**(1987) 03 AHC CK 0001**

**In the Allahabad High Court**

**Case No :** Sales Tax Revision No. 636 of 1986

Commissioner, Sales Tax APPELLANT

Vs

Luniyal Engineering Company RESPONDENT

**Date of Decision :** 06-03-1987

**Acts Referred:**

Central Sales Tax Act, 1956 — Section 11, 14

**Citation :** (1988) 69 STC 275

**Hon'ble Judges :** Om Prakash, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

Om Prakash, J.—This is a revision for the assessment year 1972-73 by the Revenue against the Tribunal''s order dated 14th March, 1986.

2. None has appeared for the dealer and, therefore, I have heard only learned Standing Counsel. I have carefully gone through the order of the Tribunal. The question for consideration is whether the steel pipes, manufactured by the assessee, are declared goods within the meaning of Clause (iv) of Section 14 of the Central Sales Tax Act as it stood prior to the amendment made by the Central Sales Tax (Amendment) Act, 1972. Prior to the amendment, Clause (iv) of Section 14 of the Central Sales Tax Act stood as follows :

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

3. After the amendment, Sub-clause (xi) of Clause (iv) of Section 14 is as under:

Steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings.

4. Considering the unamended and the amended Act, the Tribunal took the view that Clause (iv) of Section 14 was merely illustrative and not exhaustive and that the intention of the Parliament is clear from the amending Act, 1972 which specifically brought "steel tubes" within Sub-clause (xi) of Clause (iv) of Section 14.

5. The question whether Clause (iv) of Section 14 of the Central Sales Tax Act was illustrative or exhaustive and what did the expression "that is to say" occurring in the Clause (iv) of unamended Section 14, denote, has come up for consideration of this Court in the case of Commissioner, Sales Tax, U.P., Lucknow v. Steel Engineering Corporation, Saharanpur 1981 UPTC 70. In the said case the decision of the Supreme Court in State of Tamil Nadu v. P.L. Malhotra 1976 UPTC 282 was considered at length. Extracting the relevant portion of the decision of the Supreme Court, this Court in the case of Steel Engineering Corporation 1981 UPTC 70 concluded in para 13 at page 75 as follows :

It is, therefore, clear that the import of the expression ''that is to say'' is to exhaustively enumerate the kinds of goods given in the four sub-clauses of Clause (iv). The enumeration is exhaustive and not illustrative and unless a particular commodity can fall within any of the items enumerated therein, it would not be regarded as iron and steel.

6. In the case of Steel Engineering Corporation 1981 UPTC 70 the question was whether the M. S. tubes" were covered by Clause (iv) of Section 14. Adverting to the decision of the Supreme Court in the case of P.L. Malhotra 1976 UPTC 282 this Court in the case of Steel Engineering Corporation 1981 UPTC 70 held in para 13 as follows :

I find that M.S. tubes and tabular sheds are not covered within the goods enumerated in this clause and hence they could not have been treated as declared goods.

7. So the question whether or not the steel pipes or steel tubes were covered by Clause (iv) of unamended Section 14 is not res integra, so far as this Court is concerned because already in the case of Steel Engineering Corporation 1981 UPTC 70 and in other cases, this Court following the decision of the Supreme Court in the case of P.L. Malhotra 1976 UPTC 282 took the view that the items enumerated in Clause (iv) of unamended Section 14 were exhaustive and not illustrative. The decision of the Tribunal runs counter to the decision of this Court and the decision of the Supreme Court as pointed out above. I, therefore, hold that steel pipes were not covered by Clause (iv) of the unamended Section 14, but they are specifically included in Clause (xi) of the amended Section 14.

 

Therefore, the assessee was liable to pay tax not at the rate of 3 per cent but at the rate of 6 per cent on the turnover of the steel pipes.

8. In the result, the revision is allowed, the Tribunal''s order dated 14th March, 1986 is set aside and the order'' of the assessing authority is restored. Let a copy of this order be sent to the Tribunal to pass an order u/s 11(8) of the Act accordingly.