Tvl K.A.K. Anwar & Co. Etc vs State Of Tamil Nadu on 27 November, 1997

Equivalent citations: AIR 1998 SUPREME COURT 518, 1998 (1) SCC 437, 1998 AIR SCW 106, 1998 UPTC 1 9, 1997 (7) SCALE 261, 1998 (1) UPTC 447, 1998 BRLJ 222, 1998 ( ) STI 1, 1998 UPTC 1 447, (1997) 7 SCALE 261, (1997) 10 SUPREME 458, (1998) 108 STC 258

Bench: S.C. Sen, B.N. Kirpal, K.T. Thomas

PETITIONER:
TVL K.A.K. ANWAR & CO. ETC.

Vs.

RESPONDENT:
STATE OF TAMIL NADU

DATE OF JUDGMENT: 27/11/1997

BENCH:
S.C. SEN, B.N. KIRPAL, K.T. THOMAS

ACT:

HEADNOTE:

JUDGMENT:

THE 27TH OF NOVEMBER, 1997 Present:

Hon'ble Mr. Justice S.C.Sen Hon'ble Mr.Justice B.N.Kirpal Hon'ble Mr. Justice K.T.Thomas K. Parasaran, H.N. Salve and S. Sivasubramaniam, Sr.Advs., A.T.M.Sampath, V.Balaji, K.J. Chandran, Nikhil Sakhandand, K.K. Mani, R. Ayyam Perumal, V.G. Pragasam, K. Swami, P.R. Tiwari, A. Raghunath, A. Mariarputham, V. Krishnamurthy, Advs. with them for the appearing parties.

J U D G M E N T The following Judgment of the Court was delivered:

WITH Civil Appeal Nos. 4747-48, 4749-50, 4751-52 of 1993 6660 of 1995, 1453 and 855 of 1994 KIRPAL, J.

Leave granted in SLP (c) Nos. 5384-85 of 1984. The common question which arises in these appeals is whether the turn-over in respect of hides and skins which has once been subjected to tax under the Tamil Nadu General Sales Tax Act, on its purchase at the raw stage, could be taxed again on inter-state sales as tanned or dressed hides and skins.

According to the appellants they purchase raw hides and skins and after dressing they are sold in the course of inter-state trade. The contention of the dealers before the assessing authority was that hides and skins, whether in a raw or dressed form, are declared goods under Section 14

(iii) of the Central Sales Tax Act and they are regarded by the sald Act as a single commodity. This being so Section 15 of the Central Sales Tax Act provides that the goods which have suffered tax once cannot be taxed again at the time of inter-state sale. As the tax had been levied at the time of purchase of raw hides and skins, therefore, there should be no levy of tax on their inter-state sale after the said raw hides and skin had been dressed.

The assessing authority, in all these cases, did not accept the said contention as the authorities were of the opinion that raw hides and skins were a commodity which were different from dressed hides and skins and, therefore, the restrictions contemplated by Section 15 of the Central Sales Tax Act was not applicable.

The decision of the assessing authority was challenged by some of the appellants by taking recourse to the provisions under the Act and after an adverse decision from the Tribunal, revision petitions are filed before the High Court at Madras. Some of the other appellants chose to challenge the decision of the sales tax authority as well as the constitutional validity of Section 3 of the Tamil Nadu General Sales Tax (3rd Amendment) Act, 1987 substituting item no. 7 and the relevant entries thereto in the IInd filing writ petitions before the High Court of Madras. The High Court, by different decisions, came to the conclusion that raw hides and skins was a commodity which was commercially different from dressed hides and skins both under the State Act as well as the Central Act and that the State had the legislative competence to tax the inter-state sale of dressed hides and skins even though tax had been paid on the purchase of raw hides and skins. The further finding of the High Court was that there was no merit in the challenge to the legality of the entries which had been substituted in the IInd Schedule by the Amending Act of 1987.

The controversy in these appeals relates to three periods, namely, for the period prior to 23rd March, 1987; for the period 23rd March, 1987 to 4th September, 1991, when amendment was made to item no.7 to the IInd Schedule pursuant to the aforesaid Amending Act and for the period subsequent to 4th September, 1991 when the said schedule was again amended, as a result of which the original entry got restored.

In order to appreciate the rival contentions it is necessary to refer to the statutory provisions. Sections 14 and 15 of the Central Sales Tax Act, in so far as they are relevant for the purpose of these cases, are as under:

> "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:-
>
> .....
>
> (iii) hides and skins, whether in a raw or dressed state."

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State:-

> Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:-
>
> (a) the tax payable under the law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent of the sale or purchase price thereof, and such tax shall not be levied at more than one stage;
>
> (b) Where a tax has been levied under that law in respect of the sale or purchase inside the State or any declared goods and such goods are sold in the course of inter state trade or commerce, and tax has been paid under this Act in respect of the sale of such goods in the course of inter state trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter state trade or commerce in such manner and subject to such conditions as may be provided in any law in force in that State.

.....

(Provision extracted is the one which was in force in 1987) After the promulgation of the Central Sales Tax Act the State Legislature introduced IInd Scheduled to the State Act providing for the rates as well as the points of levy in respect of declared goods. This was done in view of the provisions of Sections 14 and 15 of the Central Act.

> "Item No.7 of the Second Schedule in so far as it related to the levy of sales tax on hides and skins, as it was originally enacted and in force upto 22.3.1987 read as hereunder:
>
> ---
>
> Sl. No. Description Point Rate of Effective

	of goods	of levy	tax per cent	from
(1)	(2)	(3)	(4)	(5)

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7. ORIGINAL & PRESENT ENTRY

(a) Raw hides At the point 2 1.4.1959 and skins of last purchase in the State. 3 18.6.1967

(b) Dressed At the point 1 1.4.1959 hides and of first sale 1-1/2 18.6.1967 skins (which in the State were not subjected to tax under 2 21.2.1978 this Act as raw hides and skins).

Note:

Rate of tax increased on item 7 (a) from 2% to 3% by Act 5 of 1967 w.e.f. 18.6.1967.

Rate of tax increased on item 7 (b) from 1% to 1-1/2% w.e.f. 18.6.1967 by Act 5 of 1967 and from 1-1/2% to 2% w.e.f. 21.2.1978 by Act 22 of 1978"

After and by virtue of the impugned Amendment Act 31 of 1987, which was proceeded by G.O.P. No. 291 dated 20.3.1987, item 7 of the Second Schedule and the relevant entries thereto read as hereunder:

"7(a)	Raw hides and skins.	At the point of last purchase in the State.	2
(b)	Dressed hides and skins.	At the point of first sale in the State.	2

---------- With effect from 6th September, 1991 item no.7 of the IInd Schedule was once again substituted and after such amendment the item read as under:-

"7(a)	Raw hides and skins	At the point of last purchase in the State	4
(b)	Dressed hides and skins (which were not subjected to tax under this Act as	At the point of first sale in the State.	4

raw hides and
skins).

The main thrust of the arguments of the learned counsel for the appellants was two fold. It was explained that with a view to preserve the raw hides and skins they are first `cured' by either wet salting, dry salting or drying. In the `cured state' the raw materials can be preserved for a temporary period. In the next stage the hides and skins are `picked' and thereafter they are tanned in which state they can be preserved almost indefinitely. These tanned hides and skins are processed further to yield dressed hides and skins which are then ready for use. It was submitted that raw hides and skins and dressed hides and skins, irrespective of their state, are the same commodities. After `raw hides and skins' are purchased they are then dressed which has the effect of preserving them. They do not undergo any change and, therefore, `raw hides and skins' and `dressed hides and skins' cannot be considered as commercially separate commodities, the difference being only in form. This being so, it was contended, hide and skins can be taxed at only one stage in the State with the result that if they have been subjected to tax at the raw state under the local Act, then section 15 of the Central Sales Tax Act would have the effect of preventing tax being levied on dressed hides and skins.

In the alternative, it was contended that even assuming that `raw hides and skins' and `dressed hides and skins' could be considered to be commercially distinct commodities under Section 14(III), even then Section 14(III) of the Central Sales Tax Act regards hides and skins as a single commodity and they cannot be taxed twice over in any one State. Elaborating this contention, it was submitted that Section 15 of the Central Sales Tax Act provides that every sales tax law of a State shall, insofar as it imposes or authorises the imposition of tax on the sale or purchase of declared goods, imposes two restrictions, namely, the tax payable of declared goods, imposes two restrictions, namely, the tax payable in respect of "such goods" cannot exceed 4% and; secondly it cannot be levied at more than one stage. The expression "such goods" occurring in Section 15, clause

(a), it was submitted, meant "declared goods" referred to in Section 14 which, in the present case, is hides and skins. A necessary corollary of this was that hides and skins could be taxed only once in a State and once hides and skins have been taxed in a State, in whichever form it may have been, the same cannot be taxed again. Therefore if the State law regarded them as different goods enabling the State to tax them twice, then to that extent the relevant provisions of the State law, being in conflict with Section 15 of the Central Sales Tax Act, would be ultra vires.

On behalf of the appellants, strong reliance was placed on the decision of this Court in the cases of State of Tamil Nadu Vs. Mahi Traders and Ors. Etc. etc., (1989 (1) S.C.R.

445), State of Punjab and Ors. Vs. M/s. Chandu Lal Kishori Lal and Ors. Etc. [(1969) 3 SCR 849], Telangana Steel Industries and Ors. Vs. State of A.P. and Ors. (1994 Supp. (2) SCC 259) and State of

Tamil Nadu Vs. Pyare Lal Malhotra Etc. [(1976) 3 S.C.R. 168]. In Chandu Lal's case (supra), the leader had paid purchase tax on the purchase of unginned cotton and, after ginning the cotton and removing the seeds, it had sold the ginned cotton to customers outside the State. In respect of the cotton seed sold by it to registered dealers, a deduction had been claimed from the purchase turnover but the same was not allowed on the ground that the goods sold, namely cotton seed, were not the goods in respect of which purchase tax had been levied inasmuch as unginned cotton underwent a manufacturing process and the goods produced were different from those purchased. Allowing the appeal of the State of Punjab, a three Judges Bench of this Court observed at page 853 that "declared goods" in Section 14 of the Central Sales Tax Act, 1956 are individually specified under separate items. "Cotton ginned or unginned" is treated as a single commodity under one item of declared goods'. Reliance was placed on this observation and it was contended that because the entry in Section 14(III) reads as hides and skins, raw or dressed, it would mean that raw hides and skins and dressed hides and skins are treated as a single commodity.

In the case of Mahi Traders (supra), the question which arose was whether leather splits and coloured leather were hides and skins which fall in the category of "declared goods" as set out in Section 14 of the Central Sales Tax Act and, therefore, entitled to the concession available under Section 15 of the Act, namely, the benefits of single point taxation and of a smaller rate of tax. This Court held that leather splits were nothing but cut pieces of hides and skins and would, therefore, fall within Section 14(III) of the Central Sales Tax Act. Dealing with the question relating to coloured leather, the Court dealt with the process in which the raw hides and skins undergo till they are tanned and observed as follows:

> "Structurally, hides and skins have a thick middle layer called corium, which is converted to leather by tanning. The operations involved in leather manufacture however fall into three groups. Pre-tanning operations include soaking, liming, deliming, bating and picking and post tanning operations are splitting and shaving, neutralising, bleaching, dyeing, fat-liquoring and stuffing, setting out, samming, drying, staking and finishing. These operations bring about chemical changes in the leather substance and influence the physical characteristics of the leather, and different varieties of commercial leather are obtained by suitably adjusting the manufacturing operations. These processes need not be gone into in detail but the passages relied upon clearly show that hides and skins are termed `leather' even as soon as the process of tanning is over and the danger of their putrefaction is put an end to. The entry in the CST Act, however, includes within its scope hides and skins until they are `dressed'. This, as we have seen, represents the stage when they undergo the process of finishing and assume a form in which they can be readily utilised for manufacture of various commercial articles. In this view, it is hardly material that coloured leather may be a form of leather or may even be said to represent a different commercial commodity. The statutory entry is comprehensive enough to include the products emerging from hides and skins until the process of dressing or finishing is done". (emphasis added) This Court then concluded that splits and coloured leather continued to be hides and skins entitled for special treatment under the Central Sales Tax Act.

In Telangana Steel Industries and Others Vs. State of A.P. and others (1994 Supp (2) SCC 259, the question was whether iron wires were separate commercial goods from wire rods from which they were produced. Without deciding whether both the goods were one commercial commodities or not and after referring to the decision of State of Tamil Nadu Vs Pyare Lal Malhotra Etc., [(1976) 3 SCR 168] and Rajasthan Roller Flour Mills Association and Anr. Vs. State of Rajasthan and Ors., (1994 Supp (1) SCC 413), this Court held that as both the rods and wires form part of one sub item viz., (iv) (xv), they could not be taken as separate taxable commodity and if wire rod which had been purchased by the dealers had already been subjected to sales tax, then wires which are drawn from the said rods could not be taxed again. In arriving at this conclusion, it was observed that when the sub-item spoke of wires "rolled, drawn, galvanized, aluminized, tinned or coated...." it showed that even if they were separate commercial commodities, the Legislature nevertheless did not want wires to be taken as a commodity different from rods for the purpose of permitting imposition of sales tax once again on wires, despite rods having been subjected to sales tax.

Even though the aforesaid decisions seem to support the contentions urged on behalf of the appellants, we find that the two questions involved in these cases, namely, whether dressed hides and skins and raw hides and tanned skins are different commodities and, secondly, whether Section 14(iii) of the Central Sales Tax Act regards them as the single commodity, appear to have been decided differently by a Constitution Bench of this Court in Hajee Abdul Shakoor and Company Vs. State of Madras [1964 (8) SCR 217]. The appellant therein had contended that tanned and untanned hides and skins did not form different commodities and, therefore, tax could not be levied on the sales of hides and skins in the raw condition when no tax is levied on the sale of hides and skins in the tanned condition. On the other hand the State had contended that they were two different commodities and constituted two separate commodities for the purpose of taxation. The Court at page 227 observed that "hides and skins in the untanned condition are undoubtedly different as articles of merchandise than tanned hides and skins." If then dealt with the contention that tanning was only a preservative process which makes no change in the nature of the article itself, a submission which has also been raised in the present case on behalf of the appellant. The Court, however, did not accept this submission and in this connection it approved the observations in Government of Andhra Pradesh Vs. M.A. Abdul Bari and Company (9 STC

231) to the effect that tanning of raw hides and skins was a manufacturing process as a result of which the product that emerges is different from the raw material as after tanning the hides and skins become a different commodity and then concluded at page 228 that "it is, therefore, not correct to say that the process of tanning brings about no change in the raw hides and skins and that therefore both types of hides and skins form one commodity." The appellant therein had also referred to the decision in Abdul Subban and Company Vs. State of Madras (11 STC 173) where the following observations had been made at page 228:

> "Section 14(3) of the Central Sales Tax Act, 1956 (Act 74 of 1958) also treats hides and skin whether dressed or raw, as a single commodity... Since skins tanned or untanned, constitute only one class of goods and the sale of that class of goods can be taxed only at a single point, obviously there can be no tax on a sale of tanned goods, if tax has already been paid on an earlier transaction when those skins were untanned."

The aforesaid conclusion in Abdul Subban's case was not accepted by this Court and it was observed at page 228 that "no reason is given why the two kinds of hides and skins are treated as a single commodity." Again at page 229 the finding of the Court was that "we, therefore, hold that raw hides and skins dressed hides and skins constitute different commodities of merchandise and they could therefore be treated as different goods for the purposes of the Act."

From the aforesaid observations it clearly follows that the Constitution Bench had, in no uncertain terms, come to the conclusion that raw hides and skins and dressed hides and skins were not one and the same commodity. Therefore, the first contention raised in the present case by the learned counsel for the appellant cannot be accepted notwithstanding the reliance by them on the aforesaid decision in the case of Telanganna Steel Industries case. It may here be noted that in none of these decisions was the attention of the Learned Judges drawn to the aforesaid observations of the Constitution Bench in Abdul Shakoor's case.

The other submission that Section 14(iii) of the Central Sales Tax Act, in any case, treats raw hides and skins and dressed hides and skins as one and the same commodity, because it is included in the same sub-heading in Section 14 also stands concluded by Abdul Shakoor's case. As already noted herein above, this Court specifically referred to those observations in Abdul Subban's case (supra) which had interpreted Section 14 (iii) of the Central Sales Tax Act to mean that hides and skins whether dressed or raw were single commodity and this observation was disapproved when at page 228 this Court observed in Abdul Shakoor's case that "no reason is given why the two kinds of hides and skins are treated as a single commodity". The Court was called upon to refer to the provisions of Section 5 Clause (vi) of the Madras General Sales Tax Act, 1959 which related to the levy of tax on the sale of hides and skins and which read as follows:

> "Subject to such restrictions and conditions as may be prescribed, including conditions as to licences and licence fees.....
>
> (vi) The sale of hides and skins, whether tanned or untanned shall be liable to tax under section 3, sub-

section (1) only at such single point in series of sales by successive dealers as may be prescribed. (emphasis added) This provision was replaced by Section 5A (4) which is as under:

> "The sale of hides and skins, whether in a raw or dressed state, shall be liable to tax only at such single point in the series of sales by successive dealers as may be prescribed but at the rate of two percent on the turnover at that point." (emphasis added) The Court while interpreting the said provisions then held, as under:
>
> The real question is whether these provisions that raw hides and skins and dressed or tanned hides and skins as one class of goods for the purpose of taxation or as two different classes of goods. If they threat them as one class of goods, the contention at the time of their sale in a raw condition meets the requirements of law as hides and kins could be taxed only at a single point. If the dressed or tanned hides and skins are

not taxed at the time of their sale that does not offend against the statutory provisions. No question of discrimination arises as a sale of raw hides and skins of whatever origin, i.e., whether produced in the State or imported into the State would be equally liable to the levy of tax.

If the statute treats both these kinds of hides and skins as different commodities the provisions of sub-rule (1) of r.16 providing for the levy of tax on raw hides and skins at a certain point even in the absence of any provision for the taxation of dressed hides and skins cannot be said to be discriminatory and invalid. The articles to be taxed were not the same and the legislature could provide differently about their taxation. (emphasis added) The language of Section 14 (iii) of the Central Sales Tax Act is similarly worded as the language of aforesaid Sections 5 (vi) and 5A of the Madras General Sales Tax Act. It is while interpreting this that it was held that raw and dressed hides and skins were different articles and that is why the legislature could provide differently about their taxation. The fact that both the articles are mentioned under the same heading is also of no material consequence. After referring to Raghbir Chand Som Chand Vs. Excise and Taxation Officer (11 STC 149) wherein it was held that ginned and unginned cotton constituted one commodity inter alia for the reason that ginned and un-ginned cotton were under the same head and thereby indicating that the legislature looked upon ginned and un-ginned cotton as one and the same thing, it was held in Abdul Shakoor's case at page 229 that "The fact that certain articles are mentioned under the same heading in a statute or the Constitution does not mean that they all constitute one commodity. The inclusion of several articles under the same heading may be for a reason other than that the articles constitute one and the same thing." This means that merely being put under one head would not make two different commodities a single item for purposes of taxation.

When dressed hides and skins are different goods from raw hides and skins, we do not find anything in the language of Section 14 of the Central Sales Tax Act which can lead us to the conclusion that these two different commodities were to be regarded as constituting a single commodity for the purpose of taxation. Sections 14 and 15 of the Central Sales Tax Act have to be read together as they constitute a scheme relating to taxation of goods of special importance in inter-state trade or commerce. While Section 14 enumerates the items which are regarded as being goods of special importance in inter-state trade or commerce, it is Section 15 which imposes the restriction and conditions in regard to tax on sale or purchase of declared goods within a State.

Section 14, in other words, is not a taxing provision but it merely classified different commodities under the same species under one entry. Merely because different goods or commodities are listed together in the same sub-heading or sub-item in Section 14 cannot mean that they are regarded as one and the same item. Whenever the legislature wanted different goods placed in the same entry to be regarded as a single commodity it expressly provided for the same. By Act 103 of 1976

sub-sections (c) and (d) were inserted in Section 15 of the Central Sales Tax Act. With the introduction of Section 115 (d) "each of the pulses referred to in Clause (vi-a) of Section 14, whether whole or separated and, whether with or without husk, were to be treated as a single commodity of the purposes of levy of tax under that law." If the intention of the legislature had been that the various commodities mentioned in the same clauses in Section 14 were to be regarded as a single commodity it would have specifically provided as such. The legislature, however, chose to single out different types of pulses only to be regarded as a single commodity. Notwithstanding the fact that the raw hides and skins had been held by this Court in Abdul Shakoor's case (supra) as being distinct from dressed hides and skins the legislature did not think it appropriate to insert a clause similar to Section 15 (d) which may have had the effect of regarding raw hides and skins and dressed hides and skins as being treated as a single commodity for the purposes of levy of tax.

The words "hides and skins, whether in a raw or dressed state" in Section 14(iii) of the Central Sales Tax Act clearly seem to indicate that the legislature recognised that raw hides and skins was an item different from dressed hides and skins. As has already been noticed hereinabove it is after undergoing a manufacturing process involving various stages that raw hides and skins becomes dressed hides and skins. As observed in the State of Tamil Nadu Vs. Pyare Lal Malhotra Etc. (1976 (3) SCR 168) at page 173 that "sales tax law is intended to tax sales of different commercial commodities and not to tax the production of the 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 goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely jointed together, they may remain commercially the same goods which cannot be taxed again, in a series sales, so long as they retain their identity as goods of a particular type. In the present case dressed hides and skins is a separate commercial commodity which emerges after raw hides and skins has been subjected to manufacturing process and, therefore, Section 14(iii) deals with two different types of goods which unlike the case of pulses referred to in Section 15 (d), is not regarded by the Act as one and the same commodity.

Having come to the conclusion that raw hides and skins and dressed hides and skins are two types of commodities, it must flow therefrom that when the appellants purchased raw hiides and skins on payment of tax they would be liable to pay sales tax in respect of dressed hides and skins and such levy will not fall foul of Section 15 as the two goods are different taxable commodities. In other words the same goods would not have been taxed more than once. In our opinion, therefore the High Court was right in coming to the conclusion which it did, namely, that the sales tax authorities could levy sales tax on the sale of dressed hides and skins and that the provisions of Section 3 of the Tamil Nadu General Sales Tax (3rd Amendment) Act, 1987 are not ultra vires.

The appeals are accordingly dismissed with no order as to costs.