
(1969) 04 AP CK 0014

In the Andhra Pradesh High Court

Case No : Tax Revision Case No. 9 of 1964

P. Chitta Reddi

APPELLANT

Vs

The State of Andhra Pradesh

RESPONDENT

Date of Decision : 11-04-1969

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 5(1)
London Coal Dues Abolition Act, 1889 — Section 35, 36

Citation : (1969) 24 STC 317

Hon'ble Judges : P. Jaganmohan Reddy, C.J.; Sambasiva Rao, J

Bench : Division Bench

Advocate : W.V.V. Sundara Rao, for the Appellant; D.V. Sastry, for Principal Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

P. Jaganmohan Reddy, C.J.—In this revision case, the simple question that falls for determination is whether burnt cinders are "coal" or "coke" within the meaning of item 1 of Schedule IV of the Andhra Pradesh General Sales Tax Act, hereinafter called the "Act", which defines "coal" as including coke in all its forms. It appears that the assessee is a person who purchased from the President of India cinders from out of the refuse of the railway engines and the sales tax authorities are seeking to assess them as "general goods" u/s 5(1) of the Act.

2. The Tribunal has relied on the decision in Mahabir Singh Ram Babu v. Assistant Sales Tax Officer [1962] 13 S.T.C. 248 All of the Allahabad High Court where Brijlal Gupta, J., held that cinder is not coal. Mr. Sundara Rao by reference to the decision of the Supreme Court in State of Gujarat Vs. Raipur Manufacturing Company Ltd., wherein cinders have been held as by-products of coal, contends that it is "coal" within the meaning of item 1 of Schedule IV of the Act. He further referred to another decision of the Supreme Court in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, that the expression "coal"

included charcoal But, in our view, this decision is not of much assistance as the question is whether cinders can be termed in common parlance as coal. A reference to the dictionary in order to ascertain the meaning of the word "cinder", it is said, is not helpful. What is to be seen is whether in common parlance cinders would be considered to be coal. Brijlal Gupta, J., in *Mahabir Singh Ram Babu v. Assistant Sales Tax Officer* [1962] 13 S.T.C. 248, thought that coal and cinder were different in that coal is a mineral dug out of the bowels of the earth without anything more being done to it while cinder, on the other hand, is got only after something has been done to coal, viz., after it is burnt. The learned Judge observed at page 249 :

If coal is completely burnt, and all combustible property of coal has escaped into the atmosphere, what is left is ashes which are no longer capable of burning. Where all the combustible property of coal has not completely escaped into the atmosphere, the residue which is left and which may still be capable of combustion and which may serve many of the purposes which are served by burning coal, is not coal but cinder.

3. In *M. Varadarajulu Naidu Vs. The State of Madras and Another, Veeraswami, J.*, followed the decision in *Mahabir Singh Ram Babu v. Assistant Sales Tax Officer* [1962] 13 S.T.C. 248, and also referred to the decisions in *Fletcher v. Fields* [1891] 1 Q.B. 790 and *Madurai Municipality v. Rangaswami* (1958) 1 M.L.J. 13. After referring to the dictionary meaning of the word "cinder" and certain observations of authors of scientific books to ascertain how coke is formed, he was of the view that cinders are different from coal or coke. The learned Judge observed at page 318 that in view of the words and the definition that coal includes coke in all its forms, cinder which is the product of coke is not coke or a form of coke. Both the Allahabad and the Madras High Courts took the view that "cinder" is neither coke nor a form of coke. In *Fletcher v. Fields* [1891] 1 Q.B. 790, which was referred to by Veeraswami, J., it was argued that for purposes of Sections 35 and 36 of the London Coal Dues Abolition Act, 1889, if "cinders" are not "coal", neither is "coke". It seems to have been assumed that "cinders" are not "coal". A.L. Smith, J., at page 792 recorded the admission of the learned counsel that cinders are not within the prohibition as to coal. On that assumption, he observed "it seems to me that coke is no more coal than cinders are". These decisions clearly support the view taken by the Tribunal, but the learned Advocate for the revision petitioner contends that their Lordships of the Supreme Court in the case of *State of Gujarat Vs. Raipur Manufacturing Company Ltd.*, held that cinders were coal. On a perusal of the judgment, however, we think that this contention is misconceived. There the goods sold were classified into three heads of which "kolsi (cinders) waste caustic liquor" was item 2 and coal was item 3. It will be observed that these were separately classified. The sales tax authority sought to bring the turnover under the head kolsi (cinders) sold by the company. The company contended that these cinders are part of coal which was necessary for furnaces and therefore the sale of cinders would not be liable to tax. The reasoning was that part of the coal

purchased for the firm was sold and the company was not carrying on the business of sale of coal. The cinders, which according to it were coal, are likewise not assessable. This contention was rejected by Shah, J., delivering the judgment of the Supreme Court. At page 1070, he noted that kolsi is not capable of "extreme fuel potency required in the furnaces" of the appellant-company, but it is still capable of being used in "lighter furnaces" and said "kolsi" results from coal which remains unburnt : it is, on that account, a subsidiary product. When such subsidiary product is turned out in the factory regularly and continuously and is being sold from time to time, an intention to carry on business in "kolsi" may be reasonably attributed to the company. The principle of the decision of the Bombay High Court in *The Aryodaya Spinning and Weaving Company Limited Vs. The State of Bombay*, which held that the sale by the company of cotton waste produced in the course of manufacture of cloth and yarn was liable to tax was applicable. In so far as the sale of coal from out of the purchase of coal required for the furnace is concerned, they have held that because they were not dealers as such, they were not liable. This decision far from supporting the contention of the learned Advocate negatives it. The subsequent decision of their Lordships of the Supreme Court in *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, is a case which was not dealing with cinders but was concerned with the question whether charcoal was coal and their Lordships held that it was. That however does not assist us in coming to the conclusion whether cinders are either coal or coke. In our view also cinders cannot be said to be coal in the popular sense of the term, though they may be the end-products of coal after a greater part of the energy therefrom has been spent. Coal in our view is either recovered from the bowels of the earth as coal or is manufactured as such by burning it as charcoal. It is unnecessary for us to reiterate the chemical processes which have been noticed both in the Allahabad and Madras High Courts' decisions except to say that coke is completely a different product from coal though coke is the residue left at the bottom when coal is subjected to intentional and controlled distillation in retort without access of air. It is got out of a process of burning and filtration of coal after certain properties have been removed therefrom. The residual coke thrown out and quenched by water is collected. Cinders certainly are not obtained by that process and, therefore, they cannot be termed or cannot come within the definition of "coke" or any form of "coke". In this view, the order of the Tribunal cannot be interfered with. The revision is dismissed with costs.