
(1996) 08 PAT CK 0052
In the Patna High Court
Case No : C.W.J.C. No. 1653 of 1990 (R)

Usha Martin Industries Ltd. and Another	APPELLANT
Vs	
State of Bihar and Others	RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1996) 2 BLJR 1349

Hon'ble Judges : P.K. Sarkar, J;Aftab Alam, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Aftab Alam and P.K. Sarkar, JJ.—This writ petition arises from a proceeding u/s 15(b) of the Central Sales Tax Act, 1956. After the amendment allowed in the writ petition, it challenges an order dated 23.11.1990 passed by the Joint Commissioner, Commercial Taxes (Administration), Ranchi Division, Ranchi, whereby he rejected the petitioners claim u/s 15(b) of the Central Sales Tax Act for the reimbursement of a sum of Rs. 13,87,395.96 paise paid by way of sales tax under the State Law on steel wire/wire rod for the period from 1976-77 to November 1979.

2. The petitioners No. 1 is an industrial unit engaged in the manufacture and sale of iron and steel wires which are manufactured from wire rods/iron rods. The wire rods/iron rods were purchased by the petitioner unit in Bihar on payment of sales tax as provided under the state law. The wires manufactured out of the wire rods which had suffered tax under state law were sold by the petitioner in course of inter-state trade and on those transaction Central Sales Tax were paid as provided under the Central Sales Tax Act, 1956. Accordingly the petitioner made a claim, interms of Section 15(b) of the Central Sales Tax Act, for reimbursement of the amount paid by it as sales tax under the State Act on the wire rod which had gone in the manufacture of the wires, sold by it in course of inter-State trade and on which central sales tax had been duly paid.

3. By the impugned order the learned Joint Commissioner rejected the claim, primarily on the ground that wire rods/iron rods and the iron and steel wires produced by the petitioner were not one and the same thing and hence the payment of central sales tax on sale of iron and steel wires would not justify the re-imbursement of sales tax paid on wire rods /iron rods.

4. It was contended on behalf of the petitioner that wire rods and wires being included together in Sub-clause XV of Clause IV of Section 14 of the Central Sales Tax Act, they would be deemed to be one and the same taxable item and hence on payment of central sales tax on the sale of wires, the petitioner was entitled to the re-imbursement of the sales tax paid on wire rods under the State Act.

5. The Joint Commissioner found and held in the impugned order that the two articles differed in their names, their appearances and their identifications and hence they could not be treated as the same commodity. He also held that the claim of re-imbursement made by the petitioner was barred by limitation as provided under Rule 31 of the framed under the Ordinance a which was in existence"s at the material time.

6. Before coming to the main question as to whether wire rods and iron rods are same taxable commodity. It would be appropriate to dispose of the objection based in limitation. In their regard it may be noted that a Bench of this Court in G.S. Kumar and Sons v. State of Bihar and Ors. 1988 B.L.T. 186 considered the provision regarding limitation as contained in Rule 35 of the Bihar Sales tax Rules, 1983, framed under the Bihar Finance Act, 1981, the enactment which replaced the earlier Ordinance. It may further be noted that Rule 35 of the Rules framed under the Act is in para materia to Rule 31 of the Rules framed under the Ordinance. In this decision, relying upon a number of Supreme Court decisions, this Court held that the Period of limitation prescribed under Rule 35 of the Bihar Sales Tax Rules for filing the application for refund was wholly unreasonable and consequently could not be sustained. The objection to the petitioners claim for re-imbursement on the ground of limitation must, therefore, be rejected.

7. Now, advertng to the main controversy in this case, we find that the question is no longer res Integra and stands conclusively settled by the decision of the Supreme Court in Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, . In that decision, the Apex Court considered the question as to whether wire rods and wires under Sub-clause (XV) of Clause (IV) to Section 14 of Central Sales Tax Act, 1956 were to be treated as one goods or two different goods? The Apex Court answered the question:

Despite the aforesaid being the position, Shri Chari contends that wires being known as a different commercial commodity from rods, as were flour, maida and suji accepted as different from wheat in Rajasthan case Rajasthan Roller Flour Mills Association and another Vs. State of Rajasthan and others, , wires would be exigible to tax on the ratio of that case. The position here different, as both rods

and wires form part of one sub-item, Rajasthan case 1903 SC 408 (SC) : JT 1903 (5) SC 128 cannot assist the revenue. In view of rather persistent submission made by Shri Chari on the point, we have applied our mind afresh as to whether despite rods and wires having been mentioned together in sub-item Sub-clause(xv) they have to be taken different commercial communities for the purpose of imposition sales tax. Had it been that the sub-item stopped after the word "wires", we would have perhaps examined the submission of Shri Chari further, the sub-item being what it is we state that wires were thought as an integral part of rods and not distinct from rods, because the sub-item speaks about wires "rolled, drawn, galvanised, aluminised, tinned or coated..." This shows that the Legislature did not want wires, even if the same be a separate commercial commodity, to be taken as a commodity different from the rods for the purpose of permitting imposition of sales tax once again on wires despite rods having been subject to sale tax. Indeed, the two goods-rods and wires-are so closely what in the sub-item that any separation of these does not seem permissible. It would bear relation to pay that multi-point sales tax on the declared goods being an interdiction of Section 15 of the Act, we would not be justified in conceding the present demand of the Revenue unless a strong and cogent case were to be made out, which we do not find.

And then went on hold as under:

We therefore, concludes by stating that iron wires cannot be taken as a separate taxable commodity and, if wire rods which were purchased by the appellants had suffered sales tax, the same could not be realised from the sale of wires. Shri Lahoty indeed brought to our notice Notification Nos. I and II issued by the Government of Andhra Pradesh under G.O. Ms. No. 176 dated February 13, 1986 as per which sale of wires was exempted from sale tax starting from April 1, 1976 If the wire rods used by the drawing units in the state for the manufacture of rods had been subjected to tax under the state Act.

8. The decision of the Supreme Court in Telangana Steel Industries case thus, leaves no room for further argument that wire rods and wires do not constitute one and the same taxable goods.

9. It may here be noted that this very controversy between the same parties came to this Court in a slightly different form. Some lots of wires, produced from wire rods on the purchases of which the petitioners had paid sales tax, were sold within the State. On the sales of wires within the State, it was contended that the petitioner, was not liable to pay sales tax under the State Law as, according to the petitioner, wire rods and wires were the same taxable items and sales tax having been realised on the wire rods, no further tax was payable on wires produced out of those wire rods. The Assessing Officer accepted the petitioners' plea and passed the assessment order accordingly. In other words, the assessing authority, for the purpose of payment of tax under the State Law, considered them as one and the same taxable item.

10. The Commissioner, Commercial Taxes in exercise of its suo motu revisional power, revised the order passed by the Assessment Officer and gave directions for realisation of sales tax on the sales of wires taking directions for realisation of sales tax on the sales of wires taking place within the State. The order passed by the Commissioner, Commercial Taxes was challenged by the petitioners before this Court in CWJC No. 1763/1991 (R). A Bench of this Court, following the Supreme Court decision in Telangana Steel Industries's case, by judgment and order dated 20.12.1994, allowed that writ petition, set aside the order passed by the Commissioner Commercial Taxes and remitted the matter before him for re-consideration and for passing a fresh order in the light of decision of this Court based on the decisions of the Supreme Court in Telangana Steel Industries case. On remand, the Commissioner of Commercial Taxes by order dated 16.5.1995 dropped the revisional proceeding and affirmed the assessment order passed by the Assessing Officer. It, therefore, appears that even the authorities under the Bihar Finance Act have now come to view wire rods and wires as one and the same taxable goods for the purpose of Central Sales Tax Act, 1956.

11. For the reason stated above, we are satisfied that this writ petition is fit to be succeed. We accordingly set aside the impugned order dated 23.11.1990 passed by the Joint Commissioner, Commercial Taxes (Administration), Ranchi Division, Ranchi and following the earlier decision of this Court in CWJC No. 1763/1990 (R) remit the matter back to him with a direction to reconsider the matter in the light of what has been stated here in above. In order to facilitate an early disposal of the matter, the petitioner is directed to appear before the Joint Commissioner Commercial Taxes within a fort-night from today with a copy of this order. The Joint Commissioner (or any other competent authority) will if necessary here the petitioner and will pass a final order. In accordance with law within one month from the date of the petitioners appearance. It may further be observed that in case of re-imbursement, the petitioners would be also entitled to any statutory interests, as provided under the Act and the Rules.

12. In the result, this application is allowed. No order as to costs.