

(2013) 03 KAR CK 0025
In the Karnataka High Court
Case No : STRP No. 1 of 2012

Utracon Structural Systems Pvt. Ltd.

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 25-03-2013

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Karnataka Value Added Tax Act, 2003 — Section 4(1)(b)

Citation : (2013) 76 KarLJ 439 : (2013) 66 VST 459

Hon'ble Judges : N. Kumar, J;B. Manohar, J

Bench : Division Bench

Advocate : Chythanya, for the Appellant; S. Sujatha, AGA, for the Respondent

Judgement

N. Kumar, J.—The assessee has preferred this appeal against the concurrent finding recorded by the three authorities rejecting the request of the assessee to treat the stranded rods as items of iron and steel falling u/s 14 of the Central Sales Tax Act and to grant the benefit of reduced rate. The assessee is a Private Limited Company, engaged in the business of works contract of design and construction of post tensioning structure involving transfer of property in goods. The assessee is a registered dealer under the Karnataka Value Added Tax Act with effect from 01.03.2006. The assessee opted for payment of tax under the composition scheme as provided u/s 15 of the Kar. VAT Act. The assessee has been filing its VAT returns regularly. The assessee purchases or brings certain materials from outside State for the execution of works contract. The assessee has purchased/brought iron and steel from outside the State which are treated as "goods of special importance" u/s 14 of the Central Sales Tax Act. The assessee offered the same to tax at the rate of 4%.

2. The Assessing Authority reassessed the tax liability in respect of the said iron and steel and levied tax at the general rate of 12.5% in his reassessment order u/s 39(1) of the Karnataka VAT Act dated 31.07.2008. Against the said order of reassessment, the assessee sought rectification of mistake apparent from the

order, by filing a letter dated 31.10.2008. The rectification order came to be passed on 18.12.2008 maintaining the tax rate at the general rate of 12.5%. Against the said order, the assessee preferred an appeal before the Joint Commissioner of Commercial Taxes (Appeals). The said appeal came to be dismissed by order dated 13.10.2009, by upholding the order of the Assessing Authority. Aggrieved by the said order, the assessee preferred an appeal to the Karnataka Appellate Tribunal. The Tribunal also dismissed the appeal. Aggrieved by the said order, the present Revision is filed.

3. Sri Chythanya, learned Counsel appearing for the assessee assailing the impugned order contended that the Section 14(iv)(xv) of the Central Sales Tax Act, 1956 (for short hereinafter referred to as "the Act") refers to Wire Rods and Wires Rolled. A Stranded rod does not cease to be a rod and becomes a goods not elsewhere specified, merely because it consists of a number of wires. Stranded rods are known in the market as wire rods. It is not a new product in the market parlance and it is not dealt with or treated as different from a wire rod. Therefore, a stranded rod is a wire rod. Therefore, it is a declared goods of special importance which falls u/s 14 of the Act and rate of tax payable is only 4% and not 12.5% as claimed by the authorities. He also contended that the Tribunal has wrongly relied on the Central Excise Tariff Act. Various items of iron and steel are enumerated in Chapter 72 of Central Excise Tariff Act. The suppliers of strands to the assessee have indicated that the Tariff Code in their invoices as 7312.10.30 and cleared the goods by paying relevant Duties to the concerned department and this entry is for stranded Wire. Therefore the stranded wire cannot be equated with the wires falling under Chapter 72 of the Central Excise Tariff Act. Incidence of tax in the case of Central Excise is at the manufacturing point, whereas the incidence of tax under the Central Sales Tax is at the time of sales. This aspect has been completely missed by the Tribunal and therefore the said order requires to be set aside, extending the benefit to the assessee.

4. Per contra, the learned Government Advocate contended that prior to the amendment carried out to Section 14(iv) of the Act, by Act 61 of 1972 which came into effect from 01.04.1973 only 4 items were declared as goods of special importance. By the aforesaid amendment the list of goods has been extended. More over, in so far as iron and steel which was the original entry, now it has been made more specific by using the words, "that is to say". Once under the aforesaid heading 16 items are specifically mentioned, the benefit of that Section has to be confined only to those 16 items. The said provision has to be strictly construed. The Court by way of interpretation cannot add any other item which may fall under the category of iron and steel. As in the market, steel wire rod and stranded rod are not understood to be the same commodity. Benefit of that Section cannot be extended to a stranded rod, deemed to have been included in the phrase, "wire rods". The three authorities on a proper construction of the said statutory provisions and taking note of the decisions of various Court on the point, have rightly held that the benefit of Section 14 cannot be extended to stranded rod, which is altogether a different item when compared to iron rod.

Therefore the said orders do not call for any interference.

5. In the light of the aforesaid facts and rival contentions, the point that arises for our consideration in this Revision Petition is as under:

Whether in common parlance, mire rods and stranded rods are one and the same or are they two different, distinct commercial commodities as understood in the market?

6. The answer to this question depends on the interpretation to be placed on Section 14 of the Central Sales Tax Act (for short, hereinafter referred as "the Act"). In the interest of National Economy of India, the Constitution (Sixth Amendment) Act of 1956 was enacted whereby tax on sales or purchase of goods in the course of Inter-state Trade and Commerce were brought expressly within the purview of the Legislative jurisdiction. The restrictions could be imposed on the powers of State Legislature with respect to levy of tax on the sale or purchase of goods within the State where goods are of Special Importance in Inter-state Trade and Commerce. The Central Legislation provided for the declaration of certain commodities, which are in the nature of raw materials and are of Special Importance in inter-state Trade or Commerce and laid down the restrictions and conditions as to the rate, system of levy and other instance of tax, subject to which the States may impose tax on the sale or purchase thereof. The provisions of Section 14 of the Central Sales Tax Act, as it was originally enacted, were very much narrow and the Section declared only six items named in clause 1 to 6 of Section 14 of the Act as goods of Special Importance. By a subsequent amendment under the heading Iron and Steel, four classes were introduced. By the Central Sales Tax Amendment Act 61 of 1972, Amendment Act No. 14 of 2001 and Amendment Act No. 38/78 Clause (iv) was redone. It now reads as under:

14 (iv) Iron and steel i.e. to say:-

(i) pig iron sponge iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

(iii) kelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;

(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

(v) steel structural (angles, joists, channels, tees, sheet, piling section, Z sections or any other rolled sections);

(vi) sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition;

- (vii) plates both plain and chequered in all qualities;
- (viii) discs, rings, forgings and steel castings;
- (ix) tool, alloy and special steels of any of the above categories;
- (x) steel melting scrap in all forms including steel skull, turnings and borings;
- (xi) steel tubes both welded and seamless, of all diameters and lengths including tube fittings;
- (xii) tin-plates, both hot dipped and electrolytic and tin-free plates;
- (xiii) fish plates bars, bearing plates bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails-heavy and light crane rails;
- (xiv) wheels, tyres, axels and wheels sets;
- (xv) wire rods and wire-rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;
- (xvi) defectives, rejects, cuttings or end pieces of any of the above categories;]

7. This provision fell for interpretation before the Apex Court in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, it was held as under:

It is true that the question whether goods to be taxed have been subjected to a manufacturing process so as to produce a new marketable commodity, is the decisive test in determining whether an excise duty is leviable or not on certain goods. No doubt, in the law dealing with the sales tax, the taxable event is the sale and not the manufacture of goods. Nevertheless, if the question is whether a new commercial commodity has come into existence or not, so that its sale is a new taxable event, in the sales tax law, it may also become necessary to consider whether a manufacturing process, which has altered the identity of the commercial commodity, has taken place. The Law of sales tax is also concerned with "goods" of various descriptions. It, therefore, becomes necessary to determine when they ceased to be goods of one taxable description and become those of a commercially different category and description.

It appears to us that the position has been simplified by the amendment of the law, as indicated above, so that each of the categories falling under "iron and steel" constitutes a new species of commercial commodity more clearly now. It follows that when one commercial commodity is transformed in to another, it becomes a separate commodity for purposes of sales tax.

8. From the aforesaid judgment of the Apex Court, it is clear that each item so specified is considered as a separate taxable item. Each item so specified forms separate species for each series of sales, although they all belong to a genus Iron and Steel. The mere fact that the substance or raw-material out of which it is made has also been taxed in some other form when it was sold as a separate

commercial commodity, would make no difference for purposes of the law of Sales Tax. The object appears to be to tax sale of goods of each variety and not the sale of the substance out of which they are made. Sales Tax Law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of particular type. When once commercial commodity is transformed into another, it becomes a separate commodity for purpose of sales tax.

9. However, it is contended by the learned counsel appearing for the assessee in the instant case, that the commodity is stranded rods, which are nothing but wire rods and they are one and the same. They are not distinct commercial commodities as understood in the market. He further submitted that in the American Heritage Dictionary the meaning of the "wire" has been given as a usually pliable metallic strand or rod made in many lengths and diameters, sometimes clad and often electrically insulated, used chiefly for structural support or to conduct electricity; a group of wire strands bundled or twisted together as a functional unit/cable; something resembling a wire, as in slenderness or stiffness. Further, he submitted that the products obtained upon hot rolling or forging of Semi-finished steel (bloom/billets/slabs) are broadly categorized as Long Products and Flat Products. Finished steel products produced normally by hot rolling/forging of bloom/billets pencils ingots into useable shape/sizes, are normally supplied in straight length/cut length except Wire rods which are supplied in irregularly wound coils, which are called as long products. There are different types of Long Products such as Bars and Rods, CTS (Cold-Worked Twisted and Deformed)/TMT, Wire Rod, Angles, Shapes & Section and wires. He also relied on a judgment of this Court in case of Bahri Steel Wires Vs. Additional Commercial Tax Officer and another, where it is held that M.S. wires drawn out of tax suffered M.S. Wire Rods on which tax has already been paid cannot be taxed again by virtue of sub-item 15 of item 4 of Section 14 and Section 15 of the Central Sales Tax Act, 1956 read with Item No. 2(15) of the 4th Schedule to the Karnataka Sales Tax Act, 1957. In the said judgment, it was held that the question whether a new commercial commodity has come into being as a result of a manufacturing process for purpose of levy of sales tax can be answered by finding out whether the original goods of one taxable description cease to be so and become goods of a commercially different category and description. In other words, the normal concept of one commercial commodity getting transformed into another commercial commodity, by itself is not an exclusive test. The said test will have to be read along with the nature of the description of the goods attracting sales tax. The test is to see whether the goods having particular

taxable description lose that description and category under the particular Sales Tax legislation. Having regard to the scheme u/s 14 and 15 of the Act and the purpose behind them being to minimize the tax burden in relation to declared goods, it could be assumed that each sub-item forms one category of goods and any goods falling within the same sub-item, cannot be treated as different taxable commodities just because the said goods are produced out of other goods which also fall within the same sub-item. Each sub-item comprises within itself a particular category of taxable commodities for the purpose of Section 14 of the Act. In the fact of the said case, it was held that MS wires drawn out of M.S. Wire rods on which tax has already been paid cannot be taxed again when sold, by virtue of sub-item (xv) of item (iv) of Section 14 and Section 15 of the Act read with item 2(xv) in the interpretation of the 4th schedule to the State Act. He also relied on an unreported judgment of the Apex Court in the case of Collector of Central Excise, Indore, M.P. V/s. Anand Behari Steel Wires & Other Products Limited, Raipur decided on 9th January 1989 where the Supreme Court observed as under:

Simply because a wire is stranded, in our opinion, the wire does not cease to be wire and becomes a "good not elsewhere specified". It is wire but standard. It still remain wire under Tariff Item 26AA(1-A) of the Central Excise Tariff. In mew of the amplitude of the expression "wire", "strended wire" or otherwise remains wire in essence. It still continues to be wire and the expression "wire" in T.I. 26AA(1-A) is not in any way circumscribed by any limitation. There was not evidence that stranded wires were known in the market as anything else than wires. It is essentially a thing that the wire is known in the market as anything else than wires. It is essentially a thing that the wire is known in the market as wire stranded and it remains as wire until there is evidence to show that it is absolutely a new product in shape, size, use or in the market parlance meaning thereby, the market parlance of those will deal with these goods and treat them otherwise. In that view of the matter, we are of the opinion that the Tribunal was right in the view it took.

10. From the aforesaid judgment, it is clear we have to find out how a stranded wire is known in the market. In the market parlance, if the stranded wire is known as only a wire, then for the purpose of Central Sales Tax Act, it falls under the heading of wire rods. But if the stranded rods are known in the market parlance as absolutely a new product in shape, size and use, then it cannot be treated as forming part of the wire rod. In this context, in the aforesaid judgment of Pyare Lal Malhotra, the Supreme Court interpreting the word, "that is to say" has held that the purpose of enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it. The ordinary meaning to be assigned to a taxable item in a list of specified items is that each item so specified is considered as separately taxable item for purposes of single point taxation in a series of sales unless the

contrary is shown. The natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item requires to be noticed. That means each item so specified forms a separate specie for each series of sales although they may all belong to the genus "Iron and Steel." The object appears to be to tax sale of goods of each variety and not the sale of the substance of which they are made. Therefore, if we keep in mind the object with which Section 14 is enacted and the confusion arose because of the interpretation placed by various Courts and the amendments carried out to clarify the said doubts and as it stands today, 16 items are specifically enumerated under the heading of "Iron and Steel". The said provision has to be strictly interpreted. It is evident through Scheme of the Central Act, the very object of specifying certain goods as declared "Goods" u/s 14 of the Act is to ensure that in each State, the taxation on such goods which are of great importance and use to the people at large throughout the Country, shall not exceed 4% and it shall also not be subjected to tax again and again. Therefore, when under the heading of "Iron and Steel", when iron rods and wire rods are drawn, galvanized, aluminized, tinned or coated such as by copper was introduced as a specific entry, if wire rods are clubbed or twisted together so as to form "stranded rods" certainly the same cannot be included in the "wire rods". The reason being when the Parliament has minutely brought about the difference between the 16 items which are enumerated therein and if they have not chosen to include in the list "stranded rods", the reason is obvious. They have no intention of extending the said benefit to stranded rods. Though stranded rods are formed out of wire rods, it cannot be said that in market parlance, both of them are treated as the same. Further, the said product is not used by the people at large throughout the Country. It is a specialized product meant for a specific purpose which is not commonly used by the people at large throughout the Country. In that view of the matter, the Authorities were justified in holding that the stranded rods do not fall within the word "wire rod" and is not entitled to the benefit of concessional rate of tax and therefore, it falls under general category u/s 4(1)(b) of the Karnataka VAT Act. In fact, all the three Authorities have recorded a concurrent finding of fact though by giving different reasons, no fault could be found with the ultimate finding recorded by them. Accordingly, the substantial question of law framed is answered in favour of the Revenue and against the Assessee. Hence, we pass the following

ORDER:

The Revision Petitions are dismissed.

No costs.