

CASE NO.:
Appeal (civil) 2789 of 2002

PETITIONER:
M/s Kalidas Sheet Metal Industries P. Ltd

RESPONDENT:
State of Kerala

DATE OF JUDGMENT: 28/02/2008

BENCH:
ASHOK BHAN & J.M. PANCHAL

JUDGMENT:
J U D G M E N T

CIVIL APPEAL NO.2789 OF 2002
WITH
CIVIL APPEAL NO.4158 OF 2003

J.M. PANCHAL, J.

1. These appeals are directed against Judgments rendered by High Court of Kerala at Ernakulam in Tax Revision Case No. 467 of 2000 and 10 of 2001 by which the view taken by the Assistant Commissioner (Assessment) Sales-Tax Office Cochin and confirmed by Additional Deputy-Commissioner (Appeals) II, as well as The Kerala Sales-Tax Appellate Tribunal that the Copper Sheets and Brass Sheets in which the appellant deals fall within the ambit of Entries No. 116A and 116D which provide tax at the rate of 8% on the total turnover, of Copper and Brass respectively, is upheld.

2. The appellant company is a dealer registered under the provisions of the Kerala General Sales-Tax Act, 1963 (the 'Act' for short). It inter-alia deals in Copper Sheets and Brass Sheets. While completing the assessment for assessment years 1984-85 and 1985-86, the Assessing Officer assessed the turnover of Copper Sheets and Brass Sheets at the rate of 8% holding that the same are covered by Entries Nos. 116A and 116D of the Schedule I to the Act which provide tax on turnover of Copper and Brass respectively. The Assessing Authority rejected the claim of the appellant that copper sheets and brass sheets are unclassified items taxable at the rate of 5%. In appeals, the Deputy-Commissioner (Appeals) confirmed the rate of tax in respect of those items. Feeling aggrieved, the appellant filed second appeals before the Kerala Sales-Tax Appellate Tribunal. The Tribunal dismissed the appeals upholding the view taken by the Assessing Officer and the Appellate Authority. Thereupon the appellant invoked the revisional jurisdiction of the High Court by filing T.R.C. No.467 of 2000 and 10 of 2001. The High Court has dismissed the same by giving rise to the instant appeals.

3. This Court has heard the learned counsel for the parties at length and in great detail. This Court has also considered the documents forming part of the instant appeal.

4. The common contention of the appellant in both the appeals is that Entries No. 116A and 116D take within their

sweep only virgin copper and brass in solid form but not Copper Sheets and Brass Sheets and therefore tax at the rate of 8% on the turnover, could not have been levied.

5. In order to determine the question posed for consideration of this Court, it would be advantageous to refer to the entries in question. Aluminium, Tin, Copper, Brass etc. are classified under the general head 'Non-ferrous metals' which comprises Entries 115 to 116G. The relevant Entries read as under:-

"Non-Ferrous metals

115. Aluminium, aluminium alloys At the point of
and all articles made of aluminium first sale in
or/and aluminium alloys. the State by
a dealer who
is liable to
tax under
Section 5.

6

116. Tin including tin sheets and do.
tin plates

8

116A. Copper At the point of
first sale in
the State by a
dealer who is
liable to tax
under Section
5.

8

116B. Zinc At the point of
first sale in
the State by a
dealer who is
liable to tax
under Section
5.

8

116C. Manganese do. 8

116D. Brass do. 8

116E. Bronze do. 8

116F. Magnesium do. 8

116G. Ferrosilicon do. 8''

6. A bare perusal of the above quoted Entries makes it clear that Entry 116A deals with copper whereas Entry 116D deals with Brass. The short question which arises for determination of this Court is whether the Copper Sheets and Brass Sheets

would fall under the Entry 116A and 116D respectively. There is no manner of doubt that Copper and Brass are metals. In ordinary temperature and pressure these metals occur in solid form. The fact that commercially, these metals are produced in rolling mills in the form of sheets, circles, ingots, strips or rods is not in dispute. It is also not in dispute that copper and brass being metals in solid form, are available in the market in one of the above forms only. Therefore, the argument of the appellant that the words 'copper' and 'brass' occurring in Entry 116A and 116D would not take within its sweep Copper Sheets and Brass Sheets, cannot be accepted.

7. From the record of the case, it is evident that the appellant had relied upon Government Order dated August 4, 1982 to contend that Copper, Brass and Zinc Sheets, circles, ingots, flats and rods were treated as unclassified items and therefore would not fall within Entry 116A and 116D. On perusal of the said Order this Court is of the opinion that the clarification made by the State Government related to the position prior to 01-04-84. This clarification was with reference to Entry No. 121 which dealt with metallic products and did not relate to copper and brass sheets. Schedule I to the Act was amended by Finance Act, 1984 and along with other entries, Entries No. 116A and 116D were introduced with effect from 01-04-84 to bring in metals like copper and brass. In fact, the clarification made by the Government weakens the case of the appellant. The clarification made by the Government would go to show that Copper and Brass Sheets, circles, ingots etc. are not Copper or Brass products. If these items are not Copper or Brass products the same will have to be regarded as Copper and Brass metals falling within the ambit of Entry No. 116A and 116D.

8. The reliance placed by the learned counsel for the appellant on the decision of the Supreme Court in Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Anr. (1981) 3 SCC 578 to contend that Copper Sheets and Brass Sheets are distinct commercial items from Copper and Brass and, therefore, would not fall under Entries 116A and 116D, is misplaced. In the said case the appellant was carrying on the business of manufacturing and dealing in Aluminium metal as well as various aluminium products. The State Government had issued several Notifications from time to time which indicated that the expression 'Metal' had been generally employed to refer to the matter in its primary sense i.e. the metal in the form in which it is marketable as a primary commodity. In these circumstances, the subsequent forms evolved from the primary form and consisting distinct commodities marketable were regarded as new commercial commodities. As observed earlier Copper and Brass metals are produced in rolling mills in the form of sheets, circles, ingots, strips or rods and are available in the market in one of the above forms only as the metals are in solid form. Therefore, the principle laid down by the Supreme Court in Hindustan Aluminium Corporation Ltd. (Supra) cannot be made applicable to the facts of the instant case. This Court notices, that in the State of M.B. vs. Hiralal (1966) 2 SCR 752 this Court held that scrap iron when put through the process of re-rolling to produce attractive and acceptable forms of iron and steel in the shape of bars, flats and plates, must be regarded as continuing to be "iron and steel" for the purpose of the notification issued under the Madhya Bharat Sales Tax Act.

9. Having regard to the nature of evidence produced before the Assessing Authority in both the cases, the Court is

of the opinion that the Authorities below as well as the High Court were justified in concluding that Copper Sheets and Brass Sheets in which the appellant deals would fall within the scope of Entries No. 116A and 116D liable to be taxed at the rate of 8% of the turnover.

10. No case is made out by the appellant to interfere with the view taken by the High Court and therefore the appeals must fail.

11. Therefore, the appeals fail and are dismissed. There shall be no order as to cost.

JUDIS