
(2015) 06 AP CK 0057
In the Andhra Pradesh High Court
Case No : T.R.C. No. 73 of 2002

State of Andhra Pradesh

APPELLANT

Vs

Polygone Refractories Ltd.

RESPONDENT

Date of Decision : 30-06-2015

Acts Referred:

Citation : (2015) 85 VST 84

Hon'ble Judges : G. Chandraiah, J;Challa Kodanda Ram, J

Bench : Division Bench

Advocate : Anil Kumar, Learned Special Government Pleader, for the Appellant;
M.V.J. Kumar, Advocates for the Respondent

Judgement

G. Chandraiah, J.—This revision case is filed by the Revenue against the order dated 07.02.2002 passed by the Sales Tax Appellate Tribunal, Andhra Pradesh, Hyderabad (hereinafter referred to as the Tribunal) in Tribunal Appeal No. 682 of 1997, raising the following two questions of law:

- i) Whether the fire bricks manufactured and sold by the appellant fall under entry 32 of 1st Schedule to APGST Act?
- ii) Whether the S.T.A.T. is justified in setting aside the revisional orders made by the Deputy Commissioner?"

2. So far as the second question being general in nature first question is one which is required to be considered. Assessee is a manufacturer of refractory bricks. It is the case of the petitioner as well as the authorities that the bricks that are being manufactured by the petitioner are of special and different category of bricks from that of the bricks which are used in the construction industry. Bricks manufactured by the petitioner have a specific purpose of utilizing the same in heat treatment furnaces and other furnaces such as kilns, blast furnaces, steam boilers etc., These bricks are used in prevention of heat as they can withstand high temperatures. The assessing authority taxed sale of these bricks as a goods falling under entries 32 of the 1st schedule. Entry 32

reads as under:

"Bricks, tiles, cement flooring stones, and granite stones including boulders and chips."

3. However, the Deputy Commissioner had revised the order of the assessing authority treating them as unclassified goods/general goods falling under Schedule VII. It may be noted that basic rate of tax under entry 32 is 5%, whereas the same is 6% for the goods falling under Schedule VII. The assessee filed appeal before the Tribunal and the Tribunal accepted the contention of the dealer that the goods would be classifiable under Entry 32 of 1st Schedule and the Tribunal had dealt with the matter stating that According to the Concise Oxford Dictionary, the Brick means a small, rectangular, block of fired or sun-dried clay used in building. It is also stated to be similar block of concrete etc., and includes a brick shaped object. Thus, the word Brick is used mainly to indicate the rectangular shape of a solid object and in common parlance, it is usually associated with blocks of solid material used for the purpose of construction of structures like building etc., which may include the construction of high temperature structures in building or factories such as Blast Furnace, Cement kilns, Blast Tanks, Steam Boilers etc., Though in ancient times bricks for the purpose of construction used to be made of clay and sand, the modern technology necessitated the use of other materials like concrete etc., in making bricks for the purpose of construction. But, whatever may be the material used and irrespective of the special design, the commodity remains bricks for the purpose of Entry 32 of the 1st Schedule if it is made for the purpose of construction and is used in the construction of structures like buildings, kilns, etc., It is not disputed that these fire bricks can be used even for the construction of rooms in a building or their inner lining in order to resist the heat which may be generated in the room. Thus, fire bricks are nothing but heat and fire resistant bricks used for the construction purposes and they undoubtedly fall under Entry 32 of the 1st Schedule and it was held so by this Tribunal earlier in the case of Navodaya Ceramics and Pottery manufacturing Industries Co-Operative Society Limited, Tadikalpudi Vs. The State of A.P. reported in (1993) 16 APSTJ 115 . The Hon'ble Supreme Court also considered the sun-dried bricks as nothing but bricks though they are different from over-baked bricks and carry lesser prices and having less strength than baked bricks. Thus, end user test is the predominant test to be applied in the case of fire bricks is considering whether they fall under Entry 32 of the 1st Schedule and fire bricks fully satisfy this test. The fire bricks are nothing but bricks in shape, nature and use and as understood in common parlance in business and commercial circles and thus fall in line with type of commodities mentioned in Entry 32 of the 1st Schedule. Merely because they are made fire resistant, they do not cease to be bricks within Entry 32 of the 1st Schedule to the APGST Act and are to be taxed at the rate specified there under and they cannot be treated as unclassified goods as held by the Deputy Commissioner in the impugned order. For these reasons, we hold that the impugned order is liable to be set aside. In the result, the T.A., is

allowed setting-aside the impugned order of revision made by the Deputy Commissioner.

4. The Tribunal also took note of the fact that on earlier occasion in the case of Navodaya Ceramics and Pottery Manufacturing Industries Co-operative Society Limited, Tadikalapudi Vs. The State of A.P. (1993) 16 APSTJ 115 the Tribunal had held that the bricks would fall under Entry 32 of the 1st Schedule. A reference was also made by the Tribunal on the judgment of the Supreme Court in the case of Advance Bricks Co. Vs. Assessing Authority, Rohtak and Another, (1987) 3 JT 655 : (1987) 2 SCALE 658 : (1987) SCC 650 Supp : (1988) 1 SCR 272 : (1987) 67 STC 233 . Learned Special Government Pleader for Telangana, Sri Anil Kumar, by referring to the judgments of the Supreme Court in Advance Bricks Company case (1988) 6 APSTJ 51 (supra) would submit that the Supreme Court had recognized the fact that sun-dried bricks are different from fire burnt bricks. He also draws the attention to that portion of the order of the Supreme Court wherein Supreme Court taken note of the difference in price of the sun-dried bricks vis-?-vis fire burnt bricks, thereby the Supreme Court recognizing the fact that both bricks are distinct category. In that view of the matter drawing an analogy learned Special Government Pleader for Taxes (Telangana) submits that the refractory bricks could not be said to be the bricks falling under the Entry 32 as the other items mentioned in the Entry 32 are predominantly used in the construction industry, whereas, the refractory bricks are of special nature used in industries in furnace, boilers, kilns etc., as these special bricks are made for a specific purpose to withstand the high temperatures. Learned counsel also placed technical literature before this Court to drive this point.

5. On the other hand Sri M.V.J. Kumar, learned counsel for the respondent reiterating the findings of the Tribunal submits that even assuming for argument sake that both the bricks are of different nature there being no specific classification in the Entry 32 and in the face of the finding of the Tribunal that these bricks are also can be used for the purpose of construction as the bricks manufactured by the dealer would squarely fall under the Entry 32 and they cannot be brought under unclassified goods under Schedule VII. He also would submit that the order of the Tribunal taking similar view on earlier occasion in Navodaya Ceramics case (1993) 16 APSTJ 115 (Supra) has become final as there was no appeal filed against the same. By placing reliance on the judgments of the Supreme Court reported in Berger Paints India Ltd., Vs. Commissioner of Income Tax, Calcutta and Commissioner of Central Excise, Bangalore-1 Vs. Bal Pharma Limited, Bangalore and Others, he submits that it is impermissible for the revenue to contend otherwise and as such the revision would not be maintainable when the facts are identical.

6. Having considered the rival submissions both the parties we are in agreement with the learned Special Government Pleader for Taxes (Telangana), Sri Anila Kumar, so far as the aspect that there are two distinct categories of bricks; (1) the bricks which are used in the construction industry and others (2) which are

specifically used for industrial purpose. However, it is also cannot be ruled out the usage of these refractory bricks in the regular construction work as well, especially considering the fact of their quality of heat resistance. Further, while a close reading of the judgment of the Supreme Court in *Advance Bricks Co. Vs. Assessing Authority, Rohtak and Another*, (1987) 3 JT 655 : (1987) 2 SCALE 658 : (1987) SCC 650 Supp : (1988) 1 SCR 272 : (1987) 67 STC 233 while holding that the sun-dried bricks are different from the fire burnt bricks, the Supreme Court accepted the contention of the dealer that in the absence of a classification of the entry the generic meaning of the term in common parlance and dictionaries has to be accepted. For the purpose of clarity the exact finding of the Supreme Court may be noticed hereunder:

"Section 18 of the Act authorises the State Government by notification to direct that in respect of named goods, tax under Section 15 of the Act may be levied at the first stage of sale thereof and on the issue of such notification, tax on such goods shall be levied accordingly. Brick under the notification is taxed at the first point of sale. The dealer claimed deduction on the basis of the notification by maintaining that he had purchased the bricks from the manufacturer and at that point had paid the tax. Thus a second set of tax in the hands of the dealer was not exigible. The reasoning given by the taxing authorities as also the High Court cannot be sustained. As the counsel for the appellant pointed that brick is a generic term: as per the meaning of the term in common parlance and dictionaries sun-dried bricks are bricks of a class and both varieties of bricks can to a considerable extent be used for the same purpose as substitute of one another. As the term brick covers both sun-dried and over-baked bricks, and there is no definition in the Act, the contention of the appellant that sun-dried bricks are a class of brick to which the notification under Section 18 applies cannot be thrown out as wrong."

7. However, taking into consideration of the huge variation in the prices of the sun-dried bricks to that of the fire burnt bricks, Supreme Court suggested, the authorities may take steps for making suitable modification in the entry. In other words, notwithstanding the fact, the Supreme Court had accepted there are sun-dried bricks and fire burnt bricks are of two categories, in the absence of a specific entry being there the generic and natural meaning had to be given to the entry and the same would have to be taxed as falling in the same entry. In that view of the matter, we have no hesitation to reject the contention of the learned Special Government Pleader for Taxes on that aspect. We are also in agreement with the contention of the assessee that there cannot be selective appeals and respectfully following the ratio laid down by the Supreme Court, we hold that there cannot be any selective appeals without any distinctive features. The question of law which is raised is answered in favour of the dealer and against the Revenue.

8. Accordingly, this Tax Revision Case is dismissed. There shall be no order as to costs.