Commissioner of Income-Tax

Vs

Krishna Copper and Steel Rolling Mills

Commissioner of Income-Tax (Addl.)

Vs

Trichy Steel Rolling Mills Ltd.

Commissioner of Income-Tax

Vs

Indian Steel Rolling.

Civil Appeal No 1404 of 1979,

(S. Ranganathan, N.D. Ojha, V. Ramaswami JJ)

12.11.1991

JUDGMENT

RANGANATHAN J. -

1. These appeals involve a common question and hence can be disposed of by a common order. The respondent-assessee are steel- rolling mills engaged in the manufacture of M. S. (mild steel) rods, bars or rounds. The question for consideration is whether they are entitled to a higher rate of development rebate specified in section 33 (1) (b) (B) (i) (a) and to relief under section 80-I (as it stood at the relevant time) of the Income-tax Act, 1961. The answer to this question turns entirely on whether the assessees are engaged in the manufacture or production of any one or more of the articles or things specified in the relevant Schedule to the Act. They claim that the articles manufactured by them fall under item No. 1 of the list of articles and things set out in the relevant Schedule which reads :

"Iron and steel (metal), ferro-alloys and special steels."

This contention was rejected by the Income-tax Officer but has been accepted by the Appellate Assistant Commissioner, the Tribunal and the High Court Hence, these appeals by the Revenue.

It has been brought to our notice that there is a difference of judicial opinion on this issue among the High Courts. The Calcutta High Court, in Indian Steel and Wire Products Ltd. v. CIT [1977] 108 ITR 802, and the Allahabad High Court, in CIT v. Kay Charan P. Ltd. [1991] 190 ITR 190, have answered the question in the negative and against the assessee. On the other hand, the Kerala High Court, in CIT v. Mittal Steel Re-rolling and Allied Industries P. Ltd. [1977] 108 ITR 207 and CIT v. West India Steel Co. Ltd. [1977] 108 ITR 601 [FB], the Madras High Court, in the judgement under appeal, reported as CIT (Addl.) v. Trichy Steel Rolling Mills Ltd. [1979] 118 ITR 39, the Punjab

and Haryana High Court, in CIT v. Krishna Copper and Steel Rolling Mills [1979] 119 ITR 256, (here under appeal) and CIT v. Ludhiana Steel Rolling Mills [1989] 180 ITR 155 (P&H), and the Allahabad High Court, in Singh Engineering Works P. Ltd. v. CIT [1979] 119 ITR 891, have taken a view in favour of the assessee. This controversy needs to be resolved.

It may be useful, at this stage, to refer to three decisions of this court and the observations which have influenced the High Courts :

(1) The first of these is State of Madhya Bharat v. Hiralal [1966] 17 STC 313 (SC). This case arose under the Madhya Bharat Sales Tax Act. Under section 5 of the said Act, two notifications have been issued. The first notification exempted from sales tax certain listed goods, one of which was "iron and steel", while the second notification specified the rates and stages for levy of sales tax on a number of articles, one of which was"... goods prepared from any metal other than gold and silver". Hiralal who owned a re-rolling mill purchased scrap iron locally and imported iron plates from outside and, after converting them into bars, flats and plates in his mills, sold them in the markets. He claimed exemption under the first of the above notifications. This claim was upheld by this court. The judgement of the court is a short one, the relevant paragraph of which reads as follows (p. 315) :

"Learned counsel for the state contends that the expression 'iron and steel' means iron and steel in original condition and not iron and steel in the shape of bars, flats and plates. In our view, this contention is not sound. A comparison of the said two notifications brings out the distinction between raw metals of iron and steel and the goods prepared from iron and steel; while the former is exempted from tax, the latter is taxed. Therefore, iron and steel used as raw materials for manufacturing other goods are exempted from taxation. So long as iron and steel continue to be raw materials, they enjoy the exemption. Scrap iron purchased by the respondent was merely re-rolled into bars, flats and plates. They were processed for convenience of the sale. The raw materials were only re-rolled to give them attractive and acceptable forms. They did not in the process lose their character as iron and steel. The dealer sold 'iron and steel' in the shape of bars, flats and plates and the customer purchased 'iron and steel' in that shape. We, therefore, hold that the bars, flats and plates sold by the assessee are iron and steel exempted under the Notification. The conclusion arrived at by the High Court is correct."

(2) The second decision referred to is Devi Das Gopal Krishnan v. State of Punjab [1967] 20 STC 430 (SC). Here, one batch of appellants before the court carried on business in rolling steels. They purchased steel scrap and steel ingots and converted them into rolled steel sections. They contended that the levy of purchase tax on the steel scrap and ingots side by side with sales tax on the rolled steel sections constituted double taxation of the same commodity contrary to the provisions of section 15 of the Central Sales Tax Act, 1956. This contention was rejected. It was held that the process by which the steel scrap (or ingot) lost its identity and became rolled steel sections was a process of manufacture and that, since the goods purchased and those sold were different, no question of double taxation arose.

(3) The third decision, Hindustan Aluminium Corporation Ltd. v. State of U. P. [1981] 48 STC 411 (SC), involved the interpretation of certain notifications issued under section 3A (2) of the U. P. Sales Tax Act, 1948. The two notifications with which the court was concerned prescribed rates of tax at which certain goods were taxable. Item No. 6 in the notification of 1973 described the goods as (at p. 413) :

> "All kinds of minerals and ores and alloys expect copper, tin, zinc, nickel or alloys of these metals only."
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> Item No. 1 of the second notification reads (at p. 413) :
>
> "All kinds of minerals, ores, metals, and alloys including sheets and circles used in the manufacture of brassware and scrap containing only any of the metals, copper, tin, zinc, or nickel expect those included in any other notification issued under the Act."

The appellant corporation which carried on the business of manufacturing and dealing in aluminium metal and various aluminium products, claimed the benefit of these notifications for its products. The High Court held that, while aluminium ingots, wire bars and billets would fall in the category of "metals and alloys". Such rolled products included plates, coils, sheets, circles and strips. The extrusions were manufactured in the shape of bars, rods, structurals, tubes, angles, channels and different types of sections. This conclusion was upheld by this court. The court referred to the history of the notifications issued by the State Government from time to time in this behalf and came to the conclusion that the inference was irresistible that when such a notification referred to a metal, it referred to the metal in the primary or original form in which it was sale-able and not to any subsequently fabricated forms of the metal. The court felt that this construction was inconsistent with the scheme of the earlier notifications to which reference had been made and observed (p. 415) :

> "While, broadly, a metal in its primary form and a metal in its sub- sequently fabricated form may be said to belong to the same genus, the distinction made between the two constitutes a dichotomy of direct significance to the controversy before us."

After referring to its earlier decisions in State of M. B. v. Hiralal [1966] 17 STC 313 (SC), Devi Das Gopal Krishnan v. State of Punjab [1967] 20 STC 430 (SC) and State of Tamil Nadu v. Pyarelal Malhotra [1976] 37 STC 319 (SC), the court concluded (p. 417) :

> "We are of the definite opinion that the only interpretation possible is that aluminium rolled products and extrusions are regarded as distinct commercial items from aluminium ingots and billets in the notification issued under the U. P. Sales Tax Act."

The above decision was rendered in the context of the Sales Tax Acts and notifications thereunder. They, however, bring out two points. First, they make it clear that there is a real and clear dichotomy between "iron and steel" and "products or goods or goods made of iron and steel" and, indeed, between any metal as such and the products or goods fabricated therefrom. This is also clear from the various entries in the revalent schedules under the Income-tax Act itself. For instance, item No. 2 in the list is : "Aluminium, copper, lead and zinc (metal) ", while ingots and sheets manufactured from scrap have been held to fall outside it. See CIT v. Rashtriya Metal Industries Ltd. [1983] 142 ITR 306 (Bom), a case under the Companies (Profits) Surtax Act, 1964; Indian Aluminium Co. Ltd. v. CIT [1983] 140 ITR 114 (Cal); Jeewanlal (1929) Ltd. v. CIT [1983] 142 ITR 460 (Cal) and CIT v. Fitwell Caps P. Ltd. [1986] 159 ITR 454 (Kar). So also, item No. 7 refers, inter alia, to "cables" which is only a type of thick copper wire used for the transmission of electricity. It has been held that insulated copper wires of a type known as winding wire will not fall under item No. 7 as they are not used for above purpose and that an industry engaged in its manufacture is not an industry eligible for the reliefs of the kind presently under consideration : See Hindustan Wire Products Ltd. v. CIT [1986] 161 ITR 749 (SC). This decision is of no direct

relevance here expect to point out that no attempt was made in the case to contend that they will fall under item No. 2 of the schedule which covers the aluminium copper, lead and zinc (metal)". Item No. 11 in the schedule refers to "steel castings and forgings and malleable iron and steel castings". The expressions "casting" and "forging" refer to processes used in the manufacture or production of articles of iron and steel and also mean, particularly when used in the plural, the article produced by the process (vide : Glossary of Terms published by the Bureau of Indian Standards and relating to Iron and Steel : Part VI, "Forging"). Item No. 21 which refers to "seamless tubes" also furnishes a similar indication. There is, therefore a distinction between article or the thing referred to in the schedules as "iron and steel". Secondly, the decision in the State do M. B. v. Hiralal [1966] 17 STC 313 (SC), shows that even the expression "iron and steel" - which is wider than the expressions as we are concerned with, as it is not further qualified by the word "metal" - was held to mean iron and steel used as raw material for the manufacture of other goods. The court held that bars, flats and plates only represented such raw material in attractive and acceptable forms. Sri Gauri Shankar, for the Revenue, contended that the use of the appellation "metal" in the entry we are concerned with further restricts the nature of the qualifying industry but we are not inclined to agree. Obviously, it is not used to denote the metal in its pristine form as an ore or as an extraction from ore. In the context of a manufacturing industry it is used, we think, for emphasising the distinction between the metal used as raw material in the manufacture of various articles and the commercial articles made therefrom. We would, therefore attach the same meaning to the expression as Hiralal's case [1966] 17 STC 313 (SC) did. In that case, the court held that the bars, flats and pieces turned out by the assessee from the scrap metal were not products manufactured from the raw material but only represented the raw material rolled out in attractive and acceptable forms. Per contra, in Devi Das Gopal Krishnan [1967] 20 STC 430 (SC), rolled steel sections were held to be products manufactured from steel scraps and ingots. But that will not be conclusive here because the relevant provision here contemplates something manufactured out of iron ore or iron scrap. The question really, therefore is : having M. S. bars, rods and rounds represent the raw material for the manufacturing of articles of iron and steel or they themselves articles made of iron and steel ?

For deciding the above issue, learned counsel on both sides have placed before us a good deal of literature about the iron and steel industry as well as the glossary of terms used therein :

> (a) A succinct summary of the processes involved, illustrated by a figurative chart, is given in the way very first page of The Making, Shaping and Treating of Steel, edited by Lankford and others (10th Edition), page 1. It is unnecessary to set out the process in detail except to note than molten pig iron coming out of the blast furnace and iron scrap are fed into steel-making furnaces wherefrom by a basic oxygen process or electric process or open-hearth process, molten steel is ladled out into moulds to form ingots. There are three stages in the manufacturing of steel :
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> (i) the first stage when ingots are obtained by tapping and then teeming the molten steel into rectangular moulds;
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> (ii) the second stage where semi-finished steel is cast in the form of blooms, billets and slabs by reheating the ingots to an appropriate temperature and rolling or forging them into shapes; and
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> (iii) the production from blooms, billets and slabs - again by processes of hot-rolling, cold-rolling, forging, extruding, drawing, etc. - of finished steel products : bars, plates, structural shapes, rails, wire, tubular produces, coated and uncoated sheet steel etc., all in the many

forms required by users of steel.

The third of the processes involves heating the blooms, billets and slabs in heating furnaces and then processing them through various types of mills :

#(i) Structural mills : for obtaining structural shapes like beams, angles, tees, zees, channels, piling, etc.;(ii) Rail mills : for producing standard rails, crane rails and joint bars;(iii) Bar mills : for producing bars which may be flat, round, half-round, triangular,square, hexagonal or octagonal;(iv) Seamless pile mills, : for producing pipes and tubesskelp mills and continuous and other tubular products;Buttweld pipemills(v) Plate mills : for manufacturing plates; and(vi) Hot strip mills and cold : for producing sheets, strips andreduction mills coils.##

(b) The Explanatory Notes to Chapter 72 (Iron and Steel) of the Harmonised Commodity Description and Coding Nomenclature (NCCN) are also on the same lines. The chapter covers ferrous metals (pig iron, spiegeleisen, ferro-alloys and other materials) as well as certain products of the iron and steel industry (ingots and other primary products and the principal products derived therefrom) of iron or non- alloy steel, of stainless steel and of other alloy steel. It is pointed out that iron ore, waste, scrap metal, pre-reduced iron ore and other ferrous waster are converted by reduction in blast furnaces or electric furnaces into pig iron or sponge iron or lump iron. Electrolysis or other chemical processes are used only when iron of exceptional purity is required for special use. Most of the pig iron is converted into steel in steel works but some are used in foundries (iron works) for manufacture of ingot moulds, cast iron tubes and pipes and castings and the remainder are cast into the forms of pigs or blocks, in casting machines or sand-beds or produced in the form of irregularly shaped lump (plate iron) or granulated. Pig iron, cast iron, sponge iron, waste and scrap constitute the primary steel-making materials. Steel-making processes are either pneumatic or hearth processes and the steel produced by these and other processes are classified in various ways. Although molten steel may be cast (in foundries) into its final shape in moulds (steel castings), most molten steel is cast into ingots in moulds. At the casting, pouring and solidification stages, steel is classified as "rimming" or effervescent, "killed" or non-effervescent and "semi-killed" or balanced steel. After they have solidified and their temperature has been equalised, the ingots are rolled into semi-finished products (blooms, billets, rounds, slabs, sheet bars) on primary cogging or roughing mills (blooming, slabbing, etc.) or converted by drop hammer or on a forging press into semi-finished forgings. Semi-finished products and, in certain cases, ingots are subsequently converted into finished products. These may be flat products (such as wide flats, universal plates, wide coil, sheets, plates and skelps) or long products (such as bars and rods, not rolled, in irregularly wound coils, other bars and rods, angles, shapes, sections and wire). These products are obtained by plastic deformation, hot or cold. The hot processes are hot-rolling, forging or hot-drawing and the cold processes are cold-rolling, extrusion, wire-drawing, bright drawing, centreless grinding or precision turning. The chapter proceeds to classify the various products in considerable detail.

(c) Reference has also been made to the tariff classifications under the Central Excises and Salt Act, 1944, and the Central Excise Tariff Act, 1975. Our attention was also invited to the Specification and Glossary, prepared for the Bureau of Indian Standards by expert "Products Sectional Committees" on the subject of iron and steel. Extracts were also furnished from the New Encyclopedia Brittanica Macropaedia (15th Edn. Vol. 21) Webster's Third New

> International Dictionary, the Encyclopaedia of Chemical Technology by Kirk Othmer (3rd Edn. Vol. 21) and a book on Small-scale Steelmaking by R. D. Walker. We do not, however, propose to discuss these extracts and definitions as we do not think that they can assist us in coming to any conclusion on the issue before us.

Basically, the argument of counsel proceeded on the following lines :

> Sri Ramachandran, learned counsel appearing for the assessee, contends that, in the steel making industry, the manufacture of ingots, billets, blooms, etc. represents only an intermediate stage at which the iron and steel metal becomes semi-finished steel. The semi-finished steel is converted into plates, bars or rods which are described as "finished steel". According to him, the bars, rods and rounds continue to be iron and steel in a finished form. It is only finished steel that is subsequently used to manufacture, by various processes such as rolling, cutting, shearing, forging, hammering and so on into various kinds of products, which can be described as products of iron and steel in contrast with "iron and steel (metal)", the item covered under the relevant entry of the Schedules. He also draws our attention to decision of the Calcutta High Court in Indian Aluminium Co. Ltd. v. CIT [1980] 122 ITR 660, where, while following the earlier decision in Indian Steel and Wire Products Ltd. v. CIT [1977] 108 ITR 802, the court observed that there is really no divergence in view between the Calcutta and the Kerala views and that the real question for consideration in each case is whether the articles in question constitute finished products and represent articles of iron and steel or merely represent the raw material, viz. iron and steel (metal) in a different form and shape.

On the other hand, Dr. Gauri Shankar, learned counsel for the Department, submits that iron and steel ceases to be a metal when it comes out of the furnace in the primary steel mills in the form of ingots. At best, the next stage at which the ingots become semi- finished products in the shape of billets, blooms and slabs may also be said only to convert the raw material into a different form or shape. But, he says, by no stretch of imagination, can the next stage during which the billets, blooms and slabs are heated and passed through various types of mills enumerated earlier be considered as involving not any manufacturer but only a conversion of the raw material into other forms or other shapes. According to learned counsel, the expression "iron and steel (metal) " only comprehends the iron and steel as it emerges in the form of billets, blooms and slabs from the steel mills and that all subsequent products whether in the form of rails, rods (including wire rods), bars, angles, channels, tees, zees, pipes, tubes, sheets, strips, plates and coils turned out by the various other types of mills would constitute articles made of iron and steel. He also invited our attention to a clarification by the Central Board of Taxes, in response to a query from the Federation of Indian Chambers of Commerce and Industry, that "rolling mills making bars and rods are not covered by item No. 1 of the Fifth Schedule".

We have considered the arguments addressed by both counsel. In our opinion, Sri Ramachandran is right in contending that, in interpreting the provisions under consideration, we would do well to keep in mind the background in which connections to certain basic industries were introduced in the Income-tax Act. The process started with the introduction of a rebate for exporters under the Finance Act of 1963 continued till 1966. The Budget Speech of the Finance Minister [vide : [1963] 48 ITR (St.) 34] indicates that the incentive was granted to assessees engaged in the manufacture of any articles in an industry specified in the First Schedule to the Industries (Development and Regulation) Act, 1951. Item No. 1 of the said Schedule reads :

#"1. Metallurgical Industries :A. Ferrous :(1) Iron and steel (metal)(2) Ferro-alloys(3) Iron and steel castings and forgings(4) Iron and steel structurals(5) Iron and steel pipes(6) Special steels(7) Other products of iron and steel.B. Non-ferrous :(1) Precious metals including gold and silver, and their alloys;(1A) Other non-ferrous metals and their alloys.(2) Semi-manufacturers and manufacturers."##

Again, in 1964, when the Finance Act of 1964 decided to grant a rebate in the corporation tax payable by companies in order to encourage development of certain industries which occupy an important place in our economy, the list of industries named in the Finance Act was similar to and included many of the items including items Nos. 1 to 3 of the list we are concerned with now. The reliefs were given to strengthen the reserves and augment the capacity of the corporate sector to develop. This process was continued under the Finance Act of 1965 : [vide [1965] 55 ITR (St.) 57 and 122] which introduced a higher development rebate for machinery or plant installed for the purposes of construction, manufacture or production of any one or more of the articles or things specified in the list in the Fifth Schedule. The Finance Act of 1966 substituted a new concession to these priority industries basic to the commercial development of the community. This historical background reflects the intention of the Legislature to grant progressively certain exemptions, reliefs or concessions for certain types of industries which were considered important for national development. The industry in iron and steel and other metals figures in all these list. The only relevance of this background to the issue before us is that it gives an indication that the incentive, concession or relief granted under these provisions has to be construed in a broad and comprehensive manner so as to cover all manufacturing activities legitimately pertaining to the specified core industry with no limitation save what may be called for by the wording of a particular entry. So far as items Nos. 1 and 2 are concerned, as earlier pointed out, the wording points to a distinction between the metal which is used as the base and other articles manufactured therefrom. We have earlier pointed out that pig iron and iron scrap are fed into furnace to produce ingots, billets and blooms. But both are iron and steel in different forms, the latter being referred to as "semi-finished steel". Likewise, we think that the bars, rods, rounds, wire rods and the like constitute the second stage in which one gets only "finished" forms of iron and steel. Having regard to the nature and weight of the metal, it has to be "finished" to assume these forms before manufacturers of iron and steel articles can take over and proceed to manufacture articles from them by drawing wires or converting them into rails or shaping them into tees, zees, pipes, tubes and the like [see CIT v. Tensile Steel Ltd. [1983] 141 ITR 223 (Guj)] or, again, producing articles of iron like ploughs, shovels, pickaxes, lathes, blowers, surface guiders and drills [as in CIT v. Ludhiana Steel Rolling Mills [1989] 180 ITR 155 (P&H)].

Whether the article produced is the raw material or an article made of iron and steel has to be decided on the basis of the nature of the article and not the kind of mill which turns it out. It is significant that these items do not draw a distinction between basic steel mills, integrated steel mills and the various other types of mills that are used in the industry which have been referred to earlier. The Board's clarification, referred to by Dr. Gauri Shankar, that the machinery and plant in "rolling mills" will not be eligible for the higher development rebate would not, therefore, seem to be justified if it intends to draw a distinction between the same machinery and plant when used in rolling mills and when used in other mills in the industry. If machinery and plant installed in steel mills where the process includes not merely the production of ingots, billets and the like but also the production of bars and rods are eligible for the higher development rebate, it is difficult to see why the same plant and machinery, when installed in rolling mills which proceed from the stage of ingots or billets to manufacture of bars and rods should not be eligible for the higher rate of development rebate. In considering the issue before us, we should not be carried away by classifications of stages

of manufacture that may be relevant for other purposes. We would like to emphasise, at the cost of repetition, that what we should examine is not the nature of the mill which yields the article but the nature of the article or thing that is manufactured and ask ourselves the question whether such article or thing can be considered as raw material for manufacture of other articles made of the metal or is it itself an article made of the metal. On this issue, our view is, as we have already stated, that the goods in the present case fall in the former category. We think that Sri Ramachandran is right in pointing out that the mild steel rods, bars or rounds which are manufactured by the assessees here are only finished forms of the metal and not articles made of iron and steel. They only constitute raw material for putting up articles of iron and steel such as grills or windows by applying to them processes such as cutting or turning. The rod or the wire rods (with which some of the decisions were concerned) are likewise not products of iron and steel but only certain finished or refined forms of the metal itself.

We do not think much assistance can be derived for the interpretation of the provision before us from the Central Excises and Salt Act or the various classifications statutorily or commercially drawn up for that purpose. They are more refined and intricate classifications for the purposes of excise duty and cannot be imported into the present context.

As we have mentioned earlier, some guidance as to the interpretation of item No. 1 to the Schedule can be derived from item No. 11, which refers to "forgings and castings". These expressions obviously refer to articles obtained from the raw material, iron and steel, by forging and casting. The argument in some of the decisions referred to before us that item No. 1 should be interpreted strictly because of the existence of item No. 11 seems to proceed on an erroneous basis. It would be more appropriate to say that the forgings and castings are not covered by item No. 1 being articles made of iron and steel but that since the Legislature definitely intended to give relief even in respect of such articles, item No. 11 (and also item No. 21) were introduced. In fact, there is some force in the contention urged on behalf of the assessees that even if MS rods, bars and rounds cannot be taken as iron and steel (metal), they would fall under the category of "forging and castings" referred to in item No. 11. We do not, however, wish to express any concluded opinion on this aspect because item No. 11 was not relied upon by the assessee at any earlier stage.

In C. A. No. 1404 of 1979, the assessee, Krishna Copper and Steel Rolling Mills, manufactured iron rods and girders out of scrap metal initially converted into billets. Before the High Court (see [1979] 119 ITR 256 (P&H)), the argument seems principally to have turned on the question whether an assessee manufacturing these articles out of iron scrap would be entitled to the higher development rebate. The assessee cited a circular of the Board that, under item No. 2 of the Schedule, the higher development rebate would be available to an assessee who manufactured articles from aluminium scrap [vide Circular No. 25D (XIX-16) dated 10th October, 1966]. The High Court, on this basis, answered the question by saying the assessee before it was also entitled to the higher development rebate though it produced articles only from iron scrap. This does not really answer the real question; but, for the reasons we have already given, we agree with the conclusion drawn by the High Court.

For the reasons stated above, we are of the opinion that the view taken by the High Courts in the present cases does not call for any interference. The appeals, therefore, fail and dismissed. But, in the circumstances, We make no order regarding costs.

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