**(1973) 08 AHC CK 0035**

**In the Allahabad High Court**

**Case No :** Sales Tax Reference No. 275 of 1971

Commissioner of Sales Tax APPELLANT

Vs

Jindal Brothers RESPONDENT

**Date of Decision :** 20-08-1973

**Acts Referred:**

**Citation :** (1973) 32 STC 612

**Hon'ble Judges :** R.L. Gulati, J;H.N. Seth, J

**Bench :** Division Bench

**Advocate :** None, for the Respondent

# Judgement

H.N. Seth, J.—At the instance of the Commissioner of Sales Tax, U.P., the Additional Judge (Revisions), Sales Tax, Bareilly, has stated the case and referred the following question for the opinion of this court in respect of the assessment year 1964-65 :

Whether G.I. pipes for the year under question shall be taxed as hardware at the rate of 3 per cent or as an unclassified item at 2 per cent.

2. For the assessment year 1964-65, the assessee, Messrs. Jindal Bros., filed returns, disclosing the turnover of the sale of G.I. pipes, effected by it, at Rs. 12,700. However, the Sales Tax Officer determined the turnover at Rs. 48,000 and calculated the sales tax payable on it by applying the rate of 3 per cent on the footing that G. I. pipes were hardware. In appeal, the assessee''s turnover was fixed at the reduced figure of Rs. 17,000 and it was held that G.I. pipes being unclassified item, its turnover was liable to sales tax at 2 per cent- The Commissioner of Sales Tax took the matter up in revision. The Judge (Revisions), Sales Tax, applying the ratio of the decisions of this court in the cases of Commissioner of Sales Tax Vs. Aftab Husain Imdad Husain, and Commissioner of Sales Tax Vs. Aftab Husain Imdad Husain, , held that G.I. pipes could not be said to be hardware and as such their turnover could be subjected to sales tax as unclassified item at 2 per cent. However, as the cases relied upon by the Judge

(Revisions) did not deal with the precise question whether G.I. pipes could be considered to be hardware and there was no direct authority of this court on that question, he has referred the aforesaid question of law for the opinion of this court. It may be mentioned here that, before the sales tax authorities, in order to claim that the turnover of the sale of G.I. pipes was liable to be taxed at 3 per cent, the revenue relied upon Notification No. ST-1367/X-1045(19)-1960 dated 5th April, 1961.

3. While pressing the Judge (Revisions) to refer the question for the opinion of this court, the departmental representative appearing for the Commissioner, Sales Tax, made a reference to a subsequent Notification No. ST-2104/X-902(16)-52 dated 21st May, 1963, wherein it had been provided that the rate of tax in respect of the turnover of the sales of ware made of any metal or alloy other than aluminium or brass was being raised from 2 paise to 3 paise per rupee and contended that in any case the G.I. pipe whether it was an item of "hardware" or not, it certainly was a ware made of metal or alloy other than aluminium or brass and as such its sale was taxable at the rate of 3 per cent under the notification dated 21st May, 1963. The Judge (Revisions) points out that no reference to this notification had been made either in the revision petition or even in the application for reference. Hence, it could not be said that the question based on the notification dated 21st May, 1963, arose from his revisional order and no reference on its basis could therefore be made. As the question whether the turnover of the sale of G.I. pipes is taxable at 3 per cent under notification dated 21st May, 1963, has not been referred to this court, we will deal merely with the question whether G.I. pipes are covered by the expression "mill-stores and hardware" as used in the notification dated 5th April, 1961 and, as such, the turnover of their sale is liable to be taxed at 3 per cent as provided by that notification,

4. The ambit and scope of the expression "mill-stores and hardware" as used in the notification dated 5th April, 1961, came up for consideration before a Full Bench of this Court in the case of Commissioner, Sales Tax Vs. Ram Niwas Puskar Dutt, . In that case, the Full Bench affirmed the view taken by this court in the cases of Commissioner of Sales Tax Vs. Aftab Husain Imdad Husain, and Fine Trading Corporation Vs. Commissioner, Sales Tax, , wherein it had been held that hardware and mill-stores are allied trades and whereas the expression "mill-stores" consists of items such as small tools and spare parts of machinery, the expression "hardware" referred ordinarily to items made of base metal consisting of building materials such as nuts, bolts, hinges, rivets, latches, etc. While commenting upon various entries made in the notification dated 5th April, 1961, this court observed as follows:

It is obvious that each entry contains a complete classification of goods and in that classification related items have been included. If that is true, for example, of cardboard and strawboard, ornaments made of gold or silver, machinery and spare parts of machinery, it should be equally good, we think, in the case of ''mill-stores and hardware''. What is comprehended within the expression ''mill-stores and hardware'' are all those articles which whether described as mill-stores or hardware have something common with each other. That common factor and the limits within which its range is circumscribed have been broadly indicated in the cases already referred to above. Upon that test, weights and measures have nothing in common with mill-stores and, therefore, do not fall within the expression ''mill-stores and hardware'' mentioned in the notification of 5th April, 1961....

5. Applying the test laid down by the Full Bench for determining whether an article is one which is covered by the expression "hardware" within the meaning of the entry "mill-stores and hardware", as laid is the notification dated 5th April, 1961, we find that there is nothing in common between articles which are covered by the expression mill-stores and G.I. pipes. In the circumstances, the G.I. pipes cannot be said to be covered by the expression hardware as used in that notification.

6. Accordingly, we answer the question referred to us in favour of the assessee by saying that in the year under question, G.I. pipes were not to be taxed as hardware. As no one appears for the we make no order as to costs.

 