

(1963) 10 GUJ CK 0005
In the Gujarat High Court
Case No : Sales Tax Reference No. 2 of 1963

Vaiswaner Trading Co.

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 31-10-1963

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 27
Central Sales Tax Act, 1956 — Section 14, 15, 7

Citation : (1964) 15 STC 586

Hon'ble Judges : P.N. Bhagwati, J; J.M. Shelat, J

Bench : Division Bench

Advocate : I.M. Nanavati and S.L. Mody, for the Appellant; A.D. Desai, Assistant Government Pleader, instructed by M.G. Doshit, of Bhaishanker Kanga and Girdharlal, for the Respondent

Judgement

Bhagwati, J.—On the application of the applicants u/s 27 of the Bombay Sales Tax Act, 1953, the Deputy Commissioner of Sales Tax determined that rivetted baling hoops sold by the applicants under their bill No. 293 dated 7th November, 1958, were not covered by any specific entry in any of the Schedules to the Act, and, therefore, fell within the residuary entry 80 in Schedule B to the Act. The contention of the applicants was that rivetted baling hoops were rolled steel sections sold in the same form in which they were directly produced by the rolling mills and were, therefore, covered by entry 4(d)(iv) in Schedule AA to the Act. This contention was negated by the Deputy Commissioner of Sales Tax who agreed that rivetted baling hoops were rolled steel sections but took the view that they were not sold in the same form in which they were directly produced by the rolling mills and did not, therefore, come within entry 4(d)(iv) in Schedule AA to the Act and since they were not claimed to fall within any other specific entry the residuary entry 80 in Schedule B to the Act applied for determining the rate of tax. The applicants being aggrieved by the decision of the Deputy Commissioner of Sales Tax preferred an appeal to the Tribunal. A contention was sought to be raised before the Tribunal on behalf of the

department that rivetted baling hoops were not rolled steel sections at all nor were they any other variety of iron and steel specified in entry 4(d) of Schedule AA and that that entry had, therefore, no application to rivetted baling hoops. This contention involved the determination of a question of fact which would necessitate the leading of fresh evidence and besides, it was contrary to the assumption on which the department had proceeded until then since in a Bulletin issued in 1960 by the department, baling hoops were shown under the main classification of rolled steel sections and were stated to be covered by entry 3(d) (iv) of Part I of Schedule B to the Bombay Sales Tax Act, 1959, which corresponded to entry 4(d)(iv) in Schedule AA to the Bombay Sales Tax Act, 1953, and the Deputy Commissioner of Sales Tax had also proceeded on the basis that rivetted baling hoops were rolled steel sections. The Tribunal, therefore, did not permit this contention to be raised and proceeded to decide the appeal on the basis that rivetted baling hoops were rolled steel sections. The only controversy which then remained was whether rivetted baling hoops were rolled steel sections sold in the same form in which they were directly produced by the rolling mills. The Tribunal determined this controversy in favour of the department holding that once small pieces of rolling steel sections were joined together by rivetting, the form was altered because after rivetting they were not the same continuous smooth strips which were directly produced by the rolling mills and they lost their characteristic of a raw material. The Tribunal accordingly upheld the decision of the Deputy Commissioner of Sales Tax and it is this view of the Tribunal which is now challenged before us on this reference.

2. Now in order to appreciate the arguments which have been advanced before us, it is necessary to examine briefly the history of the enactment of entry 4 in Schedule AA under which the applicants claim, rivetted baling hoops are liable to be taxed. There was originally in Schedule B, entry 15, which was in terms : "Iron and Steel". The general sales tax chargeable on this category was six pies in a rupee and the purchase tax was three pies in a rupee. An amendment was made in this entry was effect from 8th April, 1957, and after the amendment, the entry read as follows :-

"Iron and steel, that is to say -

(a) pig iron and iron scrap;

(b) iron plates sold in the same form in which they are directly produced by the rolling mill;

(c) steel scrap, steel ingots, steel billets, steel bars and rods;

(d) (i) steel plates, ---- (ii) steel sheets, sold in the same form in which they (iii) steel bars and tin bars, are directly produced by the rolling mill." (iv) rolled steel sections, (v) tool and alloy steel. ----

3. This was done presumably because section 14 of the Central Sales Tax Act, 1956, which came into force from 5th January, 1957, declared certain goods to

be of special importance in inter-State trade or commerce and under sub-section (iv) of that section the category of goods described above was included in such goods. The amendment of entry 15 in Schedule B, therefore, brought it in line with section 14(iv) of the Central Sales Tax Act, 1956. Section 15 of the Central Sales Tax Act, 1956, provided that every sales tax law of a State shall, in so far as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, being the goods specified in section 14, be subject to the restrictions and conditions that the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent. of the sale or purchase price thereof, and such tax shall not be levied at more than one stage. The original section 15 was not in this form but in this form it was substituted by Central Act 31 of 1958 with effect from 1st October, 1958. Consequent upon the enactment of section 15 in this form a further amendment was made in the Bombay Sales Tax Act, 1953, with effect from 1st October, 1958. Section 7A was introduced in the Bombay Sales Tax Act, 1953, which ran as follows :-

"7A. Subject to the provisions of section 7 there shall be levied sales tax or purchase tax on the turnover of sales or, as the case may be, of purchases, of goods specified in Schedule AA at such rate not exceeding two naye paise in the rupee and at such one stage as may be specified by the State Government by notification in the Official Gazette."

and a new Schedule AA was added containing the categories of goods declared by section 14 of the Central Sales Tax Act, 1956, to be of special importance in inter-State trade or commerce and taxable under the Bombay Sales Tax Act, 1953. Entry 15 in Schedule B was, therefore, deleted and the categories of goods specified in that entry became the subject-matter of entry 4 in Schedule AA. The Government of Bombay thereafter issued a notification u/s 7A directing that sales tax or purchase tax on the turnover of sales, or as the case may be of purchases, of goods specified in the various entries in Schedule AA which included entry 4 shall be levied at the rates respectively specified against them in column 2 of the Schedule to the notification at stage specified in column 3 of that Schedule. It is, therefore, clear that the Parliament considered rolled steel sections sold in the form in which they were produced directly by the rolling mills and specified in entry 4(d)(iv) in Schedule AA as goods of special importance in inter-State trade or commerce and, therefore, granted certain relief in respect of sales of such rolled steel sections. This circumstance will have to be borne in mind while considering whether rolled steel sections which are rivetted and are used for baling hoops are entitled to this relief or not.

4. We may point out at the outset that it was common ground between the parties that rivetted baling hoops were rolled steel sections and the only question debated before us was whether they were sold in the same form in which they were directly produced by the rolling mills. Now when can an article which is a rolled steel section be said to be in the same form in which it is directly produced

by the rolling mill is a difficult question to decide and so various are the considerations which must enter into the determination of the question that it is impossible to attempt to formulate a general test which must be applicable in all cases. By the very nature of the subject-matter no straight jacket formula can be devised or even contemplated which would take in all cases covered by the entry and yet not leave out some. Human ingenuity is too great and so numerous are the ways in which having regard to scientific and technological progress articles like rolled steel sections can be made use of that we think it would be unwise to formulate, even if we could, an inclusive or exclusive test defining the content of the entry in so far as it relates to rolled steel sections sold in the same form in which they are directly produced by the rolling mills. We should confine our task only to the determination of the limited question before us, namely, whether on the facts and circumstances of the present case rivetted baling hoops can be said to be rolled steel sections sold in the same form in which they are directly produced by the rolling mills. We must consider these goods and ask ourselves the question : are these goods rolled steel sections in the same form in which they are directly produced by the rolling mills and if we ask this question to ourselves, it is clear that whatever difficulty there may be in defining precisely and exhaustively the true meaning of the entry, there is no difficulty in arriving at a solution of the problem before us.

5. Rivetted baling hoops are really nothing else but pieces of rolled steel sections joined together by rivetting. The description "rivetted baling hoops" is a little confusing for it diverts the mind from the basic fact that what we have to consider are plain and simple rolled steel sections joined together by rivetting and not any articles different from rolled steel sections. It is merely because they can be used for the purpose of baling hoops and are sold as such that they are described as rivetted baling hoops but in essence and substance they are just rolled steel sections joined together by rivetting. The question to which we must, therefore, address ourselves is whether pieces of rolled steel sections joined together by rivetting can be said to be in the same form in which rolled steel sections are directly produced by the rolling mills. If the question is put in this way, the answer to our mind can only be one, namely that in favour of the applicants. Rolled steel sections as they emerge from the rolling mills may be of diverse lengths that a dealer may purchase for the purpose of sale. It may be that rolled steel sections in certain lengths only may be required by the consumers and a dealer may, therefore, find that in order to be able to sell the rolled steel sections purchased he may have to cut them up into smaller pieces. When a dealer cuts up the rolled steel sections purchased by him from the rolling mills into smaller pieces and sells such smaller pieces in the lengths required by the consumer, can it be said for a moment that such pieces are not sold in the same form in which rolled steel sections are directly produced by the rolling mills ? The length of the rolled steel sections is not a part of their form and the mere cutting up of the rolled steel sections into smaller pieces or if the rolled steel sections are joined together by rivetting, they do not in any way change the form. They still

remain rolled steel sections as they emerged from the rolling mills with only this difference that instead of a particular length which they originally had, they now have a greater length. The form remains unchanged; merely the length changes. To illustrate, let us take a case where a rolling mill produces rolled steel sections of a certain length but the consumers require rolled steel sections of a greater length and a dealer, therefore, rivets the rolled steel sections purchased by him from the rolling mills in order to have rolled steel sections of the required greater length. In such a case, can it be said that what are sold by the dealer are not rolled steel sections in the same form in which rolled steel sections are directly produced by the rolling mills ? Take another case where a rolling mill which produces rolled steel sections in certain defined lengths finds that in the process of manufacture some rolled steel sections are broken and the rolling mills, therefore, rivets them so as to make up the usual length and then sells them. Can it be said in such a case that what are sold by the rolling mills are not rolled steel sections in the same form in which rolled steel sections are directly produced by the rolling mills ? These illustrations pointedly bring out the distinction between the length and form in relation to rolled steel sections. The argument urged on behalf of the department suffers from the fallacy that it seeks to treat length as a part of the form of the rolled steel sections. Of course rivetting is done to the rolled steel sections, but that is done for the purpose of increasing the length of the rolled steel sections and it does not have the effect of changing their form. No process is applied which in any way changes the form of the rolled steel sections. We are, therefore, of the view on a plain grammatical construction of entry 4 in Schedule AA that where pieces of rolled steel sections are joined together by rivetting, they still retain the same form in which rolled steel sections are directly produced by the rolling mills within the meaning of that entry.

6. An inquiry into the object and purpose of the enactment of section 7A and entry 4 in Schedule AA also leads to the same conclusion. What the Parliament intended to achieve by enacting sections 14 and 15 of the Central Sales Tax Act, 1956, which is brought about the introduction of section 7A and entry 4 in Schedule AA was to give relief in respect of the goods specified inter alia in entry 4 in Schedule AA in respect of sales tax since these goods were regarded by the Parliament as goods of special importance in inter-State trade or commerce. Rolled steel sections in the form in which they are directly produced by the rolling mills constituted an important category of goods for the purpose of inter-State trade or commerce since they could be used for divers purposes and played a considerable role in the economy of the nation and they were, therefore, included in section 14 of the Central Sales Tax Act, 1956, and entry 4 in Schedule AA, so that the burden of tax on the sales of such goods should be reduced. Now if this was the object and purpose of the enactment, could the Parliament and the State Legislature have ever intended that if rolled steel sections are sold in the lengths in which they come out from the rolling mills, they should be entitled to relief in respect of sales tax, but if different lengths of

rolled steel sections are joined together so as to form a greater length, they should not be entitled to such relief ? The consequence of accepting the view contended for on behalf of the department would be that where a dealer sells rolled steel sections in the lengths received by him from the rolling mills or by cutting up such lengths according to the requirement of the market, he would have the benefit of reduced sales tax, but if he, for the requirement of the market, joins up the lengths of rolled steel sections and sells such increased lengths of rolled steel sections, he would not be entitled to the relief of reduced sales tax but would be liable to pay higher sales tax. Such a view would not effectuate the object and purpose of the enactment whereas the view which we are inclined to take would carry out the object and purpose of the enactment more fully and effectually, for it will give the benefit of reduced sales tax not only to rolled steel sections which are sold in the lengths in which they come out from the rolling mills but also to rolled steel sections which are joined together by rivetting so as to form a greater length. This approach to the consideration of the question also, therefore, lends support to the view that rivetting baling hoops which are nothing but pieces of rolled steel sections joined together by rivetting fall within entry 4 in Schedule AA.

7. In this view of the matter, we are of the opinion that the decision of the Tribunal that rivetted steel baling hoops did not fall within entry 4 in Schedule AA and were therefore covered by the residuary entry 80 in Schedule B, are erroneous. Rivetted baling hoops fall within entry 4 in Schedule AA and sales tax must, therefore, be charged on the sale of rivetted baling hoops under that entry. Our answer to the question referred to us will, therefore, be in the affirmative. The respondent will pay the costs of the reference to the applicants.

8. Reference answered in the affirmative.