

***THE HON'BLE SRI JUSTICE G. CHANDRAIAH
&
THE HON'BLE SRI JUSTICE CHALLA KODANDA RAM**

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+T.RC.Nos.71 & 91 of 2002

%23.06.2015

The State of AP, rep. by S.T.A.T, Hyderabad.

..... Appellant

And

1.M/s. Durga Enterprises, Bandar Road, Vijayawada.

.....Respondent

! Counsel for the appellant: Spl. Govt., Pleader for Taxes.

^ Counsel for respondent : Sri M.V.J.K. Kumar

< Gist:

> Head Note:

? Cases referred: 1999 (Vol.114) 550

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COMMON ORDER: (per GC,J)

Both the T.R.Cs are filed under Section 22(1) and Rule 10 of the A.P.G.S.T Act (for short "the Act"), raising the following common questions of law.

1. Whether the commodity (chair seats and back rests) Fall under Entry 17 of the Sixth Schedule or unclassified item falling in the Seventh Schedule?
2. Whether the judgment of the Hon'ble High court in the case of M/s. NOL Industries Ltd vs. State of A.P. reported in 114 STC 550 is applicable to this case?
3. Whether the S.T.A.T is justified in setting aside the orders of lower authorities by allowing both the appeals?

The facts are not in dispute. The respondent-assessee is a dealer in ply wood, chair seats and back-rests made out of ply wood. The issue involved in the present case is the chair seats and chair back rests made out of ply wood and the wood are required to be classified as commodities attracting tax under Entry 17 of the Sixth Schedule of the Act or as unclassified goods falling under Schedule 7 of the Act. Both the Assessing Officer as well as the appellate authority had classified the same as falling under Entry 17 of the Sixth Schedule of the Act. The Tribunal by placing reliance on a judgment of this Court in **N.C.L. Industries Ltd. V. State of A.P.**^[1] had held that though the seats are made out of ply wood, they do not strictly confirmed to the description of Entry 17 of the Sixth Schedule of the Act and thus held that the goods as falling under Schedule 7 as unclassified goods. It may be noted that the only difference between the Schedule 6 and Schedule 7 is with regard to the rate of tax, the goods falling under Schedule 6 of Entry 17 of Rule 6 attract a duty of 15% and whereas in the unclassified goods falling under Schedule 7 of the Act attract a duty element of 10%. In the present case, the Tribunal had taken note of the fact that the Assessing Officer himself accepting the contention of the Assessee that the chair seats though made out of ply wood, they cannot be called as ply wood as they are distinctly identifiable products. The Tribunal had also taken note of its earlier order dated 22.10.1996 in T.A.No.357 of 1993 in the case of M/s. Durga Furniture Works, Vijayawada, wherein the Tribunal had held that the table-tops, tea-poy tops and stool tops made out of ply wood are distinct goods and by undertaking a further processing of fixing of the legs, the table topes, tea-poy tops and stool tops would become commercial commodities in themselves and thus not satisfying the description of goods under Entry 114 of the First Schedule of the Act. The earlier Entry 114 of the First Schedule is slight modification came to be classified as Entry 17 of the Sixth

Schedule with effect from 01.04.1995. The Tribunal had taken note of the fact that the market recognising these products as distinct products.

We have considered the arguments of the learned counsel for the petitioners and we are of the opinion that the Common Order dated 21.08.2014 of this Court in T.R.C Nos.212 and 213 of 2001 (Mangalam Timbers Products v. State of A.P), does not support the case of the Department. The issue involved in the Mangalam Timbers Products case is whether “MDF Boards” prior to the amendment of Entry 17 by specifically bringing them into the entry could be brought under the purview of the entry 17, was the issue. Adverting to the arguments of Assessee and rejecting the argument of the Department, this Court held:

“Both the Deputy Commissioner and the Tribunal, on a detailed analysis of the relevant clauses of ISI specifications, have held that the MDF Boards fall within the ambit of Entry 114 of the First Schedule. The mere fact that Entry 17 of the VI Schedule was later amended, to bring within its ambit MDF Boards also, does not mean that it did not earlier fall within the ambit of Entry 114 of the first Schedule to the Act. What was implicit in Entry 114 of the First Schedule to the Act has, by Act 27 of 1996, been made explicit and brought under the ambit of Entry 17 of the VI Schedule. After the amendment of Entry 17 of the VI Schedule by Act 27 of 1996, MDF Boards are liable to be taxed thereunder, and not under Entry 114 of the First Schedule. However prior to Act 27 of 1996, as the MDF Boards manufactured by the petitioner were made out of wood chips, they fell within the ambit of Entry 114, and were liable to be taxed at the rate stipulated therein. The Tribunal has rightly held that the subject MDF Boards could not be held to be “general goods” under the VII Schedule. We see no error in the order of the Tribunal necessitating exercise of the revisional jurisdiction under Section 22(1) of the Act.”

In the present case, the simple test which is required to be applied is whether when asked for seat chairs and seat back rests, the

assessee could give ply wood or ply wood boards and whether the trade would accept the same. If the answer is 'yes' straight away the products would need to be classified under Entry 17. If the answer is 'no', the same would not satisfy the description of Entry 17.

In the present case, the respondent-assessee is only a dealer in the products which are manufactured by various entities. It is the basic case of the dealer that the ready made chair seats and back-rests as products are made available to the dealer for sale and they in turn sell them as such without there being any other further process and these products are distinct from the ply wood and boards etc. This aspect of the matter has not been controverted before the Tribunal and the Tribunal had based on its judgment on this crucial aspect as well. In the facts situation, the classification made with regard to the chair seats and chair back-rests are rightly classified as unclassified goods falling under the Schedule 7 as the description of the goods do not satisfy in terms of the description in Entry 17 of the Sixth Schedule of the Act.

Accordingly, both the T.R.Cs are dismissed. No order as to costs.

Miscellaneous Petitions, if any pending in these T.R.Cs, shall stand closed.

G. CHANDRAIAH,J

CHALLA KODANDA RAM,J

Date:23.06.2015.

Note:

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[1] 1999 (Vol.114) 550