

(1980) 07 AHC CK 0018
In the Allahabad High Court
Case No : Sales Tax Revision No. 6 of 1980

Agra Metal Perforators

APPELLANT

Vs

Commissioner, Sales Tax

RESPONDENT

Date of Decision : 07-07-1980

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Central Sales Tax Act, 1956 — Section 14
Central Sales Tax Act, 1956 — Section 14

Citation : (1981) 48 STC 378

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : R.C. Sharma, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Rastogi, J.—This is assessee's revision u/s 11(1) of the U. P. Sales Tax Act relating to the assessment year 1973-74. The assessee deals in perforated iron sheets. His account books and disclosed turnover for the aforesaid year were rejected by the Sales Tax Officer and best judgment assessment was made which was confirmed on appeal except that some reduction was allowed in the net turnover. On further revision the Additional Judge (Revisions), Agra, accepted the accounts. As for rate of tax the Sales Tax Officer treated perforated sheets as mill stores or hardware while the Assistant Commissioner (Judicial) treated them to be an unclassified item and liable to tax as such. The assessee contended before the Additional Judge (Revisions) that perforated sheets sold by him fell in the category of "iron and steel" as defined in Clause (iv) of Section 14 of the Central Sales Tax Act and after the amendment in the section by amending Act 61 of 1972, which came into effect from 1st April, 1973, sheets both plain and corrugated are covered by the expression "iron and steel". It was explained that the assessee purchases iron sheets and after perforating them against orders sells the same and thus perforated sheets remain only iron sheets without

undergoing any change in the essential characteristic of sheets. Reliance was placed on Commissioner of Sales Tax v. Tata Iron and Steel Company [1976] 38 S.T.C. 10, in which it was held that galvanisation and corrugation process do not change the essential character of the iron and steel and they remain iron and steel even after such process and on that analogy it was contended that perforation of sheets does not bring about any change in the commodity. The learned Additional Judge (Revisions) did not accept this contention since in his opinion by perforating holes in sheets a change is made in its form and use. Perforation cannot be equated with galvanisation and corrugation and thus perforated sheets have to be treated as an unclassified item.

2. It would thus be seen that the question that falls for consideration in this revision is as to whether iron sheets after perforation of holes still remain iron sheets liable to be treated as iron and steel under Clause (iv) of Section 14 of the Central Act or they undergo a change and a different commercial commodity comes out and are to be treated as an unclassified item. It will be useful to quote the relevant provisions at this place. Section 14 of the Central Act declares certain goods enumerated therein to be "of special importance in inter-State trade or commerce". The list of goods given therein at serial No. (iv) as it stood prior to the amendment of this clause in 1972 was :

(iv) 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 mill ;

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

(d) (i) steel plates, (ii) steel sheets, sold in the same form in which (iii) sheet bars and tin bars, they are directly produced by (iv) rolled steel sections, the rolling mill." (v) tool alloy steel

By the Central Sales Tax (Amendment) Act (61 of 1972), Clause (iv) was redrafted and in so far as it is relevant for the present purpose, it now reads :

(iv) Iron and steel, that it to say,-

(vi) sheets, hoops, strips and scalp, both black and galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in rivetted condition.

3. It is not necessary to mention the other sub-clauses of this clause because the assessee has placed reliance on this clause alone and claims that iron sheets even after perforation remain sheets under this sub-clause. It would be seen that the amendment has now taken care of galvanised and corrugated iron sheets and has equated them with sheets. In other words the question as to whether any change occurs in sheets after they are galvanised and corrugated does not arise. Perforated sheets have not been mentioned and in that regard the

question still remains as to whether iron sheets after perforation can be treated as sheets only.

4. On behalf of the assessee reliance was placed on *State of Gujarat v. Shah Veljibhai Motichand, Lunawada* [1969] 23 S.T.C. 288, which on its turn relies on *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, . I find that *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, has been explained and distinguished by the Supreme Court in *State of Tamil Nadu v. P.L. Malhotra* 1976 U.P.T.C. 282. In *The State of Madhya Bharat (Now The State of Madhya Pradesh) and Others Vs. Hiralal Ji*, a dealer who had bought some scrap iron locally and imported some iron plates from outside, and then converted the material into bars, flats and plates by rolling them in his mills and then sold them, was held entitled to exemption given to iron and steel from sales tax. This case was considered in *P.L. Malhotra's case* 1976 U.P.T.C. 282 and was thus explained (para 11) that the language of the provision giving the exemption justified that interpretation. The exemption was given to sale by either an importer or a purchaser of "goods prepared from any metal other than gold or silver". Thus, the question there was whether exemption was given to the substance out of which goods were made. In that context it had become necessary to examine whether the exemption from sales tax was meant for all goods made out of a particular substance, or for goods as separate commercial commodities and it was held that the raw material from which the goods were made was decisive for the purposes of exemption given. Now the view taken in *P.L. Malhotra's case* 1976 U.P.T.C. 282 is that the object of single point taxation is a commercial commodity and not the substance out of which it is made. Such 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. It has further been observed (para 10):

As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type.

5. It would thus be seen that if as a result of manufacturing or processing a separate commercial commodity emerges or comes into existence then it becomes a separate entity for purposes of sales tax. Iron and steel is now divided into 16 categories in Clause (iv) of Section 14 of the Central Act and these categories embrace widely different commercial commodities ranging from mere scrap iron and left-overs of processes of manufacturing to wires, and wheels, tyres, axles and...sets. Some of the enumerated items can serve as raw

material out of which other goods are made and others are definitely varieties of manufactured goods. By means of this subsequent amendment, therefore, the intention of the legislature is made clear and it is to enumerate separately the taxable goods and not just to illustrate what is just one taxable substance "iron and steel".

6. In my opinion, after perforation, the iron sheet emerges as a different commercial commodity. A perforated iron sheet cannot be used for purposes in which a plain iron sheet can be used. In other words, the use of an iron sheet and perforated iron sheet is not interchangeable. It may also be noted that a perforated iron sheet cannot be restored to its original shape and thus it has to be held that after perforation a different commercial commodity comes into existence. In *State of Uttar Pradesh v. Indian Hume Pipe Company Ltd.* 1977 U.P.T.C. 289 (S.C.) user of a commodity was considered a relevant test for judging the nature of the commodity. Along with user, the purpose for which a commodity is sold and the sense in which it is understood in commercial and popular sense are some of the useful tests in this behalf. For example's sake, it may be noted that ice and water have been held to be different commodities in *Gael Industries (Pvt.) Ltd. v. Commissioner of Sales Tax* 1971 U.P.T.C. 697. Liquid gold used for decoration of glass and ceramic articles was treated as a chemical and not as bullion or as an unspecified item in *Indian Ceramic House, Agra v. Commissioner of Sales Tax* [1970] 26 S.T.C. 413. In my opinion, therefore, as a result of perforation of the iron sheets a different commercial commodity comes into existence and since it is not covered by the categories mentioned in Clause (iv) of Section 14 of the Central Act, it cannot be treated as iron and steel but has to be treated as an unclassified item.

7. The revision hence fails and is dismissed, but there will be no order as to costs.