CASE NO.:
Appeal (civil) 6073-74 of 1994

PETITIONER:
STATE OF BIHAR AND ORS.

RESPONDENT:
UNIVERSAL HYDROCARBONS CO. LTD. AND ANR.

DATE OF JUDGMENT: 12/08/1994

BENCH:
M.N. VENKATACHALIAH & S. MOHAN

JUDGMENT:
JUDGMENT

1994 SUPPL. (2) SCR 627

The Judgment of the Court was delivered by

MOHAN, J. Leave granted.

Respondent No. 1 is a private company. The respondent No. 2 of the director-cum-shareholders.

The respondent purchases raw petroleum product. This product under goes a process of manufacture in the factory. The ultimate com-modity is Calcined Petroleum Coke (hereinafter referred to 'C.P.C').

The respondent was subject to Sales Tax under Bihar Finance Act, 1981, Act (hereinafter referred to as Finance Act) on the sale of C.P.C. as well as the Central Sales Tax Act, 1956 (hereinafter referred to as 'the Act). The respondent stated that he missed to Claim the adjustment of sales tax paid on the purchase of raw materials in the returns filed or the months of July and August, 1990. The admitted tax due thereon was paid. In terms of Section 15(b) of the act, the respondent was entitled to refund of sale tax paid under Finance Act. While filing the return for the month of September, 1990, the respondent did not pay the admitted tax of Rs. 1,96,072 but claimed refund of Rs. 5,22,728 which would be adjusted towards the admitted tax of 1, 96,072 and the balance of Rs. 3,26,656 was to be refunded on account of Bihar Sales Tax paid on the direct raw materials purchased for the months of July, August and September, 1990.

The application for refund was considered by the Assistant Commissioner and the same was dismissed since the claim for refund was against law. By order dated 8.1.1990, a penalty of Rs. 9,852.85 was imposed. Against this order, respondent preferred C.WJ.C. No. 7549/90.

Thereafter the respondent filed an application of refund for Rs. 19,22,340.12 for the period 1985-86 and Rs. 17,65,987.01 for the period 1986-87 under Section 15(b) of the Act read with Rule 35 of Bihar Sales Tax Rules 1983. By notice dated 2.2.1991, the dealers was called Upon to substantiate his claim. While that application was pending, he preferred C.W.J.C. No. 5813/91 before the High Court of Patna. While disposing of the writ petition, the High Court Ordered 5.9.1991 to consider the claim of refund and pass orders. On a consideration of the matter, the Joint Commissioner by order dated 16.12.1991 rejected the claim. Thereupon, the respondent preferred C.WJ.C. 415 of 1992.

Both C.W.J.C. Nos.7549/90 and 415/92 came to be disposed of under a common order dated 10.4,92 which impugned in this civil appeal. Ac-cordingly, the writ petitions were allowed.

The High Court set aside the findings of the Joint Commissioner in so far as he held that R.P.C. and C.P.C. though different commercial commodities, are declared goods under Section 14(l-a) of the Act. The petition was liable to be reject on the ground that raw petroleum coke has undergone a process of manufacture. On this line of reasoning, the High Court took the view that C.P.C. is a form of R.P.C. and, therefore, petitioners before it, would be entitled to exemption/reimbursement under Section 15(b) of the Act.

In this civil appeal before us, the only contention urged by the State of Bihar is that no doubt the entry under Section 14 (1-a) of the Act says 'Goal', including Coke in all its forms, but excluding 'charcoal'. Having regard to the ruling of this Court in State of Tamil Nadu v. Pyare Lal Malhotra, ATR (1976) SC 800 it should be held if R.P.C. has undergone a process of manufacture which ultimately results in C.P.C., it is a different product for the purpose of taxation. In the field of taxation, the State has a wide choice in choosing the object of taxation. In this ease, one added feature is that for the purpose of excise duty, R.P.C. is treated different than C.P.C. both the products being subject to separate excise duty. Therefore, it is prayed that the judgment of the High Court be set-aside and the order of the Joint Commissioner be restored.

In opposition to this, the learned counsel for the respondents urges that there is a wide distinction between entry under Section 14(l-a) of the Central Salts tax relating to cock in aft forms an Section 14(iv) iron and steel, 'that is to say". Because of this peculiar phraseology ''that is to say', the riding of Pyare Lal case (supra) came to be so-laid down. But here, there is no such difficulty, having regard to the nature of the entry, the same principle same to be adopted with regard to "oil and seeds" in Sait Rikhaji Furtamal and another V. State of Andhra Pradesh, [1991] Supp, 1 SCC 202. As a matter of fact, India Carbon Ltd, v. Superintendent of Taxes, Gauhati and others, AIR (1972) SC 154 fully supports the stand of the respondents. The High Court was justified in relaying on this ruling. This decision also refers to Pyare Lai's ruling (supra).

Further, in State of Tamil Nadu v. Mahi Traders, [1989] 1 SCC 724 in relation to Hides & Skins, at page 734 the test of different commercial commodities has been categorically rejected.

In other to appreciate this controversy, we will now refer to the relevant provisions of the Act,

Section 14 of the Act catalogues certain goods of special importance in inter-state trade or commerce. They are commonly called 'declared goods'. Item (i-a) read as follows:

"Coal, including Coke in all its form, but excluding charcoal:

Provided that during the period commencing on the 23rd day of February 1967 and ending with the date of Commencement of Section 11 of the Central Sales Tax (Amendment) Act, 1972 (61 of 1972), this clauses shall have effect subject to the modification that the words "but excluding charcoal" shall be omitted."

The object of classifying the goods as 'declared goods' can be gathered from Section 15 of the Act. This Section imposes restrictions and conditions with regard to tax on sale an purchase of declared goods' within a State. Clauses (a) & (b) of the said Section read as follows:

"The tax payable under that law in respect' of any sale of purchase of such goods inside the State shall not exceed (four per cent) or the sale or purchase price thereof, and such tax shall not be levied at more than on stage;

Where a tax has been levied under that law in respect of the Sale of

purposes inside the State of any declared goods and such goods are sold in the course of inter- state trade of commerce, and tax has been paid under this Act in respect of the sale of much 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."

In the instant case, the respondent purchases R.P.C. and after sub-jecting that to a process of manufactures C.P.C. is produced. When exemption was sought to be claimed on the ground that both these items will fall under Section 14(l-a) of the Act, that was rejected by the Joint Commissioner. He took the following view:

"It is not disputed that the Raw Petroleum Coke and the Calcined Petroleum Coke, though different commercial com-modities are both declared goods. In order to entitle inter State Sale of such goods to avail the benefit of Section 15(b) of the Central Sales Tax Act, the same goods as subjected to inter State levy of tax must be sold in course of inter-State trade or commerce. The expression 'such goods used in section 15(b) quoted above and underlined by me is very significant in the matter.

Once the particular goods which had earlier been subjected to inter-State tax in the State was again put to a process of manufacture, it loses it original identity and emerges as another from of finished product though still remaining a declared goods. The cite an example, case of steel scrap of billets rolled into different kinds of steel materials may be taken. When these are purchased as raw materials within a State after being subjected to State Tax at 4 per cent being declared goods and are then rolled into rods, channels, wire etc., they become different commercial commodity though still remaining declared goods as defined under Section 14 of the Central Sales tax Act, In the instant case, the Raw Petroleum Coke, a declared good is put tot he process of production by the dealer in his factory called Universal Hydrocarbons Co. Pvt. Ltd. and another commercial commodity, namely, calcined petroleum coke, again a declared goods in terms of Section 14 (la) is produced. Therefore, the original identity of Raw Petroleum Coke is lost and than Calcined Petroleum Coke is the outcome of the process of manufacture.'

In supporting the reasoning, reliance is placed on Pyare Lal's case (supra). The ultimate finding given by him is as under :

"That though Raw Petroleum Coke and Calcined Petroleum Coke/both commodities are declared goods under Section 14(l-a) of the Central Sales Tax Act in the light of judgment of the Hon'ble Supreme Court in the case of India Carbon Co. dated 18.8.1997 for the purposes of sales tax they are two separate commercial commodities.

That the raw Petroleum Coke has riot been sold in course of Inter-State trade or commerce in the Same Fonns in terms of Section 15(b) of the Central Sales Tax Act rather it has undergone a process of manufacture in a factory and the commodity turned but thereby is Calcined Petroleum Coke which is a different Commercial commodity proved by levy of separate central excise duty at both the: points of production of raw petroleum Coke and Calcined Petroleum Coke."

In rendering this finding reliance is placed on the purchase bills, sales bills and registration certificate.

The High Court in the Impugned judgment considered the scope of the phrase 'that-is to say. Thereafter it proceeded to hold that C.P.C. is a form of R.P.C. and, therefore, the exemption under Section I5(b) of the Act would be available;

We have already referred to entry relating to coke occurring under Section

14(l-a) of the Act. When the entry says 'coke' in all its forms', there is no possibility of bringing coke of different forms except under this entry. The Joint Commissioner has clearly held that both Raw Petroleum Coke and Calcined Petroleum Coke, though different commercial commodities are 'declared goods'. However, he held that by process of manufacture, Raw Petroleum Coke has lost its original identity and has resulted in a new product, namely, Calcined Petroleum Coke. Therefore, according to him, the benefit under Section I5(b) of the Act could be availed of only If the same goods are subject to inter-State levy of tax. He opined the use of words 'such goods' under Section 15(b) of the Act are of significance.

We are totally unable accept this line of reasoning. Once the entry is "coke in all its forms" irrespective of the Raw Petroleum Coke loses its original identity or in the process of manufacture Calcined Petroleum Coke is produced, cannot take Calcined Petroleum Coke out of the purview of this entry. In more of less identical situation, this Court held in India Carbons; case (supra) that Petroleum Coke is one form the coal governed by the expression 'coal' within Sections 14(l-a). The relevant extract of the judgment is as under:

"It is not disputed that petroleum coke is covered by Clauses(i) of Section 14 which reads 'coal including coke in all its forms" the State was not competent to levy tax at a rate exceeding the one given in Section 15 (a) of the Central Act.

The High Court was of the view that the word 'coal' includes coke in all its forms in clause (i) of Section 14 of the Central Act and must be taken to mean coke derived from coal. In other words it must be coke, which had been derived or acquired from coal by following the usual process of heating or burning. The contention, therefore, of the appellant was negatived that petroleum coke was covered by the aforesaid provision of the Central Act."

This decision fully supports the respondent. The fact that Calcined Petroleum Coke is a different commodity is of little consequence. In interpreting the scope of Hides and Skins which fail under Section 14(i) (iii) of the Act, this Court in Mahi Traders -case (supra) held at pages 734-35 as under :

"According to him the products purchased and sold are not different even under the classification by way of the dichotomy between raw and dressed hides and skins under the Tamil Nadu General Sales Tax Act. Under the Central Sales Tax Act, the appellant is in a much better position, because all the hides and skins are brought together in one entry, Whether raw or dressed, the product falls; under the same entry.

The operations involved in leather manufacture however fall into three groups. Pre-tanning operations includes soaking, liming, de-liming, bating and pickling, 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 arid 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 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 supplied)

This is enough to conclude the case against the appellant. However, since reliance is placed on Pyare Lal Malhotra's case (supra), we have to make a brief reference to the same. That case dealt with the scope of the entry 14(iv) of the Act, Iron and steel 'that is to say". The interpretation of this phrase 'that is to say" loomed large. It was held in paragraph 13 & 14 as under:

"It is true that the question whether goods to be taxed have subjected to a manufacturing process so as to produce a new marketable commodity, is the decisive test in determining whether an excise duty is leviable or not on certain goods. No doubt, in the law dealing with the sales tax the taxable event is the sale an not the manufacture of goods. Nevertheless, if the question is whether a new commercial commodity has come into existence or not, so that its sale is a hew taxable event, in the Sales Tax law, it may also become necessary to consider whether a manufacturing process, which has altered the identity of the commercial com-modity, has taken place. The law of sales tax is also concerned with "goods" of various descriptions. It, therefore, becomes necessary to determine when the cease to be goods of one taxable description and become those of a Commercially different category and description,

It appears to us that the position has been simplified by the amendment of the law, as indicated above, so that each of the categories falling under "Iron and Steel" constitutes new species of commercial commodity more clearly now. It follows that when one commercial commodity is transformed into another, it be-comes a separate commodity for purposes of sales tax."

The position hereis entirely different. There is no such phrase under Section 14(ia) of the Act. In the case of 'Oil' an seeds' occurring under namely, 'that is to say' occurs. This Court in State of A.P, (supra) held in paragraph 4 as under :

"Mr. Rangam appearing in support of the appeals contended that there was a circular of Government of India with reference to the provisions of the Central Sales Tax Act as to what would be included within the meaning of oil seeds and all the five items referred to here were included in the circular as being oil seeds. It is difficult for us to accept his submission that after the Act has been amended reliance is available to be placed on the circular. On the basis of the test indicated by this Court in State of Tamil Nadu v. Pyare lal Malhotra, we must hold that the expression 'that is to say' employed in the definition in the statute with reference to oil seed is exhaustive and is not illustrative. Since on amendment these five items were no more included in oil seeds, the appellant is not entitled to claim the benefit,"

This vital distinction cannot be lost sight of. Therefore, the argument of the appellant has to be rejected, in the result, upholding the judgment Of the High Court, we find no merit in this appeal which is accordingly dismissed. However, there shall be no order as to costs.