

Maresh Enterprises, Hyderabad Vs State of A.P.

Court: Andhra Pradesh High Court

Date of Decision: June 9, 2000

Acts Referred: Andhra Pradesh General Sales Tax Act, 1957 " Section 42
Central Sales Tax Act, 1956 " Section 14, 15

Citation: (2000) 4 ALD 329 : (2000) 4 ALT 159

Hon'ble Judges: V. Eswariah, J; P. Venkatarama Reddi, J

Bench: Division Bench

Advocate: Mr. Ch. Sreerama Rao, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

P. Venkatarama Reddi, J.

In this tax revision case arising out of the assessment made under APGST Act for the year 1985-86, the

question that falls for consideration is about the rate of tax applicable to G.I (galvanised iron) pipes and C.I (cast iron) pipes. The Sales Tax

Appellate Tribunal gave the description of the goods sold as "G.I pipes and C.I. pipes fittings". The description given by the appellate Dy.

Commissioner is "C.I. pipes and fittings". In the assessment order, G.I pipes are not shown at all as one of the items on which the dispute as to

rate of tax arises. The assessing authority described the goods as "G.I fittings." Thus, the suffix "pipes" is not found after "G.I.* in the assessment

order. Either "G.I. pipes" or "G.I. fittings" are not referred to in the first appeal order at all.

2. The Tribunal negated the contention of the appellant that "G.I. pipes" are declared goods falling under Entry 2(xi) of the Third Schedule to

APGST Act corresponding to item (ii) of Section 14(iv) of the Central Sales Tax Act. The item reads :

Steel tubes both welded and seamless, of all diameters and lengths including tube fittings

3. The Tribunal accepted the contention of State representative that they were meant to be used as water supply and sanitary fittings falling under

Entry 102 of the first Schedule which attracts tax at the basic rate of 9%. If they are treated as "declared goods" falling under Entry 2 of the third

Schedule, the goods would attract the tax at the rate of 4% only. The conclusion of the Tribunal is based on the reasoning that the G.I. pipes are

used in bathrooms, lavatories and urinals and therefore, they become a different commercial commodity other than the steel pipes. In our view, the

approach of the Tribunal is not correct. If G.I. pipes and C.I. pipes and fittings whichever are sold, can be classified as steel tubes and fittings, they

become the goods of special importance as enumerated in Section 14 of the Central Sales Tax Act. In respect of these goods which are otherwise

known as "declared goods", the rate of tax is 4%. When once they answer the description and nomenclature of "steel tubes" under the Entry 2(xi)

of the third schedule, the rate of tax applicable thereto cannot exceed 4% irrespective of the fact whether they can also be regarded as water

supply and sanitary fittings falling under some other schedule and entry. Section 15(a) of the Central Sales Tax Act enjoins that the sales tax

payable under any State law in respect of sale or purchase of declared goods inside the State shall not exceed 4% of the sale or purchase price

thereof. We find it difficult to endorse the cryptic reasoning of the Tribunal that steel tubes become a different commodity because they are used in

bathrooms and lavatories or for the purpose of water supply. The characteristics of steel tubes are not lost depending on their user if they are

otherwise steel tubes.

4. We need not dilate on this aspect further in view of the direct decision of the Supreme Court in Gujarat Steel Tubes Ltd. etc. Vs. State of

Kerala and others, The Supreme Court held that the G.I. pipes are steel tubes within the meaning" of Section 14(iv) of the Central Sales Tax Act

and a different commercial commodity does not emerge on account of galvanising the steel pipe. The contention of the petitioner should therefore

be accepted as far as this item is concerned. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. G.S. Pai

and Co., the issue was not whether the G.I. pipes can be regarded as steel tubes and should be taxed as such. The only question answered by the

Supreme Court in that case was whether the G.I. pipes would fall within the expression "water supply and sanitary fittings" within the meaning of

Entry 26(a) of the first schedule. Thus, it is not a direct decision on the point.

5. However, as indicated in the opening para of the judgment, it is not clear whether in fact the petitioner effected the first sales of G.I. pipes. We

therefore remand the case to the assessing authority to make a limited enquiry on this aspect and it is found that net turnover includes the turnover

of G.I. pipes, the rate of tax as applicable under the third schedule should be applied and the relief should be granted to the assessee accordingly.

6. The next item of dispute is rate of tax applicable to cast iron pipe fittings. The Tribunal recorded a finding of fact that the appellant sold C.I. pipe

fittings and not C.I. pipes as such. The Tribunal held that the C.I. pipes and fittings dealt with by the appellant are water supply and sanitary fittings

under Entry 102 of the first schedule and therefore affirmed the rate of tax applied by the assessing authority. The Tribunal followed the decision of

this Court in *Deccan Engineers v. State of A.P.*, 84 STC 92. The contention of the appellant assessee that they are nothing but cast iron castings

and therefore fall within the ambit of Entry 2(i) of the third schedule has not been accepted by the Tribunal.

7. Item 2(i) of the Third Schedule reads : ""Pig iron and cast iron including ingot, moulds and bottom plates

8. The view taken by the Tribunal has to be upheld in view of the subsequent decisions of the Supreme Court as well.

9. In *Bengal Iron Corpn. v. CTO* (1993) 90 STC 47 the Supreme Court held that the cast iron is different from the cast iron pipes which are

covers, bends etc., manufactured and sold by the assessee. Those products are in commercial parlance different and distinct goods from cast iron.

The broad observations in *Bengal Iron Corpn.*, case that cast iron is different from cast iron castings were explained by the three Judge Bench of

Supreme Court in *Vasantham Foundry Vs. Union of India and others*, The Supreme Court while clarifying that cast iron casting in its basic or

rough form is still "cast iron", observed thus :

But, if thereafter any machining or polishing or any other process is done to the rough cast iron casting to produce things like pipes, man-hole

covers or bends, these cannot be regarded as "cast iron casting" in its primary or rough form, but products made out of cast iron castings. Such

products cannot be regarded as "cast iron" and cannot be treated as "declared goods" u/s 14(iv) of the Central Sales Tax Act. This view is not in

conflict with the view taken in the case of *Bengal Iron Corporation* 1993 90 STC 47.

Earlier, the Supreme Court clarified;

If molten metal is poured into a mould, what comes out may be regarded as a casting. Even then such iron casting in its solid form must be treated

as "cast iron" in Section 14(iv) of the Central Sales Tax Act. To repeat, the test is whether the goods in question are being bought and sold, i.e.,

dealt with and understood, in commercial parlance as cast iron or as different goods, eg. manhole covers, pipes, motor parts, etc.

10. Thus, in both the decisions of the Supreme Court, cast iron pipes were treated as goods different from cast iron construed even in a wider

sense C.I. pipes were held to be not comprehended within the scope of the terminology "cast iron".

11. A Division Bench of this Court in *State of Andhra Pradesh Vs. Venkatesh Foundry*, also took the view that C.I. pipes etc., which are

manufactured out of the cast iron are separate commercial commodities and they cease to be cast iron under sub-item (i) of Entry 2.

12. The above decisions furnish a complete answer to the contention of the petitioner. However, the learned Counsel for the petitioner persisted in

his argument that the clarification given by the State Government u/s 42-AA of the APGST Act by G.O. 383 (Revenue) dated 17-4-1985 is

binding on the Tax authorities and they are estopped from denying the benefit flowing from the said clarifcatory G.O. It is further contended that

the clarification given in the G.O. should be given its due weight in construing the expression "cast iron" having regard to the principle of

contemporanea expositio"" it is difficult to accept this contention. By G.O. 383 Revenue dated 17-4-1985, the Government clarified that the "cast

iron castings" are covered within the term "cast iron including ingots, moulds and bottom plates (sub-item (1) of item (2) of the third schedule). It is

obvious that the said G.O. does not enumerate or elaborate what the cast iron castings are. There is no reference to cast iron pipes and the like.

As already seen, the Supreme Court held that cast iron and cast iron castings are not two different commodities. At the same time, the Supreme

Court did lay down that the cast iron casting in its basic or rough form only must be treated as cast iron. Cast iron pipes cannot be regarded as

cast iron castings, it was specifically ruled by the Supreme Court. Therefore, the clarification in the aforementioned G.O. does not lead the

petitioner any where. At any rate, on the basis of this clarification, no promise can be spelt out that the cast iron pipes and other finished products

would be subjected to tax as cast iron only. There is no scope to bring in the concept of promissory estoppel or the principle of contemporanea

expositio. We therefore find no substance in the second contention advanced by the learned Counsel.

13. In the result, the TRC is allowed partly and the matter is remanded to the assessing authority insofar as the first item is concerned. No costs.