HON'BLE SRI JUSTICE R. SUBHASH REDDY

AND

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

TAX REVISION CASE Nos.64, 112 & 133 of 2002

COMMON ORDER: (Per R. Subhash Reddy, J)

As these Tax Revision Cases are filed against common order dated 03.09.2001 passed by the Sales Tax Appellate Tribunal, A.P., Hyderabad, as such, they are heard together and disposed of by this common order.

2. For the sake of convenience, we refer to the facts that arise in T.R.C.No.112 of 2002.

3. The respondent, M/s. Maitreya Electricals Pvt. Ltd., is a company and repairer of failed electrical transformers belonging to A.P. State Electricity Board (APSEB) and assessee on the rolls of the Commercial Tax Officer, Auto Nagar, Vijayawada. For the Assessment Years 1990-91, 1991-92 and 1992-93, the assessing authority, i.e., Commercial Tax Officer, Auto Nagar, Vijayawada, has passed assessment order, holding that the respondent-assessee purchased aluminium wire and copper wire from outside the state and within the state and manufactured rewinding coils and replaced them in repair of failed transformers. The assessing authority has exempted turnover relating to labour charges and regarding the materials used in repairing transformers and found that most of the material is purchased within the state from registered dealers and granted exemption of such turnover relating to the second sales. He levied tax on the material, i.e., aluminium wire and copper wire which is purchased from outside the state from unregistered dealers by adding gross profit to the purchase value and arrived at the sale value on which tax is calculated.

4. The Deputy Commissioner (CT) No.II Divn., Vijayawada, in exercise of powers under Section 20 (2) of the A.P. General Sales Tax Act, 1957 (for short “the Act”), by issuing show-cause notice and after calling for explanation, has revised the assessment and levied tax on the estimated value of the rewinding coils which are made out of aluminium wire and copper wire. He added 10 per cent of the material cost of this wire and arrived at the value of rewinding coils and levied tax on the same at 11.55 per cent on the ground that rewinding coils are different goods manufactured out of raw material, i.e. aluminium wire and copper wire as the case may be. He further held that H.V. coils and L.V. coils made out of wire are transferred to APSEB in execution of works contract and repairing transformers, as such, the same is a deemed sale of H.V. and L.V. coils; therefore the turnover covering value of these coils is liable to sales tax.

5. On similar grounds, orders are revised for the three assessment years by orders dated 27.02.1998 passed in R.F.No.38, 39 and 40/97-98. Against the said three orders, the respondent-assessee filed appeals before the Sales Tax Appellate Tribunal, A.P., Hyderabad, contending that “coil” is not a different commodity from aluminium wire or copper wire. It is their case that coil is nothing but aluminium or copper wire wound into a coil and it can always be unwound and coil is not a different commercial commodity from the wire itself. It is also pleaded that there are no separate commodities called coils available in the market. It is also pleaded that though the work is referred as “replacement of L.V. and H.V. coils with new coils”, the same does not in fact amount to supply of new L.V. or H.V. coils. It is also their case that aluminium or copper wire on the coils of the failed transformer is unwound and the same is rewound with new wire for making the transformers workable and operational. Therefore, it is their case that, in any event, coil cannot be taxed as the coil is used in execution of works contract. The Tribunal, having examined the wire and also the coils physically, disagreed with the contention of the learned State representative that coil is a different commodity from the wire and allowed the appeals by the impugned order dated

23.09.2001. As against the same, these three Tax Revision Cases are filed by the State under Section 22(1) of the Act.

6. Heard the learned Spl. Government Pleader for Commercial Taxes for the petitioner and Sri G. Narendera Chetty learned counsel for the respondent-assessee.

7. It is contended by the learned Spl. Government Pleader for the petitioner, that as per the agreement entered into by the respondent-assessee with the APSEB, it is clearly indicated that goods to be supplied are L.V. and H.V. coils and not aluminium and copper wires; the respondent-assessee is issuing 'G' Forms for purchasing aluminium and copper wire to use the said material in the manufacturing process of L.V. and H.V. coils, as such, it is not open to plead that coils which are manufactured are not new commodities. It is further contended that coils which the dealers are using for repairing transformers are made out of aluminium and copper wire, as such, the Deputy Commissioner rightly added 10 per cent of the material cost and arrived at the value of the coils and levied 11.55 per cent tax on the ground that coils are different goods manufactured out of raw material.

8. On the other hand, it is contended by the learned counsel for the respondent-assessee that mere terminology in the agreement entered into by the respondent-assessee with the APSEB is not a determinative factor for the purpose of levying tax on the coils. It is further contended that in the execution of works contract, assessee requires coils for unwinding of the used coil by replacing it with new aluminium and copper wire and such material is used in execution of works contract. It is further contended that, having regard to the reasoned order passed by the Tribunal, by recording valid findings, there are no grounds to interfere with the same and as the coils are not marketable in the market, the same cannot be subjected to tax. To substantiate his contentions, learned counsel for the respondent-assessee relied on the decision of the CEGAT Special Bench 'B1', New Delhi in the case of *Punjab State Electricity Board v.*

Collector of C.Ex., Chandigarh.

9. Having heard the learned counsel for the parties, we have carefully perused the material on record and the order passed by the Deputy Commissioner (CT) No.II Divn., Vijayawada and the common order passed by the Sales Tax Appellate Tribunal, A.P., Hyderabad.

10. A perusal of the order passed by the Deputy Commissioner would indicate that he has revised the order of the assessing authority on two grounds. In the order of the Deputy Commissioner, it is stated that in the agreement entered by the respondent-assessee with APSEB, goods are mentioned as L.V. and H.V. coils, but not aluminium and copper wire. Secondly, it is stated that respondent-assessee purchased the raw material, i.e. aluminium and copper wire by issuing 'G' Forms, as such, respondent-assessee has manufactured the coil with the wire purchased by issuing 'G' Forms.

11. The appellate Tribunal, in the common order, has elaborately dealt with the matter and physically examined the samples of wire and also the coils and recorded a finding that L.V. and H.V. coil is nothing but a coil wound with wire as per the specifications of the transformer. Further, having regard to the fact that there is no dispute that a spoiled wire is unwound from the wound coil and coil is rewound by a new wire, it is held that there is no manufacturing process involved. It is further held that wire which is being used is insulated wire which can only be used for electrical purpose and is not an ordinary metal wire. Thus, it is held by the Tribunal that rewinding of coil by wire is only job work and the material used is only wire and has not resulted in any different commodity. Further, the Tribunal has also held that merely because raw material is purchased by issuing "G" Forms, that, by itself, does not *ipso facto* lead to the conclusion that there is manufacturing process involved. It is also held by the Tribunal that, whether there is any manufacturing process or not is to be determined on the facts of each case by looking at the process.

12. The only question which arises for consideration is whether

rewinding of coils by using new wire and using such coils in the transformers, will constitute manufacturing process and whether it amounts to sale of goods. In this case, the respondent-assessee has entered into agreement with APSEB to repair failed transformers by rewinding the coils. For the purpose of rewinding the coils and to replace them with new wire, respondent-assessee purchases new aluminium and copper wires and uses the same for winding the coil. Whether such activity constitutes manufacturing and results in new commodity, or not, is to be tested by looking at whether such coil is readily available in the market. If such test is applied, it is clear that there is no such new commodity which is readily available with wound coil in the market. It is not in dispute that the agreement involves repair of transformers. In the process, wire is used for winding the transformer by removing the old wire. As such, it cannot be said that the activity involves manufacturing process resulting in a new commodity. It is true, respondent-assessee has purchased aluminium and copper wire by issuing “G” Forms to the sellers. As rightly held by the Tribunal, merely because such purchases are made by issuing “G” Forms, that, by itself, is no ground to conclude that the activity of the respondent does constitute manufacturing process resulting in new commodity. If the dealer issues “G” Forms though there is no manufacturing process, it is always open to the authorities to initiate appropriate action as per law for issuing “G” Forms illegally. But, at the same time, merely because the respondent-assessee has purchased aluminium and copper wire by issuing “G” Forms, it cannot be a determinative factor to record a finding that the coils for which wire is replaced by the respondent-assessee amounts to manufacturing process resulting in a new commodity. The decision *Punjab State Electricity Board* (supra) relied on by the learned counsel for the respondent-assessee would support the plea of the respondent-assessee. In the said decision, it is held that if any item is to be considered “goods” within the meaning of the Act, they must be marketable. That is to say, they must be capable of being taken to the market for being bought and sold. It is further held therein that coil cannot be considered as goods within the meaning of the Act as the coils fabricated by the Board are used for its captive purpose. Similarly, the coils which are wound with new wire and used in the works contracts cannot be said to be new and marketable and capable of being bought and sold in the market. By applying the said analogy, we are also of the view that the said test can be applied so as to examine whether the activity of the respondent-assessee would amount to manufacturing process resulting in a new commodity. We are of the considered view that the Tribunal, in the impugned common order, has recorded correct findings by appreciating the question which fell for consideration, in a proper perspective. In that view of the matter, no case is made out for interference in exercise of jurisdiction under Section 22 of the Act.

12. For the foregoing reasons, T.R.C.No.112 of 2002 is dismissed and for the reasons alike, T.R.C.Nos.64 and 133 of 2002 are also dismissed. No order as to costs.

As a sequel, miscellaneous petitions if any pending in the T.R.Cs., stand closed.

R. SUBHASH REDDY, J

Dr. B. SIVA SANKARA RAO, J

29th September, 2015

MRR