(1994) 05 GAU CK 0027

In the Gauhati High Court

Case No : Civil Rule No. 883 of 89

Shree Kamrup Industries Assam Ltd. APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 27-05-1994

Acts Referred:

Assam Finance (Sales Tax) Act, 1956 — Section 3
Central Sales Tax Act, 1956 — Section 14, 15, 2, 25, 5
Constitution of India, 1950 — Article 141, 226, 286, 286(1), 286(3)

Citation : (1994) 2 GLR 118

Hon'ble Judges : J.N. Sharma, J

Bench : Single Bench

Advocate : J.P. Bhattacharjee, H.K. Roy and A.K. Saraf, for the Appellant; A.G. for Assam and B.P. Todi, for the Respondent

Final Decision : Allowed

Judgement

J.N. Sarma, J.—This application under Article 226 of the Constitution of India has been filed claiming the following reliefs:

(i) To quash the impugned notices dated 4.6.88 and 2.7.88 Annexures III and IV issued by the Respondent No. 5, the Superintendent of Taxes Unit -''A'' Panbazar, Ouwahati.

(ii) To quash the notice dated 23.3.88 issued by the Respondent No. 3, the Deputy Commissioner of Taxes, Assam, Guwahati on the basis that corrugated iron sheets made out of plain iron sheets purchased locally after paying first point tax under the Assam Financial Sales Tax Act, 1956 is not again taxable at the rate of 4% under the said Act and to quash the subsequent actions initiated on the basis thereof.

2. The brief facts are as fallows:

That the Petitioner is a Private Limited Company engaged in the business of sale and supply of corrugated Iron Sheets prepared from the plain Iron Sheets purchased locally within the State of Assam. On 12.3.87, the Superintendent of Taxes issued a notice to show cause as to why the sale of corrugated iron sheets should not be treated as taxable sale and assessed accordingly. Annexure -1 is at page 28 of the Writ application which reads as follows:

Sub: Show cause notice against imposition of tax on the sale of corrugated Iron Sheets produced from the locally purchased rolled plain sheet during the period ending on 30.9.86 under the Assam Finance (Sales Tax) Act, 1956.

Whereas, it appears on examination of your hooks of accounts for the period ending 30.9.96 under the Assam Finance (Sales Tax) Act, 1956, you have sold C.I. sheets processed and produced out of locally purchased plain sheets amounting to Rs. 98,25,056.47 and have shown that sale is the return of turnover as sales of goods secured within the State of Assam and have not paid any tax on such sales.

Since the C.I. Sheets which is produced after some processing of plain sheet is commercially different and distinct commodity which cannot be regarded as original commodity viz, plain, sheet and moreover the general commercial use of plain sheet and C.I. Sheet am not the same; (i.e. plain sheets are used in making Bus bodies and C.I. sheets used in roofing) as such C.I. sheets sold by you are taxable under the Act at the rate of 4 paise in the rupee.

You are therefore, hereby asked to show cause in writing by appearing personally before the undersigned on 17.3.87 at 11 A. M as to why the said sale of C.I. Sheets should not be treated as taxable sale and assessed accordingly.

3. The Petitioner submitted a show cause vide Annexure - II on 4.4.87. His contentions are as follows

1. That "Iron & Steel" is a declared goods within the meaning of Section 2(c) of the Central Sales Tax Act, 1956, the same having been declared u/s 14 of the Central Sales Tax Act to be of special importance in inter-State trade and commerce. Item (iv) of Section 14 enumerates "Iron & Steel". Sub-item (vi) of the said item reads as follows:

(vi) Sheets, hoops, strips and skelp, 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.

2. That there is no dispute about the fact that all varieties of iron sheets "plain and corrugated" are covered by the aforesaid Sub-item (vi) of item (iv) of Section 14 of the Central Sales Tax Act.

3. That it is well-settled by now by the decisions of the Supreme Court that Item (iv) of Section 14 of the Central Sales Tax Act (as amended by Act 61 of 1972 w.e.f. 1.4.1973) is clear and unambiguous. The intention of the legislature was to consider each sub-item of item (iv) as separate taxable commodity for the purpose of sales tax. Each sub-item has been treated as a separate commodity

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by the legislature. Till the goods fall in the same category i.e. sub-item, it continues to be the same declared goods and cannot be taxed again However, whet, one commodity is transformed into another and the commodity so emerging after transformation falls in a different sub-item then the commodity out of which it that; emerged, the said new commodity can be taxed again. If not, it remains the same taxable commodity and cannot be subjected to tax again.

4. That "Iron &. Steel" in item 40 of the Schedule to the Assam Finance (Sales Tax) Act, 1956 was also substituted by Assam Act XXX of 1974 w. e. f. 1.4.73 to incorporate the definition given in clause (iv) of the Central Sales Tax Act, 1956. Item 40 reads:

40, Iron & Steel as defined in clause (iv) of Section 14 or the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

5. In the instant case, it is apparent that Iron Sheets of all varieties plain or corrugated, black or galvanized fall under the same-sub item namely, Sub-item (vi) of item (iv) of Section 14 of the, Central Sales Tax Act. Plain sheets and corrugated sheets are not two separate declared commodities. The declared commodity is "Iron Sheets" and till it ceases to be "Iron sheets" the same cannot be taxed at more than one stage simply because it has been corrugated.

6. That in view of the aforesaid legal position, well settled by the decisions of the Supreme Court and also accepted and acted upon by the Sales Dept. in Assam all through out there is no scope for trying to interpret sub-item (vi) of item (iv) of Section 14 of the Central Sales Tax in a different way to authorise the department to levy Tax on the same declared goods at more than one stage. Such an interpretation would be contrary to the scheme and provisions of the Central Sales Tax Act, 1956 and the principles of interpretation of fiscal Statutes laid down by the Supreme Court. In view of the aforesaid legal position, we hope you will be satisfied that "plain iron sheets" and "corrugated iron sheets" are the same declared goods as defined in sub-item (vi) of item (iv) of Section 14 of the Central Sales Tax Act and it is not permissible to sub-divide the same and levy tax at more than one stage.

4. On 23.3.88 vide Annexure-VIII, a clarification was given from the Govt. as regards the taxability of corrugated iron sheets made out of the Plain Sheets purchased within the State of Assam by paying first point tax under the Assam Finance (Sales Tax) Act, 1956, which is quoted below:

The question for decision is as to whether plain iron sheets purchased by paying first point tax and converted into corrugated Iron Sheets can again be subjected to sales tax as a different commodity, The facts stated in the J.C.T''s letters at SI. 1/c are that plain sheets are purchased in coil form by eight. They are thereafter cut to various sixes in length and subjected to a mechanical process whereby they are corrugated. It is also stated that the commercial uses of plain sheets and corrugated sheets differ. The Supreme Court in the case referred to in

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the JCT?s letter was dealing with the sole question whether goods manufactured out of steel rounds, flats, angles etc. cannot be taxed again once the subject i.e. iron and steel out of which these were made has suffered taxes. In dealing with that question, their Lordship no doubt said that Section 14 of Central Sales Tax Act in its various clauses contained 16 categories of Iron Steel. Their lordship had no occasion to go into the sub-categories within a category. Their Lordship approved the law laid down in AIR, 1987 Supreme Court 1895 and held that the decisive test in the matter is whether the goods were subjected to a manufacturing process and thereby a new commercial commodity was produced.... Indeed, the Supreme Court in the latest case reported in AIR, 1987 Supreme Court 1885 reiterated the same test. Applying this test we would say that four sub-categories in Section 14(vi) of the Central Sales Tax Act may be subjected to tax once again if one sub-category is consumed in manufacture of another sub-category. The facts as stated in the J.C.T''s letter constrain one to leant to the view that AIR 1976 Supreme Court 800 is no bar to levy of tax on corrugated iron sheets made out of plain iron sheets purchased after paying tax.

5. On 4.6.88, the Superintendent of Taxes informed that the clarification regarding taxability of corrugated iron sheets made out of the plain sheets purchased locally after paying first point tax under the Assam Financial (Sales Tax) Act, 1956 has been received from the Government and the item is taxable under the aforesaid Act @ 4%. The Petitioner was directed to furnish the purchased figures after corrugation for the purpose of assessment for the period mentioned in the notice, i.e. Annexure-III to the writ application which is quoted below:

Sub: Taxability of corrugated Iron Sheets made out of the plain sheets purchased within the State of Assam by paying first point tax under the Assam Finance (Sales Tax) Act, 1956 a clarification thereof.

With reference to the subject cited above, you are hereby informed that clarification regarding taxability of Corrugated Iron Sheets made out of plain sheets purchased locally after paying first point tax under Assam Finance (Sales Tax) Act/56 has been received from the Govt. and the said item is taxable under the Assam Finance (Sales Tax) Act/56 @ 4%.

Yon are therefore, hereby required to furnish to the undersigned by 15.6.88 positively the purchase figures after corrugation for the purpose of assessments for period ending 30.9.86, 31.3.87 & 30.9.87 respectively.

6. In pursuance of this letter, notice was issued by the Superintendent of Taxes to submit the required particulars as per notice dated 4.6.88 and 16.7.88. A reply was sent on 13.7.88 stating therein that the Petitioner is not liable to pay tax. The main contentions are as follows:

That Corrugated Sheets made out of locally tax paid Iron Plain Sheets cannot attract further tax, because it is clearly defined in sub-item VI of Iron and Steel contained in Heading No. 14 of ton and Steel of different categories as specified

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in Section of CST Act, 1956. Sub-Item VI reads as under-

SHEETS, Hoops, Strips and Skelp, both Black and Galvanised, hot and cold rolled, Plain and Corrugated, in all qualities, in straight length and in coil form as rolled and in rivetted condition.

From this sub-heading, we understand that there are four items, namely Sheets, Hoops, Strips and Skelp and any of these items may be in any form like Black and Galvanised, hot and cold rolled, plain and corrugated, in all qualities, in straight length and in coil form as rolled and in rivetted condition. So, "Sheets" is also one of the aforesaid items in the specific sub-heading which may be plain or corrugated. It means that Plain Sheets and Corrugated Sheets are not two different products and basically the same is one item only. Hence, the question does not arise for imposition of further tax on Corrugated Sheets made out of Plain Sheets. If other three items, namely Hoops, Strips and Skelp would have been made out of Sheets, then the question for further tax on the said items would have arisen.

While discussing the matter with you, you had stated that AIR 1976 Supreme Court 800 is no bar to levy tax on Corrugated Iron Sheets made out of locally tax paid sheets. In this connection, we want to bring to your kind notice humbly, that due to oversight your goodself is mis-interpreting the said AIR. We have taken several legal opinion in respect of the said AIR 1976 Supreme Court 800, which also does not allow you to impose further tax on sale of Corrugated Iron Sheets made out of locally tax paid iron Plain Sheets.

It has been clearly mentioned in the said AIR that if there is no change of categories amongst the items under different Heads and Sub-heads mentioned in the Schedule of Section 14 of CST Act, the same cannot be taxed double. As such your goodself will be kind enough to go in agreement with our opinion that there should not be imposition of further tax on sale of Corrugated Iron Sheets made out of locally tax paid Plain Sheets.

7. Another letter was written to the Deputy Commissioner of Taxes, Assam, Guwahati on 20/28 August, 1988 in the same line. A letter was also written to the Commissioner of Taxes, Assam Guwahati on 2.3.89 In the same line. By Annexure-IX on 27.3.89, the Deputy Commissioner of Taxes sent a reply that the clarification was already given to the concerned Superintendent of Taxes and the Petitioner was requested to contact the concerned Superintendent of taxes for guidance. Hence, this writ application.

8. I have heard Dr. A.K. Saraf, learned Advocate for the Petitioners and Learned Advocate General of Assam assisted by Shri B. P. Todi, Learned Advocate.

Dr. Saraf urges the following four points:

(i) That Corrugated Iron Sheets and Plain Sheets fall under the same item i.e. sub-item (vi) of item (iv) of Section 14 of the Central Sales Tax Act, 1956 and as such the same cannot be treated as two different commodity for the purpose of

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taxation. The declared commodity is Iron Sheet and till it ceases to be iron sheets the same cannot be taxed at more than one stage only on the ground that, the same has been corrugated.

(ii) That Corrugated Iron Sheets and Plain Iron Sheets are the same commodity us per Central Sales Tax Act, 1956 and it is not permissible to sub-divide the same into two different commodities and levy tax at more than one stage and as such impugned notices purporting to split up one single declared goods into two different commodities and providing for levy of taxes at two different stages is violative of the mandatory provisions of Constitution of India contained in Article 286 read with Section 15(a) and (b) and Section 14(i)(a) of the Central Sales Tax Act and as such the same are illegal, null and void.

(iii) That the Superintendent of Taxes being a quasi judicial authority ought to have decided the taxability of the item independently and not acting on the basis of the directions of the superior authorities and as such the entire proceeding of levying tax on corrugated iron she its on the basis of the clarifications issued by the Deputy Commissioner of Taxes are illegal, null and void and in-operative in law.

(iv) That the Deputy Commissioner of Taxes acted most arbitrarily and illegally and in gross violation of the cannons of law in issuing direction and/or clarifications to the Superintendent of Taxes as regards taxability of corrugated iron sheets.

9. That an order was passed on 30.6.89 to the following effect:

There shall be interim stay of the operation of the notices dated June 4, 1988 and July 2, 1988 issued by the Superintendent of Taxes, Gauhati, Unit-A, only affecting the Petitioner.

10. Learned Advocate General of Assam raises a preliminary point regarding the maintainability of this Application on the ground that the Assam Finance (Sales Tax) Act, 1956 is a self-contained legislation and provides for appeal and revision and as such this application is not maintainable as the Petitioner has approached this Court without exhausting the remedies provided under the statute. On the other hand, Dr. Saraf contends that when he has challenged the very jurisdiction of the Sales Tax authority to impose, levy taxes, he can file the application under Article 226 and for this purpose he relies in a number of Division Bench decisions of this Court. After perusing the same and after hearing the learned Counsel, I do not find that this contention of the learned Advocate General has any force. (See 1990 (79) STC Page 51 (Gauhati) Chittraranjan Saha v. State of Tripura, Accordingly, this point is rejected.

11. Article 286 provides certain restrictions as to imposition of taxes on the sale or purchase of goods.

Article 286(1) -No law of a State shall impose, or authorise the imposition

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Restriction as to imposition of tax on the sale or purchase of goods. of, a tax on the sale or purchase of goods where such sale or purchase takes place-

(a) ....

(b) ....

(2) ....

(3) Any law of a Suite shall, in so far as it. imposes, or authorises the imposition of,....

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in interstate trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to, in Sub-clause, (b) Sub-clause (c) or Sub-clause (d) of clause (19A) of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

The Parliament enacted the Central Sales Tax Act. 1956 and we are concerned with the item of Iron and Steel. Let us have a look at Section 14 dealing with it. Section 14 of Central Sales Tax Act, 1956 provides as follows:

14. Certain goods to be of special Importance in inter-State trade or commerce, It is hereby declared that the following goods are of special importance in inter-State trade or commerce:

(i) Cereals, that is to say-

(i) paddy; (ii) rice; (iii) wheat; (iv) jowar or milo; (v) bajra; (vi) maize; (vii) ragi; (viii) kodon; (ix) kutki and (x) barley,

Section 14(iv) iron and steel, that is to say,

(i) pig iron and cast iron including (ingot moulds, bottom plates), iron scrap, cast iron scrap, runner scrap and iron skull scrap;

(ii) steel semis (ingots, slabls, blooms and billets of all qualities, shapes and sizes);

(iii) skelp bars, tin bars, sheet bars, hoe-bars

(iv) steel bars (rounds, rods, squares, flats, octogons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths).

Section 14(vi) sheets, hoops, strips and skelp, 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 rivctted conditions:

Section 15 of the Central Sales Tax act provides for restriction and conditions in regard to tax on sale or purchase of declared goods within the State.

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Section 15(a): The. tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed of the sale or purchase price thereof, and such tax shall not be levied at more than one stage.

12. That the legislative history of levying of Sales Tax in Assam on sale of iron and steel may briefly be stated as under:

(a) Iron and steel are items taxable under the Assam Finance (Sales Tax) Act, 1956 and the same is covered by item No. 40 of the Schedule attached to the Assam Finance (Sales Tax) Act, 1956. The said item originally read as under:

(b) The Iron and Steel were subject to tax from time to time by the State Government as under:

(i) Originally it was taxable at the rate of 2 paise in the rupee.

(ii) From 3.1.67 iron and steel were made taxable at the rate of 3 paise in the rupee by Assam Act I of 1967.

(c) The aforesaid original item was substituted by the Assam Act XXX of 1974 with effect from 1.4.83 by the following:

Iron and steel as defined in clause (iv) of Section 14 of Central Sales Tax Act, 1956 (Central Act 74 of 1956) and the same was made taxable at the rate of 3 paise in the rupee.

(d) By Assam Act 21 of 1977 the said item 40 was substituted with effect from 15.12.77 and the substituted item as at present runs as follows:

40. iron &, Steel as defined in Clause (iv) of Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956).

13. The main thrust of argument of the Petitioner is that the Petitioner company purchases plan iron sheets within the State of Assam by paying Assam Finance Sales Tax under the Assam Act, 1956 and hereafter these iron sheets are converted by the Petitioner company into Corrugated Iron Sheets and thereafter again it is sold within the State of Assam as corrugated iron sheets and within the meaning of Clause, (iv) of Section of the Central Sales Tax Act, 1956 the same cannot be taxed twice by the State of Assam.

14. In support of this contention, Dr. Saraf relied on a recent judgment of the Supreme Court reported in (1994) 93 STC Page 187 Telangana Steel Industries and Ors. v. State of Andhra Pradesh and Ors., the Supreme Court in that case was considering Iron and Steel and entry XV i.e. wire, rods and in paragraph 17 and 18 of the judgment pointed out as follow:

Para 17:

The aforesaid being the approach to the controversy at hand, we do not propose to refer to what had been stated in the counter-affidavit filed by the State before the Tribunal relating to the process of manufacturing of wire from rods, to which

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our attention has been invited by Shri Chari. We only wish to put on record that in meeting what was mentioned in this regard in the counter-affidavit, Shri Lahoty, who assisted Shri Tarkuride, drew our attention to what has been stated by the Indian Standard Institution on this subject, reference of which is to be found at page 19 of Volume II of the Paper Book of C.A. No. 68 of 1986 under the heading "2.4 wire". We have retrained from going through the exercise of deciding whether wire is a different commercial commodity from rod, because our approach has been different, as we wanted to base our decision not on the touchstone of iron rod and wire being one or separate commercial commodity, having found that these two goods have been clubbed together in sub-item (xv) (supra) which according to us, made material difference and clinched the issue.

Para 18:

We, therefore, conclude by slating that iron wires cannot be taken as a separate taxable commodity and, if wire rods which were purchased by the Appellants had suffered sales tax, the same could not be realised from the sale of wires. Shri Lahoty indeed brought to our notice Notification Nos. I and II issued by the Government of Andhra Pradesh under G.O. Ms. No. 176 dated February 13, 1986 as per which sale of wires was exempted from sales tax starting from April 1, 1976 if the wire rods used by the wire drawing units in the State for the Manufacture of wire had been subjected to tax under State Act.

15. In this case the Supreme Court was considering the point as follows:

The point has, however, arisen for consideration because we are concerned with a single point sales tax which would not allow taxing of the same commodity again. It is also not a dispute that if the two goods at hand be different commodities the single point taxing principle would not debar realisation of tax once again from the sale of wires. In this case the Supreme Court was considering the earlier 4 (four) Judges decision of the Supreme Court In the State of Tamil Nadu v. Pyare Lal 1976 (37 STC) Page 319, 1976 SC Page 800 1976 SC (Supra), the case was examined whether steel rounds, flats, plates etc. were to be taxed under the provisions of the Tamil Nadu General Sales Tax Act. These products were also declared goods, and so, an argument was advanced that the iron scrap from which the goods had been manufactured having suffered sales tax, tax could not be realised once again from the sale of plates, flats, rounds, etc. The Supreme court did not accept the contention.

16. In paragraph 11 of the present judgment of Telengana Steel, the Supreme Court noted the submission in the earlier case where it is stated as follows:

Our attention is also invited to what has been stated at page 172 (at page 323 of STC) -the same being that each, of the sub-category of a sub-item retains its identity as a commercially separate item so long as it retains the sub-division, The argument, therefore, is that goods of one sub-item and in one sub-division have to be taken as one commercial commodity.

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17. On the other hand, the learned Advocate General contends that in, the case of Pyare Lal (Supra), the interpretation which was given the law was laid down as follows:

It is true that the question whether good to be taxed have been subjected to a manufacturing process so as to prepuce a new marketable commodity, is the decisive test in determining whether an excise duty is leviable or not on certain goods. No doubt dealing with the sales tax, the taxable event is the gale and not the manufacture of goods. Nevertheless, if the question is whether a new commercial commodity has come into existence or not, so that its sale is a new taxable event, in the sales tax law, it may also become necessary to consider whether a manufacturing process, which has altered the identity of the commercial commodity, has taken place. The law of sales tax is also concerned with "goods" of various descriptions, It, therefore, becomes necessary to determine when they ceased to be goods of one taxable description and become those or a commercially different category and description.

It appears to us that the position has been simplified by the amendment of the law, as indicated above, so that each of the categories falling under "Iron and steel" constitutes a new species of commercial commodity is transformed Into another, it becomes a separate commodity for purposes of sales tax.

18. The learned Advocate General submits that there is no dispute in tills case that by adopting manufacturing process, the plain sheets have been transformed into corrugated iron sheets and corrugated Iron sheet Is a separate commodity for the purpose of sales tax. He submitted that during the process of manufacturing, plain iron sheet loses its identity and it becomes a new marketable commodity and it is sold at much higher price to the consumer and as such subject to further sales tax. He further submits that the case of Pyare Lal is a decision of larger bench and that will be binding in this Court. In this connection the learned Advocate General draws my attention to the observation of the Supreme Court in the case of Pyare Lal where the argument which is put forward in the present case was specifically turned down in the following terms:

The purpose of an enumeration in a statute dealing with sales tax at a single point in a series of sales would very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it.

Learned Counsel appearing for an intervener argued that the chemical composition of iron and steel affords a clue to the meaning of "iron and steel" as used in Section 14 of the Central Act, We are unable to agree that this could be what Parliament or any legislature would be thinking of when enumerating items to be taxed as commercial goods. The ordinary meaning to be assigned to a unable item in a list of specified items is that each item so specified is considered as a separately taxable item for purpose''s of single point taxation in a series of sales unless the contrary is shown. Some confusion has arisen because the

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separate items are all listed under one heading "Iron and steel"

If the object was to make Iron and steel taxable as a substance, the entry could have been: "Goods of iron and steel", Perhaps even this would not have been clear enough. The entry, to clearly have that meaning, would have to be: "Iron and steel irrespective of change of form or shape or character of goods made out of them". This is the very unusual meaning which the Respondents would like us to adopt. If that was the meaning, Sales TAX law itself would undergo a change from being a law which normally taxes sales of "goods" to a law which taxes sales of substances out of which goods are made. We, however, prefer the more natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item. This means that each item so specified forms a separate species for each item. This means that each item so specified forms a separate species for each series of sales although they may all belong to the genus; "iron and steel". Hence, if iron and steel "plates" are malted and converted into "wire" and then sold in the market, such wire would only be taxable once so long as it retains its identity as commercial goods belonging to the category "wire" made of either iron or steel. The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be to tax sales of goods of each variety and not the sale of the substance out of which they are made.

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 substance 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 purpose 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.

19. The contention of the Advocate General in short is that the judgment of two Judges in Telengana Steel (Supra) is inconsistent with the decision of the larger Bench in Pyare Lal''s case and therefore this Court should not follow the decision in Telengana Steel (Supra). The judgment of the Telengana Steel makes it quite clear that it was rendered after considering the earlier decision of the Supreme Court i.e. judgment of the Larger Bench in Pyare Lal''s case, When the Supreme Court after considering the earlier decision explains as to what those decisions have laid down the interpretation of the earlier judgment made by the Supreme Court in a subsequent judgment is binding on me. The judgment in Telengana Steel clearly explained as to what has been laid down in earlier decision in Pyare Lal''s case.

20. That being the position, it would not be open to the High Court to examine

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and say that. the view taken by the Supreme Court in this behalf in Telengana Case is Inconsistent with the law laid down by the Larger Bench in the case of Pyare Lal, I am bound under Art, 141 of the Constitution to follow the law as explained in Telengana Steel case keeping in mind the Article 141, of the Constitution, judicial discipline and decorum. So, even if there is some force in the argument of the learned Advocate General, I am not entitled under the law to accept the submission made by the learned Advocate General.

21. It is a fact that in the common parlance as I understand, when plain sheet through manufacturing process''s converted to corrugated iron sheet it becomes a different commodity and it also fetches a higher price in the market. Further, plain sheets may be sola as a roll but corrugated iron sheets are sold piece-wise and in that view of the matter normally that should be deemed to be liable to sales tax but seal has been put in the matter by the Supreme Court, there is the end of the matter.

22. Point No. I

23. As this Point No. 1 is decided in favour of the Petitioner. It is held that plain sheet and corrugated iron sheet cannot be treated as two different commodities for the purpose of taxation. The declared commodity is iron sheet and till it ceases to be iron sheets, the same cannot be taxed at more than one stage only on the ground that the same has been corruated.

24. Dr. Saraf in this connection also relies on a Division Bench of this Court reported in 1992 (1) GLR page 82 India Carbon and Ors. v. State of Assam and Ors. where a Division Bench of this Court in paragraph 10 of the judgment pointed out as follows:

As stated earlier, clause (a) of Section 15 imposes restriction on the sales tax law of State that the State law cannot impose tax on a sale or purchase inside the State of declared goods at more than one stage. It has already been concluded that raw petroleum coke and calcined petroleum coke are goods declared and they are to be treated as one and same for the purpose of item (i-a) of the list u/s 14 of the Central Act. Therefore, although Assam Act has treated the petroleum coke and the calcined petroleum coke, which are goods declared, as different commodities for the purpose of sales tax law of the State, the treatment as two different commodities cannot prevail over Section 14 of the Central Act. This being the position, if the raw petroleum coke is also sold inside the State, after-calcination, and if the State law imposes tax on the raw petroleum coke as well as the calcined petroleum coke, it would be imposition of tax on a sale or purchase inside the State of goods declared at more than one stage, which is not permissible under clause (a) of Section 15 of the Central Act. In that view of the matter, Assam Act cannot impose tax on the raw petroleum coke as well as calcined petroleum coke if a sale or purchase of both the raw petroleum coke and calcined petroleum coke takes place within the State, of Assam as such imposition of tax will be unconstitutional in view of Article 286(3) of the

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Constitution read with Central Act. We are, therefore, of the view'' that the doctrine of "reading down" shall be attracted in the present case. in order to save unconstitutionality when such a situation arises, and that, in entry (vii) of Clause (I) of Section 3 of the Assam Act, if the words, namely, "which was not subjected to tax as raw petroleum coke", are added within brackets after the words "calcined petroleum coke", it will save the classification from being unconstitutional. Accordingly, we read down entry (vii) thus:

Calcined petroleum coke ''which was not subjected to tax as raw petroleum.

25. The learned Advocate General points out that this matter is pending before the Supreme Court but pendency before the Supreme Court shall not wipe out the decision rendered in the case.

26. The learned Advocate General has also placed reliance on the following two cases:

(i) 90 STC Page 47 (1993) Bengal Iron Corporation and Ors. v. Commercial Tax Officer where the Supreme Court was considering the Andhra Pradesh General Sales Tax Act and the Central Sales Tax Act and was considering the entry regarding Iron and Steel. The facts are that the Appellant is a dealer who purchased cast iron and manufactured cast iron casting like cast iron pipes, man-hole covers and bends was assessed to sales tax. on the, turnover of their sales by treating them as general goods rejecting his claim that the cast iron castings manufactured by him were declared goods and therefore, they were liable to be taxed only once. The Supreme Court held that cast iron was different from "cast iron castings" like man-hole covers, bends cast Iron pipes, etc. manufactured and sold by the Appellant from "cast iron". It cannot, be denied in such a situation that the products manufactured by the Appellant are in common parlance different and distinguished from the cast iron and liable to be taxed separately.

(ii) 91 STC (1993) Page 408 Rajasthan Roller Flour Mills Association v. State of Rajasthan. This case was considered by the Supreme Court in the case of Telengana Steel (Supra) but it appears that the case reported in 90 STC page 47 (Supra) was not considered by the Supreme Court. But as I have taken the view that this matter is squarely covered by the Judgment of Telengana Steel and the judgment of Bengal Iron (Supra) is also by two Judges and the judgment of Telengana Steel also by two Judges and as Telengana Steel is subsequent decision, the same is binding on me.

27. Point No. II

28. As point No. I has been decided in favour of the Petitioner point No. It is also decided in favour of the Petitioner and it is held that the action of the authority seeking to tax corrugated iron sheets again under the Assam Act is illegal and void.

29. Point No. III & IV

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30. Dr. Saraf on behalf of the Petitioner submits that the Superintendent of Taxes being a quasi judicial authority ought to have decided the taxability of the item independently and he cannot act on the basis of the directions of the superior authority and in this connection he relies on the following decisions:

(i) AIR 1969 SC page 48 Orient Paper Mills Ltd. v. Union of India wherein the Supreme Court in paragraph 8, has pointed out as follows:

if the power exercised by the Collector was a quasi judicial power-as we hold it to be that power cannot be controlled by the directions issued by the Board. No authority however high placed can control the decision of a judicial or a quasi judicial authority. That is the essence of our judicial system. There is no provision in the Act empowering the Board to issue directions to the assessing authorities or the appellate authorities in the matter of deciding disputes between the persons who are called upon to pay duty and the department. It is true that the assessing authorities as well as the appellate authorities are judges in their own cause; yet when they are called upon to decide disputes arising under the Act they must act independently and impartially. They cannot be said to act independently if their judgment is controlled by the directions given by others. Then it is a misnomer to call their orders as their judgments; they would essentially be the judgments of the authority that gave the directions and which authority had given those judgments without hearing the aggrieved party. The only provision under which the Board can issue directions is Rule 233 of the Rules framed under the Act. That rule says that the Board and the Collectors may issue written instructions providing for any supplemental matters arising out of those Rules. Under this rule the only instruction that the Board can issues is that relating to administrative matters; otherwise that rule will have to be considered as ultra vires Section 35 of the Act.

(ii) 1970 (Vol. 77) ITR (SC) Page 6 Sirpur Paper Mill Ltd. v. Commissioner of Wealth-Tax, where Supreme Court pointed but interi-alia as follows:

The power conferred by Section 25 is not administrative, it is quasi-judicial. The expression "may mate such Inquiry and pass such order thereon" does not confer any absolute discretion oh the Commissioner. In exercise of the power the Commissioner must bring to bear an unbiased mind, consider impartially the objections raised by the aggrieved party, and decide the dispute according to procedure consistent with the principles of natural justice : he cannot permit his judgment to be influenced by matters not disclosed to the Assessee, nor by dictation of another authority.

(iii) 1970 ITR Page. 772 (AP) Raja V.V.V.R.K. Yachendra Kumar Rajah of Venkatagiri v. Income Tax Officer where the Andhra Pradesh High Court pointed out as follows:

It is now well settled that the assessment proceeding before the income tax Officer are quasi judicial in nature and while making assessments the income tax Officer has solely to be guided by the provisions of law. He cannot avail of any

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instruction or direction given by his higher authorities including the Central Board of Direct Taxes for making a particular assessment

(iv) 1958 SC Page 667 Mahadayal Premchandra v. Commercial Tax Officer where the Supreme Court pointed out as follows:

Held, that the order which the Commercial Tax Officer ultimately passed showed that he was merely voicing the opinion of the Assistant Commissioner without any conviction of his own, This was hardly a satisfactory way of dealing with the matter. The Assistant Commissioner however, had delegated the work of assessment order giving his own reasons for doing so. The Appellants had no opportunity of meeting the point of view which had been adopted by the Assistant Commissioner and the Commercial Tax Officer quietly followed these instructions and advice of the Assistant Commissioner. It was clear that he did not exercise his own judgment in the matter and faithfully followed the instructions conveyed to him by the Assistant Commissioner without giving the Appellant an opportunity to meet the points urged against him. The whole procedure was contrary to the principles of natural justice. The procedure adopted was, to say the least unfair and was calculated to undermine the confidence of the public in the impartial and fair administration of the sales tax department concerned.

31. On the other hand, the learned Advocate General submits that no direction was given by the superior authority but the superior authority only clarified the matter but this does not appear to be correct position as will be evident from Annexure - VI where the Superintendent of Taxes stated that the "J.C.T''s letter appears to have imbibed ambiguous meaning and it is not perceptible to me." So, the Superintendent of Taxes himself was not convinced that the goods are taxable but again the Deputy Commissioner of Taxes held that the JCT''s letter constrains one to lean to the view that AIR 1976 SC Page 800 is no bar to levy of tax on corrugated iron sheets made out of plain iron sheet purchased after paying taxes and in this connection, the Deputy Commissioner of Taxes relied on 1987 SC Page 1885 Deputy Commissioner of Sales Tax v. Pitcha, where the Supreme Court was considering Kerala General Sales Tax Act and the Supreme Court pointed out as follows:

Where the goats and sheep undergo a process viz., slaughtering and then come into existence as meal, hides and skin by consuming the goat in the said process, the product being something entirely different from the original goods it cannot be said that gout and meat are the same and that no consumption was involved in converting goats into meat. There is clearly a process of consumption in converting goals into mutton by which goods different from the original goods are produced. Lifeless mutton is, by any standard, "other goods" different from "goat and sheep" within the meaning of Section 5

32. So, it appears that the superior authority having decided the matter gave direction to the Superintendent of Taxes and accordingly the Superintendent of

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Taxes issued the notice Annexure - VI and Annexure IV itself says that this was issued as per Govt. instruction communicated by the Deputy Commissioner of Taxes.

33. Accordingly, there is force in the contention of Dr. A. K, Saraf and these notifications are liable to be set aside and quashed,

CONCLUSION

34. After hearing the learned Counsel of both the sides and on perusal of the materials on record and on the basis of the decisions cited by me earlier, I hereby allow this Writ application with the following directions:

(i) Annexure III and V dated 4.6.88 and 2.7.88 issued by the Respondent No. 5, the Superintendent of Taxes Unit ''A'', Panbazar, Guwahati are quashed.

(ii) No question can arise regarding quashing of Annexure-VIII, the letter dated 23r

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