Telangana Steel Industries vs State Of A. P on 4 March, 1994

Equivalent citations: 1994 AIR 1831, 1994 SCC SUPL. (2) 259, AIR 1994 SUPREME COURT 1831, 1994 AIR SCW 1747, 1994 KERLJ(TAX) 492, 1994 (2) SCC(SUPP) 259, 1994 SCC (SUPP) 2 259, (1994) 7 JT 27 (SC), (1994) 2 SCR 324 (SC), (1996) 62 ECR 281, (1994) 93 STC 187, (1994) 73 ELT 513

Author: B.L Hansaria

Bench: B.L Hansaria, B.P. Jeevan Reddy

PETITIONER:
TELANGANA STEEL INDUSTRIES

Vs.

RESPONDENT:
STATE OF A. P.

DATE OF JUDGMENT04/03/1994

BENCH:
HANSARIA B.L. (J)
BENCH:
HANSARIA B.L. (J)
JEEVAN REDDY, B.P. (J)

CITATION:
1994 AIR 1831 1994 SCC Supl. (2) 259
JT 1994 (7) 27 1994 SCALE (1)884

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by HANSARIA, J.- Leave granted.

2. Law has some bright patches as well as some grey areas. Some areas remain grey despite best efforts to illuminate them by enlightened judgments as they get engulfed in darkness or become part of twilight zone either because of typical climatic condition or changes in conceptual firmament.

3. In the present cases, we are concerned with one of the grey areas of the legal world. The same is as to when a new commercial commodity comes into existence following processing or manufacturing undergone by the parent object, which in most cases serves as a raw material for the end- product. This aspect of the matter assumes importance when a law taxes sale of goods. To find out whether a particular good is exigible to sales tax or not despite the raw material used in the production having been taxed earlier, the test evolved is whether a new commercial commodity has come into existence.

4. As to when it can be said as aforesaid has been a subject-matter of catena of decisions. We do not propose either to catalogue them or even examine some of them to find out as to why in one case it was held that a new commercial commodity had not come into existence and in another a different view was taken. It would be enough if we note some of the leading decisions. These are:

> (1) Tungabhadra Industries Ltd. v. CTO1 wherein hydrogenated groundnut oil 1 (1960) 11 STC 827: AIR 1961 SC 412: (1961) 2 SCR 14 (commonly called Vanaspati) was not held to be a different product from groundnut oil, (2) Hindustan Aluminium Corpn.

Ltd. v. State of Up.2, where rolled products and extrusions were regarded as different commercial commodity from aluminium ingots and billets, (3) Dy. CST (Law), Board of Revenue (Taxes) v. Pio Food Packers3, where pineapple slices sold in sealed cans after processing the pineapples were not regarded as different goods, (4) Alladi Venkateswarlu v. Govt. of A.p.4 where parched rice (Atukulu) and puffed rice (Muramarulu) were held not different from rice, (5) Ganesh Trading Co. v. State of Haryana5 and Babu Ram Jagdish Kumar and Co. v. State of Punjab6 in both of which rice was accepted as a different commodity from paddy, (6) State of Karnataka v. B. Raghurama Shetty7 in which certain observations were made regarding bread being different from wheat flour inasmuch as flour is consumed in the production of bread and so a new commodity comes into existence.

5. When the Gauhati High Court was confronted with a similar situation in Modem Candle Works v. Commissioner of Taxes8, to which decision one of us (Hansaria, J.) was a party, it had to labour hard to find out as to whether any principle as such can be culled out from large number of decisions noted in that case. Saikia, C.J., as he then was, stated for the Bench that different considerations Would apply when the court is concerned with edible articles ill contrast to non-edible articles. As to what test should be applied in both types of articles were then stated as below in paragraph 18 :

> "From the above decisions involving edible articles some of the criteria found are - whether the entry article is a genus of which the test article is a species; whether the essential characteristics of the entry article are still to be found in the new article; whether there has been addition of external agents thereby making it different; and whether there has been a process of transformation of such a nature and extent as to have resulted in the production of a new article as commonly understood in the market where it is dealt with. So long it does not result in a new article, the nature, duration and transformation of the original commodity would not be material.

> In the other line of decisions involving articles which are not as such edible, we find that it is the concept of the consumption of the original commodity in the course of production of a new commodity as understood commonly by the people who use it would be material. The nature and extent of the process, whether the labour is manual or mechanical, whether the duration is short or long, whether the production requires expertise or not would no doubt be relevant but would not alone be decisive."

6. The above adequately shows how a valiant effort was made to read a common thread running through different judgments noted in the decision. A Bench of this Court as well had gone through this exercise recently in Rajasthan Roller Flour Mills Assn. v. State of Rajasthan9, (hereinafter the Rajasthan case) 3 1980 Supp SCC 174: 1980 SCC (Tax) 319: (1980) 46 STC 63 4 (1978) 2 SCC 552: 1978 SCC (Tax) 112: (1978) 41 STC 5 (1974) 3 SCC 620: 1974 SCC (Tax) 100: (1973) 32 STC 623 6 (1979) 3 SCC 616: 1979 SCC (Tax) 265: (1979) 44 STC 159 7 (1981) 2 SCC 564: 1981 SCC (Tax) 134: (1981) 47 STC 369 8 (1988) 71 STC 362 (Guj) 9 1994 Supp (1) SCC 413: JT (1993) 5 SC 138 in which, one of us (Jeevan Reddy, J.) delivering judgment for a two-Judge Bench noted some leading decisions on this aspect of the matter and held that flour, maida and suji are different commercial commodities from wheat.

7. The above shows complexity of the concept of a different commercial product coming into existence because of manufacturing process undertaken. It is because of this that we do not propose to decide the controversy at hand, which is whether iron wires are separate commercial goods from wire rods from which they are produced, by trying to answer whether they are one commercial commodity or separate. The point has however arisen for consideration because we are concerned with a single point sales tax, which would not allow taxing of the same commodity again. It is also not in dispute that if the two goods at hand be different commodities, the single point taxing principle would not debar realisation of tax once again from the sale of wires. Shri Tarkunde's whole emphasis is that goods in question cannot be regarded as two different commercial commodities. Let it be seen why this stand has been taken by the learned counsel on behalf of the appellants and whether the same is sound?

8. The stand owes its origin to clubbing together of wire rods and wires in sub-clause (xv) of clause (iv) of Section 14 of the Central Sales Tax Act, 1956 (for short 'the Act'), which deals with what is commonly known as declared goods, in which case Section 15 of the Act would come into play which would not permit levying of sales tax at more than one stage on such goods. On the strength of a four-Judge Bench decision of this Court in State of TN. v. Pyare Lal Malhotra10 it is strongly contended by Shri Tarkunde that wire rods and wires having been mentioned in one sub-item, they have to be treated as one goods and not two different goods.

9. Pyarelal case1O being the kingpin or sheet-anchor of Shri Tarkunde's submission, we may carefully note as to what was really decided in that case. There, this Court was examining whether steel rounds, flats, plates etc. were exigible to tax under the provisions of Tamil Nadu Sales Tax Act. These products were also declared goods, and so, an argument was advanced that the iron scrap from which the goods had been manufactured having suffered sales tax, tax could not be realised

once again from the sale of plates, flats, rounds etc. This Court did not accept the contention but the reason given for rejecting the contention is what is pressed into service by Shri Tarkunde, according to whom, the reason given therein establishes his contention conclusively.

10. As we are concerned with the products of iron and steel, as was Pyarelal case1O, let the relevant part of Section 14 of the Act dealing with it be noted :

> " 14. Certain goods to be of special importance in inter-State trade or commerce.- It is hereby declared that the following goods are of special importance in inter-State trade or commerce
>
> (iv) iron and steel, that is to say,-
>
> (xv) wire rods and wires - rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;

10 (1976) 1 SCC 834: 1976 SCC (Tax) 102: (1976) 3 SCR 168

11. In Pyarelal case10, the contention on behalf of the assessee was that steel rounds, flats, plates etc. were not different commercial commodities because they were products of iron and steel, and so, were not taxable once again, as all the products of iron and steel mentioned in various sub- items of clause (iv) have to be taken as one commodity inasmuch as the legislature visualised iron and steel as one commodity. It may be stated that at the relevant time (as also now) iron scrap was one of the sub-items; and steel plates, sheets etc. part of another sub-item, albeit in separate sub-divisions. Assessees' contention was rejected by this Court by stating that it was not the substance (i.e. iron and steel) which should be taken as an object of taxation, but goods of iron and steel, as otherwise sales tax law itself would undergo a change from being a law which taxes the sale of "goods" to a law which taxes sale of "substance" out of which goods are made. The Court also pointed out that steel plates, sheets etc. formed part of a sub-item different from that of iron scrap. What is sought to be relied on by Shri Tarkunde is the observation at p. 171 of the Report that the amendment which was brought about in item (iv) by 1972 Act following the recommendation of Select Committee was intended to "consider each 'sub-item' as a separate taxable commodity for purpose of sales tax".

12. Our attention is also invited to what has been stated at p. 172 - the same being that each of the sub-category of a sub-item retains its identity as a commercially separate item so long as it retains the sub-division. The argument, therefore, is that goods of one sub-item and in one sub- division have to be taken as one commercial commodity.

13. Before expressing our opinion on the aforesaid submission, it would be necessary to note whether any different view in the matter has been taken in the Rajasthan case9, which also dealt with the question of as to how products of a declared goods have to be taxed. Shri Chari appearing for Revenue contends that in this case this Court held flour, maida and suji derived from wheat as commodities different from wheat, and so, taxable once again, despite wheat having suffered tax; and we should take the same view qua wires. A perusal of this decision shows that the view in

question was taken because "wheat simpliciter was mentioned as a declared goods in sub-clause (iii) of clause

(i) of Section 14 of the Act and not wheat products. So this case has not departed from the view taken in Pyarelal 10, which had been duly noted in this decision.

14. At this stage, we may note the object behind interdicting multiple-point tax on declared goods which follows from the mandate contained in clause (a) of Section 15 of the Act. According to us, the purpose behind this provision is to minimise the tax burden on declared goods because of the special importance of these goods in inter- State trade and commerce.

15. When the attention of the Sales Tax Appellate Tribunal, against whose orders present appeals have been filed, was drawn to Pyarelal case10 and the argument noted above was advanced, it observed that the two goods being distinct, the argument was "really a camouflaged attempt to bypass the judgment". According to us, the Tribunal did not properly understand the decision in Pyarela10, which indeed supports the appellants's case. This is for the reason that Pyarelal case10 ought to be taken to have accepted that goods of one sub-item should be taken as one taxable commodity. Rajasthan case9 does not lay down any different proposition.

16. 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 case9, wires would be exigible to tax on the ratio of that case. The position here being different, as both rods and wires form part of one sub-item, Rajasthan case9 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 multipoint 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.

17. For the sake of completeness, we may say a few words about the use of the expression "that is to say" in clause

(iv), though Shri Chari has not advanced any argument basing on this expression. Nonetheless, we are addressing ourselves to this aspect because in Rajasthan case9 some observations have been made about the purport of this expression. Reference was made there to what had been stated in

Pyarelal case10 about this expression. The meaning given in Stroud's Judicial Dictionary (4th Edn., Vol. 5, p. 2753) was first noted and then what was observed by Beg, J. in Pyarelal case10 was quoted. We do not think that what has been stated about this expression in these decisions makes any difference to the conclusion arrived at by us.

18. The aforesaid being the approach to the controversy at hand, we do not propose to refer to what had been stated in the counter-affidavit filed by the State before the Tribunal relating to the process of manufacturing of wire from rods, to which our attention has been invited by Shri Chari. We only wish to put on record that in meeting what was mentioned in this regard in the Counter-affidavit, Shri Lahoty, who assisted Shri Tarkunde, drew our attention to what has been stated by the Indian Standard Institution on this subject, reference of which is to be found at p. 19 of Vol. II of the Paper Book of CA No. 68 of 1986 under the heading "2.4 wire". We have refrained from going through the exercise of deciding whether wire is a different commercial commodity from rod, because our approach has been different, as we wanted to base our decision not on the touchstone of iron rod and wire being one or separate commercial commodity, having found that these two goods have been clubbed together in sub-item (xv) (supra) which, according to us, made material difference and clinched the issue.

19. 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. Shri Lahoty indeed brought to our notice Notification Nos. 1 and 11 issued by the Government of Andhra Pradesh under GOMs No. 176 dated 13-2-1986 is per which sale of wires was exempted from sales tax starting from 1-4-1976 of the wire rods used by the wire drawing units in the State for the manufacture of wire had been subjected to tax under the State Act.

20. What is left to be decided is about the nature of the order to be passed on the prayer of refund. In this connection, Shri Lahoty has drawn the attention to the order dated 6-1-1986 passed by this Court while granting special leave reading as under

> "We make no order for restraining the recovery of the amount from the petitioners but we direct issue of notice returnable in four weeks from today for considering the terms on which an order of refund should be made."

Our attention is then invited to Section 33-B of the statute in question (Andhra Pradesh General Sales Tax Act) which deals with the subject- matter of refund in cases of the present nature. We leave the appellants to work out their remedies relating to refund in accordance with the provisions contained in this section.

21. In view of the above, the appeals are allowed by setting aside the impugned judgments and by leaving the appellants to pursue the matter of refund as indicated above. In the facts and circumstances, we leave the parties to bear their own costs.