

Gujarat Steel Tubes Ltd. and Others

Vs

State of Kerala and Others

Civil Appeal No. 2025-26, 2873-75, 1537 of 1986

(CJI R. S. Pathak, S. Natarajan, Sabyasachi Mukharji JJ)

05.05.1989

JUDGMENT

PATHAK, C. J. –

1. These appeals by certificate granted by the High Court of Kerala raise the question whether galvanised iron pipes and tubes are a commercially different commodity from steel tubes mentioned in Section 14(iv)(xi) of the Central Sales Tax Act.
2. The appellant is a company registered under the Companies Act, 1956. It has its registered office at Ahmedabad in Gujarat. It is engaged in the manufacture and sale of steel tubes and pipes, both black and galvanised.
3. In the assessment proceedings for the assessment years 1982-83 and 1983-84 under the Kerala General Sales Tax Act, 1963, the appellant contended that the galvanised iron pipes manufactured by it are "declared goods" and are not liable to additional sales tax as well as surcharge. The appellant's contention was not accepted by the assessing authority, who taxed the turnover of galvanised iron pipes at 4 per cent and also assessed an additional tax and surcharge treating the galvanised iron pipes as goods falling under entry 46 of the First Schedule to the Kerala Sales Tax Act. Demands were raised accordingly.
4. It appears that the matter was brought to the High Court by writ petition, and the High Court held on the basis of its decision in Apollo Tubes Limited v. State of Kerala that the category of goods called galvanised iron pipes had acquired a different commercial identity as a result of the process of galvanisation and could not be identified with steel tubes mentioned in Section 14(iv)(xi) of the Central Sales Tax Act. Cases on the other side of the line are Associated Mechanical Industries v. Commissioner of Commercial Taxes ((1986) 61 STC 225 (Kant HC)) and CST v. Om Engineering Works (1986 UPTC 55). The High Court preferred to follow its own decision and on March 24, 1986 held against the appellant. A certificate having been granted by the High Court these appeals are now before us.
5. The purpose of galvanising a pipe is merely to make it weather-proof. It remains a steel tube. By being put through the process of galvanising it is made rust-proof. Neither its structure nor function is altered. As a commercial item it is not different from a steel tube. That galvanisation is done on steel tubes or pipes as a protective measure only was the basis of the decision of the Karnataka High Court in Associated Mechanical Industries ((1986) 61 STC 225 (Kant HC)). Merely because the steel tube has been galvanised does not mean that it ceases to be a steel tube. The Gujarat High Court in State of Gujarat v. Shah Veljibhai Motichand, Lunawada ((1969) 23 STC288 (Guj HC))

held that merely because iron is given the shape of a sheet and is subjected to corrugation does not take it out of the description of "iron and steel". So also in *STC v. Jammu Iron and Steel Syndicate* ((1980) 45 STC 99 (J&K HC)) the High Court of Jammu and Kashmir held that galvanisation and corrugation do not change the essential character of iron sheets, and they remain iron sheets.

6. We are unable to agree with the view taken by the Madras High Court in *Deputy Commissioner of Commercial Taxes v. P. C. Mohammed Ibrahim Marakayar Sons* ((1980) 46 STC 22 (Mad HC)) The limited purpose of galvanisation does not, it seems to us, bring a new commodity into existence. The respondents rely on *Dy. CST v. G. S. Pai & Co.* ((1980) 1 SCC 142 : 1980 SCC (Tax) 70 : (1980) 1 SCR 938) but in that case this Court held that bullion as understood popularly does not include ornaments or other articles of gold. It was pointed out that bullion was commonly treated as a commodity distinct and separate from ornaments and articles of gold. Gold ornaments and articles were manufactured or finished products of gold. A number of other cases were cited on behalf of the respondents, but we do not find any of them to be of assistance to the respondents.

7. We are of the view that galvanised pipes are steel tubes within the meaning of Section 14(iv)(xi) of the Central Sales Tax Act. The view taken by the High Court is erroneous.

8. We may note that shortly after judgment was reserved in the present appeals, an identical point arose before a bench of this Court on April 28, 1988 in S.L.P. (Civil) No. 3549 of 1988 - *CST v. Mitra Industries* ((1988) 69 STC Note No. 55 at p. 16) and the learned Judges took the same view which finds favour with us here.

9. In the result, the appeals are allowed, the impugned judgment and order of the High Court and the order of the tax authorities in each case are set aside. The Sales Tax Officer will now proceed to re-assess the appellant in accordance with law and the observations contained in this judgment.

</html