
(2011) 03 P&H CK 0553
In the Punjab And Haryana At Chandigarh
Case No : VATAP No. 97 of 2010 (O and M)

State of Punjab

APPELLANT

Vs

Federal Gogul Goetze (India) Ltd.

RESPONDENT

Date of Decision : 15-03-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 14(4)
Punjab Value Added Tax Act, 2005 — Section 68(2)

Citation : (2011) 267 ELT 602 : (2011) 43 VST 100

Hon'ble Judges : Jaswant Singh, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : Jaswinder Singh, DAG, for the Appellant; M.P. Devnath, for the Respondent

Final Decision : Dismissed

Judgement

Adarsh Kumar Goel, J.—Notice of motion. Mr. M.P. Devnath, Advocate accepts notice for the Respondent. We have heard learned Counsel and proceed to dispose of the appeal.

2. This appeal has been preferred by the revenue u/s 68(2) of the Punjab Value Added Tax Act, 2005 (for short, "the Act") against the order dated 16-5-2010, Annexure P-3, of the Punjab VAT Tribunal claiming following substantial questions of law:

(a) Whether piston rings manufactured from iron by using carbon, silicon, chemicals and other material with specific quality, precision and dimension, for specific type of engines, of specific dia and for specific purposes would fall under Sub-clause (viii) of Clause (iv) of Section 14 of the Central Sales Tax Act, 1956 i.e. "iron and steel" and would be declared goods under this provision of law?

(b) Whether piston rings manufactured from iron by using carbon, silicon, chemicals and other material with specific quality, precision and dimension, for specific type of engines, of specific dia and for specific purposes would be

covered under the word "declared goods" for the purpose of levy of tax under item (3) of Schedule "B" appended to the Punjab Value Added Tax Act, 2005?

(c) Whether the rings manufactured by the Respondent are taxable at the rate of 4% or at the rate of 12.5% as the primary function of the rings is its use for the functioning of pistons which are automobile parts?

3. The Assessee is a taxable person under the provisions of the Punjab VAT Act, 2005 and is manufacturing and selling pistons and piston rings used in automobiles. For the year in question, the Assessee calculated and paid tax @ 4% by treating the goods in question to be "declared goods". The Assessing Authority did not accept the classification claimed by the Assessee and held the goods to be "automobile parts" falling in residue entry taxable @ 12.5%. This view was upheld by the Appellate Authority. But on appeal, the Tribunal upheld the plea of the Assessee, as under:

There are 16 entries given in the details of the goods under head iron and steel. Discs, rings, forgings and steel casting have been specified to be the items under the head iron and steel as declared goods. Whether such items are used by the purchaser as automobiles parts or any purpose is not material. The material is as to whether concerned item manufactured by the Appellant, 90 to 92% iron is used and the other material used are chemical etc. just 8 to 10%. Even if this item is used as automobiles parts by the automobiles industry or as automobiles components, still the fact remains that the item piston rings manufactured by the Appellant shall be the item made out of iron and steel and shall be covered in entry (viii) of Section 14(iv) of the Central Sales Tax Act, 1956 especially when the word rings is there in that entry.

From the above discussion, it is held that item piston rings is a declared goods chargeable to tax @ 4%. The appeal filed by the Appellant as such is accepted and orders of the authorities below treating this item as automobiles component and charging tax @ 12.5% is set aside.

4. We have heard learned Counsel for the parties.

5. Learned Counsel for the revenue submitted that the having regard to their use, piston rings are covered by the residue entry being automobile parts carrying rate of tax at 12.5% and thus, on common parlance, piston rings could be taxed as automobile parts.

6. On the other hand, learned Counsel for the Assessee supports the view taken by the Tribunal and submits that rings are specifically "declared goods" as mentioned in Sub-clause (viii) of Clause (iv) of Section 14 of the Central Sales Tax Act, 1956 (CST Act). If an article was covered by Section 14 of the CST Act, the entry in a State legislation had to be read subject to the said entry. Specific entry prevails over general/residue entry.

7. To appreciate the above submission, it will be appropriate to reproduce the relevant entries. Schedule "B" to the Act with reference to Section 8 thereof, is

Schedule of goods taxable @ 4%. Item 30 therein, is as under:

Declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 except those included in any other schedule.

Section 14 of the CST Act to the extent relevant is as under:

14: Certain goods to be of special importance in inter-State trade or commerce It is hereby declared that the following goods are of special importance in inter-State trade or commerce:

xxx

(iv) iron and steel, that is to say:-

xxx

(viii) discs, rings, forgings and steel castings;

Schedule F is of residue items not specified elsewhere taxable @ 12.5%.

8. It is well settled that normal test to be applied for classifying a fiscal entry is a common parlance test and if the entry is covered by specified entry, the residue entry cannot be invoked. Rings are specifically mentioned in Section 14 of the CST Act and mere fact that the same are used as automobile parts, is not enough to exclude the same from the said entry and invoke residue entry. Reference may be made to judgments of the Hon'ble Supreme Court in *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, *Dunlop India Ltd. and Madras Rubber Factory Ltd. Vs. Union of India (UOI) and Others*, *Mukesh Kumar v. State of M.P.*, 1988 SCC 232 : 2004 (178) E.L.T. 3 (S.C.) , *Akbar Badrudin Jiwani of Bombay Vs. Collector of Customs, Bombay*, and *Commissioner of Central Excise, Nagpur Vs. Shree Baidyanath Ayurved Bhawan Ltd.*, . In *Shree Baidyanath Ayurved Bhawan Ltd.*, it was observed:

56. There is no doubt that a specific entry must prevail over a general entry. This is reflected from Rule 3(a) of the general Rules of interpretation that states that heading which provides the most specific description shall be preferred to Headings providing a more general description....

57. We have already observed that common parlance test continues to be one of the determinative tests for classification of a product whether medicament or cosmetic....

9. In this view of the matter, the finding of the Tribunal cannot be held to be erroneous. No substantial question of law arises.

10. The appeal is dismissed.