

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **STR Nos. 12 of 2002 and 4 of 2003**

JUDGMENT RESERVED ON: 12th January, 2011
% JUDGMENT PRONOUNCED ON : 24th January, 2011

1. STR No. 12 of 2002

M/S METALITE INDUSTRIES ...PETITIONER
3, ANSARI ROAD,
NEW DELHI

Through: Mr. H.N. Arora, Advocate

Versus

COMMISSIONER OF SALES TAX ...RESPONDENT
DELHI

Through: Mr. Rajesh Mahna, Advocate.

2. STR No. 4 of 2003

M/S METALITE INDUSTRIES ...PETITIONER
3, ANSARI ROAD,
NEW DELHI

Through: Mr. Raj Batra, Advocate.

Versus

COMMISSIONER OF SALES TAX ...RESPONDENT
DELHI

Through: Mr. Rajesh Mahna, Advocate.

CORAM:
HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE M.L.MEHTA

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

M.L. MEHTA, J.

1. By this common judgment, we propose to dispose of both the references made by the Appellate Tribunal, Sales Tax Department, New Delhi. Initially ST Ref. No. 12 of 2002 was made on the following question of law:-

“Whether on the facts and circumstances of this case and on a true interpretation of the scope of the term ‘Iron & Steel’ within the meaning of section 14(iv)(vii) of the Central Sales Tax Act, 1956, the Appellate Tribunal was right in holding that the goods ‘Cable Tray’ is not covered by the term ‘Iron & Steel’?”

2. Vide ST. Ref. No. 4 of 2003 consolidated questions of law were referred by the Tribunal. Same are as under:-

“1. Whether on the facts and in the circumstances of the case and on a true interpretation of the scope of the term ‘Iron and Steel’ within the meaning of section 14(iv)(vii) of the Central Sales Tax Act, 1956, the Appellate Tribunal was right in holding that the goods ‘Cable Tray’ is not covered by the term ‘Iron & Steel’?”

2. Whether on the facts and in the circumstances of the case, the dealer was liable to pay interest under Section 27(1) of the Delhi Sales Tax Act, 1975?”

3. The petitioner was assessed for the assessment year 1987-88.

On 30th March, 1992 an additional payment of Rs.8,05,831/- was created. The items which were sold by the petitioner to the purchasing dealer were not allowed as per registration certificate of purchaser without payment of tax. Reassessment was done and tax return of Rs.14,12,314/- @ 7% along with interest was assessed whereby an additional demand was raised from Rs.8,05,831/- to Rs.13,53,486/-. The appeal against the reassessment order was dismissed by the Additional Commissioner Sales Tax (hereinafter, referred to as 'ACST'). The petitioner/assessee filed an appeal before Appellate Tribunal Sales Tax (hereinafter referred to as 'Tribunal') which was also dismissed vide the impugned order. The petitioner deals in iron and steel. It had sold cable trays without charging tax from the purchasing dealer. As per the Department the same could not be sold without charging tax from the purchaser.

4. Learned counsel for the petitioner explained that cable trays are generally of two types, namely, "perforated cable trays" and "ladder type cable trays". He also showed us the photographs of these trays. He submitted that definition of 'iron and steel' in Section 14 (iv) contains a list of items which

are not exhaustive. He further submitted that the cable trays are merely plates and are covered within the ambit of Clause (vii) of Section 14(iv). Based on these submissions, learned counsel attempted to interpret Clause (vii) of Section 14(iv) of the Act that these cable trays were nothing but plates within the ambit of this Clause.

5. To buttress his submissions, the learned counsel for the petitioner relied upon ***The Deputy Commissioner (C.T.) Coimbatore Division v. The South India Traders***¹; ***Deputy Commissioner of Sales Tax (Law), Board of Revenue Taxes, Ernakulam v. Pio Food Packers***²; ***Tata Engineering and Locomotive Co. Limited v. Union of India***³; ***Commissioner of Central Excise, Chennai-II Commissionerate v. Tarpaulin International***⁴ and ***K.A.C. Trading Corporation v. The State of Tamil Nadu***⁵.
6. On the other hand, the learned counsel for the Department submitted that plates of the type specified in Clause (vii) of sub-section (iv) of Section 14 do not include the cable trays - perforated or ladder type. He relied upon various judgments such as ***Rajasthan Roller Flour Mills Association v. State***

¹ 50 STC 106

² 46 STC 63 (SC)

³ 1997(89) ELT 463(B)

⁴ (2010) 34 VST 97 (SC)

⁵ (1984) 55 STC 62

of Rajasthan⁶; Jai Shakti Traders v. State of Uttar Pradesh⁷; Bengal Iron Corporation and Anr. v. Commercial Tax Officer and Ors.⁸; Agra Metal Peforators v. Commissioner, Sales Ta, U.P. Lucknow⁹; Hindusthan Development Corporation Ltd. v. West Bengal Commercial Taxes Tribunal & Ors.¹⁰; Bengal Ingot Co. Ltd. & Ors.¹¹

7. Thus, the first question that arises for consideration before us is whether the cable trays of the type which the petitioner prepared and sold would fall within the aforesaid Clause (vii) or any other Clause of Section 14(iv).

8. Before we take up this question and advert to the authorities relied upon by the learned counsel for the parties, it would be appropriate to refer to the relevant provisions of the Act. Section 2(c) of the Act, defines “declared goods” as under:-

“(c)“declared goods” means goods declared under Section 14 to be of special importance in inter-State trade or commerce;”

Section 14. “Certain goods to be of special importance in inter-State trade or commerce- It is hereby declared that the

⁶ (1993) 91 STC 408 (SC)

⁷ (1995) 97 STC 114 (SC)

⁸ (1993) 90 STC 47 (SC)

⁹ (1981) 48 STC 378

¹⁰ (1992) 84 STC 450 (WBTT)

¹¹ (1990) 79 STC 212 (WBTT)

following goods are of special importance in inter-State trade or commerce”

iv) iron and steel, that is to say, -

(vii) Plates both plain and chequered in all qualities;”

9. Clause (c) of Section (2) uses the expression ‘means’ and is undisputedly exhaustive. It means that only those goods which are specified under Section 14 of the Act are to be treated as ‘declared goods’. The words ‘iron and steel’ used in sub-section (iv) of section 14 are qualified with the words ‘that is to say’. According to the learned counsel for Department, sub-section (iv) would apply to only those items of iron and steel which are specified in Clauses (i) to (xiv) thereunder. The use of words ‘that is to say’ makes the categories of items specified in Clauses (i) to (xiv) exhaustive. Similar words ‘that is to say’ have also been used in sub-sections (i), (ii), (iic), (v), (vi) and (via) to make the items mentioned in these sub-sections exhaustive as well and not open for covering other unspecified items. However, we are not concerned with these sub-sections.

10. In the case of **Rajasthan Roller Flour Mills** (supra) the Hon’ble Supreme Court held as under:

“The provisions of sections 14 & 15 of the Act, being restrictions upon the plenary powers of the State Legislatures to levy tax on sale/purchase of goods must be constructed strictly. In other words, the restrictions must be limited to the goods expressly mentioned and nothing more must be read into it except what it says clearly.

Therefore, commodities other than those specified cannot be introduced into the relevant provisions on the ground that they are derived from the primary commodities mentioned in section 14(i).

The expression “that is to say” is employed in section 14(1) of the Central Sales Tax Act, 1956, to make clear and fix the meaning of what is to be explained or defined. Such words are not used, as a rule, to amplify a meaning and in the context of single point sales tax, the expression is meant to exhaustively enumerate the kind of goods in a given list.”

11. Similarly the Supreme Court in the case of ***Royal Hatcheries (P) Ltd. v. State of AP***¹² also held that the words to the effect ‘that is to say’ qualify the word which precedes them. This indicates that these terms must therefore be understood in the context of the words which follow.
12. Relying upon the authorities noted in para (5) above, the learned counsel for the petitioner vehemently argued that bending and punching iron plates and making them cable trays does not amount to ‘manufacture’ and the goods

¹² 1994 Supp (1) SCC 429

continued to be iron and steel plates. However, we note that the authorities relied upon by the learned counsel are distinguishable from the facts of the present case and are thus of no help to the petitioner.

13. The case of **South India Traders** (supra), relied upon by learned counsel for the petitioner related to handkerchiefs which were sought to be exempted. That case is distinguishable on facts from the present case. It was held as under-

“We are satisfied that the expression “fabric” is of sufficient amplitude to cover not only a handkerchief woven as a fabric in its own size but also a handkerchief made out of a bigger dimension of fabric. Whether the handkerchief is manufactured by the textile process as such, or is a cut piece of a larger fabric, it would qualify for exemption under item 4 in the Third Schedule.”

14. The case of **Pio Food Packers** (supra), relied upon by learned counsel for the petitioner is also distinguishable. This case related to pineapple fruits which were processed into pineapple slices. It was held that though, it has undergone a degree of processing, it must be regarded as still retaining its original identity. The principles laid down by the Hon'ble Supreme Court in this case are of wide importance. The Court held as under:-

“The generally prevalent test is whether the articles produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognized as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity.

...
“In the present case, there is no essential difference between the pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as preservative. On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit.”

Referring to *Anheuser-Busch Brqing Association v. United States*, the Court said:

“Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and

manipulation. But something more is necessary There must be transformation ; a new and different article must emerge, having a distinctive name, character or use”.

And further :

“At some point processing and manufacturing will merge. But where commodity retains a continuing substantial identity through the processing stage we cannot say that it has been ‘manufactured’.”

15. Similarly, the cases of **Tata Engineering and Locomotive Co Ltd** (supra) which related to cutting of steel plates, drilling holes, riveting or fastening them with nuts and bolts and of **Tarpaulin International** (supra) which related to stitching tarpaulin sheets and fixing eyelets are distinguishable too from the facts of present case. In both these cases it was held that the processes did not bring into existence new and distinct products with total transformation in the original commodity.
16. Likewise the case of **K.A.C. Trading Corporation** (supra) which related to sizing or subdividing iron and steel plates was also on entirely different facts.

17. On the other hand, the authorities relied upon by the learned counsel for the Department as noted in para (6) are relevant to the facts and questions of the present case.

18. In the case of **Jai Shakti Traders** (supra), relied upon by learned counsel for the Department it was held as under:-

“Shoe tips, heels, tip toes and tip nails made of iron or steel are not declared goods as they are not comprised by the item “plates, both plain and chequered in all qualities” specified in section 14(iv)(vii) of the Central Sales Tax Act, 1956.”

19. In the case of **Bengal Iron Corporation and Anr.** (supra) it was held by the Hon’ble Supreme Court as under:

“‘cast iron’ was different from ‘cast iron casting’ like manhole covers, bends, cast iron pipes etc. manufactured and sold by the appellant from cast iron purchased by him.”

The Court also held that:

“clarification/circulars issued by the Central Government and/or State Governments represent merely their understanding of statutory provisions. They are not binding upon the Courts.”

20. In the case of **Agra Metal Peforators** (supra), it was held as under:-

“as a result of perforation of iron sheets a different commercial commodity comes into existence and since perforated iron sheet is not covered by the category mentioned in section 14(iv) of CST Act, it could not be treated as iron and steel but had to be treated as an unclassified item for the purposes of assessment under the West Bengal Sales Tax Act, 1948.”

21. In the case of **Hindusthan Development Corporation Ltd.**

(supra), it was held as under:-

“that HDC turnout sleepers manufactured and sold by the applicant to the railways were different commercial commodities from crossing sleepers or any other kind of sleepers mentioned in section 14(iv)(xii) of the Central Sales Tax Act, 1956. Having been subjected to the process of manufacture by the applicant, they became a commercially different commodities, not enumerated in any of the sub-clauses of section 14(iv) of the Central Sales Tax Act. Therefore, they were not declared goods.”

22. In the case of **Bengal Ingot Co. Ltd & Ors.** (supra), it was held as under:-

“the steel casting were processed and machined at the applicant’s factory with the result different articles of various shapes and sizes having different trade names came out and were sold in the market to meet various mechanical and engineering needs. The fact that no other metal or material was used in the process could not be the sole criterion to determine whether the commodities sold and marketed by the applicant in different trade names were still known in trade circles as a mere steel casting.”

23. In view of the law as laid down in judicial pronouncements noted above, one of the tests would be as to whether the article produced is regarded in trade, by those who deal in it as distinct in identity from the commodity involved in its manufacture. Though the said article might have undergone a

degree of processing, if it retains its original identity, then it would not be within the meaning of 'manufactured'.

24. The expression 'Manufacture' implies a change, but every change is not a manufacture and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary. There must be transformation, a new and different article must emerge, having a distinctive name, character or use. It would depend upon the facts and circumstances of each case and application of relevant provisions of section 14 of the Act.
25. Applying the aforesaid tests to the present case, we cannot say that the cable trays – perforated as well as ladder types continued to remain the iron and steel plates only. As understood both these types of plates are manufactured out of mild steel sheets of 2 mm thickness. These sheets are cut into strips in required sizes. The perforated types cable trays are cut into strips, punched and slotted before bending it into channel shaped trays. Finally, the trays are galvanized by the hot-dip process. In case of ladder type cable trays, sheets strips are first bent and then welded together in required dimensions and finally galvanized. These are used in power projects for laying down of heavy cables instead of cement

trenches or pipes. The type of processes involved brings an ultimate product which is distinct and different. The cable trays of different types and shapes come of the manufacturing process. There cannot be any doubt that the plates have undergone transformation into cable trays and the process involved was manufacturing. These are sold in the market to meet different mechanical and engineering needs as distinct from the plain or chequered plates. In the case of **Agra Metal Peforators** (supra) also as a result of perforation a different commodity of perforated iron sheets came into existence and it was held to be an unclassified item for the purposes of assessment. By any stretch of extension, the cable trays cannot fit in the category of iron and steel plates as specified in Clause (vii) of sub-section (iv) of Section 14. That being so, the cable trays cannot be said to be declared goods within the meaning of Section 2(c) of the Act. Hence, we are of the firm view that the cable trays are not iron and steel as per section 3 of the Second Schedule of Sales Tax Act, 1975 read with section 14(iv) of the Act.

26. In view of the above discussions, we answer the first question in favour of the Department and against the petitioner.

27. With regard to second question regarding liability, if any, of the petitioner to pay interest under Section 27(1) of the Delhi Sales Tax Act, 1975 it may be stated that this Section provides that if any dealer fails to pay the tax due as required by sub-section (3) of section 21, he shall, in addition to the tax (including any penalty) due, be liable to pay simple interest on the amount so due at one per cent per month from the date immediately following the last date for the submission of the return under sub-section (2) of the said section for a period of one month and at one and a half per cent per month thereafter for so long as he continues to make default in such payment or till the date of completion of assessment under section 23, whichever is earlier.

28. In the case of ***J.K.Synthetics Ltd. v. Commercial Taxes Officers***¹³, the Apex Court held as under:-

“The full amount of tax due and payable prior to the submission of the return is clearly relatable to the information furnished in the return. Undoubtedly, the information to be furnished in the return must be “correct and complete” that is, true and complete to the best of knowledge and belief; without the dealer being guilty of willful omission.”

In Hindustan Heavy Chemicals Ltd. and Anr. v. Commercial Tax Officer & Ors. (1997) 106 STC 74 (WBTT): “Turnover tax was levied with effect

¹³ (1994) 94 STC 422 (SC)

from April, 1, 1979 by section 6B of the Bengal Finance (Sales Tax) Act, 1941 and section 4AAA of the West Bengal Sales Tax Act, 1954. The applicant-dealer initially paid turnover tax, but for the period of beginning January 1, 1982, it filed its returns without furnishing any details of the gross turnover and stated that it had refrained from paying turnover tax upon legal advice that the provisions in question were invalid. Writ petitions were filed in the High Court challenging the provisions of section 6B of the 1941 Act and section 4AAA of the 1954 Act. By an interim order dated March 4, 1983 the court granted an injunction permitting the dealer to furnish a bank guarantee for 50 per cent of the disputed turnover tax and directing the dealer to go on furnishing bank guarantees equivalent to 50 per cent of the turnover tax liability in subsequent years till further orders. For the periods in question, the dealer went on furnishing bank guarantees for 50 per cent of the turnover tax. On February 24, 1988 the writ petitions were dismissed by a Division Bench of the High Court. The turnover tax which remained unpaid was paid by July, 1989. The sales tax authorities held the dealer liable to interest on the turnover tax for the periods in question in terms of section 10A of the 1941 Act.

On a petition to the Taxation Tribunal, it was held, dismissing the petition, on the facts, that the provisions regarding turnover tax were merely under challenge in writ petitioner before the High Court. There was no information that the presumption of their validity was no longer available. There was an interim injunction against the respondents from taking any step on the basis of the statutory provisions regarding turnover tax. But, there was no injunction against payment of turnover tax by the dealer. There was no law nor any decision of any court which could lead the applicant-dealer to a bona fide belief that it was not required to pay turnover tax. The dealer had chosen to withhold full payment of turnover tax by obtaining an interim order merely because a lot of others had done so, as it had paid turnover tax, giving full particulars thereof for the previous

years. When the writ petitions were finally disposed of by the High Court turnover tax became payable not from the date of disposal of the writ petitions but from the date it was payable under the statute. The verdict of the court upholding validity of the provisions relating to turnover tax was a mere declaration or reaffirmation of the liability that already existed and was created by the statute. The element of bona fide was absent. The dealer defaulted in making payment at its choice. The provisions regarding interest were statutory provisions and there being no order against the running of interest from the time of default, the dealer could not now claim that the demand for interest by the Department was illegal or unauthorized.”

29. In the present case there is a finding of the fact by the Tribunal that the returns filed by the petitioner are not true and correct. In its order dated 17th August, 2001, the Tribunal observed as under:-

“The provisions of section 14 (iv) of the CST Act are unambiguous and clear. Hence, it cannot be said that the returns filed by the appellant were true and correct when filed in the best of his knowledge and belief. There is no suggestion that the other dealers of the product were not taxed or there was any reason which could lead to a reasonable belief. From the papers on record it is found that the appellant firm has two partners Smt. Sulchana Jalan W/o Sh. Vishwanath Jalan and Smt. Manorama Jalan W/o Late Sh. Vishambar Jalan (Sh. Jalan expired on 30/6/96. All the ST-1 forms have been received from M/s Metallite India and signed by Sh. Vishamvhar Jalan, partner. It has been stated in application dated 5/12/2000 that the appellant firm suffered heavy losses due to the death of Sh. Vishambhar Jalan. Thus, the appellant and the purchasing dealer are closely related being family concerns. In this background we are of the opinion that the returns filed by the

appellant did not disclose the taxability of turnover with malafide intention and willful omission. On the one hand the appellant as purchasing dealer did not file utilization A/c till the assessment and on the other submitted the present ST-1 forms in a bid to enjoy ta-deduction to which as per his knowledge he as not entitled to. Hence, levy of interest cannot be faulted with"

30. We do not see any infirmity in the order of learned Tribunal as recorded above.

31. Hence, this question also deserves to be answered in affirmation, in favour of the Department/Revenue and against the petitioner.

32. For the foregoing reasons, both the questions are answered in affirmative in favour of the Department/Revenue and against the petitioner.

M.L.MEHTA
(JUDGE)

A.K. SIKRI
(JUDGE)

JANUARY 24, 2011

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