**(1995) 07 AP CK 0037**

**In the Andhra Pradesh High Court**

**Case No :** Tax Revision Case No. 266 of 1987

State of Andhra Pradesh APPELLANT

Vs

Narsing Industries RESPONDENT

**Date of Decision :** 04-07-1995

**Acts Referred:**

Andhra Pradesh General Sales Tax Act, 1957 — Section 15, 20(2), 22(1)
Central Sales Tax Act, 1956 — Section 14, 15, 5, 6

**Citation :** (1996) 101 STC 294

**Hon'ble Judges :** S.S. Mohammed Quadri, J;G. Bikshapathy, J

**Bench :** Division Bench

## Judgement

1. This tax revision case, u/s 22(1) of the Andhra Pradesh General Sales Tax Act, 1957 (for short, "the Act"), is directed against the order of the Sales Tax Appellate Tribunal in Tax Appeal No. 695 of 1986 dated February 3, 1987. The question that arose for consideration is :

"Whether, ''stoker coke'' manufactured by the respondent from out of coal falls within the meaning of entry 1 of the Third Schedule to the Act ?"

2. The respondent is a dealer in coal and coke. In the assessment year in question the turnover of Rs. 11,40,366 was in respect of second sales of stoker coke. The assessee claimed exemption on the ground that the stoker coke falls within declared goods and, therefore, sales tax can be levied only at one point. The assessing authority allowed the exemption. However, the Deputy Commissioner (C.T.), in exercise of the powers u/s 20(2) of the Act, revised the assessment made by the assessing authority and directed inclusion of the exempted turnover in the assessable turnover. On appeal by the assessee to the Sales Tax Appellate Tribunal, the order of the Deputy Commissioner was reversed and that of the assessing authority was restored taking the view that stoker coke is eligible for exemption on second sales. Aggrieved by that order of the Tribunal the Revenue filed this revision.

3. The learned Government Pleader contends that stoker coke does not fall

within the meaning of entry 1 of the Third Schedule, as such, turnover of its second sale is not entitled to exemption. Shrimathi C. Jayashree Sarathy, the learned counsel for the assessee, on the other hand, contends that the petitioner manufactured stoker coke from out of coal and having regard to the wording of the entry it falls within the entry and there can be no tax liability on the second sale.

4. The short question that arises for consideration is whether stoker coke, sold in the brand name of Charminar coke, by the assessee, falls within the meaning of the first entry of the Third Schedule.

5. It would be useful to note here that the goods enumerated in section 14 of the Central Sales Tax Act, being goods of special importance in the inter-State trade or commerce and commonly known as declared goods, are liable to be taxed subject to the restrictions imposed in section 15 of that Act. The restrictions, inter alia, are that the tax payable under the law in respect of any sale or purchase of the declared goods inside the State shall not exceed 4 per cent and such tax shall not be levied at more than one stretch. To give effect to the said provisions of the Central Sales Tax Act, section 6 of the Andhra Pradesh General Sales Tax Act provides that notwithstanding anything contained in the charging section, namely, section 5, the sales or purchase of the declared goods by a dealer shall be liable to tax at the rate, and only at the point of sale or purchase specified against each in the Third Schedule on his turnover of such sales or purchase for each year. This is irrespective of the quantum of the turnover of such goods. Entry 1 of the Third Schedule reads as follows :

"THIRD SCHEDULE Declared goods in respect of which a single point tax only is leviable u/s 6 ---------------------------------------------------------------------- S. Description of goods Point of Rate of No. levy tax ---------------------------------------------------------------------- (1) (2) (3) (4) ---------------------------------------------------------------------- 1 Coal including coke in all its At the 4 paise forms but excluding charcoal : point of in the first sale rupee." Provided that during the period in State. commencing on the 23rd day of February, 1967 and ending with the 1st day of April, 1973, this clause shall have effect subject to the modification that the words ''but excluding charcoal'' shall be omitted. ----------------------------------------------------------------------

It is evident that coal includes coke in all its forms excluding charcoal and is liable to be taxed at the point of first sale in the State and the rate of tax is four paise in a rupee. If the stoker coke falls within the expression "coke in all its forms" then the turnover relating to the second sale of stoker coke is exempted. But if it does not, the turnover relating to the second sale of stoker coke is ineligible for any exemption.

6. The expression "coal including coke in all its forms" occurring in section 14(i) and 15(a) of the Central Sales Tax Act, 1956 fell for consideration of the

 

Supreme Court in Indian Carbon Limited Vs. Superintendent of Taxes, Gauhati and Others, . After considering the meaning of "coke" given in the Webster''s New International Dictionary, Volume I, and the Encyclopaedia Britannica, Volume V and considering passages in "Chemical Engineers'' Handbook, Third Edition", the Supreme Court held that in section 14(i) of the Central Act, the Parliament, by using the word "coke", had no intention to give it a meaning other than the ordinary dectionery meaning which would cover petroleum coke. It was further observed that the language employed in the expression was so wide that petroleum coke, which was a form of coke, could not possibly be excluded merely by reference to coke. There the question was whether "petroleum coke" would fall within the meaning of the said expression, namely, "coke in all its forms". From the above discussion it follow that the expression "coke in all its forms" embraces "stoker coke". Thus "stoker coke" fall within the meaning of entry 1 of the Third Schedule and consequently the turnover relating to its second sale would be exempted. For these reasons, we do not find any illegality in the order of the Tribunal to warrant our interference. The tax revision case is, therefore, dismissed. No costs.

7. Petition dismissed.

 