(2004) 12 AP CK 0058

In the Andhra Pradesh High Court

Case No : Special Appeal No. 68 of 1998

Poddar Projects Ltd.		APPELLANT
	Vs	
Commissioner of Commercial Taxes		RESPONDENT

Date of Decision : 10-12-2004

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 6, 9(1)

Citation : (2006) 146 STC 669

Hon'ble Judges : S. Ananda Reddy, J;Bilal Nazki, J

Bench : Division Bench

Advocate : P. Srinivasa Reddy, for the Appellant; Special Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Bilal Nazki, J.—This special appeal is filed by the appellant against the order passed by the Commissioner of Commercial Taxes, Nampally, Hyderabad.

2. Controversy is very short. The appellant is a dealer and is dealing with manufacture of mild steel rounds, angles, flats, ingots and billets. He claims that in terms of G.O. Ms. No. 774 Revenue(s) dated the 9th July, 1985, he was entitled to set-off as it includes all types of scrap. Whereas the authorities below including the Commissioner held that the set-off in terms of this G.O. was available only with respect to steel ingots or billets or rerollable scrap and there is a finding by the authorities below that the scrap in which the appellant was dealing was not rerollable. The scrap was undergoing a melting process before production of a new product.

3. The learned Counsel for the appellant, however, submits that reference to steel ingots or billets or rerollable scrap in G.O. Ms. No. 774 dated the 9th July, 1985, has to be understood in the context of item 2 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act 6 of 1957) as the G.O. itself lays down that the scrap mentioned in the G.O. has a reference to

item 2 of the said Schedule.

4. The relevant portion of the G.O. Ms. No. 774 Revenue(s) dated the 9th July, 1985, is extracted below:

In exercise of the powers conferred by Sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act VI of 1957), the Governor of Andhra Pradesh hereby directs that where a tax has been levied and collected under the said Act in respect of the sale or purchase inside the State of steel ingots or billets or rerollable scrap referred to in item 2 of the Third Schedule to the said Act, the tax leviable u/s 6 of the said Act on the rerolled finished products, manufactured within the State, from out of such ingots or billets or rerollable scrap by the steel rerollers and mini-steel plants-cum-rerollers (incase of purchase of ingots, billets and rerollable scrap by them in the State) situated within the State of Andhra Pradesh and sold inside the State shall be reduced by the amount of tax levied and collected on such ingots, billets and rerollable scrap with effect from the 1st April, 1985.

5. Item 2 of the Third Schedule has as many as 16 entries. Item 2(i) reads as under:

Pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap.

6. Item 2(x) reads as under:

steel melting scrap in all forms including steel skull, turnings and borings.

7. After perusing all the entries in item 2, we have not been able to find any entry as "rerollable scrap" whereas the G.O. lays down that rerollable scrap referred to in item 2 of the Third Schedule would be entitled for set-off. The authorities below came to the conclusion that only those scraps referred to in item 2, which are rerollable would be entitled to the benefit under the G.O. But that interpretation could only be placed on the G.O. if there was any entry in item 2 of the Third Schedule pertaining to rerollable scrap. The G.O. has particularly mentioned rerollable scrap as referred in item 2. There might be some ambiguity in the G.O. and if so the appellant would have the benefit of such an ambiguity as is settled. Therefore, what we understand from the G.O. is that all scrap mentioned in item 2 would be covered by G.O. Ms. No. 774. The other reason for coming to this conclusion by us is that set-off would be only given if a particular item had suffered tax. If, we go by entries in item 2 and accept the contention of the department, then rerollable scrap would not be taxed at any stage and therefore there was no question of any set-off.

8. For these reasons, we allow the special appeal, set aside the order of the Commissioner and hold that all types of scrap mentioned in item 2 were entitled to benefit under G.O. Ms. No. 774 dated the 9th July, 1985. We restore the order of the Appellate Deputy Commissioner. Because of our findings on applicability of G.O., we are not dealing with the issue raised with respect to limitation, which is

kept open.

9. The special appeal is accordingly allowed. No order as to costs.

