

Vasantham Foundry

Vs

Union of India and others

Civil Appeals Nos. 2638-39 With 2640-41 of 1994

(B. P. Jeevan Reddy, S. C. Sen JJ)

09.08.1995

JUDGEMENT

SEN, J.

1. The question that falls for determination on this case is whether the 'cast iron' in the list of declared goods in the Tamil Nadu General Sales Tax Act would include 'Cast Iron Castings.'

2. The case of the appellants is that the basic raw materials for producing cast iron are pig iron, steel scrap, iron scrap, cast iron scrap etc. After melting these raw materials and adding requisite quantity of carbon, silica etc., the molten metal in the cupola furnace is poured into the moulds of different specifications to get the cast iron castings as required by the end user. The foundry owners like the appellant, manufacture rough cast iron castings according to the specifications of their customers, who in their turn manufacture manhole covers, pipes, components for automobile industry, agricultural implements, etc. For this the rough castings have to undergo machining, grinding, polishing and various other process.

3. Section 14 of the Central Sales Tax Act declared certain goods to be of special importance in inter-State trade or commerce. In the list of goods, set out in Section 14, 'Iron and Steel' has been included in the following manner:-

"14(iv). Iron and Steel, that is to say.-

- (i) Pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;
- (ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);
- (iii) skelp bars, tin bars, sheet bar, hoe-bars and sleeper bars;
- (iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);
- (v) Steel structurals (angles, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);
- (vi) sheets, hoops, strips and skelp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities in straight lengths and in coil form, as rolled and in riveted conditions;

- (vii) plates both plain and chequered in all qualities;
- (viii) discs, rings, forgings and steel castings;
- (ix) tool, alloy and special steels of any of the above categories;
- (x) steel melting scrap in all forms including steel skull, turning and borings;
- (xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;
- (xii) tin-plates, both hot dipped and electrolytic and tinfree plates;
- (xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails-heavy and light trance rails;
- (xiv) wheels, types, axles and wheel sets;
- (xv) wire rods and wires-rolled, drawn galvanised aluminised, tinned or coated such as by copper;
- (xvi) defective, rejects, cuttings or end pieces of any of the above categories;"

4. Section 15 of the Act imposed restrictions and condition in regard to sales tax on sale or purchase of declared goods within a State. By Section 15 (1) of the Act, the sales tax payable under any State law in respect of any sale or purchase of declared goods inside the State shall not exceed 4% of the sale or purchase price thereof and such sales tax shall not be levied at more than one point.

5. Section 4 of the Tamil Nadu General Sales Tax Act deals with tax in respect of declared goods and reads as follows :-

"Notwithstanding anything contained in sub-section (2) to (8) of Section 3, or Section 3-A or Section 3-B but subject to the provisions of sub-section (1) of Section 3, the tax under this Act shall be payable by a dealer on the sale or the purchase inside the State of declared goods at the rate and only at the point specified against each in the second schedule on the turnover in such goods in each year."

6. Entry 4 of the Second Schedule to the Tamil Nadu General Sales Tax Act has reproduced clause (iv) of Section 14 of the Central Sales Tax Act word for word. Clause (i) of Entry 4 of the Second Schedule to the Tamil Nadu General Sales Tax Act with effect from 1-4-1974 reads as follows :-

"(i). Pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;

(... ..")

7. There is no dispute that sub-item (i) of Item II to the Third Schedule of Andhra Pradesh General Sales Tax Act is also identically worded and provides for levy of 4% tax on such goods.

8. The case of the appellant is that before the judgment of this Court in the case of Bengal Iron Corporation v. Commercial Tax Officer, (1994) Suppl. I SCC 310 : (1993 AIR SCW 2718), cast

iron castings were treated as declared goods and tax was levied at 4% at the first point of sale in the State of Tamil Nadu. This is evident from the Commissioner of Commercial Taxes proceedings in R. Dist. AZ/3402/81 Dated 24-6-1981. It was clarified in that proceedings that the expression 'cast iron' in the list of declared goods would cover 'cast iron casting.' Rough (unmachined) cast iron castings were to be treated as declared goods under sub-item (i) of Item IV of the Second Schedule to the Tamil Nadu General Sales Tax Act.

9. Similar views were expressed by the Central Government twice in two clarificatory letters Dated February 28, 1977 and January 31, 1994, in which it was stated that 'cast iron' used in Section 14 (iv) (i) of the Central Sales Tax Act would cover 'castings of cast iron.'

10. After the judgment of this Court in the case of Bengal Iron Corporation, delivered on 27th April, 1993, a circular has been issued Dated 14th September, 1993. by the Special Commissioner and Commissioner of Commercial Taxes, Madras-V, in which it has been stated that 'cast iron castings' are liable to be taxed at the rates applicable to the products according to their classification under the First Schedule to the Tamil Nadu General Sales Tax Act. The circular referred to the decision in the case of Bengal Iron Corporation (1993 AIR SCW 2718), (supra) and stated that as a result of this decision 'rough cast iron castings whether machined or unmachined' have to be treated as distinct and different from cast iron and the earlier stand that rough cast iron castings were 'declared goods' has to be reversed and tax shall be levied on cast iron castings accordingly. This circular superseded all earlier circulars and it was declared that the revised classification will take effect from 1-4-1993.

11. The case of the appellant, Vasantham Foundry, is that is it doubtful whether such clarification/circulars can have any binding effect on quasi-judicial authorities under the Sales Tax Act. But, following this circular, notices were issued by Commercial Tax Officer to various foundry owners proposing to assess to tax sales of cast iron castings at the rate of 8%. A group of writ petitions was moved by Vasantham Foundry, Coimbatore, and members of Southern Indian Engineering Manufacturers Association, Coimbatore and the Coimbatore District Tiny and Small Scale Industries Association, Coimbatore, challenging the aforesaid clarification as well as notices. All these writ petitiones were dismissed by a common order in which it was held that there was absolutely no merit in all these cases. The law as to the treatment of the cast iron castings and as to in what manner the goods by the description cast iron casting had to be treated for assessment purposes, has been declared by the Supreme Court and is binding not only on all quasi-judicial functionaries, but also upon all Courts and all persons in this country under Article 141 of the Constitution. It was held that the relevant provisions of Andhra Pradesh General Sales Tax Act were identical with those of corresponding provisions of the Tamil Nadu Act in that view of the matter, the circular issued by the State of Tamil Nadu to give effect to the judgment of the Supreme Court cannot be quashed by the issuance of a writ of certiorari as prayed.

12. The appellant has now come up before this Court and has contended that the decision of this Court in the case of Bengal Iron Corporation (1993 AIR SCW 2718) (supra) is being misconstrued and misunderstood by all the States revenue authorities. The circular issued by the Tamil Nadu Government will affect 6,000 foundries in the State. In fact, all the foundries in the country will be similarly affected by the misunderstanding of this judgment. It has been prayed that a large number of notices have been issued to individual foundry owners like Vasantham Foundry. Unless these notices are withdrawn at once, they will suffer irreparable loss or damage.

13. Before going into the controversy raised in this case, it is necessary to examine the judgment in

the case of Bengal Iron Corporation (1993 AIR SCW 2718) (supra) and decide exactly what was decided in that case. Bengal Iron Corporation, the appellant in that case, had purchased 'cast iron' and from that cast iron the appellant manufactured several goods like manhole covers, bends cast iron pipes, etc. It was pointed out in the judgment :- (at Pp. 2722-23, Pr. 6 of AIR.)

"It is thus clear that 'cast iron' is different from 'cast iron castings' manufactured by the appellant. 'Cast iron' is purchased by the appellant and from the 'cast iron,' he manufactures several goods like manhole covers, bends, cast iron pipes, etc. In other words, 'cast iron' used in Item (iv) of Section 14 of the Central Act is the material out of which the petitioners products are manufactured. Position remains the same, even if the appellant purchases iron and mixes it with carbon and silicon thereby deriving 'cast iron' and then pours in into different moulds. In sum, 'cast iron' is different from the cast iron pipes, manhole covers, bends etc. manufactured and sold by the appellant. It cannot be denied, in such a situation that the products manufactured by the appellant are, in commercial parlance, different and distinct goods from the cast iron. Indeed this aspect is not seriously disputed by Shri Ganguli, the learned counsel for the appellant."

14. The appellant, in the instant case, has not disputed the above proposition laid down in the case of Bengal Iron Corporation (1993 AIR SCW 2718) (supra). It has been argued that if in a given case it is found that agricultural implements or parts of a motor vehicle or manhole covers, bends, or cast iron pipes are being produced in a foundry, these cannot be treated as 'cast iron,' but will have to be treated as finished goods made of cast iron. But, 'cast iron casting' at its primary stage must be treated as declared goods. When pig iron or scrap iron is melted in the foundry and mixed with carbon and silicon, it cannot be said that the molten metal was cast iron and when the molten metal is poured into a mould, it ceased to be cast iron.

15. In our judgment, this contention must be upheld. When Section 14, declared certain goods as of special importance in inter-State trade or commerce, it could not have the molten metal in contemplation. It is nobody's case that the molten metal is bought and sold in the market. What is bought and sold is cast iron, which is obtained by pouring molten metal in the moulds. The moulds may be of various shapes or sizes, but the type or nature or the size of the mould will not decide the question whether the end product will be 'cast iron' or not. Cast iron has to be in some shape, whether as a bar, as a billet or in some other form. The molten metal has to be poured into some mould to obtain 'cast iron' so that it can be traded, transported and used in obtaining finished goods out of it. It is not the shape of this rough mould that is determinative of the issue. What is determinative is whether it is finished product or only a rough mould to be used in manufacturing finished products. The fact that the rough mould approximates in shape to the finished goods that will be ultimately made out of it does not make it any the less a rough mould. What emerges from the moulds is a cast iron casting in its primary form, that is to say, rough cast iron casting. But, that will not take it out of the ambit of declared goods. If cast iron or cast iron casting in the primary form is not to be treated as declared goods, then the whole purpose of including cast iron in the list of declared goods will be defeated.

16. The Central Sales Tax Act imposed a levy of tax on sale or purchase of goods that takes place in course of inter-State trade or commerce. 'Declared goods' and 'goods' have been defined in sub-sections (c) and (d) of Section 2, of the Act :-

"(c) 'declared goods' means goods declared under Section 14, to be of Special

importance in inter-state trade or commerce;

(d) 'goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities;"

17. By including 'cast iron' among the goods of special importance in inter-State trade or commerce, the Legislature could not have given the phrase 'cast iron' a narrow and limited meaning so as to exclude everything made out of cast iron in molten form. Only some of the goods which are dealt with in inter-State trade or commerce, have been declared as goods of special importance. On these goods tax can be levied only at one point and the rate of tax will not exceed 4% of its price. It is not conceivable that molten metal can be sold or purchased in course of inter-State trade or for that matter even in course of intra-State sale or purchase. Assuming for argument's sake that a quantity of molten metal can be purchased by a customer, it can only be delivered by a foundry in a container. The molten metal will solidify on cooling and acquire the shape and size of the container. In other words, the molten metal will become rough cast iron casting. Similarly, if the molten metal is delivered in moulds, it will acquire the size and shape of the moulds as soon it cools down and will acquire the size and shape of mould. It is nobody's case that it is the molten metal which is dealt with in inter-State trade or commerce. When the Central Government declared cast iron as goods of special importance in inter-State trade or commerce, it must have in contemplation some commodity which is actually trade in inter-State trade or commerce. If rough cast iron castings are treated as something distinct and separate from cast iron, the purpose behind Sections 14 and 15 will be defeated.

18. It has been asserted on behalf of the appellant that cast iron would have to be given its natural meaning and understood in the light in which the expression has been understood by the trade for several decades. The Central Government through the Department of Revenue has issued several clarificatory letters confirming that 'cast iron' and 'cast iron castings' would mean the same item for the purpose of declaration under the Act. This contention is sought to be supported by the following statement in McGraw-Hills's Encyclopedia of Science & Technology, 7th Edition, Vol. 3:-

"Cast Iron

A generic term describing a family of iron alloys containing 1.8-4.5% carbon. Cast iron usually is made into specified shapes, called castings, for direct use or for processing by machining, heat treating, or assembly."

19. It will be seen from this that 'cast iron' and 'cast iron castings' are not being described as two different commodities. Cast iron usually is made into specified shapes or castings. This corroborates the argument urged on behalf of the appellant that cast iron can exist only in the form of cast iron castings or cast iron scrap.

'Metal Casting' has been described in McGrawHills's Encyclopedia of Science & Technology, 7th Edition Volume 11 :-

"Metal Casting

The introduction of molten metal into a cavity or mold where, upon solidification, it becomes an object whose shape is determined by mold configuration."

20. But these statements have to be understood in the context of sales tax enactment-the test being whether the basic metal remains the same after the treatment or whether commercially known different goods, emerge.. It cannot be said that cast iron after it is machined and finished and sold as different goods e. g., bends, pipes, manhole covers, motor parts, etc. will still be treated as cast iron. The test is whether the goods are being dealt with as cast iron or as different goods made out of cast iron in the market place.

21. The Encyclopedia Americana, International Edition, Volume 5, has explained 'cast iron' and 'casting' in the following manner :-

"Cast Iron : Cast iron is a general term that describes a series of iron-carbon-silicon alloys, which are produced by pouring the molten alloy into molds. In contrast with steel, in which carbon is chemically combined with the iron, cast irons contain more carbon than can be retained in solution. By varying the carbon and silicon content of the alloy several types of cast iron are produced, each with distinctive properties and uses. The production of a cast iron object, regardless of the type of iron, involves several steps."

"Casting : Casting is the process of producing a metal object of a desired shape by pouring molten metal into a mold and allowing the metal to cool and solidify. Man has been making cast metal objects for artistic or practical purposes since very early times, when the first castings probably were made of gold or copper formed in a stone or clay mold. The earliest axes and other useful metal objects were cast in open molds of stone or baked clay. Early art objects were made of cast gold, silver, copper, or bronze; one existing life-sized portrait head in cast bronze from Mesopotamia dates from about 2250 B. C.

The shaping of metals in the liquid state has been in development for centuries. With the growth of industrial societies, the need for metal castings has become very great. In the United States alone the industry produces more than 16 million tons of castings annually, using iron, steel, copper aluminum, zinc, alloys, and magnesium alloys."

22. Therefore, it appears from this that the molten form is not regarded as 'cast iron' at all according to the Encyclopedia Americana. It is produced by pouring the molten alloy into moulds. 'Casting' is also used generally to describe the process of producing a metal object of a desired shape.

23. In our judgment, the molten metal produced in a foundry cannot be described as 'cast iron.' In particular having the purpose behind Sections 14 and 15 of the Central Sales Tax Act in mind, cast iron cannot be construed to mean anything but the solidified material which is bought and sold in inter-State trade or commerce. The shape and size of the solidified materials is quite unimportant for the purpose of Section 14. If molten metal is poured into a mould, what comes out may be regarded as a casting. Even then such iron casting in its solid form must be treated as 'cast iron' in Section 14 (iv) of the Central Sales Tax Act. To repeat, the test is whether the goods in question are being bought and sold, i. e., dealt with and understood, in commercial parlance as cast iron or as different goods, e. g., manhole covers, pipes, motor parts, etc.

24. Therefore, in our view 'cast iron casting' in its basic or rough form just be held to be 'cast iron.' But, if thereafter any machining or polishing or any other process is done to the rough cast iron

casting to produce things like pipes, manhole covers or bends, these cannot be regarded as 'cast iron casting' in its primary or rough form, but products made out of cast iron castings. Such products cannot be regarded as 'cast iron' and cannot be treated as 'declared goods' under Section 14 (iv) of the Central Sales Tax Act. This view is not in conflict with the view taken in the case of Bengal Iron Corporation (1993 AIR SCW 2718) (supra), but it is in consonance with the decision in that case.

25. An argument was also made that from the very beginning when 'cast iron' was brought in the list of declared goods under Central Sales Tax Act and suitable legislation was passed by the State Government to treat 'cast iron' as declared goods and levy tax thereon at the rate prescribed by the Central Sales Tax Act and at a single point. All the State Governments have taken the view that 'rough cast iron casting' should be treated as 'cast iron.' Reliance has been placed on (i) circular Dated 5-10-79 issued by the Commissioner of Commercial Taxes, Hyderabad, Andhra Pradesh; (ii) circular Dated 24-6-91 issued by the Commissioner & Secretary Commercial Tax Department, Tamil Nadu; (iii) Memorandum of Government of Andhra Pradesh issued on 27-7-1984; (iv) clarification made by the Government of India vide its letters dated 28-2-1977 and 21-1-1984; (v) Memorandum Dated 17-4-85 issued by the Government of Andhra Pradesh; (iv) communication Memo No. 11469 C. T./7A12/88 Dated 31-7-91 issued by the Commissioner of West Bengal; and (vii) letter from the C. C. T. Andhra Pradesh Dated 12-3-92. In all these communications consistent view has been taken that 'cast iron castings' have to be treated as 'cast iron.'

26. It has been argued that the word 'cast iron' must be understood in the way the trade understands it. This understanding has been recognized and implemented by the various circulars issued by various State Governments and the Central Government from time to time in a consistent view. This meaning should not be discarded without very strong reasons. In the instant case, if the well-understood meaning is discarded and the new meaning is adopted, 6,000 foundries in the State of Tamil Nadu and thousands of other foundries all over the country will suffer irreparable loss or damage.

27. Lastly, it has been contended that the circular Dated 14-9-93 issued by the Tamil Nadu Government is based on misconception of the law laid down by this Court in the case of Bengal Iron Corporation (1993 AIR SCW 2718) (supra). The aforesaid circular reads as follows :-

CIRCULAR

Sub-TNGST Act 1959- Cast iron rough castings -clarifications regarding rate of tax - judgment of Supreme Court in the case of Bengal Iron Corporation - Revised Clarification - Issued.

Ref : 1. This Official Lr. R. Dis. A2/3492/81 Dated 24-6-1981.

2. Judgment of Supreme Court in 90 STC 47 : (1993 AIR SCW 2718).

In this office LR. No. R. Dis. A2/3492/81 Dated 23-6-81, it was clarified (in modification of all previous instructions) that rough (un-machined) cast iron castings were liable to be taxed as declared goods under sub-item 1 of item 4 of the Second Schedule.

2. The Supreme Court in the cast of Bengal Iron Corporation (90 STC 47 : (1993 AIR SCW 2718) has held that cast iron castings do not come under the definition of cast iron mentioned in item (iv) (iv) (i) of Section 14 of CAST Act, as they are manufactured from cast iron and sold. The Supreme Court has observed that cast iron

used in item (iv) (i) of Section 14 of CST Act is the material out of which the products like man-hole covers, bends, cast iron pipes are manufactured; that it cannot be denied that products manufactured are in commercial parlance, different and distinct goods from cast iron. The apex Court has gone into the clarifications issued by the Government of India at various points of time and has come to this conclusion. As a result of the judgment of Supreme Court cast iron castings (whether machined or unmanchined) have to be treated as distinct and different from cast iron. Therefore cast iron castings which are parts of machinery/automobiles etc. are to be classified under the respective main items of the first Schedule. This will also call for the levy of surcharge, additional surcharge and limit. These additional levies were hitherto not collected because rough cast iron castings were treated as declared goods. The department and the trade have been following the above clarifications that rough cast iron castings are declared goods. The reversal of this stand by the department in view of the judgment of Supreme Court has, therefore, to be given effect to from the current year only.

3. In supersession of the clarification issued by this office relating to the taxation of rough cast iron castings it is hereby clarified that such rough cast iron castings are liable to tax at the rates applicable to the products according to their classification under the First Schedule (for clarification will take effect from First April 1993). Government are being addressed for orders not to re-open past assessment involving sales of rough cast iron castings. In respect of pending assessments, revised rate of tax may be applied, but collection of difference between the tax assessed and;

4. Additional levies of surcharge, additional surcharge and additional sales tax may be deferred pending receipt of orders of waiver from Government."

28. We are of the view that there is considerable force in the contention of the appellant. The appeals are allowed. The circular Dated 14-9-93 is quashed and the impugned show cause notice issued pursuant to the aforesaid circular are also quashed, with the clarification that 'rough unmanchined cast iron castings' will continue to be treated as declared goods under sub-item (i) of Item (iv) of the Second Schedule to the Tamil Nadu General Sales Tax Act, 1959.

29. The respondents, however, will be at liberty to tax any product made out of the rough unmanchined cast iron castings in accordance with law.

30. There will be no order as to costs.

CIVIL APPEALS NOS. 2640 AND 2641 OF 1994

31. In view of our judgment in Civil Appeals Nos. 2638 and 2639 of 1994, the above appeals are also allowed. There will be no order as to costs.

Order accordingly.

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