

**SUPREME COURT OF INDIA**

Jai Vijai Metal Udyog Pvt. Ltd.

Vs.

Commissioner, Trade Tax, U.P. Lucknow

C.A.No.95 of 2009

(D.K.Jain and T.S.Thakur JJ.)

16.04.2010

**ORDER**

1. Challenge in this appeal, by special leave, is to the final judgment and order dated 12th August, 2005 rendered by the High Court of Judicature at Allahabad in Trade Tax Revision No.945 of 1998. By the impugned judgment, the High Court has allowed the Revision Petitions filed by the Commissioner, Trade Tax, U.P., Lucknow (for short "the Commissioner") against a common order passed by the Trade Tax Tribunal, Varanasi (for short "the Tribunal") in appeals preferred by the Commissioner against the order passed by the Deputy Commissioner (Appeals) in favour of the appellant (hereinafter referred to as "the Dealer") in respect of the assessment year 1988-89.

2. Briefly stated, the material facts giving rise to the present appeal are as follows:

“The Dealer, incorporated as a private limited company, is engaged in the manufacture of aluminium `properzi' redraw rods from aluminium ingots. The word `properzi' is the name of the person who had invented the process of manufacturing redraw rods. According to the Dealer, the process involves pouring of molten metal from pot room crucible directly in the melting furnace, which is then transferred to holding furnace. The material is then degassed, fed through a cast iron spout into the groove of a water cooled circular steel-casting wheel, which rotates at a slow speed.

The top portion of the grooved steel mould is covered by steel belt and during one half rotation of the casting wheel, the metal gets solidified and comes out in the form of a continuous bar of about 12 sq. cms. cross section at a temperature of 4400 to 3800 centigrade. This bar is then fed through a 13 strand `properzi' mill where the thickness of cross section is progressively reduced and finally a 9.5 mm diameter redraw rod comes out, which is then wound on the drum of a mechanical coil. The stand of the Dealer is that `properzi' rods of the size of 9.5 mm have no use in the market inasmuch as except for being used as raw material in the manufacture of wires of different sizes, it cannot be used as such for any other purpose.”

3. For the assessment years 1983-84, 1984-85, 1985-86 and 1987-88, the `properzi' rods manufactured by the Dealer were classified by the Assessing Authorities to be a metal/primary metal and were assessed at the rate of 2% plus surcharge at 10% of the said rate in terms of Entry 24 of the Schedule to the U.P. Trade Tax Act, 1948 (for short "the U.P. Act"), as inserted by Notification No.ST-II-6075/X-6(9)/83 dated 30th September, 1983. The said Entry reads as follows:

“(24) All kinds of ore, metals, scraps and alloys including sheets and circles used in the manufacture of brass wares, except those included in any other entry or any other notification issued under the Act.”

4. Similarly, for the assessment year 1988-89, with which we are concerned in this appeal, the Assessing Authority taxed the `properzi' rods at the rate of 2.2% vide order dated 19th August, 1992. However, subsequently proceedings under Section 21 of the U.P. Act were initiated against the Dealer on the ground that assessment in respect of the said assessment year had escaped assessment or had been under-assessed. The main reason for re-opening the assessment was that while assessing another dealer in the State, namely, M/s Hindustan Aluminium Corporation (hereinafter referred to as "HINDALCO"), who were also engaged in the manufacture of `properzi' rods and other products, the Assessing Officer had held that `properzi' rods were not `Metal' falling under Entry 24.

5. Thus, in the re-assessment, the Assessing Officer held that `properzi' redraw rods manufactured by the Dealer being a "rolled product" were not primary metal and being commercially different from metal, were liable to be taxed as an unclassified item at the rate of 10% in terms of Section 3A(1)(c) of the U.P. Act. The re-assessment resulted in creation of an additional demand of Rs.35,19,632/- against the Dealer.

6. Being aggrieved, the Dealer preferred separate appeals against the assessments under the Regional Sales Tax Act and the Central Sales Tax Act. Relying on the decision of this Court in Hindustan Aluminium Commissioner (Appeals), Sales Tax, Varanasi vide his order dated 11th February, 1993, allowed both the appeals. The Deputy Commissioner (Appeals) found that `properzi' rods manufactured by the Dealer were not in the final shape of finished goods and were the basic raw material for the manufacture of aluminium wires and, therefore, being a primary metal, would attract tax at the rate of 2%. Aggrieved by the said order, the Revenue took the matter in second appeal to the Tribunal which, vide order dated 27th March, 1998, dismissed both the appeals.

7. Being dissatisfied, the Revenue filed Revision Petitions before the High Court. As stated above, by the impugned order, the High Court has allowed both the Revision Petitions. Placing reliance on the decision of 1 (1981) 3 SCC 578 this Court in Hindustan Aluminium Corporation Ltd. (supra) wherein, according to the High Court, it had been held that aluminium rolled products and extrusions did not fall in the category of metal and were liable to be taxed as unclassified item, the High Court has come to the conclusion that `properzi'

rods manufactured by the Dealer are, in fact, wire bars and not wire rods, and have, therefore, to be taxed as unclassified items.

8. Aggrieved, the Dealer is before us in this appeal.

9. Learned counsel appearing on behalf of the Dealer has strenuously urged before us that the High Court has mis-directed itself in law in not only treating extrusions as similar to `properzi' redraw rods, its decision drawing a distinction between the `properzi' redraw rods manufactured by the Dealer and the same product manufactured by HINDALCO is clearly perverse. Learned counsel submits that, in fact, observations in para of the judgment in Hindustan Aluminium Corporation Ltd. (supra) show that in so far as `properzi' redraw rods are concerned, this Court has treated these rods as different from rolled products and extrusions and, therefore, affirmed the direction of the High Court to the Sales Tax Officers to re-examine the matter after making further enquiry. It is asserted that the said decision does not conclude the issue against the Dealer as pleaded on behalf of the Revenue. Learned counsel also points out that pursuant to the remand by the High Court in the case of HINDALCO, the Assessing Officer examined the entire issue afresh; by summoning the representatives of other manufacturers to understand the manufacturing process as also the commercial value, and then came to the conclusion that `properzi' redraw rod is like an ingot - a form of primary metal and, therefore, falls in the category of metal and alloy, covered under Entry 24. According to the learned counsel, the assessment made in the case of HINDALCO on remand has attained finality. It is, thus, pleaded that since the item, viz. `properzi' redraw rod manufactured by the Dealer and HINDALCO are similar, the Revenue cannot treat two dealers differently for the purpose of levying sales tax under the Regional Act as well as the Central Act.

10. Learned counsel appearing on behalf of the Revenue, on the other hand, supported the decision of the High Court and submitted that `properzi' redraw rods are manufactured from aluminium ingots and billets; being commercially different commodities, the same cannot be considered as primary metal and, therefore, these have been correctly taxed in the category of unclassified item. Learned counsel urged that after this Court had passed order on 2nd December, 2009, directing the Revenue to disclose its stand with regard to the assessment in the case of HINDALCO, assessments in the case of the said company in respect of assessment years 2003-04 to 2006-07 have been re-opened under Section 21(2) of the U.P.

11. Act and, therefore, the plea of discrimination is not available to the Dealer.

12. It is, however, conceded that in so far as assessment in the case of HINDALCO for the assessment year 1988-89 is concerned, it has attained finality and cannot be re-opened.

13. The questions falling for consideration are: (i) whether the aluminium `properzi' redraw rods can be classified as metal under Entry 24 of the aforementioned Notification dated 30th September, 1983 and (ii) when admittedly, the foundation for re-opening Dealer's assessment in respect of assessment year 1988-89 was the assessment in the case of HINDALCO, in

which case, after the remand by the High Court, assessment for that year has attained finality, can the Revenue be permitted to take a different view in the case of the Dealer from that taken in the case of HINDALCO in respect of the same assessment year? In so far as the first question is concerned, we are of the opinion that in the light of the decision of this Court in Hindustan Aluminium Company Ltd . (supra) wherein, while examining the question whether aluminium rolled products and extrusions could be described as 'Metal' under Item No.6 (as it then existed) in the Schedule attached with the U.P. Act which is materially similar to Entry 24, this Court has observed that expression 'Metal' has been generally employed to refer to the metal in its primary sense, i.e. the metal in the form in which it is marketable as a primary commodity, it is unnecessary for us to delve deep into the issue.

14. The only question for our consideration is whether the said decision 8 conclusively holds that 'properzi' redraw rods are not 'metal' in the primary form as such constituting new commercial commodity as held by the High Court. Having carefully gone through the judgment, particularly the observations in para 7 thereof, we are convinced that in so far as 'properzi' redraw rods are concerned, a distinction has been drawn by this Court between 'properzi' redraw rods and other aluminium rolled products and extrusions and precisely for this reason, the issue was kept open to be re-examined by the Sales Tax Officer after further enquiry. As noted above, learned counsel for the Revenue candidly conceded before us that in so far as assessment year 1988-89 is concerned, after fresh enquiry, the Assessing Officer treated 'properzi' redraw rods as primary metal, classifiable under Entry 24. Admittedly, this decision of the Assessing Officer was not questioned by the higher authorities and thus, attained finality. Moreover, bearing in mind the fact that the same issue has now been re-opened in the case of HINDALCO, in respect of assessment years 2003-04 to 2006-07, we feel that expression of any opinion on the issue, at this juncture, would be prejudicial to the interest of either of the parties, particularly when HINDALCO is not before us.

15. Now, coming to the second issue, it is trite that in view of the inherent complexity of fiscal adjustment of diverse elements, a wider discretion is given to the Revenue for the purpose of taxation and ordinarily different interpretations of a particular tariff entry by different authorities as such cannot be assailed as violative of Article 14 of the Constitution.

16. Nonetheless, in our opinion, two different interpretations of a particular entry by the same authority on same set of facts, cannot be immunised from the equality clause under Article 14 of the Constitution. It would be a case of operating law unequally, attracting Article 14 of the Constitution.

17. In the present case, as stated above, the basis for re-opening the assessment of the Dealer in respect of assessment year 1988-89, was the view taken by the Assessing Officer in the case of HINDALCO that 'properzi' redraw rods were not primary metal in terms of Entry 24.

18. Therefore, subsequently when on remand by the High Court as affirmed by this Court, in HINDALCO's fresh assessment in respect of the said assessment year, the said product was

held to be a `metal' falling under Entry 24, the entire foundation for re-opening of the assessment vanished.

19. Having accepted the view of the Assessing Officer in the case of HINDALCO, the Sales Tax Authorities in the State cannot be permitted to take a different stand in the case of the Dealer in respect of a similar item for the same assessment year.

20. For all these reasons, we are of the opinion that the view taken by the High Court, distinguishing the case of HINDALCO from that of the Dealer, cannot be sustained.

21. As a result, the appeal is allowed; the impugned order is set aside and that of the Tribunal is restored leaving the parties to bear their own costs.