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Andhra Pradesh High Court

Case No: TRC No. 138 of 1996

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| Andhra Steel Corporation Limited | APPELLANT |
| Vs | |
| State of A.P. | RESPONDENT |

Date of Decision: Aug. 6, 2003

Citation: (2003) 6 ALD 769 : (2004) 136 STC 504

Hon'ble Judges: Motilal B. Naik, J; Dalava Subrahmanyam, J

Bench: Division Bench

Advocate: P. Srinivasa Reddy, for the Appellant; Special Government Pleader for Taxes, for the Respondent

Final Decision: Dismissed

Judgement

Dalava Subrahmanyam, J.
This revision is directed against the order of the Sales Tax Appellate Tribunal in TA No. 509 of 1990 dated 4-3-1994 in dismissing the appeal and confirming the order of the Appellate Deputy Commissioner in disallowing the exemption claimed by the petitioner.

2. The brief facts of the case are as follows:

The petitioner-M/s. Andhra Steels Corporation Limited, Visakhapatnam is a registered dealer under A.P.G.S.T. Act (for short "the Act") dealing in all types of iron and steel products. The assessee purchased pig iron during the years 1983 to 1985 to an extent of Rs. 12,44,120/- from the registered resident dealers and manufactured ingot moulds from the said pig iron in its cast iron factory. Subsequently, the ingot moulds have become unserviceable in the year 1987-88 and they were broken and sold to resident registered dealers as scrap. The dealer claimed exemption on such sale of scrap on the ground that the pig iron from which the castings were manufactured were already suffered tax for which the Commercial Tax Officer negatived his claim on the ground that pig iron was

different commodity from cast iron scrap under Enter 2(1) of m Schedule of the Act. Against the said orders of the Commercial Tax Officer, an appeal was filed before the Appellate Deputy Commissioner who dismissed the appeal and later the matter came up before the Sales Tax Appellate Tribunal and the said appeal was also dismissed.

3. Aggrieved against the orders of the Tribunal, the revision petitioner-assessee filed the present revision contending that the Tribunal and the authorities below have committed error in not granting tax exemption as claimed by the assessee. Hence, the following questions of law would arise for consideration in this revision.

1. Whether the Sales Tax Appellate Tribunal is justified in holding that each item listed in the sub-clause to the entries to the III Schedule are to be considered as separate commodities for the purpose of single point taxation?

2. Whether the pig iron and its scrap are one and same commodity under Item 2(1) of III Schedule to the Act and if so whether the petitioner is exigible for exemption on the second sales of pig iron scrap.?

4. Points 1 and 2 : Heard the learned Counsel for the petitioner and the learned Government Pleader for Taxes. The revision petitioner-assessee is a dealer in various types of iron and steel products. The petitioner claimed exemption on turnover in sales of scrap arising out of discarded moulds which were made out of tax suffered pig iron. The Sales Tax Appellate Tribunal and the authorities below considered whether the disputed turnover consisting of sale of scrap was not exigible to tax as it arose from tax suffered material of pig iron. The disputed turnover has been described by the assessee as sale of used, broken and rejected iron casting. The assessee contended that they purchased pig iron during the years 1983-84 and 1984-85 from registered dealers and manufactured ingot moulds from the said pig iron in their casting iron factory and after they became unserviceable they have broken them and sold to the resident registered dealers. The Appellate Deputy Commissioner observed that the appellants did not adduce any proof to the effect that they have manufactured the ingot moulds from the pig iron purchased by them in the years 1983-84 and 1984-85. The ingot moulds were admittedly used all these years as materials for the manufacture of finished goods of iron and steel. The said moulds are part of equipment necessary for the manufacture of the finished goods and after having used those ingot moulds all these years, they have sold the same as iron scrap when they are not serviceable. The contention of the assessee is that the pig iron from which they manufactured the ingot moulds and the scrap now sold are single commodity and hence the sales should be treated as second sales not liable to tax.

5. The learned Advocate appearing for the revision petitioner relied on a decision in Telangana Steel Industries and others Vs. State of Andhra Pradesh and others, wherein it was held that the commodities specified in same sub-item are not

different commodities exigible for tax on second sales. The following decisions are also relied for the same proposition. K.A.K. Anwar and Company v. State of Tamil Nadu 108 STC 258 and State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, The learned Special Government Pleader contended that there are no tenable grounds to interfere with the findings of the Tribunal. The ordinary meaning to be assigned to a taxable item in a list of specified items is that each item so specified is considered as a separately taxable item for the purpose of single point taxation in a series of sales unless the contrary is shown. The object is to tax sale of each commercial commodity and not the sale of the substance out of which they are made. Each commercial commodity becomes a separate object of taxation in a series of sales of that commercial commodity so long it retains its identity as that commodity. If there is any change in the commodity, it cannot be considered as the same commodity. The principles are enunciated in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, .

6. The assessee purchased pig iron from which they manufactured the ingot moulds. The ingot moulds were themselves finished and they were used in the process to obtain finished goods of iron and steel. The identity of the pig iron was lost with the manufacture of ingot moulds. Further they are used over all these years. The said ingot moulds have become unserviceable and as such they are sold as scrap. The finished good obtained after the casting could not be treated as cast iron and therefore the ingot moulds scrap now sold by the assessee are not identical to the pig iron and therefore the contention of the assessee was rightly negatived by all authorities including the Sales Tax Appellate Tribunal. For the above said reasons, the Tribunal was justified in holding that each item listed are different entity and separate commodities for the purpose of single point taxation and the pig iron and its ingot moulds scrap are different commodities and therefore the petitioner is not entailed for exemption claimed on second sale. For the above said reasons, the Tribunal and the lower authorities have not committed any error and the order passed by the Sales Tax Appellate Tribunal is in accordance with the provisions of the Act.

7. In the result, the revision is dismissed confirming the order of the Sales Tax Appellate Tribunal in T.A. No. 509 of 1990.