

HINDUSTAN ALUMINIUM CORPORATION LTD.

v.

STATE OF UTTAR PRADESH & ANR.

July 28, 1981

B

[V.D. TULZAPURKAR AND R.S. PATHAK, JJ.]

U.P. Sales Tax Act 1948—Section 3A (2) and notifications issued thereunder—Scope of.

Interpretation—Words of common parlance used in a Sales Tax Act—How interpreted.

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Pursuant to a circular issued by the Commissioner of Sales Tax that aluminium ingots only should be taxed at the lower rate and that all other items like rods, bars, rolled products, extrusion sections etc. should be taxed at higher rates as unclassified items, the Sales Tax Officer taxed aluminium ingots manufactured by the appellant at the lower rate; and treating the remaining products manufactured by them as unclassified items taxed them at the higher rate.

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The High Court, dismissing the appellant's writ petition impugning the assessment made by the Sales Tax Officer, held that while aluminium ingots, wire bars and billets would fall in the category of "metals and alloys", rolled products prepared by rolling ingots and extrusions manufactured from billets were different commercial commodities from the ingots and billets and that they fell outside the category of "metals and alloys". The method of assessment made by the Sales Tax Officer was, therefore, upheld.

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In appeal to this Court it was contended that the High Court erred in holding that the rolled products and extrusions were new commercial commodities, distinct from the aluminium ingots and billets from which they were prepared and that they represented the marketable form merely of ingots and billets.

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Dismissing the appeal,

HELD : The expression 'metal' has been generally employed in the relevant notifications to refer to the metal in its primary sense i.e. in the form in which it is marketable as a primary commodity. Subsequent forms evolved from the primary form and constituting distinct commodities marketable as such must be regarded as new commercial commodities. In all the relevant notifications, therefore, the framers followed the scheme that one clause dealt with metal in its original saleable form and another separate clause dealt with fabricated forms in which it was saleable as a new commodity. Aluminium ingots and billets are saleable commodities as such in the market. When such a notification refers to a metal it refers to the metal in the primary or original form in which it is saleable and not to any subsequently fabricated form. [133 H; 134 F]

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A The word "all" occurring in "all kinds of minerals, ores, metals and alloys including sheets..." in the notification cannot be interpreted to include even subsequently fabricated forms of the metal, for such an interpretation would be inconsistent with the scheme of the notifications. While broadly a metal in its primary form and a metal in its subsequently 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 in the instant case. [135 B-C]

B Having regard to the scheme followed in the framing of the notifications, the expression "including" does not enlarge the meaning of the word "metal". It must be understood in a conjunctive sense, as a substitute for "and". [134 H]

Devi Dass Gopal Krishnan and Others v. The State of Punjab and Others [1967] 20 S.T.C. 430 followed.

C *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool* [1960] 11 S.T.C. 827 and *State of Madhya Bharat (now State of Madhya Pradesh) and Others v. Hiralal* [1966] 17 S.T.C. 313 distinguished.

D *State of Tamil Nadu v Pyare Lal Malhotra* [1976] 37 S.T.C. 319 and 325, & *Maharaja Book Depot v. State of Gujarat* [1979] 2 S.C.R. 138 referred to.

State of Gujarat v. Shah Veljibhai Motichand, Lunawada [1969] 23 S.T.C. 288 not approved.

E A word describing a commodity in a sales tax statute should be interpreted according to its popular sense, the sense in which people conversant with the subject matter with which the statute is dealing would attribute to it. Words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance. But what is relevant in the circumstances of the present case is the manner in which these and similar expressions have been employed by those who framed the relevant notifications and with the inference that can be drawn from the particular arrangement of the entries in the notifications. The intent must be derived from a contextual scheme. [133 D-F]

F *Porritts & Spencer (Asia) Ltd. v. State of Haryana* [1978] 42 S.T.C. 433 followed.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 2014 to 2016 of 1977

G Appeals by special leave from the judgment and order dated the 17th November, 1976 of the Allahabad High Court in Civil Misc. Writ Nos. 107, 108 & 357 of 1976.

H *S.S. Ray, Depankar Gupta, Raja Ram Agarwal, O.P. Khaitan, N.R. Khaitan, Bharat Ji Agarwal, Mrs. Neelam Thakur and Umesh Khaitan* for the Appellants.

S. C. Manchanda, R. Ramchandran and O.P. Rana for the Respondent. A

The Judgment of the Court was delivered by

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PATHAK, J: These appeals by special leave raise the question whether aluminium rolled products and extrusions can be described as "metal" for the purposes of the notifications dated December 1, 1973 and May 30, 1975 issued under the U.P. Sales Tax Act, 1948.

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The appellant, the Hindustan Aluminium Corporation Limited, carries on the business of manufacturing and dealing in aluminium metal and various aluminium products.

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On December 1, 1973 the State of Uttar Pradesh notified under section 3-A (2) of the U.P. Sales Tax Act, 1948 that the turnover in respect of the following goods set forth in item No. 6 of the attached schedule would be liable to tax at all points of sale at 3½%—

"6. All kinds of minerals and ores and alloys except copper, tin, zinc, nickel or alloy of these metals only."

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On May 30, 1975 the State of Uttar Pradesh published a notification, under section 3A (2-A) of the Act, in which item No. 1 of the schedule read as follows :

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"1. All kinds of minerals, ores, metals and alloys except those included in any other notification issued under the Act."

and a rate of 2% was prescribed. The notification dated December 1, 1973 was amended and item No. 6 was deleted.

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On August 14, 1975 the U.P. Legislature enacted the U.P. Sales Tax (Amendment and Validation) Act, 1975 section 31 (7) of which amended the aforesaid notification of May 30, 1975 retrospectively, so that it would be deemed always to have read as follows :—

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"1. All kinds of minerals, ores, metals, and alloys including sheets and circles used in the manufacture of brass

A wares and scraps containing only any of the metals, copper, tin, zinc, or nickel except those included in any other notification issued under the Act."

B On July 11, 1975 the appellant wrote to the Sales Tax Officer contending that the aluminium ingots, billets, rolled products, extrusions and other aluminium products manufactured and sold by it upto May 31, 1975 fell within item No. 6 of the notification dated December 1, 1973 and thereafter their sale was covered by item No. 1 of the notification dated May 30, 1975. However, the Commissioner of Sales Tax, U.P. issued a circular on October 15, 1975 to all Sales Tax Officers advising that aluminium ingots only should be taxed as "metal", and in regard to other items such as rods, bars, rolled products, extrusion sections tax at the rate of 7% would be payable as on unclassified items.

C On December 30, 1975, the Sales Tax Officer made provisional assessments under rule 41(3), U.P. Sales Tax Rules, 1948 for the quarters ending June 30, 1975 and September 30, 1975. The Sales Tax Officer applied a rate of 3-1/2% under the Notification of December 1, 1973 to aluminium ingots only and treated the remaining products as unclassified items attracting sales tax at 7%.

E Similarly under the Notification of May 30, 1975 a rate of 2% was applied to the turnover of aluminium ingots while the remaining products were charged to tax at 7% as unclassified items.

F The appellant filed a writ petition in the Allahabad High Court against the provisional assessments. During the pendency of the writ petition the Sales Tax Officer made a final assessment order for the assessment year 1975-76 on August 3, 1976. The writ petition was amended in the High Court and relief was now sought against the final assessment order. On November 17, 1976 the High Court passed judgment on the writ petition holding that while aluminium ingots, wire bars and billets would fall in the category "metals and alloys", rolled products prepared by rolling ingots and extrusions manufactured from billets must be regarded as different commercial commodities from the ingots and billets and therefore outside the category of "metals and alloys". The 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. In regard to properzi redraw rods, the High Court considered that a further

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enquiry was necessary and therefore directed the Sales Tax Officer to re-examine the matter.

The present appeals are directed against the part of the High Court judgment refusing relief in regard to rolled products and extrusions. It is vehemently contended that the High Court has erred in holding that the rolled products and extrusions are new commercial commodities distinct from the aluminium ingots and billets from which they are prepared. It is urged that they represent the marketable form merely of ingots and billets. We have been referred to a number of documents and publications as well as the Aluminium (Control) Order, 1970, and the submission is that when reference is made to aluminium as a metal it includes rolled products and extrusion products.

We are not satisfied that the appellant is right. There is no doubt that, as laid down by this Court in *Porritts & Spencer (Asia) Ltd. v. State of Haryana*,⁽¹⁾ a word describing a commodity in a sales tax statute should be interpreted according to its popular sense, the sense being that in which people conversant with the subject matter with which the statute is dealing would attribute to it. Words of everyday use must be construed not in their scientific or technical sense but as understood in common parlance. That principle has been repeatedly reaffirmed in the decisions of this Court. It holds good where a contest exists between the scientific and technological connotation of the word on the one hand and its understanding in common parlance on the other. We are here concerned, however, with a very different situation. We are concerned, with the manner in which these and similar expressions have been employed by those who framed the relevant notifications, and with the inference that can be drawn from the particular arrangement of the entries in the notifications. We must derive the intent from a contextual scheme.

Section 3A of the U.P. Sales Tax Act empowers the State Government to prescribe, by notification, the rate, and the point at which the tax may be imposed on the sale of a commodity. A consideration of the notifications issued from time to time will show that the expression "metal" has been generally employed to refer to the metal in its primary sense. The reference is to the metal in the form in which it is marketable as a primary commodity. Subsequent

(1) [1978] 42 STC 433.

A forms evolved from the primary form and constituting distinct commodities marketable as such must be regarded as new commercial commodities. The notification No. ST-2631/X-902 (64)-50 of November 21, 1952, for example, sets forth two clauses :

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- (a) Copper, tin, nickel, or zinc or any alloy, containing any of these metals only, and
- (b) Scrap, meant for melting, and sheets including circles meant for making brass-ware, and containing only any or all of the said metals, viz., copper, tin, nickel and zinc.

C It is clear that while clause (a) makes specific reference to certain metals, clause (b) separately sets forth the products which emerge as a result of processing the original metal. Clause (b) speaks of sheets, including circles meant for making brass-ware, and containing only any or all of the metals specified in clause (a).

D A sheet of copper only or tin only or nickel only or zinc only is regarded as belonging to a distinct entry in the notification from copper, tin, nickel or zinc in its unfabricated form. This schematic arrangement has been followed in notification No. ST-3500/X dated May 10, 1956, notification No. 1366/X-990-1956, dated April 1, 1960

E and notification No. St-9377/X-906 (AB-4)-1971 dated October 6, 1971. In all those notifications the framers of the notifications followed the scheme that one clause dealt with the metal in its original saleable form and another separate clause dealt with fabricated forms in which it was saleable as a new commodity.

F It is admitted before us on behalf of the appellant that aluminium ingots and billets are saleable commodities as such in the market. In the circumstances the inference is irresistible that when such a notification refers to a metal, it refers to the metal in the primary or original form in which it is saleable and not to any subsequently fabricated form. It is true that in the notification dated May 30, 1975, as amended retrospectively on August 14, 1975, the entry reads :

G "All kinds of minerals, ores, metals and alloys including sheets and circles used in the manufacture of brass wares and scraps containing only any of the metals, copper, tin, zinc, or nickel except those included in any other notification issued under the Act."

H But here, the expression "including" does not enlarge the meaning of the word "metal" and must be understood in a conjunctive sense,

as a substitute for "and". This is the reasonable and proper construction having regard to the scheme followed in the framing of notifications.

It is urged that item No. 6 in the notification of 1973 and Item No. 1 in the notification of 1975 speak of "all kinds of minerals, ores, metals and alloys" and, it is said, the word "all" should be given its fullest amplitude so as to include even subsequently fabricated forms of the metal. It seems to us that the construction suggested is inconsistent with the scheme to which we have referred. While broadly a metal in its primary form and a metal in its subsequently 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.

The question whether rolled steel sections are a different commodity from scrap iron ingots was considered by this Court in *Devi Das Gopal Krishnan and Others v. The State of Punjab and Others*⁽¹⁾, and this Court had no hesitation in holding that when scrap iron ingots are converted into rolled steel sections they go through a process of manufacture which brings into existence a new marketable commodity. We are of the opinion that the same conclusion must follow when aluminium ingots and billets are converted into aluminium rolled products and extrusion products.

Learned counsel for the appellant places reliance on *Tungabhadra Industries Ltd., Kurnool v. Commercial Tax Officer, Kurnool*⁽¹⁾ where this Court took the view that hydrogenated "groundnut oil" commonly called Vanaspati was "ground nut oil" within the meaning of rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. In that case, the Court was of opinion that the process of hydrogenation did not alter the essential identity of the oil, and reference was made to the broad compass of the expression "groundnut oil", besides the circumstance that the use to which the original groundnut oil could be put would also be the use to which the hydrogenated oil could be applied. It seems to us that the case is distinguishable. We then turn to *State of Madhya Bharat (now the State of Madhya Pradesh) and Others v. Hirralal*⁽³⁾, the next case placed before us. This Court held that scrap iron, when put through a process of re-rolling to produce attractive and acceptable forms of iron and steel in the shape of

(1) [1967] 20 STC 430.

(2) [1960] 11 STC 827.

(3) [1966] 17 STC 313.

A bars, flats and plates, must be regarded as continuing to be "iron and steel" for the purpose of the notification issued under the Madhya Bharat Sales Tax Act. The case, however, has been distinguished by this Court in *State of Tamil Nadu v. Pyare Lal Malhotra*⁽¹⁾ on the ground that the nature of the raw material from which the goods were made was the decisive criterion for deciding the earlier case. It observed -

C "The language of the notification involved there made it clear that the exemption was for the metal used. In the cases before us now, the object of single point taxation is the commercial commodities and not the substance out of which it is made. Each commercial commodity here becomes a separate object of taxation in a series of sales of that commercial commodity so long as it retains its identity as that commodity."

D And the Court then referred with approval to *Devi Dass Gopal Krishnan* (supra).

E Our attention has been invited to *State of Gujarat v. Shah Veljibhai Motichand, Lunawada*⁽²⁾ where the Gujarat High Court held that corrugated iron sheets were merely "iron" in another shape and form and could not be regarded as articles or products manufactured or fabricated out of iron. We have perused the three judgments delivered in that case but it seems to us that the majority opinion is of doubtful validity, specially having regard to the observations of this Court made in *Pyare Lal Malhotra* (supra).

F We are also referred to *Maharaja Book Depot v. State of Gujarat*⁽³⁾. This Court held that an exercise book is "paper" as defined in s. 2(a) (vii) of the Essential Commodities Act, 1955 and Item 13 in Schedule I to the Gujarat Essential Articles Dealers (Regulation) Order 1971. The Court accepted that construction on the ground that it would be in consonance with and would carry out effectively the object or purpose of the Act and the Regulation Order. It is desirable to recall that the Essential Commodities Act was enacted to control the distribution and price of essential commodities. A sufficiently comprehensive interpretation was called for

H (1) [1976] 37 STC 319 and 325.

(2) [1969] 23 STC 288.

(3) [1979] 2 SCR 138.

in order that all products essential to the community which would reasonably fall within the scope of the definition could be covered. A

Learned counsel for the appellant relies on the wide definition of the word "aluminium" in the Aluminium (Control) Order, 1970, but we must remember that the word has been given the broad definition set out there only for the purposes of that Control Order. It cannot be pressed into service for resolving the controversy before us. B

Learned counsel for the appellant also relies on the Glossary of Terms for Aluminium and Aluminium Alloys prepared by the Indian Standards Institution⁽¹⁾, the Glossary of Terms prepared by the British Standards Institution⁽²⁾, Engineering Metallurgy⁽³⁾, Non-Ferrous Metals and their Alloys⁽⁴⁾, Metal Industry: Hand Book and Directory, 1962 and allied literature. In considering the material, it is necessary to caution ourselves that the literature is concerned with conceptions particular to the aluminium industry, while we are here concerned with the application of a sales tax statute. C

Finally, it is urged that two interpretations are possible of the relevant entries in the notifications of 1973 and 1975 and therefore the interpretation favourable to the dealer should be adopted. 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 notifications issued under the U.P. Sales Tax Act. D

In the result, the appeals fail and are dismissed with costs. E

P.B.R.

Appeals dismissed

(1) Part I : Unwrought and Wrought Metals, I.S. : 5047 (Part I)—1969.

(2) British Standard 3660 : 1963.

(3) Stoughton, Butts and Bounds, 1953.

(4) F.J. Long.