

# ALLAHABAD HIGH COURT

Commissioner of Sales Tax

Vs

Om Engineering Works

(Anshuman Singh, CJ.)

20.11.1985

## JUDGMENT

**(Anshuman Singh, J.)**

1. These six revisions have been filed by the Commissioner of Sales Tax against the judgment dated 31st August, 1984, passed by the Sales Tax Tribunal, Meerut Bench, Meerut, relating to assessment years 1975-76, 1976-77 and 1977-78 both under the U. P. and Central Sales Tax Acts.

2. The assessee deals in pipe and pipe fittings. For the years 1975-76 and 1976-77 the original assessment orders were passed on 26th September, 1978 and for the year 1977-78 it was passed on 29th September, 1978 under Rule 41(7) of the Sales Tax Rules. The goods which were being dealt with by the assessee were held as "iron and steel" under Section 14(iv)(xi) of the Central Sales Tax Act (hereinafter referred to as the Central Act) and were taxed accordingly. Thereafter the assessments were reopened under Section 21 of the U. P. Sales Tax Act (hereinafter referred to as the Act) on the ground that the goods in which the applicant was dealing were not covered by the entry "iron and steel" under Section 14(iv)(xi) of the Central Act but were unclassified items and were liable to be taxed at the rate of 7 per cent under the Act and at 10 per cent under the Central Act. The contention of the assessee in proceedings under Section 21 of the Act that the pipe and pipe fittings were "iron and steel" was not accepted by the assessing authority and fresh assessment orders were passed. The first appeals filed by the respondent assessee before the Assistant Commissioner (Judicial) were allowed. The Revenue being aggrieved against the aforesaid order of the Assistant Commissioner (Judicial) preferred second appeals before the Tribunal which by the impugned order dismissed the appeals.

3. I have heard Sri P. K. Jain, learned counsel appearing for the department and Sri Bharatji Agarwal, learned counsel appearing for the assessee. Learned standing counsel has urged that the pipe and pipe fittings are not covered under the entry "iron and steel" and was not classified

commodity under Section 14(iv)(xi) of the Central Act and should have been taxed as unclassified commodity and the Tribunal's order is wholly illegal and erroneous. Learned standing counsel also contended that galvanised pipe fittings were liable to be taxed at the rate of 7 per cent as they are not covered under Section 14(iv)(xi) of the Central Act. On the contrary Mr. Bharatji Agarwal has invited my attention to circular No. 24/3/73 S.T. (P.T.) dated November 20, 1973 issued by the Government of India, Ministry of Finance, on the scope of the definition of the term "iron and steel" as given in Section 14(iv) of the Central Act as amended by the Central Sales Tax (Amendment) Act, 1972 relevant part where of reads:

(a) Cast iron castings manufactured after melting cast iron and cast iron scrap, may not fit in the nomenclature 'pig iron and cast iron including in gotmoulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap' used in item (i) of Section 14(iv) of the Act.

(b) G. I. Pipes : black pipe, black and galvanised pipes and tubes would fall within the scope of item (xi) of Section 14(iv), viz., 'steel tubes, both welded and seamless of all diameters and lengths including tube fittings'. Pipe fittings, tube fittings such as bends, elbows, tees and reducers would also fall within the aforesaid item (xi). However, manipulated/fabricated tubes/pipes and tubeless structurals are items which are fabricated from pipes and tubes. As such it is doubtful whether these fabricated items would fall within the scope of the said item (xi).

4. On the basis of the aforesaid circular counsel contends that galvanised pipe and pipe fittings fall within the ambit of item (xi) of Section 14(iv) of the Central Act. Learned standing counsel has contended that the circular issued by the Government of India could not be conclusive and the sales tax authorities were not bound by it. To repel the said argument counsel for the assessee has relied on a decision of the Supreme Court in *State of Orissa v. Dinabandku Sahu and Sons*<sup>1</sup>R in which it was held that though the notification issued by the Government of India has no statutory force and as such is not binding on the Sales Tax Officer. But the Ministry of Finance, Department of Economic Affairs, is intimately conversant not only with the policy of legislation for the purpose of implementation of the provisions of the Central Act but is also familiar with the nature and quality of the commodities and also their use from time to time. If, therefore, such an authority issued a notification including certain commodities under the head of "oilseeds", as defined under the Central Act, it cannot be said that the Tribunal and the High Court were not right in preferring such an opinion of the Government as good evidence for its conclusion. In view of the aforesaid law laid down by the Supreme Court the contention of the standing counsel is untenable.

5. Learned counsel for the contends that even the galvanised pipe and pipe fittings do not cease to be "iron and steel" even after galvanisation. In support of this contention he relied on a decision of the Andhra Pradesh High Court in *State of Andhra Pradesh v. Sri Durga Hardware*

*Stores*<sup>2</sup> wherein a Division Bench of that Court held that:Galvanisation is nothing but coating the iron sheet with zinc by an electrical process, or some other processes, to prevent it from oxidation. The galvanisation improves the utility of the raw material of iron. Corrugation is merely wrinkling of the sheets in one direction for the purpose of making the sheets more rigid and for giving increased stiffness so as to be more suitable for roofing and walling. Corrugation results merely in the alteration of the shape of the raw material, 'iron and steel'. Both corrugation and galvanization improve the utility of the raw material. By the process of galvanisation and corrugation, the iron and steel do not lose their essential character as 'iron and steel' when the resulting articles are sold as galvanised plain or corrugated sheets. The purposes for which the iron is used may be different from the purposes for which the galvanised plain or corrugated sheets are used, but for that mere reason it is difficult to hold that the essential character of iron has been lost. Nor is the fact that the raw material and the article resulting on processing that are sold under different and distinct names in the commercial market, would be decisive of the fact that the galvanised plain or corrugated sheets are different from iron, the raw material which still exists in them.

6. Learned counsel for the assessee in support of his aforesaid contention has also placed reliance on a Division Bench decision of this Court in *Commissioner of Sales Tax v. Tata Iron and Steel Co. Ltd*<sup>3</sup>. which relying on the aforesaid decision of the Andhra Pradesh High Court held that galvanisation and corrugation process does not change the essential character of the iron and steel. They remain iron and steel.

7. Learned chief standing counsel appearing for the department has not cited any authority in which a contrary view has been taken and has also not been able to place any material before me to take a different view.

8. After hearing the learned counsel for the parties at length and in view of the aforesaid decisions I am of the opinion that the order passed by the Tribunal is fully justified and calls for no interference by this Court.

9. In the result the revisions fail and are accordingly rejected. However, there will be no order as to costs.

#### Cases Referred.

1 AIR 1976 SC 1561  
2 [1973] 32 STC 322  
3 1975 UPTC 104