising is done by the aid of electricity as is in the case of electroplating, electrogalvanising and anodising.

14. Electrogalvanised coatings as mentioned in ISI Publication IS 12753-1989 has given the advantages of electrogalvanising over the hot-dip process as under.- "(a) Closer control of coating thickness and therefore, saving of zinc;

(b) Electrogalvanised zinc is pure, more concentric and uniform and is more versatile in use;

(c) No ash or zinc dross is formed;

(d) Heavier coatings (up to 1-2kg/m?) is possible only with electrogalvanising;

(e) Plant can be shut down quickly and restarted quickly; and (f) Electrogalvanised steel wires are better for further drawing and stranding.

However, hot-dip galvanising requires less space and gives lustrous zinc coatings, while corrosion protection for both types is similar. In order to rationalise the requirements of different types of galvanised wires, coatings have been grouped into three types, that is, heavy, light and medium. For general guidance, Annexure-A indicating applicability of various types of coatings on different wires has been included".

15. There may be an entry where it contains one genus or more than one genus. If it contain one genus only then the other entry have to be considered as different species within that genus. But in a case where the entry contain more than one genus then it may not be necessary. In the present matter, the process which are covered are of galvanising with the aid of electricity and whether the process which are without the aid of electricity would also come under the Entry 28 of the Sixth Schedule is to be examined and for that purpose, one of the golden rule of interpretation is that no word in the statute is superfluous. The words ''and the like'' according to learned counsel could be interpreted only in respect of those process where the electricity is involved in the process, but this contention cannot be accepted because, has there been any such process of galvanising other than the three mentioned thereunder, this contention could have been considered. But if there is none then the interpretation which is to be taken is that the words ''and the like'' have been used to cover other process of galvanising which may not be even by electricity. The legislative history as mentioned above also makes it clear that earlier only electroplating and

anodising were subjected to tax but thereafter "electrogalvanising and the like" were added in the said entry. The words ''and the like'' do not qualify to anodising alone, it would cover electrogalvanising also and the like process of electrogalvanising is hot-dip galvanising. The meaning of the entry is not restricted to the process which are by electricity. The word ''and the like'' has increased the scope of entry and as such all the process where coating of metal is done will fall in the entry. I do not consider that any case for interference is made out at this stage. Petition is accordingly dismissed.

