
(1985) 02 AP CK 0011
In the Andhra Pradesh High Court
Case No : T.R.C. No. 6 of 1983

Sree Venkata Durga Aluminising Works	APPELLANT
Vs	
State of Andhra Pradesh	RESPONDENT

Date of Decision : 20-02-1985

Acts Referred:

General Sales Tax Act — Section 5(1)

Citation : (1986) 63 STC 445

Hon'ble Judges : P.A. Choudary, J; K. Ramaswamy, J

Bench : Division Bench

Advocate : S.R. Ashok, for the Appellant; The Government Pleader for Commercial Taxes, for the Respondent

Judgement

P.A. Choudary, J.—This tax revision case has been filed by Messrs. Sree Venkata Durga Aluminising Works Nandigama of Krishna District against an order passed by the Sales Tax Appellate Tribunal in T. A. No. 56 of 1981 dated 31st December, 1982.

2. The petitioner is a dealer within the meaning of the Andhra Pradesh General Sales Tax Act. Among the commodities which he sells and with which we are concerned in this tax revision case are "nails" made out of iron and steel. The claim of the petitioner is that the sale of the "nails" falls under item 2 of the Third Schedule of the Sales Tax Act and is therefore exempt from sales tax. The argument of the petitioner is that "nails" are made out of iron, and as iron is a declared commodity multiple taxation of iron or its products is not permissible. Accordingly he claimed that the sales of "nails" should be excluded from the taxable turnover. This claim of the petitioner has been rejected by the Commercial Tax Officer, Krishna, by his order dated 19th March, 1977, and the appeal filed by the petitioner against that order is also dismissed by the Sales Tax Appellate Tribunal. It is against that order the present revision case has been filed.

3. The argument of the petitioner is that "nails" are made out of iron and steel

and should therefore be exempt from sales tax because iron and steel from which these "nails" are made had already suffered sales tax. This argument of the petitioner does not merit serious consideration. It should be rejected on the clear authority of the judgment of the Supreme Court rendered in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, . Item 2 after having undergone amendment in the year 1972 and with which we are concerned here reads as follows :

"Iron and steel, that is to say, -

- (i) pig iron and cast iron including ingot 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 blank 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 tinfree 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 carne rails;
- (xiv) wheels, tyres, axles and wheel sets;
- (xv) wire rods and wires - rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;
- (xvi) defectives, rejects, cuttings or end pieces of any of the above categories."

Before the above amendment by the Central Sales Tax (Amendment) Act (61 of

1972) item 2 stood thus :

"Iron and steel, that is to say, -

(a) pig iron and iron scrap;

(b) iron plates sold in the same form in which they are directly produced by the rolling mill;

(c) steel scrap, steel ingots, steel billets, steel bars and rods;

(d) (i) steel plates, Sold in the same form in (ii) steel sheets, which they are directly (iii) steel bars and tin bars, produced by the rolling (iv) rolled steel sections, mill;". (v) tool alloy steel;

Now, in the aforementioned case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, the question which has been considered by the Supreme Court was whether pig iron and iron scrap, iron plates, steel scrap, steel ingots, steel billets, steel bars and rods, etc., are separate taxable items liable to suffer separate sales tax notwithstanding the fact that all iron goods are made out of iron and steel. The argument of the dealer in that case was that any product made out of iron and steel like pig iron, iron scrap, steel scrap, etc., falls within the meaning of "iron and steel" and that therefore where those products are made out of iron and steel which had already suffered sales tax, such products should not be subjected to further sales taxation. In support of that argument the dealer contended before the Supreme Court that the enumeration made in clauses (a), (b), (c) and (d) were merely illustrative. It is argued that the use of the words "that is to say" would show that those items are not separately taxable. It was this argument, which has been considered and rejected by the Supreme Court by holding that iron and steel does not exhaust the various iron products and that each one of the iron products which has been mentioned is liable to suffer separate taxation. It is accordingly held that each one of the iron commodities should suffer separate tax. After 1972 the State Sales Tax Act has been amended bringing it in harmony with the Central Sales Tax Act by Central Sales Tax (Amendment) Act 61 of 1972. But that amendment is inconsequential for the purpose of this case. By that amendment all that has been done is to particularise in greater detail the iron products. In fact the Supreme Court has noticed in the abovementioned State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, the law existing before 1972 and the law existing even after 1972. Now, the ruling of the Supreme Court in the abovementioned case is clearly to the effect that these various heads of iron products are separate and independent taxable commodities liable to be taxed as such without being exempted from taxation on the ground that iron and steel out of which they are made has already suffered sales tax. Following that judgment of the Supreme Court we must hold that the first argument of the learned counsel for the dealer that "nails" are made out of iron and steel and that they are not liable to suffer further taxation because the iron and steel from which they are made had already suffered taxation, must be rejected.

4. However, it is very strongly urged by Mr. Ashok that the judgment of the Supreme Court should be understood only on the basis of the language of the note contained against clauses (b) and (d), namely "sold in the same form in which they are directly produced by the rolling mill" of the pre 1972 statute law. It is argued that the judgment of the Supreme Court is that the items in those clauses should suffer sales tax only when sold in the same form in which they are directly produced by the rolling mill. We cannot approve this attempt of the learned counsel. It will have the effect of limiting the general declaration of law made by the Supreme Court. Secondly, even this argument cannot apply and cannot explain the meaning of the Supreme Court judgment in relation to clauses (a) and (c), namely, pig iron and iron scrap, steel scrap, steel ingots, steel billets, steel bars and rods of the pre 1972 law. Accordingly, we reject this argument of the learned counsel.

5. It is not in dispute that "nails" as such are nowhere enumerated in any of the (xvi) clauses in item 2 of the Third Schedule. It cannot, therefore, be urged on the basis of the language of item 2 of the Third Schedule that "nails" should be taxed under that schedule and under that item. But the learned counsel stated that "nails" fall under "wires" mentioned under the heading "wire rods and wires" covered by clause (xv) of item 2 of the Third Schedule. His argument is that "nails" are made out of "wire" and they do not lose their essential quality of being "wire" even after they become "nails". We have to reject summarily this argument of the dealer which appears to us to be calculated to harm greatly the dignity of the "nails". "Nails" are of great and distinct commercial use. Though made of iron they have nothing in common with rods. Its head is broad and wide to take the hammer strokes and its end is long and sharp to pass through holes and joints of obdurate materials. Its features are distinct and different from those of somewhat faceless and formless wires and wire rods. Nails are used by more number of people on more number of occasions than the wires or wire rods. From times immemorial "nails" are treated with greater respect than "wires". The great warrior BHISHMA used the "nails" for his bed. While none had even bitten a wire, reports of people in ordinary walks of life swallowing nails are too frequent to be ignored. The English language had singled out the word "nail" for great honour and distinction by the use of such expressions as "the last nail in coffin" or "nail the lie", etc. Crucifixion would ever remain impossible but for the use of nails. Ordinary people would never understand that "nails" are the same as "wires" or "wire rods". Both in concept, use and utility the two things are poles apart with nails occupying a place of honour and distinction. We cannot, therefore, agree with the dealer that nails fall within the description of "wire" or "wire rods" given by clause (xv) of item 2 of the Third Schedule. The argument of the learned counsel for the dealer that Courts have considered that galvanised sheets are the same as iron and steel in *The State of Andhra Pradesh Vs. Sri Durga Hardware Stores and Another*, or that cut-sizes of timber are considered as timber in *G. Ramaswamy and Others Vs. The State of Andhra Pradesh and Others*, cannot be of any use or of any help to the petitioner in his

attempt to show that the nails will not have a distinct and separate entity in the commercial and ordinary use. We accordingly reject this argument.

6. It was then argued by the learned counsel that "nails" can be regarded as defectives, rejects, cuttings or end-pieces of any of the above categories falling under item 2 of the Third Schedule. This argument also does not appeal to us. The words "of any of the above categories" clearly refer to defectives, rejects, cuttings or end-pieces made of those commodities, which have been enumerated earlier. Certainly "nail" is not one of those enumerated items and is not made out of "wires". "Nail" is made as such from iron and steel as wire rods, wires or tin-plates. This entry, therefore, has no application. We accordingly reject this argument also. We, therefore, hold that "nails" do not fall under item 2 of the Third Schedule at all. If so, it is not denied that it would fall u/s 5(1) of the General Sales Tax Act.

7. The argument of the learned counsel that "nails" come under the category of declared goods and should not, therefore, be allowed to suffer multiple taxation is really begging the question. According to the above mentioned judgment of the Supreme Court "nails" do not come under declared goods.

8. We accordingly dismiss this tax revision case with costs. Advocate's fee Rs. 150.

9. Petition dismissed.