Master Strips (Pvt.) Limited Vs. Deputy Commissioner of Commercial Taxes (Administration) and Another

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Court : Karnataka

Decided On : Feb-23-1994

Reported in : [1995]99STC216(Kar)

Judge : Tirath S. Thakur, J.

Acts : Central Sales Tax Act, 1956 - Sections 14 and 15; Karnataka Sales Tax Act, 1957 - Sections 21(4)

Appeal No. : Writ Petition No. 16196 of 1989

Appellant : Master Strips (Pvt.) Limited

Respondent : Deputy Commissioner of Commercial Taxes (Administration) and Another

Advocate for Def. : Smt. V. Vidhya, Government Pleader

Advocate for Pet/Ap. : E.R. Indra Kumar, Adv.

Judgement :

Tirath Singh Thakur, J.

1. The petitioner is engaged in the business of manufacturing cold rolled steel strips from hot rolled steel strips in coil form purchased from local registered dealers.

2. Assessment for the period July 1, 1984 to June 30, 1985, was completed by the assessing authority concerned by its order dated February 24, 1987, in which the petitioner's claim that the conversion of hot rolled strips into cold rolled strips involved only reduction of the thickness of strips without any changes in the chemical composition thereof was accepted by the authority concerned. While doing so the assessing authority relied upon his personal observation of the process of conversion in the petitioner's factory of which a reference is made in the order of assessment passed by him. The exemption claimed by the petitioner on the sale of rolled strips was accordingly upheld and the petitioner's turnover held exempt from tax.

3. Nearly two years later the Deputy Commissioner of Commercial Taxes, Administration Sub-Division, Bangalore first respondent in this petition, issued a show cause notice under section 21(4) of the Karnataka Sales Tax Act, 1957, calling upon the petitioner to show cause as to why the assessment order passed by the assessing authority should not be set aside and the matter remanded back for a fresh disposal with a view to levy tax on a total turnover of Rs. 33,54,878 representing the sale of the cold rolled strips effected by the petitioner during the relevant period. The reasons indicated behind the proposed suo motu action of the first respondent was that hot rolled strips and cold rolled strips could not be considered as one and the same commodity although enumerated in the same entry of the Fourth Schedule to the Karnataka Sales Tax Act, 1957.

4. Aggrieved by the proposed action the petitioner has come up to this Court with the present petition for a writ of certiorari quashing the show cause notice as also a clarification dated February 12, 1988, issued by the Commissioner of Commercial Taxes by which cold rolled strips manufactured out of hot rolled strips have been held liable to tax even if the latter had already suffered tax.

5. Mr. Indra Kumar appearing for the petitioner relied upon a Division Bench judgment of this Court in Bahri Steel Wires v. Additional Commercial Tax Officer

[1992] 84 STC 418, in support of his submission that the impugned show cause notice and the clarification proceed on a totally erroneous view of the true legal position. He urged on the authority of that judgment that the presence of hot rolled and cold rolled strips in the same sub-item of item 2 to the Fourth Schedule to the Act was suggestive of the fact that the cold rolled and hot rolled strips were treated to be one commodity no matter one was produced out of the other. The clubbing of goods though commercially different in the same sub-item of item 2, contended the learned counsel, was a statutory recognition of the fact that the goods so grouped together for purpose of taxation were to be treated as one category of goods with the result that tax paid on one would suffice for the other also. Reference was also made by the learned counsel to sections 14 and 15 of the Central Sales Tax Act, to show that the goods covered by item 2 of the Fourth Schedule were declared goods, tax burden on which was meant to be minimised.

6. In Bahri Steel Wires case the question that fell for consideration was whether M.S. wires produced by the assessee from M.S. rods purchased from registered dealers within the State of Karnataka could be said to be taxable as a separate item. Relying upon the judgment of the Supreme Court in State of Tamil Nadu v. Pyare Lal Malhotra : 1983(13)ELT1582(SC) , State of Punjab v. Chandu Lal Kishori Lal [1970] 25 STC 52 and State of Tamil Nadu v. Mahi Traders [1989] 73 STC 228 and Bharat Forge & Press Industries (P) Ltd. v. Collector of Central Excise, Baroda [1992] 84 STC 414, the Division Bench held that the placement of goods in the same sub-item of item No. 2 of the Fourth Schedule to the Act was by itself sufficient to show that the said goods formed one category and could not therefore be held taxable independently just because the said goods are produced out of another goods also falling in the same sub-item.

7. Shivashankar Bhat, J., speaking for the Bench summed up the legal position thus :

'Having regard to the scheme of sections 14 and 15 of the Central Act and the purpose behind it being to minimise the tax burden on the declared goods, it can be assumed that each sub-item forms one category of goods and any goods falling within the same sub-item cannot be treated as a different taxable

commodity just because the said goods are produced out of another goods which also fall within the same sub-item. Each sub-item comprised within itself a particular category of taxable commodity for the purpose of section 14 of the Central Act. The opinion expressed by the Government of India near about the time section 14 of the Central Act was amended, and the earliest clarification issued by the Commissioner, in the year 1975, reflect the proper meaning.'

8. A similar issue came up for consideration of the apex Court in Telangana Steel Industries v. State of Andhra Pradesh [1994] 93 STC 187. Relying upon its judgment in State of Tamil Nadu v. Pyare Lal Malhotra : 1983(13)ELT1582(SC) their Lordships came to a similar conclusion in the following words :

'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 : AIR 1994 SC64 , wires would be exigible to tax on the ration of that case. The position here being different, as both rods and wires form part of one sub-item, Rajasthan case : AIR 1994 SC64 cannot assist the Revenue. In view of rather persistent submission made by Shri Chari on this 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 as different commercial commodities for the purpose of imposition of 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, but the sub-item being what it is, we state that wires were thought of as 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 subjected to sales tax. Indeed, the two goods - rods and wires - are so closely knit in the sub-item that any separation of these does not seem permissible. It would bear repetition to say 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.

.....

We, therefore, conclude 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.'

9. Reliance is also placed by Indra Kumar upon two judgments of the High Court of Andhra Pradesh in State of A.P. v. Nagarjuna Steels Limited and State of Andhra Pradesh v. Southern Steel Ltd. wherein the question as to whether cold rolled steel strips manufactured entirely out of hot rolled strips could be treated as distinct commodities so as to attract payment of tax independently was considered.

10. A Division Bench of the Andhra Pradesh High Court in the latter judgment, relying upon Pyare Lal Malhotra's case : 1983(13)ELT1582(SC) came to the conclusion that where the dealer purchased hot rolled skelp and strips on payment of tax and after processing them in its cold rolling mill varied the width of the strips and reduced the thickness of the skelp and sold the resultant product in rolls, the strips, so produced were not taxable.

11. A similar view had been taken by the same court in State of A.P. v. Nagarjuna Steels Limited [1995] 96 STC 451, where the court dealt with the question thus :

'From a reading of the entry, it is clear that it encompasses four commercial products - sheets, hoops, strips and skelp. What follows after these four words is only the description of these four products. If a sheet is converted into a hoop, there is no difficulty to hold that the resultant hoop should suffer tax following the decision of the Supreme Court in State of Tamil Nadu v. Pyare Lal Malhotra : 1983(13)ELT1582(SC) . But if the sheet continues to be a sheet with reduced size or if a strip continues to be a strip in smaller size after it is subjected to the process called 'cold rolling', it cannot be said that the resultant products fall under different sub-items. The Sales Tax Appellate Tribunal has rightly taken the view :

'Thus, in the context of the language used in this sub-item, it is possible to interpret the sub-item plainly to include all types of strips whether hot rolled or cold rolled."

12. The principles that can therefore be deduced may be stated thus :

(a) The grouping together of goods in a sub-item of item 2 of the Fourth Schedule, is a prima facie strong circumstance to show that the goods so grouped together form one category of goods for purposes of sales tax.

(b) Even if commercially different goods are produced out of some other goods found in the same sub-item the goods so produced may not be liable to tax if the goods out of which the same are produced are already tax-paid.

(c) Multi-point taxation on declared goods being forbidden by section 15 of the Central Sales Tax Act, a very strong and cogent case has to be made out by the Revenue, before goods which are grouped together are allowed to be taxed at multi-point.

13. Applying the above principles to the present case, the goods in question are admittedly declared goods and the same having been grouped together in the same sub-item of the Fourth Schedule, there is a strong reason for treating them to be one category of goods on which tax shall be payable only once regardless whether the goods produced out of one of such goods are a commercially different commodity. This is so particularly when cold rolled steel strips and hot rolled steel strips are no different from each other except in their thickness, which is smaller in the case of cold rolled strips. The conversion of hot rolled to cold rolled strips does not involve any change in the chemical composition of the strips, which continue to retain their original properties and characteristics. There is therefore no reason much less a compelling one why the two should not be treated to be the same for purpose of payment of sales tax, nor was any such reason pointed out to me by the respondents to justify the taking of a view different from the one taken by the High Court of Andhra Pradesh in regard to the same category of goods.

14. I have therefore no hesitation in holding that the clarification issued by the second respondent as also the show cause notice issued by the first respondent

proposing to tax the petitioner's turnover on cold rolled strips manufactured out of tax-paid hot rolled strips are unsustainable.

15. In the result this petition succeeds and the impugned clarification dated February 12, 1988, as also the show cause notice dated June 16, 1989, are hereby quashed. Rule made absolute.

The parties to bear their own costs.

16. Petition allowed.