

(1970) 04 MAD CK 0013

In the Madras High Court

Case No : Writ Petitions No's. 437 of 1967 and 520 of 1968

Pyarelal Malhotra

APPELLANT

Vs

Joint Commercial Tax Officer, T. Nagar Division

RESPONDENT

Date of Decision : 10-04-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15

Constitution of India, 1950 — Article 286

Tamil Nadu General Sales Tax Act, 1959 — Section 3, 4

Citation : (1971) 2 MLJ 176 : (1970) 26 STC 416

Hon'ble Judges : Ramaprasada Rao, J; Ramanujam, J

Bench : Division Bench

Advocate : C.S. Chandrasekhara Sastry and V.K. Thiruvenkatachari, for D. Tulokchand Chopda, for the Appellant; K. Venkatasami, Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, AIR 1976 SC 800 : (1983) 13 ELT

1582 : (1976) 1 SCC 834 : (1976) 3 SCR 168 : (1976) 37 STC 319

1. The point involved in these cases has arisen in a batch of cases which was posted for hearing along with these and the question that is raised for

our decision is as to the validity of the levy of sales tax on iron flats, iron sheets and iron bars made out of iron scrap which has already been

subjected to tax. We have heard the various counsel appearing for the petitioners in the entire batch of cases but we render our decision in the

above two cases leaving the other cases to be disposed of later on the particular facts. Before dealing with the contentions of the assessee in these

cases, it is necessary to set out the facts at least in one case and we propose to

deal with the facts in Writ Petition No. 520 of 1968.

2. The petitioners herein are carrying on business of re-rolling steel. They buy iron and steel scraps from other registered dealers and convert them

into mild steel rounds, flats, angles etc., by rolling them. The concerned assessing authority by its Order dated 25th January, 1968, proposed to

assess the said petitioners under the Tamil Nadu General Sales Tax Act, 1959, treating their sales turnover of Rs. 28,20,278.76 of mild steel

rounds, flats, angles, etc., as liable to tax at 2 percent, for the assessment year 1966-67. The objection to the proposed assessment by the

petitioners was that the iron and steel scraps from which rolled mild steel rounds, flats and angles have been made had already suffered tax in the

State as first sale of declared goods and that as such rolled mild steel, iron flats and angles are not liable to tax, as they are declared goods u/s 14

of the Central Sales Tax Act not liable to tax on second and subsequent sales. They also contended that the rolled mild steel rounds, flats and

angles are not goods different from the iron and steel scraps purchased by them. The petitioners filed the above Writ Petition No. 520 of 1968 for

prohibiting the assessing authority from making any assessment on the basis of the said notice proposing assessment.

3. In the said writ petition they contend that the prescription of single point tax specified in Section 14 of the Central Sales Tax Act hereinafter

referred to as the ""Central Act"" 1956 means and requires a single point tax in respect of the series of sales within the State of the goods specified in

the opening part of each item comprised under the Roman numeral numbering in Section 14 of the said Act, that prescription of a single point tax in

respect of item 4, that is ""iron and steel"", means that there should be a tax at a single point only in the series of sales of ""iron and steel"" within the

State though the iron and steel may be converted into other items comprised in the definition and that as such any manufactured Article composed

of iron and steel which fell within any one of the particular specific items listed in item 4 as being ""iron and steel"" will have to be taxed only at one

prescribed point in the series of sales. According to the petitioners all the particular forms of iron and steel mentioned in item 4 are the iron and

steel either in the crudest form such as pig iron or steel ingots or scrap or Articles produced therefrom in rolling mills, which convert the basic

material into usable forms such as plates, sheets, bars or Sections and that it is not permissible to take each particular specification under the same

item 4 and levy a single point tax on the series of sales of each particular sub-item within item 4 as it is not possible to contemplate levy of one

single point tax on the iron plates, sheets or bars or steel scrap or steel ingots. They urge that the levy of sales tax on the rolled steel plates, bars

etc., made out of iron and steel scrap or ingots purchased by them will infringe the provisions of Sections 14 and 15 of the Central Sales Tax" Act

and as such the levy will be invalid. They question the jurisdiction of the assessing authority to make assessment on the alleged second sales of "iron

and steel". This writ petition is to prohibit the concerned assessing officer from bringing to tax rolled "iron and steel" bars or plates etc., produced

from and out of the scrap iron and steel purchased by them and which had suffered tax.

4. Before considering the merits of the contentions of the petitioners, it is necessary to set out the relevant statutory provisions. Section 3(1) and

(2) of the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as the local Act, is as follows :

Section 3 : Levy of taxes on sales or purchases of goods.-(1) Every dealer (other than a casual trader or agent of a non-resident dealer) whose

total turnover for a year is not less than fifteen thousand rupees and every casual trader or agent of a non-resident dealer, whatever be his turnover

for the year, shall pay a tax for each year at the rate of three per cent, of his taxable turnover:....

(2) Notwithstanding anything contained in Sub-section (1) in the case of goods mentioned in the First Schedule, the tax under this Act shall be

payable by a dealer, at the rate and only at the point specified therein on the turnover in each year relating to such goods whatever be the quantum

of turnover in that year.

Section 4 : "Notwithstanding anything contained in Section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the

State of declared goods at the rate and only at the point specified against each in the Second Schedule on the turnover in such goods in each year,

whatever be the quantum of turnover in that year.

5. Schedule I to the Act sets out the goods in respect of which single point tax is

leviable under Sub-section (2) of Section 3 and Schedule II sets

out a list of declared goods in respect of which single point tax only is leviable u/s 4 of the local Act. Item 4 in Schedule II is as follows:

Items (i) to (v) sold in the same form in which they are directly produced by the rolling mill.

6. Section 14 of the Central Act declares certain goods as being of special importance in inter-State trade or commerce and item (iv) therein is

practically the same as has been set out under item 4 of Schedule II to the Act. As a matter of fact the entire Second Schedule is based on the list

of goods mentioned in Section 14. Section 15 imposes certain restrictions and conditions in regard to the levy of tax by the States on the sales of

declared goods as enjoined by Article 286(3) of the Constitution of India. It is useful to set out the said Section 15 as it stood originally:

15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.-Every sales tax law of a State shall, in so far

as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions,

namely :-

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed two per cent, of the sale or

purchase price thereof and such tax shall not be levied at more than one stage;

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in

the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as

may be provided in any law in force in that State.

7. This Section came into force on 1st October, 1958 and the restrictions imposed by the Section became applicable as and from that date. The

rate of 2 per cent, mentioned in Sub-section (a) was, however, raised to 3 per cent, by the Finance Act of 1966 with effect from 1st July, 1966.

Section 15 ensures that in the case of declared goods they should in all circumstances be liable to tax only at a specified stage in the series of sales

and at the prescribed rate.

8. In the light of the above statutory provisions the substantial contention of the petitioners is that "iron and steel" cannot be subjected to tax at

more than one stage and at more than the prescribed rate of 3 per cent, under any circumstances and that if the sales tax law of any State imposes

or authorises the imposition of a tax on the sale or purchase of "iron and steel" at more than one stage or at more than 3 per cent., such law would

be invalid. Admittedly the rate of tax has not exceeded the prescribed rate of 3 per cent, as the rate of tax levied u/s 4 read with Schedule II of the

Act is only 3 per cent and it has not exceeded the rate fixed in Section 15(a). We are concerned herein only with the question whether by levying

tax on rolled "iron and steel" bars and plates etc., made out of iron and steel scrap and the ingots (already subjected to tax), the revenue has

contravened the provisions of Section 15 of the Central Sales Tax Act prohibiting the levy of tax on "iron and steel" at more than one stage.

9. Mr. V.K. Thiruvengkatachari, learned counsel for the petitioner in W.P. No. 520 of 1968 submitted that the words "that is to say" following "iron

and steel" in item (iv) in Section 14 of the Central Act as also in item 4 of Schedule II to the local Act are of considerable importance. According

to him these words are explanatory of what "iron and steel" is and all articles enumerated under that head either in their crude form or in their

manufactured stage or in any of the forms listed under the sub-headings (a), (b), (c) and (d) are treated as various forms of "iron and steel". It is

said that the statute contemplates a single point tax in the series of sales of all forms mentioned under the heading "iron and steel" and that it does

not contemplate a single point among the series of sales of Articles in various forms mentioned in (a), (b), (c) and (d) of item (iv). In this

connection, the learned counsel referred to the decision in *Megh Raj v. Allah Rakhia* AIR 1947 P.C. 72. for ascertaining the scope of the words

that is to say" occurring in item (iv). In that case the Judicial Committee had to deal with the scope of item 21 of List II of the Seventh Schedule of

the Government of India Act, 1935, when they expressed as follows :

The key to item 21 of List II of the Seventh Schedule of the Constitution Act is to be found in the opening word "land". That word is sufficient in

itself to include every form of land, whether agricultural or not. "Land", the governing word in the entry is followed by the rest of the item, which

goes on to say, "that is to say". As to the scope of the words "that is to say" occurring in item 21, it was held that they introduce the most general

concept "rights in or over land".

10. On the same reasoning, it is possible to say that by the use of the words "that is to say" after the words "iron and steel", the Legislature had

intended to adopt the most general concept of "iron and steel" and wanted all forms of iron and steel to be brought within the entry (iv). "The

learned counsel also brought to our notice an explanatory note issued by the Government of India, Ministry of Finance, Economic Affairs, by their

letter No. 4(2) S.T./58, dated 21st July, 1958, which detailed the following items as falling within item (iv), "iron and steel".

A. 1. Pig iron. 2. Steel ingots. 3. Steel billets, blooms and slabs. 4. Tin bars. 5. Skelp.

B. 1. Steel bars and rods. 2. Structural (viz. angles, tees, joists and channels). Bearing plates and crossing-sleeper bars. 3. Plates. 4. Chequered

plates. 5. Boiler plates. 6. Black sheets-plain and corrugated. 8. Heavy rails. 9. Light rails. 10. Fish-plates-heavy and light. 11. Tool steel. 12.

Bullet-proof plates. 13. Shell steel blooms and bars. 14. Box strapping. 15. Baling hoops. 16. Gate channels.

C. 1. Hard bright wire. 2. Annealed wire. 3. Galvanised wire. 4. Telegraph wire. 5. Signal wire galvanised.

D. Tin plates.

E. Alloy steel.

F. Iron and steel defectives and scraps.

11. On the basis of the said explanatory note, it was contended that the Government of India had itself treated all the commodities listed under the

head A to F as "iron and steel", that the single point tax contemplated by Section 15 of the Central Sales Tax Act should therefore be levied at only

one stage in the series of sales from the raw stage to the final stage of production by the rolling mills and that it is not contemplated that the goods

are to be taxed at various stages and in its various forms. The learned counsel is willing to concede that "iron and steel" scrap and ingots may be

commercially different from the rolled plates, bars and sheets as produced by the petitioners and that the local Act may treat them as different

Articles for purpose of single point tax so long as there is no prohibition as the one contained in Section 15 of the Central Act. But it is said that

once a prohibition has come into existence in the form of Section 15 of the

Central Act, it is not possible for the local Act to treat sales of different forms of iron and steel as constituting separate series of sales for the purpose of levying single point tax u/s 4 of the local Act and that if the State were to treat the sales of various forms of iron and steel mentioned under sub-items (a), (b), (c) and (d), as separate series of sales of different commodities and subject them to tax in all its forms, it will be contravening the mandate of single point provided in Section 15 of the Central Sales Tax Act.

12. Mr. Chandrasekhara Sastry, learned counsel for some of the petitioners, however, contends that the various forms of "iron and steel" following the words "that is to say" in item 4 cannot be treated as different Articles and that whatever the form of the Articles be, it continues to be "iron and steel".

13. Mr. V. K. Thiruvengkatachari refers to the other items of declared goods mentioned in Section 14 of the Central Act to substantiate his contention that a single point has to be fixed for the series of sales in all forms of Articles mentioned under the entry. He refers to the entry (ii) dealing with cotton and states that all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, are treated as one commodity for purpose of single point levy and that sales of cotton, whether ginned or unginned, suffer only one tax, though ginned cotton and unginned cotton are commercially different as single point has been fixed with reference to series of sales both in the ginned stage and unginned stage. He also refers to the entry "hides and skins" which has also contemplated single point levy in the series of sales of hides and skins either raw or dressed. It is urged that the Central Act limits the series of sales for purposes of single point levy up to the stage of production by the rolling mill, thus excluding the sales of fabricated materials from the single point scheme and that the single point scheme contemplated by Section 15 should be from the stage of scrap up to the production stage by the rolling mills.

14. The learned counsel relies on the decision in *State of Punjab v. Chandu Lal Kishori Lal* [1970] 25 S.T.C. 52 in support of his stand that cotton, ginned or unginned, is treated as a single commodity under one item of declared goods and that, though they are two distinct commercial

goods, for the purpose of Section 15 of the Central Act it is treated as one item. The learned counsel also referred to the decision of the Supreme Court in *State of Madhya Bharat v. Hiralal* [1966] 17 S.T.C. 313 where it was held, construing Notification No. 58 u/s 5 of the Madhya Bharat Sales Tax Act, 1950, exempting "iron and steel" from sales tax, that the exemption will include iron and steel bars, flats and plates. The learned Judges in that case negated the contention of the State that the expression "iron and steel" meant "iron and steel" in the original condition and not iron and steel in the shape of sheets, bars and plates and that distinction should be made between raw materials of "iron and steel" and the goods prepared out of them. The learned Judges took the view that "iron and steel" used as raw materials for manufacturing other goods also are exempted from taxation, that scrap iron purchased by the assessee was merely re-rolled into bars, flats and plates, that the process was only for convenience of sale and for making them attractive and in acceptable forms and that by the process of re-rolling their character as "iron and steel" is not lost. In these cases also it is urged by the petitioners that the process adopted by them is only re-rolling and that the same does not involve any process of manufacture as such.

15. In *Devi Dass Gopal Krishnan v. State of Punjab* [1967] 20 S.T.C. 430 the Supreme Court had again to consider the correctness or otherwise of the decision of the Punjab High Court in *Devgun Iron and Steel Rolling Mills v. State of Punjab* [1961] 12 S.T.C 590. holding that when steel is rolled into rolled steel Sections the outcome is a different and a new commodity, that when it is sold, there is a sale of a different commodity and not a sale of steel over again and that when sales tax is levied on the sale of rolled steel Sections it is not levied second time or at the second stage on the same commodity in the same condition. The Supreme Court had expressed that the purchase of "iron and steel" as raw material was for the purpose of manufacture so as to exempt from tax the manufactured Article, that when iron scrap is converted into rolled steel it undergoes a vital change in the process of manufacture and is converted into a different commodity, that during the process the scrap iron loses its identity and transforms into a new marketable commodity and that the process is certainly one of manufacture.

16. The learned Judges noted Section 15 of the Central Act before and after its amendment in 1953 and stated that while Section 15 of the

Central Sales Tax Act before the amendment described the stage at which the purchase tax can be levied, Section 15 after the amendment only

declares that it cannot be levied at more than one stage and that the stage prescribed u/s 15 of the Central Act before the amendment and the

prohibition against taxation at more than one stage contained in the amended Section would automatically control the provisions of the Punjab

General Sales Tax Act, 1948. In their view till 1st October, 1958, the State can levy tax at one stage in respect of purchases of declared goods

inside the State made by a dealer for use by him in the manufacture of goods and that from 1st October, 1958, the State was enabled to levy tax at

any one stage as it chooses. They also noted that the amended Section 15 of the Central Act does not fix the stage by its own force but that the

Punjab Act, which they had to consider, had provided in Section 2(ff) that the prescribed stage for single point taxation was the stage of purchase

by a dealer for use in the manufacture of goods. This decision, according to the learned counsel for the petitioners, does not decide the question at

issue in the case and we also agree with him. The question decided by the Supreme Court was that when iron and steel scraps and ingots are

converted into iron and steel bars and plates, the process involves one of manufacture and this was necessary for the purpose of levying a purchase

tax on the purchase of raw material for producing the rolled iron and steel Sections. The learned Judges have not expressed any view on the

question whether in the manufactured state, iron and steel plates and bars etc., cease to be "iron and steel" as defined in item (iv) of Section 14 of

the Central Sales Tax Act as they were not concerned with the taxability or otherwise of the sales of manufactured Articles made out of iron and

steel scrap.

17. Mr. Chandrasekhara Sastry referred to the words "in the same form" used in sub-items (b) and (d) in item (iv) of Section 14 and contended

that there cannot be a straight-jacket formula for finding out whether a particular Article was sold in the same form as was produced by the rolling

mill. In Vaiswaner Trading Co. v. State of Gujarat [1964] 15 S.T.C. 586. a Bench of the Gujarat High Court held that where pieces of rolled steel

Sections are joined together by riveting ,they still retain the same form in which rolled steel Sections are directly produced by the rolling mills within

the meaning of entry 4 in Schedule A A of the Bombay Sales Tax Act, 1953 and that riveted baling hoops which are nothing but pieces of rolled

steel Sections joined together by riveting ,fall within that entry. The learned Judges expressed that it is impossible to attempt to formulate a general

test which must be applicable in all cases and it is a difficult question to decide as to when can an Article which is a rolled steel Section be said to

be in the same form in which it is directly produced by the rolling mill,

18. Reference was also made to State of Gujarat v. Sakarwala Brothers [1967] 19 S.T.C. 24 where the Supreme Court had held that sugar in

entry 47 of the Bombay Sales Tax Act, 1959, included within its ambit all forms of sugar, that is to say, sugar of any shape or texture, colour or

density and by whatever name it is called.

19. It was also contended by the learned counsel that the object of the statute should be effectuated and that cannot be done if each sub-item in

item (iv) is treated as an independent item for purpose of levying single point tax. Reference is made to Tungabhadra Industries Ltd. v. Commercial

Tax Officer [1960] 11 S.T.C. 827 where the Supreme Court held that hydrogenated ground-nut oil (commonly called vanaspati) is ""groundnut oil

within the meaning of Rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. The Supreme Court expressed :

That the hydrogenated oil sold by the appellants was out of groundnut not being in dispute, the only point is whether it continues to be oil even after

hydrogenation. Oil is a chemical compound of glycerine with fatty acids, or rather a glyceride of a mixture of fatty acids-principally oleic, linoleic,

stearic and palmitic the proportion of the particular fat varying in the case of the oil from different oil-seeds and it remains a glyceride of fatty acids

even after the hardening process, though the relative proportion of the different types of fatty acids undergoes a slight change. In its essential nature

therefore no change has occurred and it remains an oil-a glyceride of fatty acids-that it was when it issued out of the press.

20. It is urged that when vanaspati, which is produced from groundnut oil after chemical process, is treated as groundnut oil, rolled iron and steel

Sections which are made out of iron and steel scrap into certain presentable and

usable forms will not cease to be "iron and steel". According to the learned counsel this is a fortiori case, for reconversion is impossible in the case of vanaspati while it is possible in the case of "iron and steel".

21. The learned Assistant Government Pleader appearing on behalf of the State, however, contends, relying on the decisions in Devgun Iron and

Steel Rolling Mills v. State of Punjab [1961] 12 S.T.C. 590 and Devi Dass Gopal Krishnan v. State of Punjab [1967] 20 S.T.C. 430 above

referred to, that "iron and steel" plates and rods sold by the petitioners are commodities different from iron and steel scrap or ingots, that they are

treated commercially different for purposes of taxation and that the State is entitled to levy on the first sales of the goods manufactured by the

petitioners, notwithstanding the fact that scrap out of which they have been manufactured had suffered tax already. He also contends that the

words "that is to say" following "iron and steel" in entry (iv) of Section 14 of the Central Act cannot be said to be explanatory but that it should be

construed as restrictive of the scope of the words "iron and steel". Though the contention of the learned Assistant Government Pleader that there is

a manufacturing process when iron and steel scraps are melted and converted into iron and steel plates and rounds may be correct in view of the

decision of the Supreme Court in Devi Dass Gopal Krishnan v. State of Punjab [1967] 20 S.T.C. 430 the facts in these cases as averred by the

petitioners and not traversed by the State are different. The petitioners are said to have adopted merely a process by which different shape is given

to the scrap which they have purchased by heating and beating them to shape. It is said that they do not melt the iron scrap to make it into a

different form, but merely heat the scrap and beat them to required sizes and shapes. The question is whether this process can be said to be a

manufacturing process. We are of the view that on the facts of these cases as averred by the petitioners the process adopted will come under the

principle of the decision of the Supreme Court in State of Madhya Bharat v. Hiralal [1966] 17 S.T.C. 313 and not within the principle of the

decision in Devi Dass Gopal Krishnan v. State of Punjab [1967] 20 S.T.C. 430. However, we are not resting our decision solely on the fact that

the process adopted by the petitioners is not a manufacturing process. Even assuming that the process adopted is a manufacturing process and the

product sold by the petitioner is a manufactured product, we are of the view that even in their manufactured state the goods did not cease to be

iron and steel"" as defined in entry (iv) in Section 14 of the Central Act. A reading of the said entry as a whole shows that the statute wanted to

treat all forms of iron and steel either as raw material or as a finished product from the rolling mill as ""iron and steel"" and the product as emerging

from the various stages of manufacture cannot be treated different from ""iron and steel"".

22. The learned Government Pleader places strong reliance on the case reported in Devgun Iron and Steel Rolling Mills v. State of Punjab [1961]

12 S.T.C. 590 and the decision of the Supreme Court in Devi Dass Gopal Krishnan v. State of Punjab [1967] 20 S.T.C. 430 and contends that

the rolled iron and steel Articles are commercially different and that the State is entitled to bring them to tax notwithstanding the fact that the scrap

out of which they have been made had been taxed already. In effect the State contends that it is entitled to treat each of the commodities

mentioned in the various sub-items in entry (iv) separately for the purpose of levying single point tax. As we had already noted, the decision in

Devgun Iron and Steel Rolling Mills v. State of Punjab [1961] 12 S.T.C. 590 and Devi Dass Gopal Krishnan v. State of Punjab [1967] 20 S.T.C.

430 were concerned with the validity of the purchase tax levied on the iron and steel scraps purchased for the purpose of rolling them into bars,

plates and sheets and the question was whether they had been purchased for the purpose of manufacture for attracting the levy of purchase tax. In

those cases the question of liability to sales tax on the sales of the manufactured product did not come up for consideration. In our view the

principle of the decision in State of Madhya Bharat v. Hiralal [1966] 17 S.T.C. 313 has to apply as, in our opinion, even after manufacture the

rolled iron and steel rounds, plates etc., continue to be ""iron and steel"" as defined in the said entry (iv). The learned Government Pleader faintly

contended that in the manufactured state the goods sought to be taxed in the petitioners' hands have ceased to be ""iron and steel"" as coming under

entry (iv). But when pointed out that if such were the contention the manufactured goods have to be taxed at the multi-point, he had to give up that

contention, for the State is contemplating to levy only single point tax on the first sale of the manufactured product even now and they did not treat

the manufactured product as subject to multi-point tax. Even though after manufacture the goods are commercially different as has been held by the

Supreme Court in *Devi Dass Gopal Krishnan v. State of Punjab* [1967] 20 S.T.C. 430 still the goods, in our view, did not cease to be "iron and

steel" and tax has to be levied only at a single point in the series of sales from the stage of raw material till it is sold in the same form as it had been

produced by the rolling mills, that is, till the manufactured Articles had been converted into any other form of fabricated material. The learned

Assistant Government Pleader also referred to the decision of the Supreme Court in *Commissioner of Sales Tax v. Harbilas Rai and Sons* [1968]

21 S.T.C. 17 . There the word "manufacture" has been held to have various shades of meaning and in the context of sales tax legislation, if the

goods to which some labour is applied remain essentially the same commercial Article, it cannot be said that the final product is the result of

manufacture. This decision, in our view, supports the view we have expressed above that notwithstanding some work and labour are applied, the

iron and steel scrap remained essentially the same and that it had not ceased to be iron and steel.

23. The learned Government Pleader also referred to the decision in *State of Gujarat v. S. V. Motichand* [1969] 23 S.T.C. 288 particularly the

dissenting view of Divan, J., that "the real test applicable to such cases is the test of possibility of substitution of the one for the other so far as

consumers are concerned and if there is no such possibility, it would be a new commodity and would no longer be a form of the original Article

and that corrugated iron sheet is not a form of iron or steel but is an Article of iron or steel and is a distinct commodity covered by entry 80 of

Schedule B to the Bombay Sales Tax Act, 1953." But it is found that the majority view was that corrugated iron sheets were merely iron in another

shape and form, that it cannot be regarded as an Article or product manufactured or fabricated out of iron, that merely because iron is given the

shape of sheet and is subject to corrugation for the purpose of giving it rigidity and increased stiffness so as to make it acceptable to a particular

class of persons who might want to use it in the form of iron sheet for roofing and walling, it does not cease to be iron; and it merely assumes

another form, namely, that of a wrinkled sheet, but it still continues to retain the essential character of iron. The majority was of the view that the

sale of corrugated iron sheets was covered by entry 15 of Schedule B of the Bombay Sales Tax Act prior to its amendment in 1957 and not by the residuary entry 80 of that Schedule. On a consideration of the entire matter with reference to the decided cases on the point, we are of the view that the goods sold by the petitioners in these cases are "iron and steel" as defined in entry (iv) of Section 14 of the Central Act and that they cannot be taxed once over, if they had suffered tax in their raw or unmanufactured stage, that is, as iron and steel scrap. The petitioners have alleged that the iron and steel scrap, which they have used for manufacturing iron and steel sheets, bars, plates etc., had been subjected to tax, but this has to be established before the concerned authorities. In view of the fact that the factual question whether the iron and steel scrap had suffered tax at the purchase stage has to be investigated, we have to dismiss the writ petitions after expressing our view on the legal question, giving liberty to the assessing authority to ascertain the actual factual position and to proceed with the assessment, if any, in accordance with law. The above writ petitions are therefore dismissed.