

ANDHRA PRADESH HIGH COURT

The State of Andhra Pradesh

Vs

Sri Durga Hardware Stores

(A Kuppuswami, C.J. Sriramulu, J.)

15.06.1972

JUDGMENT

Sriramulu, J.

1. These two tax revision cases give rise to a common question of law for our consideration and hence they are disposed of by a common order.
2. The State of Andhra Pradesh is the revision-petitioner in both the cases. The respondents are dealers in iron and hardware goods. While assessing the dealers to sales tax, the Commercial Tax Officer exempted the sales of (i) galvanised plain or corrugated sheets and (ii) B. P. sheets, in both the cases and of wire-nails in the first case on the ground that those commodities fell within the ambit of entry No. 2 in the Third Schedule to the Andhra Pradesh General Sales Tax Act (hereinafter called "the Act"), namely, "iron and steel" and those sales were not the first sales, but second sales.
3. In the exercise of his revisional powers Under Section 20(2) of the Act, the Deputy Commissioner of Sales Tax, suo motu, revised the assessments by withdrawing the exemption that was granted by the Commercial Tax Officer as, in his opinion, the view taken by the Commercial Tax Officer that the corrugated and B.P. sheets and wire-nails fell under the entry "iron and steel", was erroneous in law.
4. On appeals filed by the dealers, the Sales Tax Appellate Tribunal held that galvanised plain or corrugated sheets and B.P. sheets fell within "iron and steel", entry No. 2 in the Third Schedule to the Act and as the sales effected by the dealers were not the first sales, those sales were exempted from payment of sales tax. The Tribunal, however, upheld the view of the Deputy Commissioner of Sales Tax that the commodity of wire-nails did not fall within the entry "iron and steel". In other words, the Sales Tax Appellate Tribunal disagreed with the Deputy Commissioner's view in respect of the sales of the first two commodities and exempted the sales of those commodities

from tax, but, with regard to the sales of wire-nails, the Sales Tax Appellate Tribunal upheld the view of the Deputy Commissioner of Sales Tax that they were exigible to sales tax.

5. Aggrieved by the orders of the Sales Tax Appellate Tribunal, the State of Andhra Pradesh has filed these tax revision cases, raising four questions of law for our consideration. These four questions can be reframed into one question and that question is: Whether the commodities of galvanised plain or corrugated sheets and B.P. sheets fall within the ambit of 'iron and steel', i. e., entry No. 2 in the Third Schedule to the Andhra Pradesh General Sales Tax Act ?

6. Commodities mentioned in the Third Schedule to the Act are declared goods in respect of which a single point tax only is leviable Entry No. 2 in that schedule is "iron and steel". The sales of iron and steel are made taxable at the point of first sale at 0.3 paise in a rupee. The said entry defines "iron and steel" thus :

Iron and steel, that is to say,

(a) pig iron and iron scrap ;

(b) iron plates sold in the same form in which they are directly produced by the rolling mills;

(c) steel scraps, steel ingots, steel billets, steel bars and rods ;

(d)(i) steel plates,

(ii) steel sheets,

(iii) steel bars and tin bars,

(iv) rolled steel Sections and

(v) tool alloy steel, sold in the same form in which they are directly produced by the rolling mills.

7. The learned Advocate appearing for the State contended that the real test that has to be applied for determining whether galvanised plain or corrugated sheets or B.P. sheets fall within "iron and steel" within the meaning of entry No. 2 in the Third Schedule to the Act is the test of possibility of substitution of the one for the other, so far as the consumers are concerned. If there is no such possibility, it would be a different commodity, but if there is such a possibility, it would be the same commodity. For that purpose, the entries in the schedule to the Act must be construed or understood not in a technical sense but in a sense as understood in common parlance by persons who are conversant with the subject-matter with which the statute is dealing.

8. Corrugated and B.P. sheets in the commercial field are understood by business people, in

ordinary parlance, as commodities different from iron and steel. The use for which the corrugated sheets and B.P. sheets are put by the consumers is something different from the use to which iron and steel are put. The trade names under which corrugated sheets and B.P. sheets and the iron and steel are sold, are different from one another. Hence it was urged by the learned counsel appearing for the State that the Sales Tax Appellate Tribunal erred in holding that the galvanised plain and corrugated sheets and B.P. sheets fall within the entry "iron and steel". In support of this argument, the learned counsel relied upon the decisions in *State of Gujarat v. Shah Veljibhai Motichand*¹ *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola and Anr*². and *the State of Andhra Pradesh v. Satyanarayana Kaithan (P.) Ltd*³.

9. The learned counsel Sri Venkatarama Reddy, appearing for the dealers, on the other hand, submitted that iron and steel are not sold as such, but are sold in acceptable forms and shapes and merely because iron and steel are put to some process for bringing them into acceptable forms and shapes for their sales, i. e., into galvanised or B. P. sheets, they do not cease to be iron and steel. In support of his argument, the learned counsel relied upon the following decisions :

(i) *The State of Gujarat v. Sakarwala Brothers*⁴ in which the Supreme Court held that patasa, hard a and alchidana fall within the definition of "sugar";

(ii) *The State of Madhya Bharat v. Hiralal*⁵ . . , in which the Supreme Court held that bars, flats and plates fall within the definition of "iron and steel";

(iii) *Pyarelal Malhotra v. Joint Commercial Tax Officer*⁶ in which the Madras High Court held that though mild steel rounds, flats and angles manufactured from "iron and steel" scraps maybe commercially different from iron and steel scraps, still they do not cease to be "iron and steel"; and

(iv) *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool*⁷ in which the Supreme Court held that hydrogenated groundnut oil called "vanaspati" is "groundnut oil" within the meaning of Rule 18(2) of the Madras General Sales Tax Rules.

10. In order to decide the question referred to us, we must know the exact nature of the commodities known as galvanised plain or corrugated sheets and B.P. sheets.

11. Corrugated sheets are iron sheets with parallel ridges and furrows so that the cross-section is a continuous waved line. "Flat sheet metal", according to Encyclopaedia Americana, 1958 Edition, Volume 8, at page 21, "tends to buckle and get out of shape with every change in temperature. The corrugations, made in one direction, give it greatly increased stiffness and adapt it to numerous purposes for which it would otherwise be less suitable. The sheet metal is corrugated by passing between ridged rollers.... It comes out in the commercial form, and is

frequently subjected to a process of coating with zinc to protect from oxidation and is then known as galvanised corrugated iron. It is used widely for roofing and walling barns, sheds, warehouses and other buildings...."

12. Encyclopaedia Britannica, Fourteenth Edition, Volume 6, at page 471, points out that corrugating process enables much lighter gauges of sheets to be used because it makes them very rigid and portable.

13. Corrugated iron sheets are thus nothing but iron sheets-sheets of iron-corrugated, that is, wrinkled for the purpose of making them more rigid and giving them increased stiffness so that they become more suitable for roofing and walling than they would otherwise be as flat iron sheets. They are merely iron sheets with their shapes altered to make them more adaptable and useful for being used as iron sheets for roofing and walling.

14. On a difference of opinion expressed by two learned Judges, the learned Chief Justice of the Gujarat High Court in *The State of Gujarat v. Shah Veljibhai Motichand, Lunawada* [1969] 23 S.T.C. 288(Supra) agreed with the view expressed by one of the differing Judges, Mr. Mehta, that galvanised plain or corrugated sheets fall within the entry "iron and steel" under the Bombay Sales Tax Act. The definition of "iron and steel" given by the Bombay Sales Tax Act is exactly identical with its definition given in the Andhra Pradesh General Sales Tax Act.

15. The test, of substitution of the one for the other, applied by Divan, J., was not accepted by the learned Chief Justice. The learned Chief Justice observed that .It is no doubt true that iron sheets when corrugated cease to be raw materials for manufacture or fabrication of goods and they can be used only as corrugated iron sheets for roofing and walling but on that account they do not cease to be iron sheets having the essential character of iron. It may be that by reason of alteration of shape, iron sheets may cease to be usable for any purpose other than roofing or walling but they still remain iron sheets and do not lose the essential character of iron which they possessed as flat iron sheets before corrugation. The process of corrugation is one of Alteration of shape and it does not make iron sheets a different or product of iron....

16. The question as to when a commodity would lose its essential character of the raw material and becomes a different or a product of the raw material, is one of degree and where precisely to draw the dividing line is a pretty difficult task. However, the test of substitution or the user of the one for the other is not the sole criterion for holding the view that the galvanised corrugated or plain sheets are a commodity different from "iron and steel" as defined in entry No. 2 in the Third Schedule of the Andhra Pradesh General Sales Tax Act.

17. Entry No. 2 in the Third Schedule to the Andhra Pradesh General Sales Tax Act begins with

the words "iron and steel, that is to say...." Those words are of considerable importance. They are explanatory of what iron and steel is. All s enumerated under that head, either in their crude form or in their manufactured stage or in any of the forms listed under the sub-headings (a), (b), (c) and (d), are treated as various forms of iron and steel.

18. The scope and meaning of the words "that is to say" following "land" in entry No. 21 of List II of the Seventh Schedule to the Government of India Act, 1935, has been expressed by the Judicial Committee in *Megh Raj v. Allah Rakhia* A.I.R. 1917 P.C. 72 as introducing the most general concept "rights in or over land".

19. By a parity of reasoning, the words "that is to say" occurring immediately after "iron and steel" in entry No. 2 show that the Legislature intended to adopt the most general concept of iron and steel and wanted all forms of iron and steel to be brought within that entry.

20. In *Ramavatar Budhaiprasad v. The Assistant Sales Tax Officer, Akola and Anr*⁸. the dealer claimed exemption from payment of sales tax on betel leaves, contending that betel leaves fell under the entry "vegetables" which was an exempted item. The Supreme Court rejected the contention holding that :this word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It has not been defined in the Act and being a word of every day use it must be construed in its popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it'

21. A Division Bench of this Court in the *State of Andhra Pradesh v. Satyanarayana Kaithan (P.) Ltd.* [1967] 20 S.T.C. 409(Supra) held that:'manganese' does not include 'manganese ore' in the popular sense of the term, though from the scientist's point of view manganese ore may contain manganese

22. The learned Judges observed that: in interpreting items in statutes like the Sales Tax Act, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their ordinary sense.

23. In *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool*⁹ the Supreme Court had to consider whether the hydrogenated groundnut oil (commonly called "vanaspati") was "groundnut oil" within the meaning of the Rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939.

24. Before the High Court, the decision of which was the subject-matter of the appeal before the Supreme Court, the dealer had claimed deduction of the purchase price of the groundnuts from

the proceeds of the sale of all oils by the company-raw, refined and hydrogenated. Both the Tribunal as well as the learned Judges of the High Court upheld the dealer's contention in regard to the sale of refined oil, but rejected it in so far as it related to the sale of hydrogenated oil.

25. The Tribunal as well as the High Court held that the hydrogenated oil ceased to be groundnut oil by reason of the chemical changes which took place and which resulted in the acquisition of new properties including the loss of its fluidity. In other words, the High Court held that hydrogenated oil was not groundnut oil but a product of groundnut manufactured out of groundnut oil and, therefore, was not entitled to the benefit of deduction under Rule 18(2). Before the Supreme Court, the question that was raised for their decision was, whether, if beyond the process of refinement of the oil, the oil was hardened again by the use of chemical processes, it was rendered any-the-less groundnut oil? In regard to that question, the Advocate-General, late Sri Narasaraju, laid stress on two facts: (i) while normally oil was a viscous liquid, the hydrogenated oil was semi-solid and that this change in its physical state was itself indicative of a substantial modification of the identity of the substance; and (ii) in the course of hydrogenation the oil absorbed two atoms of hydrogen and there was an inter-molecular change in the content of the substance. Rajagopala Ayyangar, J., speaking for the Supreme Court, rejected the first submission and in regard to the second submission, stated that it was not decisive of the matter.

26. The learned Judge observed that:

To be groundnut oil, two conditions have to be satisfied. The oil in question must be from groundnuts and, secondly, the commodity must be 'oil'. The addition of the hydrogen atoms was effected in order to saturate a portion of the oleic and linoleic constituents of the oil and render the oil more stable thus improving its quality and utility. But neither mere absorption of other matter, nor inter-molecular changes necessarily affect the identity of a substance as ordinarily understood. The change here is both additive and inter-molecular, but yet it could hardly be said that rancid groundnut oil is not groundnut oil. It would undoubtedly be very bad groundnut oil but still it would be groundnut oil and if so it does not seem to accord with logic that when the quality of the oil is improved in that its resistance to the natural processes of deterioration through oxidation is increased, it should be held not to be oil. There is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used.

27. In the end, the learned Judge held that the hydrogenated oil will continue to be groundnut oil notwithstanding the processing which was merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil.

28. In *State of Gujarat v. Sakarwala Brothers*¹⁰ the question that arose for the decision of the

Supreme Court was whether patasa, harda and alchidana could be regarded as "sugar", which was defined as meaning "any form of sugar containing more than 90 per cent of sucrose".

29. A small portion of hydrogen sulphide is passed through the sugar solution for bleaching purposes, after which patasas are prepared by splashing the solution on a piece of wood which converts the sugar into amorphous sugar; the hard as are prepared by pouring the solution into moulds which is then allowed to cool and the alchidanas are prepared by rapidly passing the solution of appropriate thickness through a sieve so as to convert it into granulated lumps of sugar.

30. It was contended on behalf of the State that patasa, harda and alchidana bore a distinct and different name from sugar and were not commercially purchased or sold as sugar and, therefore, they were commodities different from "sugar". This argument was rejected. It was held that they fell within the definition of "sugar".

31. In *Kapildeoram Baijnath Prosad v. J.K. Das* [1954] 5 S.T.C. 365, a question arose before the Assam High Court, whether chira and muri could be said to be covered by the words "all cereals and pulses including all forms of rice".

32. Chira is parched beaten rice. It involves the process of boiling paddy, its dehydration, frying and flattening. Muri involves the process of soaking, boiling and dehydration of paddy and the removal of husks. As a result of these processes, the rice became edible and could be taken as food without any more cooking.

33. Although the , when so transformed, bore a different name and could not be commonly recognised as "rice", Sarjoo Prosad, C.J., observed that it seemed to him that those commodities could be regarded more as forms of rice than products thereof and were, therefore, exempt from the payment of tax under the Assam Sales Tax Act, 1947.

34. In *Commissioner of Sales Tax, Madhya Pradesh, Indore v. Jaswant Singh Charan Singh*¹¹ in considering whether charcoal was included in the word "coal" specified in entry 1 of Part III of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, the Supreme Court observed that :while construing the word 'coal' in entry 1 of Part III of Schedule II to the Act, the test that would be applicable is, what is the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales tax statute, being one levying a tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as 'coal' according to the meaning ascribed to it in common parlance. Viewed from that angle, both the merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would

include 'charcoal' in the term 'coal'....

35. The Supreme Court also observed that: While interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense....

36. *In State of Madhya Bharat v. Hiralal A¹³*. Subba Rao, J. (as he then was), speaking for the Supreme Court, observed that .So long as iron and steel continued to be raw materials, they enjoyed the exemption. Scrap iron purchased was merely re-rolled into bars, flats and plates. They were processed for convenience of 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....

37. The Supreme Court held that bars, flats and plates sold by the assessee were "iron and steel" which were exempted under the notification.

38. In *Pyarelal Malhotra v. Joint Commercial Tax Officer* [1970] 26 S.T.C. 416(Supra), a Division Bench of the Madras High Court held that: Even though mild steel rounds, flats and angles manufactured from iron and steel scraps may be commercially different from iron and steel scraps, they do not cease to be 'iron and steel' and tax can be levied only at a single point in the series of sales from the stage of raw material till it is sold in the same form in which it has been produced by the rolling mills, that is, till the manufactured s have been converted into any other form of fabricated material....

39. From the aforesaid discussion it emerges that a taxing statute like the Sales Tax Act must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term according to the meaning ascribed to it in common parlance. In interpreting items contained in those entries, resort should be had not to the scientific, geological or botanical sense, but to their popular meaning, or the meaning that is attributed to them by those who are dealing in those commodities and the meaning in which their consumers or buyers understand them.

40. The test of possibility of substitution of the one for the other, so far as the consumers or purchasers are concerned, cannot be said to be a decisive or the only test for determining whether the sold was the same or different from the s specified in the entry in the schedule to the Sales Tax Act.

41. If the raw material is subjected to a processing by the application of chemical methods, either for the removal of impurities or for improving its quality or utility, the resulting does not lose its

essential character as the raw material.

42. Neither mere absorption of other matter, nor any inter-molecular changes effected in processing the raw material, necessarily affect the identity of the as ordinarily understood by the dealers or consumers. Mere change of physical form or shape of the raw material by the application of some process or the other, so as to prevent it from oxidation or to increase its utility, the resulting from that process, although called by a different trade name in the commercial world, does not lose its essential character of the raw material. The different uses to which the raw material and the resulting from it by reason of some process or the other, are put to, would not be decisive of the fact that the resulting is different from the raw material that was processed.

43. It is in this background of decided cases and by applying the tests laid down by those cases, that we will now have to decide whether or not galvanised plain or corrugated sheets and B.P. sheets are different from "iron and steel" specified in entry No. 2 in the Third Schedule to the Andhra Pradesh General Sales Tax Act.

44. 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 galvanisation 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 s 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 s 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. B.P. sheets are mere sheets of steel and hence a fortiori they are forms of "iron and steel".

44. Hence we agree with the Tribunal that galvanised plain or corrugated sheets and B.P. sheets fall within entry No. 2 in the Third Schedule to the Andhra Pradesh General Sales Tax Act. Since the sales of those s are not the first sales effected by the dealers but are the second sales, the dealers are not liable to pay the sales tax thereon.

45. The references are accordingly answered. The State shall pay the costs of these references to

the dealers. The tax revision cases are dismissed.

Cases Referred.

1[1969] 23 S.T.C. 288

2[1961] 12 S.T.C. 286

3[1967] 20 S.T.C. 409

4[1967] 19 S.T.C. 24 (S.C)

51966 S.C. 1546

6[1970] 26 S.T.C. 416

7[1960] 11 S.T.C. 827 (S.C)

8[1961] 12 S.T.C. 286 (S.C.)

9[1960] 11 S.T.C. 827 (S.C.)

10[1967] 19 S.T.C. 24 (S.C.)

11[1967] 19 S.T.C. 469 (S.C.)

12 A.I.R 1966 S.C. 1546