

State of Andhra Pradesh Vs. Radiant Engineering Co.

State of Andhra Pradesh Vs. Radiant Engineering Co.

SooperKanoon Citation : sooperkanoon.com/433286

Court : Andhra Pradesh

Decided On : Nov-07-1994

Reported in : [1995]96STC300(AP)

Judge : A.S. Bhate and ;S.S. Mohammed Quadri, JJ.

Acts : Andhra Pradesh General Sales Tax Act, 1957 - Sections 5(1), 20(2) and 22

Appeal No. : Tax Revision Cases Nos. 211, 213 and 238 of 1986

Appellant : State of Andhra Pradesh

Respondent : Radiant Engineering Co.

Advocate for Def. : Y. Ratnakar, Adv.

Advocate for Pet/Ap. : The Government Pleader for Commercial Taxes

Judgement :

Syed Shah Mohammad Quadri, J.

1. In these revisions by the State, under section 22 of the Andhra Pradesh General Sales Tax Act, 1957 (for short 'the Act'), classification of two items in the First Schedule falls for consideration. The first item is PVC granules and the second item is insulated copper wire. The assessing authority treated them as unclassified items and taxed them under section 5(1) of the Act. On revision, the Deputy

Commissioner, in exercise of the revisional power under section 20(2) of the Act, set aside the order of the assessing authority and classified PVC granules under entry 88 of the First Schedule and the insulated wire under entry 38 of the First Schedule. On appeal by the assessee-respondent to the Sales Tax Appellate Tribunal, the order of the Deputy Commissioner was reversed and that of the assessing authority was confirmed treating both the items taxable under section 5(1) of the Act. The Tribunal thus allowed three appeals of the assessee for the assessment years 1974-75, 1975-76 and 1977-78 by its common order, dated November 21, 1985. The correctness of this order is assailed in these revisions. As these revisions relate to the same assessee, relating to three different assessment years, arising out of a common question of fact and raising same question of law, we have heard them together and are disposing of by this common order.

2. The learned Government Pleader contends that PVC granules are also included within the meaning of PVC articles; therefore, they are to be classified under entry 88.

3. Mr. Y. Ratnakar, learned counsel for the assessee-respondent, on the other hand, supports the order of the Tribunal and submits that when the Legislature intended the raw material also to be included within the meaning of entry 88, it specifically stated thus, but, in the instant case, raw material is not included in the entry and PVC granules being raw material cannot be brought under entry 88.

4. To appreciate the contentions of the learned counsel for the parties, it would be useful to read entry 88, which is in the following terms :

-----S. No.	Description of goods
Point of levy	Rate of tax-----88
Articles of PVC materials.	At the point of 9 paise in the first sale in rupee.the State.-----

5. Entry 88 deals with articles of PVC materials. The other entries which are brought to our notice are : entries 43, 54 and 89; entry 43 deals with 'marble and marble articles'; entry 54, which, during the relevant period, read as 'stainless steel

and articles of stainless steel' and entry 89 refers to 'furs and articles thereof'. It is clear that in these entries raw material is also included. In contrast with these entries, a reference is made to entry 119 of the First Schedule, which speaks of 'articles of ivory and of sandalwood'; entry 21 deals with 'articles and jewellery made of bullion or specie or both excluding precious stones'. We may point out here that bullion and specie are taxable under entry 20. Thus, the legislative intent is clear; wherever the prime form of the material was also sought to be taxed under an entry, the Legislature included it in that entry as it is evident from the entries referred to above. Therefore, it follows that PVC granule, which is a prime form of PVC, does not fall within the meaning of entry 88.

6. It is the common case that if entry 88 is not attracted, PVC granules are taxable under section 5(1) of the Act. In this view of the matter, we confirm the order of the Tribunal so far as PVC granules are concerned.

7. Now turning to insulated copper wire, the question is - whether it falls under entry 38 or is it taxable under section 5(1) of the Act Entry 38, in so far as it is relevant for our purpose reads as follows :

-----S. No.	Description of goods
Point of levy	Rate of tax-----38
All kinds of electrical apparatus and appliances	At the point of 8 paise in goods, instruments, first sale in the rupee. the State.([The expression 'other than those specifically mentioned elsewhere' was substituted by Act 4 of 1989 with effect from February 15, 1989.] other than those specifically mentioned elsewhere)([The word 'including' was substituted for the words 'that is to say', by Act 11 of 1984 with effect from July 8, 1983.] including) - (i) wires, holders, plugs, switches, electrical earthenware and porcelain-ware; (ii) to (v)

8. Entry 38 deals with all kinds of electrical goods.

9. In *State of Andhra Pradesh v. Indian Detonators Ltd.* [1971] 28 STC 84, a Division Bench of our High Court, for the purpose of entry 37, Schedule I, considered the meaning of the expression 'electrical goods'. Having pointed out

that the expression 'electrical goods' has not been defined in the Act and neither the Act nor the Rules made thereunder had laid down any test to be satisfied before any given article could be brought within the scope of entry 37, it was observed : 'the expression 'electrical goods', of course, as already stated, is not defined in the Act or the Rules. In the absence of any specific meaning given to it in the Act we have to necessarily construe it and understand the same in the sense it is used in common parlance. This principle is well-recognised and has been followed by the Supreme Court in several cases'.

10. In common parlance when copper wire is insulated, it will be used as an electrical goods. That it is so is admitted by the respondent-assessee itself. This can be seen from the order of the Deputy Commissioner when he pointed out, 'bare wire cannot be sued as an electrical wire because of obvious reasons'. They also stated that 'the wire must be insulated in order to come under electrical goods'. But, according to their letter, dated February 27, 1976, available at page 123 of the assessment file, they supplied insulated copper wire and not the bare wire. But now they have stated that they have supplied bare wire without giving any evidence to this effect.

11. The Tribunal, in the order under revision, referred to the same letter, but did not reach any conclusion as to whether the wire supplied by the assessee was insulated wire or bare wire. Having regard to the wording of entry 38, we are inclined to take the view that if what is supplied is an insulated wire, it would be within the meaning of 'electrical goods' and would fall under entry 38(i); but if what was supplied was bare wire it could not be brought within entry 38(i) and would, therefore, be taxable under section 5(1) of the Act.

12. As there is no definite finding by the Tribunal as to what was supplied; whether it was insulated wire or bare wire, we consider it appropriate to set aside the order of the Tribunal on this aspect and remit the matter to the Tribunal to determine as to whether the goods supplied by the assessee was insulated wire or bare wire.

13. The revision cases are accordingly disposed of. No costs.

14. Petitions disposed of accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com