(2009) 02 KL CK 0015

In the High Court Of Kerala

Case No : S.T. Rev. No. 29 of 2007

State of Kerala APPELLANT

Vs

A.K.P. Metals and Alloys RESPONDENT

Date of Decision : 25-02-2009

Acts Referred:

Kerala General Sales Tax Act, 1963 — Section 5
Kerala General Sales Tax Rules, 1963 — Rule 32(13)

Citation : (2010) 28 VST 131

Hon'ble Judges : K. Surendra Mohan, J;C.N. Ramachandran Nair, J

Bench : Division Bench

Advocate : Vinod Chandran, Government Pleader, for the Appellant; S.K. Devi, M. Raj Mohan, Santosh P. Abraham, Frankur D. Jayan, K.P. Pradeep (Payyannur) and P.K. Maya Devi, for the Respondent

Judgement

C.N. Ramachandran Nair, J.—The revision is filed by the State against the order of the Tribunal passed pursuant to remand by this Court in the earlier round of litigation between the same parties. The respondent is engaged in purchase of scrap, recovery of metal therefrom in their refinery in sheet, round, etc., forms and also converting some of the items to utensils and selling the same. The items purchased are scrap of aluminium, bronze, etc., which after manufacture are sold in sheets, circles, rounds and as utensils. The respondent claimed exemption on the sale of metal in various forms and on sale of utensils on the ground that such sales are second sales because scrap metal purchased by them from out of which products are made have suffered tax in the State. In the first round of litigation this Court felt that the Tribunal has not taken into account the relevance of entry 121 of the First Schedule which provided for separate rate of tax on metal scrap other than those covered under the Second Schedule. However, even after remand by this Court, the Tribunal confirmed its earlier order declaring eligibility for second sale exemption for the respondent against which the State has filed this revision.

2. We have heard the Special Government Pleader appearing for the petitioner

and Smt. S.K. Devi appearing for the respondent.

3. The assessment involved is for 1986-87 and relevant entries of the Kerala General Sales Tax Act, 1963 are the following:

115 Aluminium, aluminium alloys and all articles At the point of first sale in made of aluminium or/and aluminium alloys the State by a dealer who is liable to tax u/s 5 116 Tin including tin sheets and tin plates -- 116A Copper -- 116E Bronze -- 121 All metallic products, or articles made of -- iron or steel in combination with other metals other than those specified elsewhere in this Schedule or the Second Schedule 121A Metal scraps other than those specified in the -- Second Schedule

4. The question to be considered is whether on purchase of scrap of the above items of metal by paying tax at first sale point, conversion of the same in the form of sheets, rounds, circles or as utensils will entitle the respondent for exemption on the sale of such items. Obviously the claim is exemption on second sales in terms of Rule 32(13) of the Kerala General Sales Tax Rules, 1963 which entitles exemption on purchase and sale of the same goods. Apparently what the respondent purchases is scrap and what they sell is not scrap as such and on the face of it they are not entitled to exemption on second sales in terms of Rule 32(13) of the KGST Rules. However, since the respondent has claimed that identity of the item purchased is not lost in the manufacture or processing and the same is accepted by the Tribunal, we have to necessarily examine the scheme of taxation with reference to entries contained in the First Schedule. It is clear from entry 121A above referred to that metal scrap is identified by the Legislature in two groups, one falling under the Second Schedule which is essential steel scrap of various types. Metal scraps other than those falling under the Second Schedule are covered by entry 121A of the First Schedule to the KGST Act which is taxable at the point of first sale in the State. In other words, in the absence of such an exclusion clause in entry 121A it is clear that the specific entries in the First Schedule providing for rate of tax on various items of metals do not cover the scrap form of such metals. This necessarily presupposes that the entries on metals provide for rate of tax on the said metal in its pure form. Metal is recovered in refining process either by processing the ore or through recovery from scrap. Both the processes involve elimination of waste and impurities and the process involves recovery of metal in its pure form. Metal recovered in any refinery may be in the form of ingots, billets, sheets, circles, rods, etc. All these items fall within the entry providing for rate of tax on the metal, no matter that the original form in which the metal is recovered may itself be a product in itself for consumer use. However it cannot be said that the ore of the metal or the scrap which are raw materials used for manufacture or recovery of metal can be treated as the metal by itself. Both are commercially different because one is the raw material and the other is the product, viz., the metal produced out of ore or scrap. In fact it is common knowledge that the percentage of recovery of metal from scrap will vary depending on the concentrates of the

metal in the scrap. Further, different metals are also recovered from combination scrap and so much so the scrap cannot in any way be equated or identified with the any metal recovered therefrom. Though not directly arising in this case, we are constrained to hold that products made of copper, zinc, manganese, brass, bronze, magnesium, etc., are covered by entry 121 of the First Schedule which provide for tax on "metallic products" because the specific entries providing for the rate of tax on these items of metals cover only metal as such whatever be the form in which it is sold and not products made out of such metal. We therefore hold that the metal produced by the respondent in the form of sheets, rounds, circles, etc., from out of scrap metal cannot be treated as the raw material, viz., scrap purchased by them by paying tax. On the other hand the metal recovered from scrap purchased is a different product taxable at the relevant entries referred above. In fact utensils are a final product made out of metal recovered in various forms and so the utensils are not even comparable with the original metal, viz., scrap used for the production. We therefore hold that the respondent is not entitled to exemption on the sales turnover of copper and brass sheets, aluminium sheets, circles and utensils made and sold by them from out of scrap purchased by them because these commodities are different from raw materials, viz., scrap. We therefore reverse the order of the Tribunal and that of the first appellate authority and restore the assessment on the items sold by the respondent.

