

Indian Carbon Limited

Vs

Superintendent of Taxes, Gauhati and Others

Civil Appeal No. 1612 of 1968

(K.S. Hegde, A.N. Grover JJ)

18.08.1971

JUDGMENT

GROVER, J. -

1. This is an appeal by certificate from a judgment of the Assam and Nagaland High Court.
2. The appellant is a company incorporated under the Indian Companies Act, 1956 in the State of Assam. It started its business on November 17, 1962, for the first time. Its business includes sale and purchase of petroleum coke. Until September 1, 1964, no sales tax was levied or was payable by the company on the sale of petroleum coke because in Schedule 3 of the Assam Sales Tax Act, 1947 hereinafter called the 'Assam Act' which enumerated the goods on which tax was not payable, Entry 7 read "coal, coke and coalgas." By Amending Act 14 of 1964 the said Entry was deleted from Schedule 3 to the Assam Act with effect from September 1, 1964. By means of a letter, dated July 7, 1964, the Superintendent of Taxes, Assam, informed the company that the petroleum coke and gas were taxable at the rate of 5 nP. in a rupee under the Assam Act and directed the company to submit the return for all the periods prior to September 1, 1964 and also apply for registration under the Assam Act for the sale of petroleum coke within the State of Assam. The company preferred a petition for revision under Section 31(2) of the Assam Act challenging the order of the Superintendent of Taxes. This petition was dismissed by the Commissioner of Taxes on September 8, 1965. During the pendency of the said revision petition the Superintendent of Taxes by his letter, dated August 14, 1965, modified his earlier order to the extent that the demand was confined to the sale of petroleum coke subsequent to September 1, 1964. The company then moved the High Court under Article 226 of the Constitution which was dismissed.
3. In the writ petition as also the return filed in reply thereto and before the High Court the provisions of certain other enactments were mentioned. These were the Assam Finance Sales Tax Act, 1956 as amended from time to time and the Assam (Sales of Petroleum and Petroleum Products.....) Act, 1956 as amended. It is unnecessary to refer to their relevant provision because before us it is common ground that the tax would be payable under the Assam Act, the only question being about the rate. Under the Assam Act the rate chargeable was 5 paise per rupee. But it has been claimed on behalf of the appellant that by virtue of the provisions of the Central Sales Tax Act, 1956, hereinafter called the "Central Act," the rate at which the tax would be payable is 2 Paise per rupee.
4. Section 14 declares, inter alia, that coal including coke in all its forms constitutes goods which are of special importance in inter-State trade or commerce. Section 15(1) of the Central Act as it stood at the relevant time was in the following terms :

"Section 15. - Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely -

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed (two per cent.) of the sale or purchase price thereof, and such tax shall not be levied at more than one stage.

(b)....."

It may be mentioned that by Amending Act, 13 of 1966 three per cent. was substituted for two per cent. with effect from July 1, 1966.

5. It is not disputed that if petroleum coke is covered by clause (1) 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. Before the High Court it was common ground that petroleum coke is used mainly in industries dealing with the manufacture of carbon products and it differs in material constituents, quality, utility and composition from the ordinary coke used as fuel. It is used largely in the manufacture of dry cells, carbon electrodes and electric furnace resistance elements. Reference has also been made in the judgment to what is stated in 'Chemical Engineers Hand book', 3rd Edn., at page 1566 :

"Coke is a hard, dense, infusible carbonization residue that ranges from a dull grey-black to a silvery grey; the latter is characteristic of good quality, high temperature coke. A coke of this type makes a ringing sound when dropped or struck with a hard object. It exhibits a porous cellular structure, which primarily depends upon the kind of coal used and the rate of heating during the carbonization process."

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 negative that petroleum coke was covered by the aforesaid provision of the Central Act.

6. We are wholly unable to agree with the reasoning or the conclusion of the High Court with regard to the ambit and scope of clause (i) of Section 14 of the Central Act. The language is clearly wide and coal has been stated to include coke in all its forms. It is not denied that petroleum coke is one of the forms of coke. Therefore on a plain reading of the aforesaid clause it is incomprehensible how petroleum coke can be excluded from its ambit. It may be that the clause mentions coal only and then declares that word shall include coke in all its forms. That shows that the object of the words which follow coal is to extend its meaning. In the writ petition it was stated in Para 2 that "coke is the refuse left after destructive distillation of coal, shale or oil and is called Petroleum coke, Metallurgical coke or pitch coke, to indicate its source or origin; but all these are carbonaceous material used for the same purpose and having same properties, more or less, main being :

- Mixed Carbon, - Volatile Matters,

- Ash and - Moisture."

In the affidavit in opposition that was filed by the Assistant Commissioner of Taxes, Assam, this

statement does not appear to have been properly denied. All that has been stated in Para 5 is that the word "coke" in clause (i) of Section 14 implies coke obtained from coal only and does not include petroleum coke. The statement in the writ petition is very similar to the meaning of the word "coke" given in Webster's New International Dictionary, Vol. I which is as follows :

"The infusible, cellular, coherent residue obtained when coal is subjected to destructive distillation. It consists mainly of carbon, is hard, porous, and grey, and has a submetallic lustre. Any similar substance left as a residue when petroleum, shale oil, etc. are distilled to dryness."

Our attention has been invited by learned counsel for the State to the discussion in Encyclopaedia Britannica, Vol. 5 on coke, coking and high temperature carbonization. We do not consider that when the Parliament used the word "coke" in Section 14(i) of the Central Act it has any intention to give it a meaning other than the ordinary dictionary meaning which would cover petroleum coke. At any rate, the language employed is so wide viz., "Coke in all its forms" that petroleum coke which is a form of coke cannot possibly be excluded merely by reference to the word "Coal."

7. For the reasons given above the appeal is allowed and the judgment of the High Court is set aside. The writ petition shall stand allowed only to the extent that the State will be entitled to levy tax under the Assam Act not exceeding the rate given in clause (a) of Section 15 of the Central Act. The appellant shall be entitled to its costs in this Court.

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