

(1993) 06 AP CK 0001

In the Andhra Pradesh High Court

Case No : Tax Revision Case No's. 24, 27, 28, 29, 35, 44 and 74 of 1987, 27 and 187 of 1988, 20 of 1989 and 190 of 1990

State of Andhra Pradesh

APPELLANT

Vs

Venkatesh Foundry

RESPONDENT

Date of Decision : 14-06-1993

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 20, 20(2), 22, 23, 42
Central Sales Tax Act, 1956 — Section 14, 15

Citation : (1994) 92 STC 34

Hon'ble Judges : S.S. Mohammed Quadri, J;S. Parvatha Rao, J

Bench : Division Bench

Advocate : Government Pleader for Commercial Taxes, for the Appellant; K. Raji Reddy, P. Sreenivasa Reddy, A.K. Jaiswal, T. Ramam, G.N. Chetty, S. Dasaratharama Reddi and Y. Ratnakar, for the Respondent

Judgement

S. Parvatha Rao, J.—In all these tax revision cases preferred by the State against the orders of the Sales Tax Appellate Tribunal allowing various appeals filed by several assessees, the common question that arises for our consideration is whether the goods sold by the assessee and described by them as "cast iron castings" which are manufactured out of tax-suffered pig iron and cast iron or iron scrap were "cast iron" are covered by item 2(i) of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as "the Act") and therefore the turnovers relating to the said sales were not taxable on the ground that the said sales were second sales.

2. In all those appeals, the Tribunal proceeded on the basis that the goods sold by the assessees were cast iron castings and held that cast iron and cast iron castings were commercially one and the same commodity. The Tribunal did not enquire into the meaning of the term "cast iron castings" and whether the goods involved were in fact cast iron castings or were different finished commercial products. The Tribunal relied on G.O. Ms. No. 383, Revenue(S) dated April 17, 1985, of the Government of Andhra Pradesh wherein the Government clarified

under sub-section (2) of section 42 of the Act that "the "cast iron castings" were covered by the term "cast iron including ingot moulds, bottom plates" occurring in sub-item (i) of item 2 of the Third Schedule" to the Act. The said clarification was issued by the Government of Andhra Pradesh on the basis of the clarification issued by the Ministry of Finance, Department of Revenue, Government of India, in their Letter F. No. 24/10/80-CT dated January 31, 1984 to the effect that "cast iron castings" were covered by the term "cast iron". The Tribunal also noticed that entry 2 of the Third Schedule to the Act was a verbatim reproduction of section 14(iv)(i) of the Central Sales Tax Act, 1956 and that Government of India in their Letter No. 24/14/76-ST Department of Revenue and Banking, dated February 28, 1977, addressed to all the Finance and Revenue Secretaries of all State Governments and Union Territories, stated as follows :

"I am directed to say that the question whether the expression "cast iron" used in section 14(iv)(i) of the Central Sales Tax Act, 1956, will include "cast iron castings" has been re-examined in consultation with the Director-General of Technical Development, Chief Chemist and the Ministry of Law, Justice and Company Affairs. This department has been advised that the existing expression "cast iron" in the aforesaid section will cover "cast iron castings" also."

3. The Tribunal observed that whatever goods were specified in the Central Sales Tax Act, 1956 (hereinafter referred to as "the Central Act"), must be treated as declared goods by every State law, and in view of G.O. Ms. No. 383 dated April 17, 1985, the position clarified by the State Government could not be disputed by the State Representative. In the circumstances, the Tribunal answered the question "whether cast iron and cast iron castings are commercially one and the same commodity for purpose of exigibility to tax under the Andhra Pradesh General Sales Tax Act ?" in favour of the assesseees and against the department and allowed the appeals preferred by the assesseees and excluded the disputed turnover from the taxable turnover. A detailed order dated April 30, 1986, was made by the Tribunal in T.A. No. 766 of 1984 against which T.R.C. No. 74 of 1987 is preferred; the Tribunal followed the said order in all its orders out of which T.R.C. Nos. 24, 27, 28, 29, 44 and 35 of 1987 and 27 of 1988 arise. T.R.C. No. 187 of 1988 is preferred against the order of the Tribunal in T.A. No. 107 of 1987 dated January 8, 1988. In the said T.A. No. 107 of 1987 the State Representative, relying on the decision of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and that of the Madras High Court in State of Tamil Nadu v. India Metal Industries [1980] 46 STC 304, contended that pig iron, cast iron, iron scrap and cast iron castings were different commercial commodities and that castings prepared out of pig iron, iron scrap and other materials were exigible to tax. But the said contention was rejected by the Tribunal on the ground that the said two decisions considered "the entry before its amendment" and that after the amendment the clarification was issued by the Andhra Pradesh Government under sub-section (2) of section 42 of the Act. The Tribunal also relied on the judgment of a Division Bench of this Court in Adarsh Foundries v. Commissioner of Commercial Taxes [1988] 70 STC 151, rendered in

special appeals u/s 23 of the Act. The question that fell for decision in that case was whether the Commissioner of Commercial Taxes in exercise of his revisional powers u/s 20 of the Act was justified in holding that cast iron castings were not "cast iron" falling within item No. 2(i) of the Third Schedule to the Act and that they were liable to be taxed u/s 5(1) of the Act. This Court referred to the said G.O. Ms. No. 383 dated April 17, 1985 and held as follows :

"We are directly confronted with the question as to whether, where a clarification u/s 42(2) of the Act has been issued by the Government, it is open to the Commissioner to take a view contrary to that and make an assessment according to his interpretation of the provisions in the Schedule or in the section. We are definitely of the view that the Commissioner is bound by the clarification issued by the Government u/s 42(2) of the Act. We find support for this view that we take, in the Division Bench ruling of this Court in *Munaga Singaraiah Sreshty and Sons v. State of Andhra Pradesh* [1977] 40 STC 89."

and quashed the orders of the Commissioner. In the event, the Tribunal held that in view of the clarification issued by the Government u/s 42(2) of the Act, the second sales of iron castings manufactured out of pig iron, cast iron or iron scrap purchased from registered dealers within the State and which suffered tax, were exempt from levy of tax. The said order of the Tribunal dated January 8, 1988, was followed in T.A. Nos. 904 and 922 of 1987 out of which T.R.C. Nos. 190 of 1990 and 20 of 1989 arise.

4. The learned Government Pleader relies on the recent decision of another Division Bench of this Court in *Deccan Engineers v. State of Andhra Pradesh* [1992] 84 STC 92 and submits that the Tribunal erred in merely relying upon G.O. Ms. No. 383 dated April 17, 1985 and in holding that the goods sold by the assesseees were not exigible to tax. In *Deccan Engineers* case [1992] 84 STC 92 this Court considered the question whether the articles sold by the assessee such as C.I. pipes, manhole covers were different commodities from cast iron which was the raw material, and were liable to tax. The assessee in that case made C.I. specials, bends, ties, tail pieces, manhole covers, etc., from cast iron which had suffered sales tax, and sold them. The case of the Revenue was that items sold by the assessee were commodities different from cast iron though made out of it and were, therefore, exigible to tax as distinct commercial commodities. It was contended on behalf of the assessee that the relevant entry in section 14 of the Central Act and also the Third Schedule of the Act spoke of cast iron including ingot moulds and bottom plates, iron scrap, etc., which indicated that any casting made out of cast iron also should be treated as included in the entry because of the word "including" in the entry. It was also contended that the Government of India in their letters had clarified that cast iron castings were covered by cast iron and the State Government had also issued the said G.O. Ms. No. 383 dated April 17, 1985, subsequently u/s 42(2) of the Act clarifying that cast iron castings were covered within the term cast iron and that the said G.O. was binding on the various assessing authorities in the State as the goods sold by

them were cast iron castings. The Bench referred to the decision of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, and to a Bench decision of this Court in *Surana Industries v. State of Andhra Pradesh* (1985) 11 STJ 282 wherein this Court had taken the view that wire made out of wire rod was a distinct commercial commodity and liable to be taxed separately. And then the Bench held as follows :

"Coming to the entry in this case the language used is "cast iron including ingot moulds, bottom plates" The entry does not speak of any cast iron castings, and uses the word "including". Admittedly what the assessee is selling are not cast iron ingot moulds or bottom plates. This particular entry (iv)(i) indicates a reference to declared goods which are in an unfinished form, like pig iron, cast iron, including ingot moulds, bottom plates, iron scrap, etc. Commodities like C.I. pipes or manhole coverings or C.I. bends are finished products for use."

Thereafter, the Bench considered the import of the word "including" and held as follows :

"In the light of what is said above, the word "including" in the said entry in section 14 cannot be said to extend to any commodity other than specified therein. Cast iron will include its form in ingots, billets and bottom plates. It will not take in any other separate commodity made from cast iron, like C.I. pipes or manhole covers. Therefore, the contention of the counsel for the petitioner that the goods sold by them should be treated as cast iron which is a declared goods is rejected.""

5. Dealing with the contention based on the letters of the Government of India and the said G.O. Ms. No. 383 dated April 17, 1985, issued by the State Government, this Court held as follows :

"It is seen from the letters of the Government of India that they were dealing with cast iron and cast iron castings. The word "cast iron castings" is not used in section 14 or Schedule III. The effect of the letters and the G.O. has to be examined keeping in view the statutory provisions of the Central Act which are repeated in Schedule III. Section 42(2) of the State Act contemplates a clarification where a difficulty is found in giving effect to the provisions of the State Act in the circumstances mentioned therein. We find no difficulty in giving effect to the provisions of the State Act which has merely copied the Central Act. The G.O. is issued based on the letters of Central Government. The letters of the Central Government and the G.O. are with reference to cast iron and cast iron castings, while the entry is "cast iron, including ingot moulds, bottom plates, etc.". It is open for the State Government to exempt any particular goods from the levy of tax, but this has not been done.

The counsel for the petitioner placed reliance on two Bench decisions of this Court reported in *Munaga Singaraiah Sreshty and Sons v. State of Andhra Pradesh* [1977] 40 STC 89 and *Adarsh Foundries v. Commissioner of Commercial Taxes* [1988] 70 STC 151, on the effect of the Government instructions. In view

of what we have pointed out above, the ratio of the said decisions does not apply to the present case. Therefore, neither the letters of the Government of India nor the G.O., issued by the State Government help in resolving the controversy in this case."

6. This Court did not agree with the decision of the Allahabad High Court in Commissioner of Sales Tax v. Vishwa Engineering Co.[1992] 84 STC 100 (decided on July 24, 1985) wherein relying on the letters of the Government of India, it was held that manhole covers were same as iron castings and cast iron. Finally this Court upheld the view of the Tribunal that articles sold by the assessee in that case, like C.I. pipes, manhole covers were different commodities from cast iron which was the raw material, and were liable to tax.

7. The question once again arose in Sri Rama Malleable Engineering Works v. State of Andhra Pradesh (W.P. No. 6772 of 1991 decided on 20th June, 1991 - Andhra Pradesh High Court). In that case, the assessee preferred a writ petition questioning the show cause notice issued by the Joint Commissioner (Legal), Commercial Taxes, proposing to revise u/s 20 of the Act the orders of the Appellate Deputy Commissioner (CT) in the assessee's case relating to the assessment year 1980-81. Dismissing the said writ petition at the admission stage, a Division Bench of this Court held as follows :

"The Division Bench ruling of this Court in Deccan Engineers v. State of Andhra Pradesh [1992] 84 STC 92 is binding on this Court. Learned counsel for the petitioner invited our attention to an earlier Division Bench ruling of this Court in Special Appeals Nos. 40, 41 and 47 to 52 of 1984, dated June 18, 1987 (Adarsh Foundries v. Commissioner of Commercial Taxes [1988] 70 STC 151)."

Going through the earlier ruling, we find the same to be not laying down the law on the subject in question. All that it says is that there being a Government order clarifying the matter, the said order of clarification is binding on the Commissioner of Commercial Taxes. A little surprise was expressed at the fact that the Commissioner did not choose to follow the said Government order. The latest Division Bench ruling goes to the root of the matter, considers the main issues involved, goes through other reported judgments on the question, also considers the function of a G.O. when the statute is otherwise clear and unambiguous and in a well considered judgment, comes to its own finding on the issue. This latter judgment is the relevant judgment. Besides, it also binds us as it also binds the Commissioner of Commercial Taxes. So long as this judgment holds the field, prevails and operates, it is not possible to interfere in a petition such as the instant one."

8. There are two earlier Division Bench decisions of this Court prior to Deccan Engineers case [1992] 84 STC 92. In State of Andhra Pradesh v. Netha Enterprises Pvt. Limited (T.R.C. No. 279 of 1988 decided on 17th January, 1989) this Court while dismissing the T.R.C. at the admission stage, held as follows :

"In our opinion, the Tribunal was right in holding that cast iron castings are cast

iron within the meaning of G.O. Ms. No. 383, Revenue, dated April 17, 1985. The learned Government Pleader pointed out that the petitioner manufactures pipes and pipes cannot be called cast iron castings. We need not, however, express any opinion on the said contention inasmuch as in this case no authority has held that the goods in question are not cast iron castings. The State Government itself has clarified that cast iron castings are cast iron. If in a given case it can be said that the goods manufactured by a dealer are not cast iron castings, it is evident that they cease to be cast iron. The T.R.C. is dismissed."

Again in *State of Andhra Pradesh v. Pratap Industries* (T.R.C. No. 93 of 1990 decided on 8th February, 1991 - Andhra Pradesh High Court) at the admission stage this Court held as follows :

"The finding of fact recorded by the Tribunal was that the goods in dispute, cast iron castings, were made out of cast iron or iron scrap or semi-finished articles, which have suffered tax. The Tribunal has relied on G.O. 383 Revenue dated April 17, 1985 in coming to the conclusion that the disputed turnover relating to cast iron castings manufactured out of tax-suffered pig iron, cast iron or iron scrap could not be subjected to tax under the Andhra Pradesh General Sales Tax Act. We are in agreement with the Tribunal that G.O. 383 dated April 17, 1984, is fully applicable to this case. The tax revision case consequently fails and it is dismissed."

9. More recently the question again arose in Writ Petition No. 9315 of 1992 (*Bengal Iron Corporation v. Commercial Tax Officer*). The petitioner in that case claimed to be manufacturer and dealer of the products like cast iron pipes, manhole covers, bends, etc. Its turnover for the assessment year 1989-90 comprising of the sales of the said articles was brought to tax by the Commercial Tax Officer and the petitioner in that case appealed against the same. Pending the said appeal, it sought the quashing of the demand notice in that writ petition. Its contention was that it had collected tax only at the rate of 4 per cent relying on G.O. Ms. No. 383 dated April 17, 1985 and treating the goods manufactured and sold by it as "declared goods" and that in view of the said G.O. the assessing authority was not justified in levying sales tax at 6 per cent and additional tax at 1 1/2 per cent and also surcharge. A Division Bench of this Court by its order dated July 28, 1992 dismissed the said writ petition at the admission stage observing that the matter was squarely covered by the decision of a Division Bench of this Court in *Deccan Engineers v. State of Andhra Pradesh* [1992] 84 STC 92 and that it was held in that case "that "cast iron" will include its form in ingots, moulds, bottom plates, etc., and it will not take in other category of goods like cast iron pipes, manhole covers, etc.". To complete the narration, it has to be noted that the Supreme Court granted special leave to the dealer on October 16, 1992 in SLP (Civil) No. 12589 of 1992 against the said order of this Court dated July 28, 1992, in Writ Petition No. 9315 of 1992 in view of the fact that earlier it had granted special leave against the judgment of this Court in *Deccan Engineers* case [1992] 84 STC 92 on October 24, 1991, in SLP (Civil)

Nos. 15898 and 15899 of 1991.

10. The learned counsel for the respondents/assessee submits that in the cases before us the Tribunal proceeded on the basis that the goods made and sold by the respondents herein were cast iron castings unlike in the case of Adarsh Foundries [1988] 70 STC 151 where the Tribunal dealt with the sales of cast iron specials, bends, ties, tail pieces, manhole covers, etc. They contend that the respondents were only making cast iron castings out of pig iron and iron scrap on which sales tax was already paid and that in view of G.O. Ms. No. 383 dated April 17, 1985, the Tribunal correctly held that cast iron castings and cast iron were commercially one and the same commodities and that they were not exigible to tax once again as the raw materials from which they were made, i.e., pig iron and iron scrap, etc., were already subjected to tax. They also submit that the decisions of this Court in the cases of Adarsh Foundries [1988] 70 STC 151, Netha Enterprises Private Limited (T.R.C. No. 279 of 1988 decided on 17th January, 1989) and Pratap Industries (T.R.C. No. 93 of 1990 decided on 8th February, 1991) directly govern the present T.R.Cs.

11. Before proceeding further, we have to advert to the facts of the cases. As already stated earlier, the first detailed order of the Tribunal was in T.A. No. 766 of 1984 dated April 30, 1986 against which T.R.C. No. 74 of 1987 arises before us. The assessment year in that case was 1980-81. The assessment order dated June 23, 1981, of the assessing authority states that a check of the accounts maintained by the assessee revealed the following turnovers :

"1. 1st sales of cast iron castings (rice Rs. 9,09,794.46 mill spare parts) 2. Sales tax collections on the above sales Rs. 46,206.50 3. Surcharge collections on the above Rs. 982.49 4. Transport charges collected Rs. 2,847.20 5. 1st sales of cast iron valves. Rs. 28,354.00 6. Sales tax collections on the above. Rs. 2,091.25 7. Surcharge collections on the above Rs. 46.18 8. Transport charges collected Rs. 68.00 9. Collections of amount on job work Rs. 14,117.50 ----- Total Rs. 10,04,507.58." -----

It further states that the assessee (the respondent herein) claimed exemption in respect of the turnover of Rs. 9,90,390.08 describing the same as "1st sales of cast iron castings, viz., rice mill spare parts and valves" on the ground that the assessee purchased pig iron and iron scrap from the registered dealers in the State and manufactured cast iron castings after melting the said pig iron and iron scrap and that as such the cast iron castings sold by it were only mouldings of tax-paid pig iron and scrap and hence it was entitled for exemption on the entire sales of cast iron castings manufactured out of tax-suffered pig iron and scrap, and that cast iron included cast iron castings. The assessing authority accepted the contention of the assessee and exempted, i.e., excluded the entire turnover of Rs. 9,90,390.08 as claimed by the assessee.

12. The concerned Deputy Commissioner of Commercial Taxes in his order dated September 1, 1984, in exercise of his revisional powers under sub-section (2) of

section 20 of the Act, held that the assessing authority erroneously granted exemption on the said turnover and subjected the same to tax at 41/2 per cent as general goods after considering the objections of the assessee to the show cause notice earlier issued to it. In the said show cause notice, the Deputy Commissioner of Commercial Taxes observed that the finished cast iron goods sold by the assessee were commercially different commodities from pig iron, cast iron, iron ore or scrap purchased by the assessee. He observed that the articles of different shapes obtained after casting were subjected to further processes like grinding, polishing and turning into different sizes and shapes as per the specific requirements of the customers by putting them into lathe machines and ultimately turning into finished products like mill parts, rubber rollers, cone polishers, etc., which had separate commercial existence and value different from the original raw moulds or mouldings or castings, and that such commodities were different from the commodities from which they were manufactured, and that therefore they were taxable. In the reply to the show cause notice, the assessee contended that it sold only rough iron castings without grinding and machining as mill parts and that whatever the nomenclature might be such as oil engines/rice mill parts, cast iron pipes, etc., they were pure rough castings only and the properties of the cast iron were not lost in the cast iron castings. The assessee relied on the clarificatory letters of the Government of India dated February 28, 1977 and the clarificatory letter of the Commissioner of Commercial Taxes dated March 12, 1981, stating that the expression "cast iron" used in section 14(iv)(i) of the Central Act would include cast iron castings also. Regarding the process of manufacture, the assessee stated that the cast iron scrap and pig iron would be melted in furnace along with hard coke and only some silicon would be added for certain cast iron casting moulds and the molten liquid would be poured into the moulding boxes of various shapes and sizes. Graphite and bonatite would be used only for the mouldings and other processing but not in the melting. The said castings lifted from the melting boxes would be sold as cast iron castings and these cast iron rough castings would be put to use for particular purpose according to the shapes in which it was moulded - for instance if it was for rice mill parts, it would be used for rice mill parts after grinding, polishing, machining further to the said rough castings and with the assembly of other accessories such as rubber bushes, bolts and nuts and then it would be called finished product of rice mill part which would fall under the category of machinery parts. The assessee also contended that as per the judgment of the Supreme Court in *State of Tamil Nadu v. Pyare Lal Malhotra* [1976] 37 STC 319 each sub-item in item 2 of the Third Schedule to the Act was liable to single point tax separately and that where commercial goods, without change of their identity as such goods, were merely subjected to some processing, finishing or merely joined together, they would remain commercially the same goods which cannot be taxed again in a series of sales so long as they retain their identity as goods of a particular type. The Deputy Commissioner took the view that the clarification issued by the executive authorities like Government of India or the State Government or the

Commissioner were not binding on the assessing or revising authorities as they were bound to exercise their judgment by applying their mind in the interpretation of statutory provisions and that the said authorities could not change the statutory provisions. He then elaborated his understanding of sub-item (i) of item (iv) of section 14 of the Central Act. According to him, even the various substances mentioned in sub-item (i) are different from each other. It is not correct to say that all the goods manufactured out of the said substances, i.e., pig iron, cast iron, ingot moulds, bottom plates, iron scrap or cast iron scrap, etc., would be one and the same. Iron is different from pig iron. Pig iron is the product that comes out of the steel plant. Cast iron is made specifically for specific uses by adding small quantities of other minerals to pig iron and is not normally sold as cast iron; it is made every time by a foundry depending upon the end-product to be manufactured. Merely because casting is made out of cast iron they cannot be treated as one and the same. The surplus metal from a casting is cast iron scrap and it is reused in further melts. The goods which can be described as cast iron castings can be commercially different from one another. Even if the clarification in the letter of the Government of India dated February 28, 1977, that the expression "cast iron will include cast iron castings" is accepted, it does not mean that one commercial commodity of cast iron casting cannot be different from another commodity of cast iron casting. Cast iron casting goods are varied in nature and can be entirely different from one another. For example, a sewing machine body which is a cast iron casting, is very different from an oil engine head made from cast iron. The end-products are moulds of cast iron and are therefore liable to be taxed even though the raw material from which they are made, i.e., pig iron or cast iron melt or cast iron scrap, have suffered tax earlier. Even the clarifications issued by the Government of India do not say that pig iron and cast iron are one and the same commodities. Therefore, the Commercial Tax Officer was in error in exempting cast iron goods on the ground that pig iron and scrap iron from which they were manufactured, suffered tax. According to him, even if the process of manufacture described by the assessee was taken into consideration, what was manufactured by the assessee from pig iron was entirely a different commodity which was given at the rough stage from the raw material, i.e., pig iron or cast iron melt or cast iron scrap; after grinding, polishing and with the assembly of other accessories referred to by the assessee yet another finished product arose. If the dealer sold the final product that would be liable to tax and if he sold at the rough stage, then also it would be liable to tax at the rough stage. The Deputy Commissioner also relied on the judgment of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, , for the proposition that once the identity of a particular commercial commodity was lost, there was no question of the commodity being exempt on the ground that the commercial commodity from which it was made had already suffered tax. According to him, the clarifications issued by the Government of India did not say that different commodities of cast iron castings were not liable to tax separately or that pig iron and cast iron were one and the same. It has to be noticed that the said

revisional order of the Deputy Commissioner dated September 1, 1984, was prior to G.O. Ms. No. 383 dated April 17, 1985, issued by the State Government under sub-section (2) of section 42 of the Act. It is also to be noticed that the assessee collected sales tax on the disputed turnover.

13. The Tribunal allowed T.A. No. 766 of 1984 preferred by the assessee against the said order of the Deputy Commissioner. In its order dated April 30, 1986, in the said appeal, the Tribunal did not enquire into the nature of the goods manufactured and sold by the assessee and whether they were in fact rice mill spare parts and valves as described in the assessee's accounts or were only rough castings or were in fact subjected to further grinding and machining, etc., and whether the goods sold by the assessee were different and identifiable commercial commodities. The Tribunal confined itself only to the one question formulated by it as follows :

"The question for our decision is whether cast iron and cast iron castings are commercially one and the same commodity for purpose of exigibility to tax under the Andhra Pradesh General Sales Tax Act ?"

14. After referring to item (iv) of section 14 of the Central Act and to item 2 of the Third Schedule to the Act and the clarifications issued by letter dated February 28, 1977 of the Government of India and to G.O. Ms. No. 383 dated April 17, 1985, of the State Government, the Tribunal observed and held as follows :

"The view of the Government of India was not accepted by the Deputy Commissioner on the ground that the Central Government's clarification does not bind the State Government. That difficulty now has been resolved by the aforesaid G.O. in which the State Government have categorically held "cast iron castings are covered within the term cast iron including ingot moulds, bottom plates occurring in sub-item (i) of item 2 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957". This position could not be disputed by the learned State Representative. In the circumstances we answer the question in favour of the assessee and against the department. In the result the appeal is allowed and the disputed turnover is directed to be excluded from the taxable turnover."

15. The assessee in T.R.C. No. 20 of 1989 is the same as the assessee in T.R.C. No. 74 of 1987 and it relates to the next assessment year, i.e., 1981-82. By order dated September 30, 1982, the assessing authority brought to tax the turnover of Rs. 8,38,624.46 relating to sales of cast iron castings including sales tax, surcharge and transport charges collected. The assessee claimed exemption as regards the said turnover on the plea that it purchased pig iron and iron scrap from registered dealers in the State and manufactured cast iron castings after melting the pig iron and scrap iron and that the said cast iron castings were only mouldings of tax-paid pig iron and scrap. The assessing authority rejected the said claim. The assessee appealed to the Appellate Deputy Commissioner

questioning the same and the appellate authority allowed the appeal on a turnover of Rs. 6,85,703 relating to "rough or crude or semi-finished iron castings which were manufactured out of tax-suffered pig iron or iron scrap". The Joint Commissioner of Commercial Taxes (Legal), in exercise of his powers under sub-section (2) of section 20 of the Act, by his order dated September 12, 1986, set aside the appellate order and restored the order of the assessing authority. The Joint Commissioner in his order dated September 12, 1986 referred to G.O. Ms. No. 383 dated April 17, 1985, issued by the State Government u/s 42(2) of the Act and held that cast iron castings manufactured out of iron scrap were not eligible for exemption under the G.O. relying on the observation of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, "that each sub-item in entry (iv) u/s 14 of the Central Sales Tax Act, 1956, is a separate taxable commodity for the purpose of sales tax and each of them forms a separate species for each series of sales although they may all belong to the genus "iron and steel"". In T.A. No. 922 of 1987 preferred by the assessee against the said revisional order of the Joint Commissioner dated September 12, 1986, the Tribunal formulated the point as "whether the disputed turnover of Rs. 6,85,703 relating to cast iron castings is exempt from levy of tax" and following its earlier order in T.A. No. 107 of 1987 dated January 8, 1988, allowed the appeal and set aside the order of the revisional authority and restored the appellate order of the Deputy Commissioner. In this case also, the Tribunal did not enquire into the nature of the goods manufactured and sold by the assessee even though the Deputy Commissioner in his appellate order described the disputed turnover as relating to "rough or crude or semi-finished iron castings which were manufactured out of tax-suffered pig iron or scrap iron".

16. T.R.C. Nos. 187 of 1988 and 27 of 1987 arise out of T.A. Nos. 107 of 1987 and 764 of 1984 preferred by an assessee in respect of the assessment years 1980-81 and 1981-82 respectively. In the assessment order dated September 15, 1981, for the assessment year 1980-81, the assessee was described as dealer in machinery parts. The assessing authority by his order dated September 15, 1981, brought to tax turnover of Rs. 2,04,188 describing it as relating to sales of machinery parts, sales tax and surcharge collections on such sales, cartage and forwarding charges, etc., from May 6, 1980 to March 31, 1981. In the appeal before the Appellate Deputy Commissioner, the assessee questioned tax on the turnover of Rs. 1,93,059 on the ground that it related to sales of iron rough castings and mouldings from tax-paid pig iron and iron scrap. The appellate authority after scrutinising the bills found that of the said turnover, a sum of Rs. 75,308 related to sales of finished goods like flanges, pressing machines, etc., which were machine parts liable to tax at 4 per cent as per entry 83 of the First Schedule to the Act and that the remaining turnover of Rs. 1,17,751 related to rough castings or mouldings and would not be liable to tax in view of the clarification of the Central Government that cast iron included cast iron castings. The Joint Commissioner of Commercial Taxes by his order dated May 5, 1986, in exercise of his revisional powers under sub-section (2) of section

20 of the Act set aside the order of the Appellate Deputy Commissioner and brought back the said turnover of Rs. 1,17,751 to tax relying on the decision of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and holding that the clarification of the Central Government and G.O. Ms. No. 383 dated April 17, 1985 had no application to the instant case where cast iron castings were manufactured out of iron scrap. Against the said order, the assessee preferred T.A. No. 107 of 1987 before the Sales Tax Appellate Tribunal and by order dated January 8, 1988 the Tribunal allowed the said appeal relying on the judgment of this Court in Adarsh Foundries case [1988] 70 STC 151, and also on the order of the Tribunal in T.A. No. 766 of 1984 dated April 30, 1986, out of which T.R.C. No. 74 of 1987 has arisen and is before us as already stated above. In its order in T.A. No. 107 of 1987 also the Tribunal did not enquire into the nature of the goods. So also in T.A. No. 764 of 1984, the Tribunal allowed the appeal as regards the disputed turnover of Rs. 1,84,266 following its decision in T.A. No. 766 of 1984. The said tax appeal was preferred by the assessee against the revisional order dated September 5, 1984 of the Deputy Commissioner of Commercial Taxes bringing the said turnover of Rs. 1,84,265.85 to tax rejecting the contention of the assessee that rough castings were nothing but pig iron and cast iron in view of the clarification issued by Government of India in its letter dated February 28, 1977. The Deputy Commissioner held that rough iron casting with a slight mechanical alterations were capable of being used as machinery and that rough castings were nothing but machinery and had a different commercial existence for the purpose of taxation.

17. T.R.C. Nos. 24 and 44 of 1987 relate to one assessee and they arise out of T.A. Nos. 326 and 327 of 1983 relating to assessment years 1980-81 and 1981-82 respectively. They were allowed by the Tribunal merely following its order in T.A. No. 776 of 1984 dated April 30, 1986, referred to earlier. The disputed turnover for both the years related to sales of cast iron pipes, cast iron specials and cast iron fittings like collars and C.I. endings including the sales tax collected thereon by the assessee. The assessing authority brought the said turnover to tax for both the years holding that the assessee manufactured the C.I. pipes, etc., from pig iron and iron scrap and holding that pig iron was entirely different from cast iron and cast iron castings. He also held that the assessee sold the C.I. pipes and fittings, etc., as finished goods. He also held that the conversion of pig iron into the said goods involved a manufacturing process and that in the said manufacturing process, pig iron and scrap iron completely lost their identity and new commercial commodity, i.e., C.I. pipes and fittings came into being. The assessing authority relied on the judgments of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and in Hindustan Aluminium Corporation Ltd. v. State of Uttar Pradesh [1981] 48 STC 411 and in Ganesh Trading Co. v. State of Haryana [1973] 32 STC 623. The Appellate Deputy Commissioner dismissed the appeals preferred by the assessee against the assessment orders in respect of both the assessment years confirming the assessment orders and holding that the cast iron pipes and

specials were manufactured and sold by the assessee and were used for water drainage purposes and that they could not be called as cast iron castings and that the clarification of the Central Government in its letter dated February 28, 1977, referring to cast iron castings did not apply to the said goods. He also held that cast iron specials and pipes were not rough castings. The Tribunal allowed the appeals preferred by the assessee against the said appellate orders without inquiring into the nature of the goods involved and merely following its earlier decision in T.A. No. 766 of 1984 as already stated above.

18. The facts in T.R.C. No. 28 of 1987 are similar to those in T.R.C. No. 74 of 1987. The assessment in T.R.C. No. 28 of 1987 related to assessment year 1980-81 and the assessing authority exempted the turnover relating to sales of castings made out of pig iron and iron scrap. The Deputy Commissioner of Commercial Taxes, as in T.R.C. No. 74 of 1987, passed a detailed order dated March 27, 1985, in exercise of his revisional powers under sub-section (2) of section 20 of the Act and brought to tax the turnover relating to cast iron castings holding that the raw material used being pig iron and iron scrap, the products produced by the assessee, i.e., cast iron castings were different commercial commodities and relying on the decision of a Division Bench of this Court in Surana Industries case (1985) 11 STJ 282. In the notice issued by the Deputy Commissioner, it was stated that the assessee purchased pig iron and iron scrap and manufactured rice mill spares and machinery parts like K. type fly wheels, K. bodies, wheels, 5 H.P. fly wheels, cones, 5.1 M.T. coneset spares, 7 M.T. cone spares, rubber drums and pulleys and in the reply the assessee denied that it manufactured rice mill spares and machinery parts and stated that it only sold rough iron castings made from tax-suffered pig iron and cast iron scrap. In this case also, the assessee denied that it manufactured rice mill spares and machinery parts and contended that it sold rough cast iron castings. The Tribunal allowed the appeal preferred by the assessee against the revisional order of the Deputy Commissioner of Commercial Taxes merely following its earlier order in T.A. No. 766 of 1984, without any discussion whatsoever as regards the goods which formed the subject-matter of the turnover in question. The facts in T.R.C. No. 29 of 1987 which is relating to assessment year 1979-80, are similar. In this case also the disputed turnover related to sales of iron castings manufactured by the assessee from pig iron and iron scrap purchased by it from dealers within the State. The assessing authority did not tax the said turnover; the Deputy Commissioner of Commercial Taxes brought the same to tax in exercise of his revisional powers under sub-section (2) of section 20 of the Act by a detailed order dated September 5, 1984. The Sales Tax Appellate Tribunal allowed T.A. No. 769 of 1984 preferred by the assessee against the said revisional order of the Deputy Commissioner, merely following its earlier order in T.A. No. 766 of 1984 without any discussion as regards the nature of the goods involved. In T.R.C. No. 35 of 1987 which relates to the assessment year 1982-83, the business of the assessee was described as rough "cast iron castings" and the disputed turnover related to sales of rough cast iron castings. The assessment

order does not state from what material the said rough cast iron castings were made and whether the said material suffered tax. The Deputy Commissioner of Commercial Taxes in exercise of his revisional powers under sub-section (2) of section 20 of the Act, brought the said turnover to tax by his order dated September 5, 1984. That order seems to proceed on the basis that the cast iron castings sold by the assessee in that case were made from pig iron and some other additives. T.A. No. 767 of 1984 preferred by the assessee against the said revisional order of the Deputy Commissioner was allowed by the Tribunal merely following its earlier order in T.A. No. 766 of 1984 without discussing the nature of the goods sold by the assessee. The facts in T.R.C. Nos. 27 of 1988 and 190 of 1990 are also similar. They relate to assessment years 1982-83. In both these cases, the assessing authorities exempted the disputed turnovers on the ground that they related to sales of cast iron rough castings in the former case and moulded goods in the latter case made from pig iron and pig iron scrap. The concerned Deputy Commissioners of Commercial Taxes, in exercise of their revisional powers under sub-section (2) of section 20 of the Act, brought the said disputed turnovers to tax. In the former case, the Deputy Commissioner found that from the sale bills the goods sold were finished cast iron castings and that they were different from pig iron and iron scrap from which they were made and therefore the turnover was liable to be taxed even though pig iron and iron scrap from which they were made suffered tax as raw material. The Deputy Commissioner relied on the decision of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, and the decision of this Court in *Surana Industries case* (1985) 11 STJ 282. In the latter case, the Deputy Commissioner found that the assessee manufactured various types of rope wheels, radial guides, point indicators, break shoes for diesel loco, inter locking frame lever shoe, base surfaces, etc., which are finished cast iron castings made from pig iron and pig iron scrap and by machining the rough castings to proper dimensions, polishing, etc. The Tribunal allowed the appeals preferred by the assessees in these two cases following its earlier decisions in T.A. No. 767 of 1984, etc., without inquiring into the nature of the goods involved. In T.R.C. No. 190 of 1990 arising out of T.A. No. 904 of 1987 an affidavit is filed on behalf of the assessee (respondent in the T.R.C.) by one of its partners and therein it is stated that the assessee supplied various cast iron castings to the Indian Railways and that the names given to the said castings were only for the purpose of identification by the Indian Railways and that they were not commercial names used to identify them in the open market. It is claimed that they were rough castings and that after further processing the same they would be used as machinery items. They were supplied as per railway drawings.

19. Thus the facts of these cases disclose that the assessees/respondents herein were dealing in goods made out of pig iron and iron scrap with some other additives. In T.R.C. No. 28 of 1987 the Deputy Commissioner stated that the goods dealt with by the assessee were rice mill spares and machinery parts; in T.R.C. No. 190 of 1990 the Deputy Commissioner found that the assessee

manufactured various types of rope wheels, radial guides, point indicators, break shoes for diesel loco, inter locking frame lever shoe, base surfaces, etc.; and in T.R.C. Nos. 24 and 44 of 1987 the assessing authority as well as the first appellate authority found that the assessee manufactured C.I. pipes, specials and fittings and that the said goods were sold as finished goods and that they were not rough castings. The full facts were not forthcoming in some cases. In none of these cases, the Tribunal considered the nature of the goods involved and proceeded on the assumption that they were all "cast iron castings" without any discussion as to whether they were rough castings or finished castings or distinct commercial commodities which could no longer be described as iron and steel goods. The Tribunal merely assumed that the goods involved in all these cases were "cast iron castings" whatever their nature. In T.R.C. Nos. 187 of 1988 and 20 of 1989 the assessing authorities brought the disputed turnover to tax, but in the appeals preferred by the assessees against the assessment orders, the respective Appellate Deputy Commissioners allowed the appeals to the extent of the disputed turnovers; the Joint Commissioner in exercise of his revisional powers brought back the disputed turnovers to tax and the Tribunal allowed the appeals preferred by the assessees against the orders of the Joint Commissioner. In some T.R.Cs. the assessing authority did not bring the disputed turnovers to tax but the concerned Deputy Commissioners of Commercial Taxes in exercise of their revisional powers brought the same to tax and the Tribunal allowed the appeals preferred by the assessees against the said revisional orders. In T.R.C. No. 187 of 1988, the Joint Commissioner brought the said turnover to tax relying on the decision of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, and holding that rough cast iron castings were different from pig iron and iron scrap from which they were made. In some of the T.R.Cs. the concerned Deputy Commissioner brought the disputed turnover to tax relying on the decision of this Court in *Surana Industries case* (1985) 11 STJ 282 and holding that cast iron was different from pig iron and iron scrap. The Tribunal did not consider this aspect of the matter in any of these cases.

20. The first question that arises for our consideration is whether there is any conflict between *Adarsh Foundries and Others Vs. Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad and Others*, and *Deccan Engineers Vs. State of Andhra Pradesh*, . In *Adarsh Foundries* [1988] 70 STC 151, this Court was definitely of the view that the Commissioner of Commercial Taxes was bound by the clarification issued by the State Government u/s 42(2) of the Act, following the decision of this Court in *Munaga Singaraiah Sreshty and Sons* [1977] 40 STC 89. This Court observed that in G.O. Ms. No. 383 dated April 17, 1985, the State Government had clarified that "cast iron castings" were covered within the term "cast iron including ingot" in sub-item (i) of item 2 of the Third Schedule to the Act. The question whether it is open to any taxing authority to go contrary to the clarification issued by the State Government in exercise of its powers under sub-section (2) of section 42 of the Act directly came up for consideration in *Munaga Singaraiah Sreshty and Sons* [1977] 40 STC 89. In that case, a Division Bench of

this Court was considering the nature and effect of the letter dated August 13, 1969, of the State Government accepting the clarification issued by the Government of India that if the weight of the fabric content of leather cloth, rexine or mackintosh was not less than 40 per cent, it continued to be a fabric for all purposes and the levy of sales tax thereon would not be proper and that if the weight of the fabric contents of the finished products, viz., leather cloth, rexine or mackintosh, was less than 40 per cent, the finished product ceased to be a fabric and that there would be no objection to tax being charged even though the base material already suffered additional duty of excise. The Division Bench held that the said acceptance by the State Government was in exercise of its powers under sub-section (2) of section 42 of the Act :

"..... because by an order, the State Government has made provisions not inconsistent with the purposes of the Andhra Pradesh General Sales Tax Act to remove the difficulty, which would otherwise arise because of the provisions of the Central Excises and Salt Act, 1944",

and that the sales tax authorities in the State of Andhra Pradesh were bound by the said adoption of the clarification of the Government of India. Now, in the present cases also we are concerned with a clarification made by the State Government by way of a G.O. in exercise of its powers under sub-section (2) of section 42 of the Act, i.e., G.O. Ms. No. 383 dated April 17, 1985, and therefore the decision of this Court in *Munaga Singaraiah Sreshty and sons* [1977] 40 STC 89, squarely applies and we have to hold that the taxing authorities under the Act are bound to follow the said clarification made by the State Government in G.O. Ms. No. 383 made to remove difficulty, if any, to the extent it is not inconsistent with the provisions of the Act. Even if we entertain any doubt as regards the competence and propriety of the State Government to issue such a clarification or about the vires of the said G.O. Ms. No. 383, it will not be possible for us to enquire into the said questions in the present tax revision cases u/s 22 of the Act as the same were not raised before the Tribunal. [See also *K.S. Venkataraman and Co. Vs. State of Madras*,].

21. Even assuming that the State Government has no power to issue G.O. Ms. No. 383 dated April 17, 1985, under sub-section (2) of section 42 of the Act which provides for power to remove difficulties arising in giving effect to the provisions of the Act (Henry VIII clause), it has to be noticed that the said G.O. was issued only pursuant to the clarification issued by the Government of India in their letter F. No. 24/10/80-CT dated January 31, 1984 and in their letter No. 24/14/76-ST dated February 28, 1977, referred to earlier. In the said letter dated February 28, 1977, it was stated that the matter was re-examined in consultation with the Director-General of Technical Development, Chief Chemist and Ministry of Law, Justice and Company Affairs and that they had advised that the expression "cast iron" in section 14(iv)(i) would cover "cast iron castings" also. The Supreme Court had occasion to consider the effect of such clarifications issued by the Government of India as regards goods declared u/s 14 of the

Central Act. In *The State of Orissa Vs. Dinabandhu Sahu and Sons*, , the Supreme Court has considered the effect of the notification of the Ministry of Finance, Department of Economic Affairs, Government of India wherein coriander seeds (dhania) among other commodities were stated to be included in the term "oil-seeds" under item (vi) of section 14 of the Central Act, and whether the High Court of Orissa was right in relying on the same. The Supreme Court has held as follows :

"It is true the High Court (of Orissa) has rightly observed that the aforesaid notification of the Government of India has no statutory force and as such is not binding on the Sales Tax Officer. It cannot, however, be denied that the Ministry of Finance, Department of Economic Affairs, is intimately conversant not only with the policy of legislation for the purpose of implementation of the provisions of the Central Act but is also familiar with the nature and quality of the commodities as also their use from time to time. If, therefore, such an authority issued a notification including certain commodities under the head of "oil-seeds", as defined under the Central Act, it cannot be said that the Tribunal (Orissa Sales Tax Tribunal) and the High Court were not right in preferring such an opinion of the Government as good evidence for its conclusion, If, therefore, the Tribunal in the facts and circumstances of the case held that the particular commodities came within the definition of clause (vi) of section 14 of the Central Act, it is not possible to hold that it was not right."

22. In *State of Tamil Nadu Vs. Mahi Traders and Others*, , the Supreme Court has considered the meaning of the expression "hides and skins, whether in a raw or dressed state" which is item (iii) of section 14 of the Central Act. The department's case was that coloured leather was a totally new and sophisticated product known as leather and could no longer be described merely as hides and skins. The assessee in that case relied on the opinion given in 1957 by the Leather Development Wing of the Ministry of Commerce and Industry on the question regarding the meaning of the expression "hides and skins in dressed state" which was raised when the Central Act came into force on April 1, 1957. The Supreme Court observed as follows :

"It has been pointed out by this Court in *Desh Bandhu Gupta and Co. and Others Vs. Delhi Stock Exchange Association Ltd.*, and *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, that a contemporaneous exposition by the administrative authorities is a very useful and relevant guide to the interpretation of the expressions used in a statute. Considering that the above clarification was sought for at the earliest point of time when a doubt arose as to the scope of the expression used by the statute and given after considering the technicalities of the processes employed in the manufacture of finished leather by the department fully conversant with this branch of trade and in the context of the provisions of this very statute, the terms of the statute can well be construed by reference to such exposition, in the absence of anything in the statute to indicate the contrary. Indeed, "such interpretation should be shown to be clearly wrong

before it is overturned".

23. In *Munaga Singaraiah Sreshty and Sons* case [1977] 40 STC 89 the Division Bench of this Court followed the decision of the Supreme Court in *The State of Orissa Vs. Dinabandhu Sahu and Sons*, and the decision of another Division Bench of this Court in *Ramaswamy v. State of Andhra Pradesh* [1973] 32 STC 309 and held :

"that the interpretation placed by the Government of Andhra Pradesh and the Board of Revenue following the clarification of the Government of India, in its letter of 15th October, 1968, will have a considerable weight so far as the present case is concerned."

From these decisions, it is therefore clear that the clarifications issued by the Government of India are relevant and important guides to the interpretation of the expressions used in the items of declared goods in section 14 of the Central Act. The said circular letter dated February 28, 1977, of the Government of India was also relied upon by the West Bengal Taxation Tribunal for interpreting the expression "cast iron" in section 14 of the Central Act in *Indian Wire & Steel Products v. Additional Commissioner of Commercial Taxes* [1991] 80 STC 21. The Tribunal held as follows :

"..... Mr. Sasanka Sen, the learned advocate for the applicant, relied on the clarificatory circular dated February 28, 1977 issued by the Department of Revenue and Banking, Government of India, in which it was clearly stated that "cast iron" mentioned in section 14 of the Central Sales Tax Act, 1956, includes "cast iron castings". It was issued in consultation with the Director General of Technical Development and the Ministry of Law and Justice But on the authority of the decision in *K.P. Varghese Vs. Income Tax Officer, Ernakulam and Another*, , this circular or notification is entitled to receive our due attention according to the rule of *contemporanea expositio*. But, the circular dated February 28, 1977, is simply clarificatory as to what includes in the expression "cast iron" It is, therefore, quite logical that due weight is given to the circular clarifying what was intended to be included in the expression used in the enactment. We, accordingly, hold that the expression "cast iron" used in section 14 of the said Act of 1956, includes "cast iron castings".

24. Viewed From this angle also, we are satisfied that due weight has to be given to the official view that the expression "cast iron" takes within its scope "cast iron castings".

25. But what do the expressions "cast iron" and "cast iron castings" denote ?

26. In the Indian Standard IS : 2763-1964 dealing with glossary of terms relating to foundry technology, the term "cast iron" is defined and explained as follows :

"An alloy essentially of iron and carbon generally containing more than 1.7 per cent carbon (and usually between 2 1/2 and 4 per cent). It also contains silicon,

manganese, sulphur and phosphorus in varying amounts. The character of cast iron is controlled by the manner in which carbon is present, and the fractured surface of cast iron exhibits characteristic colour; white, mottle or grey depending on whether carbon is present wholly in combined state (as carbide) or partly in combined state or wholly in uncombined state (as graphite) (see also "cast iron, white")."

27. In Encyclopedia Britannica (1967 Edition, Volume 5) "cast iron" is described as follows :

"A wide range of iron-carbon-silicon alloys containing 2% to 4% carbon (much more than ordinary steels) along with varying amounts of silicon, manganese, sulfur and phosphorus. Cast iron, of which pig iron is a crude form, was the first of the ferrous metals to be cast."

28. The main varieties of "cast iron" are given as "gray iron", "white iron", "malleable cast iron" and "ductile iron". It is stated that "gray iron" is the usual form of "cast iron". The essential characteristic of cast iron is that much of the carbon is present as flake graphite, which gives it a gray-coloured fracture when broken and accounts for the name gray cast iron. The strength of gray cast iron is increased by reducing the carbon content and by alloying it with nickel, chromium, copper, molybdenum, vanadium and titanium. The alloy content of ordinary cast iron generally does not exceed 3 per cent to 4 per cent. Special types of corrosion-resistant iron are made with greater alloy contents, for example 11 per cent to 17 per cent silicon, 25 per cent to 30 per cent chromium or 20 per cent to 30 per cent nickel. The silicon content of gray cast iron is normally 1.5 per cent to 3.0 per cent. When the silicon content of gray cast iron is substantially reduced a new type of cast iron which is called white iron is produced. Chilled cast iron is a variety of white iron. Castings made out of chilled iron are used as freight car wheels and brake shoes and plowshares, pulverizer equipment parts and rolls for steel mills. Another variety of cast iron is malleable cast iron. It is used for making a variety of small or thinwalled industrial castings such as automotive, agricultural machinery and railroad equipment parts, electrical and small pipe fittings, hardware and small tools. Another variety of cast iron is ductile iron. Ductile irons are really a whole family of irons and can be heat-treated and alloyed in various ways to produce special mechanical properties and superior corrosion, heat and wear resistance and are widely used in pipe, valves, gears, dies, machinery frames, automotive crankshafts, pump and compressor bodies, metal working rolls, agricultural equipment parts and a host of other products. In 1991 (37) ECR 784 the Customs, Excise and Gold Control Appellate Tribunal, East Regional Bench, Calcutta refers to the American Publication on Metals Hand Book (Ninth Edition, Volume I) wherein it is observed as follows :

"The term "cast iron", like the term "steel", identifies a large family of ferrous alloys. Cast irons primarily are alloys of iron that contain more than 2 per cent carbon and from 1 to 3 per cent silicon. Wide variations in properties can be

achieved by varying the balance between carbon and silicon, by alloying with various metallic or non-metallic elements, and by varying melting, casting and heat treating practices.

Cast irons, as the name implies, are intended to be cast to shape rather than formed in the solid state. Cast irons have low melting form undesirable surface films when poured, and undergo slight to moderate shrinkage during solidification and cooling. However, cast iron have relatively low impact resistance and ductility, which may limit their use."

29. It is also stated in that book that there are four basic types of cast iron which are white iron, gray iron, ductile iron and malleable iron. It is further observed in that book as follows :

"Besides the four basic types, there are other specific forms of cast iron to which special names have been applied. Chilled iron is white iron that has been produced by cooling very rapidly through the solidification temperature range. An area of the casting that solidifies at a rate intermediate between those of chilled iron and gray iron, and which exhibits micro-structural and fracture-surface features of both types, is known as mottled iron. Compacted graphite cast iron (also known as vermicular iron) has a structure intermediate between those of gray iron and ductile iron; compacted graphite cast iron is described more completely in a subsequent section of this article."

30. In the 1974 (15th Edition) of Encyclopedia Britannica, Volume 9, it is stated that cast iron is a generic term describing a family of iron alloys containing 1.8 to 4.5 per cent. carbon and these alloys are usually made into specified shapes for direct use or for further processing by machining or heat treating. It is also stated that gray iron is produced from pig iron and scrap, or from scrap iron alone and that various additives to enhance its properties may be introduced into the cupola, after the iron is molten, or into the ladle, before pouring it into moulds. It is also stated that gray iron has become an important engineering material whose composition, structure, and physical and mechanical properties can be carefully controlled to obtain the best combination of strength and service and that its mechanical properties such as tensile strength can be improved to a moderate extent by natural aging, heat treatment followed by quenching and tempering and that its surface can be hardened by flame or induction heating. It is also stated that white iron with certain additives like chromium can be used in the "as cast" condition.

31. In the Indian Standard IS : 2763-1964 dealing with glossary of terms relating to foundry technology, the term "casting" is defined and explained as follows :

"(a) Metal object cast to required shape by pouring or otherwise injecting liquid metal into mould, as distinct from one shaped by mechanical process.

(b) Act of pouring molten metal into mould is also known as casting."

32. The different types of casting like centrifugal, centrifuge, continuous, gravity die or non-pressure, investment, machine, open sand, plaster, pressure die, etc., are also defined. There is also the term "precision casting" which is described as :

"A casting of high dimensional accuracy produced by such processes as investment casting, plaster mould, die casting, permanent mould or shell mould."

In Encyclopedia Britannica (1967 Edition, Volume 5) the process of "casting" is described as :

"The process of giving shape to or reproducing an object by pouring its material in liquid form into a mold."

33. The product obtained by the said process is also called "casting" as per the Indian Standard. Such castings can be made out of a variety of metals.

34. It can therefore be stated in a simplistic way that the objects resulting by casting cast iron are "cast iron castings". But from the different types of casting described and explained in the Indian Standard referred to above, it is obvious that the process of casting can be complicated and highly specialised especially in the case of precision casting which may result in the final product which can be used in the "as cast" condition - that means the resultant product is a commercial commodity in itself and can be directly marketed as a distinct commodity known to the market. The manufacture of such castings also involves the choice of the proper variety of cast iron, i.e., iron alloy suited for the end products depending on the use for which the end-products are intended. It can be that the castings which are obtained after the process of casting are in a rough condition and that they will have to be further processed before they can be used as end-products or as marketable commodities. Thus there can be a variety of cast iron castings some of which can be directly marketed as end-products with specific commodity names and some others which are rough castings and which have to be further processed and finished before they can be marketed as specific commodities as items of machine parts, etc.

35. The question that now arises is whether all varieties and kinds of cast iron castings are covered by the expression "cast iron" in section 14 of the Central Act and in sub-item (i) of item 2 of the Third Schedule to the Act in view of the clarification issued by the State Government in G.O. Ms. No. 383 dated April 17, 1985 and in view of the letters of Government of India dated February 28, 1977 and January 31, 1984. The learned counsel for the respondents contend that all types of cast iron castings are covered by the expression "cast iron" and that no exception can be made and rely on *Adarsh Foundries and Others Vs. Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad and Others*, . On the other hand, the learned Government Pleader contends that in view of the decisions of this Court in *Deccan Engineers case* [1992] 84 STC 92 and *Sri Rama Malleable Engineering Works case* (W.P. No. 6772 of 1991 decided on 20th June, 1991), cast iron castings are not covered by the expression "cast iron" in the said provisions.

36. In *Adarsh Foundries and Others Vs. Commissioner of Commercial Taxes, Andhra Pradesh, Hyderabad and Others*, , the only question that arose was whether the departmental authorities including the Commissioner of Commercial Taxes were bound by G.O. Ms. No. 383 dated April 17, 1985, issued by the Government of Andhra Pradesh in exercise of its powers under sub-section (2) of section 42 of the Act and this Court held that the said authorities were bound by the said G.O. In that case, this Court only held that when the said G.O. clarified that cast iron castings were covered within the term "cast iron including ingot", it was not open to the Commissioner of Commercial Taxes to take a view contrary to the said G.O. and that the Commissioner was bound by the said clarification issued by the Government u/s 42(2) of the Act. In that case, this Court did not consider what type of commodities were comprehended by the term "cast iron castings". Neither the G.O. of the State Government nor the two letters of the Government of India clarify what is meant by "cast iron castings" and what material and articles are comprehended by it and whether they include finished commodities having distinct identity and which can be directly put to use. A reading of the judgment in that case does not disclose what commodities were involved in that case.

37. On the other hand, in *Deccan Engineers Vs. State of Andhra Pradesh*, the commodities involved were C.I. pipes, manhole covers, C.I. bends, etc. In that case, this Court observed that the said commodities were finished products ready for use and that the relevant entry, i.e., sub-item (i) of item (iv) of section 14 of the Central Act indicated a reference to declared goods which were in unfinished form like pig iron, cast iron including ingot moulds, bottom plates, iron scrap, etc. On that basis this Court held that cast iron would include its form in ingots, billets and bottom plates and it would not take in any other separate commodity made from cast iron, like C.I. pipes or manhole covers. In that view of the matter, this Court also held in that case that neither the letters of Government of India nor the said G.O. issued by the State Government helped in resolving the controversy in that case. As we understand, the ratio of the decision of this Court in *Deccan Engineers* case [1992] 84 STC 92, is that when finished products which are distinct commercial commodities known to the market as such, like C.I. pipes, manhole covers, etc., are made from cast iron, such separate commodities are not attracted by the expression "cast iron", the rationale being that sub-item (i) of item (iv) of section 14 of the Central Act takes in only "goods which are in an unfinished form" and not commodities which are "finished products for use". In *Deccan Engineers* case [1992] 84 STC 92, this Court has referred to the decision of the West Bengal Taxation Tribunal in *Indian Wire & Steel Products* case [1991] 80 STC 21 and observed as follows :

"It has been clarified by the Tribunal, after referring to the Supreme Court decision in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, that where an assessee manufactures articles like G.I. pipes and manhole covers out of cast iron purchased by him, he is liable to pay sales tax on them because they are distinct commodities."

38. This Court also referred to the judgment of the Allahabad High Court in Commissioner of Sales Tax v. Vishwa Engineering Co. [1992] 84 STC 100 wherein it was held relying on the two letters of the Government of India that manhole covers were the same as iron castings and cast iron. This Court did not agree with that view and held that the said letters did not lead to such a conclusion and they did not have any effect of amending the statutory provision. Incidentally it is to be noted that the Supreme Court granted special leave against the judgment of the Allahabad High Court on September 3, 1990 in SLP (Civil) Nos. 15546 - 15548 of 1985 and also against the judgment of the West Bengal Taxation Tribunal against its judgment in Indian Wired & Steel Products case [1991] 80 STC 21 on March 21, 1991 in SLP (Civil) No. 15814 of 1990. This judgment of the Division Bench in Deccan Engineers case [1992] 84 STC 92 binds us. Another Division Bench of this Court in Sri Rama Malleable Engineering Works case (W.P. No. 6772 of 1991 decided on 20th June, 1991) referred to earlier, took the same view after considering Adarsh Foundries case [1988] 70 STC 151 also; but the order of the Division Bench did not mention the facts of that case and the commodities involved in that case. The learned counsel for the respondents submit that the view of this Court in Deccan Engineers case [1992] 84 STC 92 requires reconsideration. But considering all aspects of the matter, we do not find any reason to disagree with the same. Firstly an examination of the relevant item. Item (iv) of section 14 of the Central Act which is identical to item (2) of the Third Schedule to the Act, at the relevant time, is as follows :

"(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, slabs, blooms and billets of all qualities, shapes and sizes);

(iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;

(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight length);

(v) Steel structural (angles, joints, channels, tees, sheet piling sections, Z sections or any other rolled sections);

(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 riveted condition;

(vii) plates both plain and chequered in all qualities;

(viii) discs, rings, forgings and steel castings;

(ix) tool, alloy and special steels of any of the above categories;

(x) Steel melting scrap in all forms including steel skull, turnings and borings;

- (xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;
- (xii) tin-plates, both hot dipped and electrolytic and tinfree plates;
- (xiii) fish plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers, rails - heavy and light crane rails;
- (xiv) wheels, tyres, axles, and wheel sets;
- (xv) wire rods and wires - rolled, drawn, galvanised, aluminised, tinned or coated such as by copper;
- (xvi) defectives, rejects, cuttings or end pieces of any of the above categories;"

39. What immediately strikes is that in sub-item (i) pig iron and cast iron are mentioned without specifying any form or shape, whereas in the other sub-items like sub-items (ii) to (viii) and (xi) to (xv) commodities are mentioned with definite form and shape implicit in their description. Sub-item (ix) is tool, alloy and special steels of any of the above categories. The expression "above category" in sub-item (ix) obviously refers to sub-items (ii) to (viii) which mention steel in different shapes varying from semis like ingots, slabs, blooms and billets to steel castings. Sub-item (x) is steel melting scrap in all forms and sub-item (xvi) also mentions scrap articles like defectives, rejects, cuttings or end pieces of the above categories - the expression "above categories" in sub-item (xvi) refers to categories where such defectives, rejects, cuttings or end pieces result. Thus, unlike in the case of sub-items (ii) to (xvi), in the case of sub-item (i) pig iron and cast iron are mentioned without any description suggestive of any particular shape and as such they are declared as "goods of special importance in inter-State trade or commerce". The other goods included in the said sub-item (i) as declared goods are ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap. "Scrap" in this context means remnants of metal produced in cutting up or casting (Shorter Oxford Dictionary). "Runner" means the passage by which molten metal is poured into a mould and "runner scrap" is remnants obtained from the said passage. "Skull" means a crust of solidified metal on a ladle, i.e., a pan or bucket for holding molten metal, and skull scrap is the remnant of the said crust. Scrap has no defined shape. The scrap mentioned in sub-item (i) is crude or indefinite forms of cast iron. Ingot moulds are usually open ended iron castings used for casting ingots; and bottom plates are also iron castings. These are the only castings which are specifically included in sub-item (i). In these cases, we are only concerned with the expression "cast iron" as used in sub-item (i) and the question is whether it takes within its scope all varieties and kinds of cast iron castings.

40. For answering this question, we derive some guidance from the decision of the Supreme Court in Hindustan Aluminium Corporation Ltd. Vs. State of Uttar

Pradesh and Another, . In that case, the Supreme Court has considered the question whether aluminium rolled products and extrusions can be described as "metal" for the purposes of the notifications dated December 1, 1973 and May 30, 1975, issued by the State Government u/s 3-A(2) of the U.P. Sales Tax Act empowering the State Government to prescribe by notification the rate, and the point at which the tax can be imposed on the sale of a commodity. The relevant provisions of the two notifications are :

"All kinds of minerals and ores and alloys except copper, tin, zinc, nickel or alloy of these metals only" (in notification dated December 1, 1973), and

"All kinds of minerals, ores, metals, and alloys including sheets and circles used in the manufacture of brasswares and scraps containing only any of the metals, copper, tin, zinc, or nickel except those included in any other notification issued under the Act" [notification dated May 30, 1975, as amended by U.P. Sales Tax (Amendment and Validation) Act, 1975].

41. The assessee, who was the appellant before the Supreme Court, was carrying on the business of manufacturing and dealing in aluminium metal and various aluminium products and contended that the aluminium ingots, billets, rolled products, extrusions and other aluminium products manufactured and sold by it fell within the said items. The sales tax authorities treated the aluminium ingots only as metal and not the other products. The assessee questioned the same before the Allahabad High Court by way of a writ petition. The Allahabad High Court held that while aluminium ingots, wire bars and billets would fall in the category of "metals and alloys", rolled products prepared by rolling ingots and extrusions manufactured from billets must be regarded as different commercial commodities from the ingots and billets and therefore outside the category of "metals and alloys". The rolled products included plates, coils, sheets, circles and strips. The extrusions were manufactured in the shape of bars, rods, structurals, tubes, angles, channels and different types of sections. The assessee appealed to the Supreme Court against the judgment of the High Court claiming relief in regard to rolled products and extrusions. While dismissing the appeal, the Supreme Court has held as follows :

"A consideration of the notifications issued from time to time will show that the expression "metal" has been generally employed to refer to the metal in its primary sense. The reference is to the metal in the form in which it is marketable as a primary commodity. Subsequent forms evolved from the primary form and constituting distinct commodities marketable as such must be regarded as new commercial commodities.

..... In all those notifications the farmers of the notifications followed the scheme that one clause dealt with the metal in its original saleable form and another separate clause dealt with fabricated forms in which it was saleable as a new commodity. It is admitted before us on behalf of the appellant that aluminium ingots and billets are saleable commodities as such in the market. In

the circumstances, the inference is irresistible that when such a notification refers to a metal, it refers to the metal in the primary or original form in which it is saleable and not to any subsequently fabricated form.

..... While broadly a metal in its primary form and a metal in its subsequently fabricated form may be said to belong to the same genus, the distinction made between the two constitutes a dichotomy of direct significance to the controversy before us.

The question whether rolled steel sections are a different commodity from scrap iron ingots was considered by this Court in *Devi Dass Gopal Krishnan v. State of Punjab* [1967] 20 STC 430, and this Court had no hesitation in holding that when scrap iron ingots are converted into rolled steel sections they go through a process of manufacture which brings into existence a new marketable commodity. We are of the opinion that the same conclusion must follow when aluminium ingots and billets are converted into aluminium rolled products and extrusion products."

42. We are inclined to take the view that a similar interpretation should be given to "pig iron" and "cast iron" occurring in item (iv) of section 14 of the Central Act, i.e., that they refer to the metals, i.e., "pig iron" and "cast iron" in the primary and the original form in which they are saleable and not to any subsequently fabricated forms. We have noticed already that "pig iron" and "cast iron" are mentioned as declared goods without reference to any form and without specifying any shape. Pig iron is available in the form of pigs or blocks or irregular shaped lumps or in the granulated form. (See *Commissioner of Income Tax, Haryana Vs. M/s. Krishna Copper Steel Rolling Mills, Jagadhri etc. etc.*, . It is stated that "'cast irons" as the name implies are intended to be cast to shape rather than formed in the solid state". [See 1991 (37) ECR 784 at page 616]. Therefore, unless sold in the molten state, it will be available in "as cast" condition. We have already observed that the type of cast iron and the shape of the casting may depend on the requirements and specifications of the intended end-product. It therefore follows that the primary and original form in which cast iron is usually available is in the form of rough castings and thus the term "cast iron" occurring in item (iv) of section 14 of the Central Act denotes "cast iron castings" in that sense.

43. The question that next arises is whether "cast iron castings" denoted by the said term "cast iron" include distinct commercial commodities, i.e., articles made out of cast iron known to the market by distinctive names though the process by which they are made involves "casting", and also whether they include finished "cast iron castings", i.e., rough cast iron castings subjected to several processes like machining, honing, etc., resulting in separate commercial commodities. This question is answered by the Division Bench of this Court in *Deccan Engineers case* [1992] 84 STC 92. This Court has held that sub-item (i) of item (iv) of section 14 of the Central Act "indicates a reference to declared goods which are in unfinished form, like pig iron, cast iron including ingot moulds, bottom plates,

iron scrap, etc." and that commodities like C.I. pipes or manhole covers or C.I. bends are finished products for use and are distinct commercial commodities and that the term "cast iron" cannot be given an extended meaning so as to include such finished products and distinct commercial commodities made out of cast iron like manhole covers and C.I. pipes. This Court has observed :

""cast iron" will include its form in ingots, billets and bottom plates. It will not take in any other separate commodity made from cast iron, like C.I. pipes or manhole covers."

44. We understand from this that the Division Bench has held that "cast iron" will include only unfinished forms, i.e., primary or original form in which it is saleable and not any subsequently fabricated forms or finished products and articles made out of cast iron. In *Bengal Iron Corporation and another Vs. Commercial Tax Officer and others*, the Supreme Court upheld the decision of this Court in *Deccan Engineers case* [1992] 84 STC 92.

45. That also seems to be the official understanding of "cast iron". Section 9 of the Act confers power on the State Government to notify exemption and reductions of tax. In exercise of the said power, the Government issued G.O. Ms. No. 174, Revenue (S) Department dated February 13, 1986, directing :

"that where a tax has been levied and collected under the said Act (Andhra Pradesh General Sales Tax Act) in respect of the sale or purchase inside the State of raw materials such as pig iron, furnace oil, ferro-alloys like ferro-silicon, ferro-manganese, ferro-phosphorus, ferro-chromium, etc., the tax leviable under the said Act on the rough castings (suitable for the automobile cylinder liners) manufactured within the State from out of such materials by the units situated within the State of Andhra Pradesh and sold inside the State shall be reduced by the amount of tax levied and collected on such materials with effect from the 1st January, 1986."

46. A fresh notification has been issued in G.O. Ms. No. 575, Revenue (CT-II) dated June 9, 1989 to the same effect only omitting "where a tax has been levied and collected". The State Government also issued G.O. Ms. No. 1512, Revenue (S) Department dated November 22, 1986, directing :

"that where a tax has been levied and collected under the said Act (Andhra Pradesh General Sales Tax Act) in respect of the sale or purchase inside the State of rough castings, the tax leviable under the said Act on the cylinder liners (finished products) manufactured within the State from out of such rough, castings by the units situated within the State of Andhra Pradesh and sold inside the State, shall be reduced by the amount of tax levied and collected on such rough castings."

47. Fresh G.O. Ms. No. 575, Revenue (CT-II) dated June 9, 1989, was issued to the same effect omitting the words "where a tax has been levied and collected". These notifications clearly indicate that in the official understanding "rough

castings" are different from finished products like cylinder liners made out of them and that rough castings made out of tax-suffered pig iron, furnace oil and ferro-alloys of different varieties are taxable commodities and that finished products made out of such rough castings are also taxable commodities.

48. This view is supported by the decision of the Supreme Court in Pefco Foundry Chemicals Ltd. Vs. Collector of Central Excise, Pune, . That case arose under the Central Excises and Salt Act, 1944. One of the questions that arose in that case is "whether cylinder liner manufactured by the appellant out of iron casting identifiable as machine part was exigible to duty under tariff item No. 68 or it continued to be iron casting and thus exempt under notification issued under sub-rule (1) of rule 8 of Central Excise Rules". Tariff item No. 25 which has been considered by the Supreme Court is as follows :

"25. Iron in any crude form - including pig iron, scrap iron, molten iron or iron cast in any other shape or size."

49. The relevant notification has granted exemption to "iron in any crude form including pig iron, scrap iron, molten iron or iron cast in any other shape or size falling under item No. 25 of the First Schedule to the Central Excises and Salt Act, 1944 (1 of 1944), and produced out of old iron or steel scrap or scrap obtained from duty-paid virgin metal" from payment of excise duty leviable thereon. The Supreme Court has held as follows :

"Cylinder liner was manufactured by the appellant by casting molten iron in specific shape. By itself it was of no use. This could be said to be first stage. Its rough surface was thereafter removed. And after machining and honing it was delivered to the Railways. According to department it became identifiable as machine part. This was second stage. The Railways further treated it with honing and chrome plating before putting it to use. There is no dispute that on the first stage it is an iron casting which is exempt under item No. 25. Nor there is any dispute that at the third stage it is an excisable commodity. The only dispute is if at the second stage when it was supplied by the appellant to the Railways it could be subjected to duty. According to the appellant till its final processing by the Railways it did not become a machine part. It continued to be iron casting. It is claimed that merely because it was supplied to Railways or that it became identifiable as a machine part no duty was attracted as no excisable commodity came into being The main plank of the argument was that till cylinder liner was finally processed by the Railways it was incapable of being used as a machine part.

.....

50. In the classification list exemption was sought on cylinder liner by describing it at serial No. 4 as under :

"4. Cylinder liners to part No. 10123416 which is not identifiable part in that it is partially machined only and not ready for use."

The description of the goods as, partially machined, does not appear to be correct. The Tribunal found that contract in pursuance of which the goods were manufactured was for the supply of, "fully machined cylinder liner". And in absence of any material it was obvious that the Railways would not have accepted the cylinder unless it tallied with the specification. There was no dispute before the authorities that first machining and honing was done in assessee's factory. According to appellant it was only akin to removal of rough layer as in Tata Iron and Steel Co. Ltd. Vs. Union of India (UOI) and Others, whereas according to department it was much more and it resulted in rendering it as machine part It is thus obvious that the processing undertaken in assessee's factory to render the cylinder liner as fully machined resulted in changing the goods from crude cast iron in size and shape to an identifiable commodity.

.....

..... The Tribunal in the circumstances, in our opinion, was justified in recording the finding that by the time the goods were cleared from factory they had ceased to be casting, and had assumed the character of fully machined cylinder liner or fully machined or proof machined cylinders which were identifiable as such. Since duty under the Excises and Salt Act is leviable on manufacture of goods produced the cylinder liner became exigible to duty under item No. 68."

51. This decision of the Supreme Court illustrates how the goods are changed from crude cast iron in size and shape to an identifiable commodity, i.e., cylinder liner and how the claim of the assessee that what was manufactured was only partially machined has been rejected on the basis of the contract entered into with the railways and the processes to which the crude cast was subjected to resulting in an identifiable commodity, i.e., a machine part. This decision also brings out the difference between a rough casting and a finished casting. A rough casting is one without any use as such; it is just cast iron given a specific shape by melting it and casting it, i.e., by subjecting it to the process of simple casting. Something more like removing the rough surface, machining and honing, to the required specifications, and even subjecting it to heat treatment and tempering, if necessary, etc., has to be done before it becomes an identifiable machine part and this makes it a different commercial commodity and might take it out of the item "iron and steel". It is like paddy being different from rice Ganesh Trading Co., Karnal Vs. State of Haryana and Another, or coconut husk being different from coconut fibre Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Coco Fibres, and not like galvanised iron pipes and tubes being not different from steel tubes Gujarat Steel Tubes Ltd. etc. Vs. State of Kerela and others, .

52. It is also to be noticed that in the case of steel articles enumerated as declared goods, there is a separate sub-item, i.e., sub-item (viii) wherein "steel castings" are specifically mentioned. Even in such a case, the West Bengal

Commercial Taxes Tribunal has held in *Bengal Ingot Co. Ltd. v. West Bengal Commercial Taxes Tribunal* [1990] 79 STC 212, that steel castings processed and machined resulting in different articles of various shapes and sizes having different trade names in the market to meet various mechanical and engineering needs are not "steel castings" and not declared goods. The goods in question in that case were bushes, valves and impellers, etc., and the assessee contended that they were manufactured out of steel castings without using or mixing any other metal or material. The Tribunal has held that "the fact that no other metal or materials was used cannot be the sole criterion to determine whether the commodities sold and marketed by the applicant in different trade names were still known in trade circles as mere steel castings". The Tribunal further observed that "it is well-settled that where no definition is given in the relevant provisions of law or the relevant rules, a particular item of goods, such as steel castings in this case, has to be interpreted in the manner it is understood and treated in commercial parlance, which is also called common parlance, in other words". In *Chhaganlal H. Mittal v. Commissioner of Sales Tax* [1989] 74 STC 290, a Division Bench of the Madhya Pradesh High Court has held :

"Conversion of G.I. wire into G.I. barbed wire involves a process of twisting and fixing sharp edges upwards and downwards to act as an obstacle to trespassers. A new commercial commodity distinct from "G.I. wires" comes into existence and in our opinion, therefore, the Tribunal was justified in holding that G.I. barbed wires were not covered by item No. (xv) [of clause (iv) of section 14 of the Central Act]".

53. In *Ravikanth Industries v. Commercial Tax Officer* [1978] Tax LR 1686 a Division Bench of this Court has held that "wire mesh" is not wire-rod [falling under the same sub-item (xv)] holding that wire mesh is a distinct commercial commodity and not declared goods. In *Sree Venkata Durga Aluminising Works v. State of A.P.* [1986] 63 STC 445 a Division Bench of this Court has rejected the contention that nails made out of iron and steel should be exempted from sales tax because iron and steel from which they were made had already suffered sales tax and that nails fall under wires mentioned in sub-item (xv) and that they do not lose their essential quality of being "wire" even after they become "nails". This Court has observed that "nails" have distinct commercial use and that ordinary people would never understand that "nails" are the same as "wires" or "wire rods" and that though made out of iron and steel they are not declared goods.

54. In fact, the Supreme Court has stated the principle in *State of Tamil Nadu v. Pyare Lal Malhotra* [1976] 37 STC 319. It is necessary to refer to this decision in detail. The Supreme Court considered item (iv) of section 14 of the Central Act after amendment as substituted by the Central Sales Tax (Amendment) Act, 1972. (There were no material alterations to the said item subsequently). In that case, the Supreme Court has observed as follows :

"It will be seen that "iron and steel" is now divided into 16 categories which

clearly embrace widely different commercial commodities, from mere scrap iron and leftovers of processes of manufacturing to "wires" and "wheels, tyres, axles and wheel sets". Some of the enumerated items like "melting scrap" or "tool alloys" and "special steels" could serve as raw material out of which other goods are made and others are definitely varieties of manufactured goods. If the subsequent amendment only clarifies the original intentions of Parliament, it would appear that heading (iv) in section 14, as originally worded, was also meant to enumerate separately taxable goods and not just to illustrate what is just one taxable substance : "iron and steel". The reason given, in the Statement of Objects and Reasons of the 1972 Act, for an elucidation of the "definition" of iron and steel was that the "definition" had led to varying interpretations by assessing authorities and the courts so that a comprehensive list of specified declared iron and steel goods would remove ambiguity. The Select Committee, which recommended the amendment, called each specified category "a sub-item" falling under "iron and steel". Apparently, the intention was to consider each "sub-item" as a separate taxable commodity for purpose of sales tax. Perhaps some items could overlap, but no difficulty arises in cases before us due to this feature."

55. After considering the significance and effect of the expression "that is to say", the Supreme Court has held as follows :

"But, in the context of single point sales tax, subject to special conditions when imposed on separate categories of specified goods, the expression was apparently meant to exhaustively enumerate the kinds of goods on a given list. 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."

56. Then the Supreme Court observed as follows as regards the meaning to be assigned to a taxable item :

"The ordinary meaning to be assigned to a taxable item in a list of specified items is that each item so specified is considered as a separately taxable item for purposes of single point taxation in a series of sales unless the contrary is shown. Some confusion has arisen because the 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 series of sales although they may all belong to the genus : "iron and steel". Hence, if iron and steel "plates" are melted 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 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

..... In the cases before us now, the object of single point taxation is the commercial commodities and not the substance out of which it is made. Each 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 is true that the question whether goods to be taxed have been subjected to a manufacturing process so as to produce a new marketable commodity, is the decisive test in determining whether an excise duty is leviable or not on certain goods. No doubt, in the law dealing with the sales tax, the taxable event is the sale 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 of 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 more clearly now. It

follows that when one commercial commodity is transformed into another, it becomes a separate commodity for purposes of sales tax."

57. Thus the principle laid down by the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, is that as soon as separate commercial commodities emerge or come into existence, they become separately taxable goods; and 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 same goods and therefore cannot be taxed again. As taxable goods of various descriptions are mentioned under the sales tax laws, it becomes necessary to determine when a particular article or commodity ceases to be goods of one taxable description and becomes one of a commercially different description. For this purpose, one should have a clear idea and description of the taxable items specified. In the present case, the taxable item specified is "cast iron". G.O. Ms. No. 383 dated April 17, 1985 and the letters of Government of India dated February 28, 1977 and January 31, 1984 clarify that the item "cast iron" covered "cast iron castings". The clarification of Director General, Technical Development in the note dated November 19, 1983, referred to in *Deccan Engineers case* [1992] 84 STC 92 states :

"Cast iron is an alloy iron of carbon, silicon and other alloying elements if required, i.e., cast iron castings are covered under the term "cast iron". It may also be clarified that "cast iron" includes grey iron, white iron, chilled malleable and nodular iron. Ingot moulds and bottom plates are nothing but cast iron castings."

58. We have made it clear that "cast iron castings" referred to in the said G.O., and letters of Government of India and by the Director-General; Technical Development can only be rough castings or castings in their crude form and not (i) separate commercial commodities emerging or coming into existence, may be by the process of casting; and (ii) subsequently fabricated forms or finished products, i.e., finished castings which become distinct and separate commercial commodities. Therefore, only rough castings continue to be declared goods under sub-item (i) of item (iv) of section 14 of the Central Act. When separate commercial commodities are made out of cast iron like C.I. pipes and manhole covers or machine parts, they cease to be cast iron and cannot any longer be treated as cast iron under sub-item (i).

59. The learned counsel contend that the expression "includes" in sub-item (i) has to be interpreted in an illustrative way as indicating something not included and not in an exhaustive way and they rely on the decision of the Full Bench of this Court in *Balaji General Stores v. Deputy Commissioner of Commercial Taxes* [1987] 65 STC 108. In particular, they referred to the following passage in the said decision :

"Thus, where it was intended that the enumerated goods specified after the

general expression were to be only illustrative but not exhaustive, the word "including" was used and where the intention of the Legislature was that the enumerated commodities should be exhaustive, they used the word "namely" or "that is to say".

60. This aspect of the matter has already been considered by the Division Bench in *Deccan Engineers Vs. State of Andhra Pradesh*, holding as follows :

"In the light of what is said above, the word "including" in the said entry [sub-item (i) in item (iv)] in section 14 cannot be said to extend to any commodity other than specified therein. Cast iron will include its form in ingots, billets and bottom plates. It will not take in any other separate commodity made from cast iron, like C.I. pipes or manhole covers. Therefore, the contention of the counsel for the petitioner that the goods sold by them should be treated as cast iron which is a declared goods is rejected."

61. In *Commissioner of Income Tax, Andhra Pradesh Vs. Taj Mahal Hotel, Secunderabad*, the Supreme Court has observed as follows :

"The word "includes" is often used in interpretation clauses in order to enlarge the meaning of the words or phrases occurring in the body of the "statute". When it is so used, these words and phrases must be construed as comprehending not only such things as they signify according to their nature and import, but also those things which the interpretation clause declares that they shall include. The word "include" is also susceptible of other constructions which it is unnecessary to go into."

62. In *The South Gujarat Roofing Tiles Manufacturers Association and Another Vs. The State of Gujarat and Another*, the Supreme Court has observed as follows :

"Though "include" is generally used in interpretation clauses as a word of enlargement, in some cases the context might suggest a different intention It seems to us that the word "includes" has been used here in the sense of "means"; this is the only construction that the word can bear in the context. In that sense it is not a word of extension, but limitation; it is exhaustive of the meaning which must be given to potteries industry for the purpose of entry 22. The use of the word "includes" in the restrictive sense is not unknown"

63. The Supreme Court was enquiring in that case as to the meaning to be given to the word "includes" in the expression "potteries industry includes" in the explanation to entry 22 in Part I of the Schedule to the Minimum Wages Act, 1948. In *Hindustan Aluminium Corporation Ltd. Vs. State of Uttar Pradesh and Another*, which was referred to earlier, while interpreting "all kinds of minerals, ores, metals, and alloys including sheets and circles used in the manufacture of brasswares and scraps" in item No. 1 in the notification dated May 30, 1975, as amended by the U.P. Sales Tax (Amendment and Validation) Act, 1975, the Supreme Court has held as follows :

"But here the expression "including" does not enlarge the meaning of the word "metal" and must be understood in a conjunctive sense, as a substitute for "and". This is the reasonable and proper construction having regard to the scheme 7 followed in the framing of those notifications."

64. That is how the Division Bench in Deccan Engineers case [1992] 84 STC 92 interpreted the word "include" in sub-entry (ii) by holding that it cannot be said to extend to any commodity other than specified therein. We are not inclined to take a different view. However, we have dealt with the matter on the basis of what "cast iron" is and what things can be properly said to be "cast iron" and we have taken the view that "rough castings" which are not separate and distinct commercial commodities are also "cast iron" keeping in view the context in which the term "cast iron" occurs in item (iv).

65. The matter does not end here. In Deccan Engineers Vs. State of Andhra Pradesh, the Division Bench has observed that the assessee manufactured and sold various goods like C.I. specials, bends, tiles, tail pieces, manhole covers, etc., made from cast iron which had suffered sales tax. The assessee contended that the goods manufactured by it were cast iron castings and, therefore, could not be subjected to tax once again as they were made from tax-suffered cast iron. That contention has been rejected by the Division Bench. In the present cases however, the facts disclose that the assessees (respondents herein) manufactured the goods in question from tax-suffered pig iron and iron scrap and not from tax-suffered cast iron. Mr. Ratnakar contends that pig iron and cast iron are the same. We do not agree. Sub-item (a) of item (iv) of section 14 of the Central Act as it existed prior to the amendment of 1972, comprised only pig iron and iron scrap. In sub-item (i) of item (iv) as it exists now, cast iron was added. If pig iron and cast iron are the same, there is no need to mention cast iron separately. Pig iron is that which is obtained from blast furnaces. As already pointed out earlier, cast iron is made out of pig iron and iron scrap and there are a variety of cast iron depending on the various other metals introduced and the manner in which it is prepared by controlling the form in which carbon and silicon occur. Merely because they are in the same sub-item, it cannot be said that they have to be treated as one commercial commodity just as iron scrap and cast iron scrap cannot be treated same as pig iron. Each of them is a separate commercial commodity by itself. In the Third Schedule to the Act as it is now, iron scrap, cast iron scrap, runner scrap and iron skull scrap are found in sub-item (i) of item 2-A under the heading "iron and steel scrap, that is to say"; steel melting scrap in all forms including steel skulls, turnings and borings is found in sub-item (ii) of item 2-A. They are not found in item 2 of the Third Schedule as it is now. They were taken out of sub-item (i) and sub-item (x) and put in separately as item 2-A by Act 4 of 1989 with effect from February 15, 1989. This supports the view that iron scrap, cast iron scrap, etc., are commercial commodities different from cast iron. In Surana Industries case [1985] 11 STJ 282 a Division Bench of this Court has considered the question whether wires derived from wire-rods that had earlier suffered sales tax under the Act can again be subjected to sales tax. The

assessee in that case, has contended that wire-rods and wires occur in the same sub-item (xv) of item 2 of the Third Schedule to the Act which is as follows :

"(xv) Wire rods and wires rolled, drawn, galvanised, aluminised. tinned or coated such as by copper."

and that therefore they have to be treated as one commercial commodity and that wires made from tax-suffered wire-rods could not be subjected to tax again in view of section 15 of the Central Act. The Division Bench has rejected the said contention and held as follows :

"But there is even a more substantial ground on which the petitioners' argument should be rejected. The Parliament's action under article 228(3) of the Constitution, declared wire-rods and wires rolled, drawn, galvanised, aluminised, tinned or coated such as by copper as goods of special importance in inter-State trade and commerce. The State Legislature merely copied that language. From the above use of the language both by the Parliament and following that by the State Legislature, it is clear that wires and wire-rods are considered and treated and declared as separate goods by the Parliament and the State Legislature. Where the Parliament has not (so ?) specified both wires and wire-rods by name, it would not be open for any law court sitting to enforce those provisions of law to inquire into the question whether wires and wire-rods are really two separate commercial commodities. The attempt of the petitioners to show that notwithstanding the above Parliamentary declaration that wire-rods and wires are one and the same is clearly subversive of the high authority of the Legislature. It is palpably erroneous and contrary to the well-settled principles of judicial interpretation and administration.

.....

We therefore, hold that it is impermissible for a court of law to ignore the Parliamentary enactment and treat wire-rods and wires as one commercial commodity, whether the word "and" and conducting wire-rods with wires is read as conjunctive or disjunctive."

66. The Division Bench has also relied on the judgment of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, and held as follows :

"When once the Supreme Court has declared in the abovementioned State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, that these sub-items are not illustrations but themselves constitute separate commercial commodities, it cannot be argued with any degree of plausibility that the wire-rods and wires are one and the same taxable commodity. The argument of the petitioners is really a camouflaged attempt to by-pass the judgment of the Supreme Court in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, ."

67. The respondents before us did not question the correctness of the judgment of the Division Bench in Surana Industries case [1985] 11 STJ 282. The view taken by the Division Bench of this Court finds support in the decision of the

Division Bench of the Madras High Court in *State of Tamil Nadu v. India Metal Industries* [1980] 46 STC 304. In that case, the Madras High Court has considered section 14 of the Central Act prior to the amendment of 1972 and after the judgment of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, . The contention on behalf of the assesseees in that case was noted by the Madras High Court as follows :

"His point was that clause (iv) of section 14 described 4 categories of iron and steel and that out of the 4 categories, the category coming under sub-clause (c) would be a single item. His submission was that any conversion of steel scrap into steel ingots or steel billets or steel bars and rods, would not make the converted goods into different categories. While this Court in *Pyare Lal Malhotra v. Joint Commercial Tax Officer, T. Nagar Division, Madras* [1970] 26 STC 416, proceeded on the basis that all the categories described in (a) to (d) of clause (iv) of section 14 fell within the main item of "iron and steel" and that any internal conversion of one item into the other would not make a difference in the matter of sales tax liability, the Supreme Court held that each item was a separate commercial commodity. According to the learned counsel, while the Madras High Court took all the items (a) to (d) as one single category, the effect of the Supreme Court's decision was only to bifurcate them into four categories, viz., (a) to (d) His point was that any internal conversion of goods falling under each of these four sub-clauses would not attract any liability at the time of sale so long as the goods had suffered tax earlier."

68. The Madras High Court rejected the said contention holding as follows :

"..... As we understand the principle (of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*,), the enumeration of the several commodities in clause (iv) must be regarded as each having a separate identity of its own; different items brought together under a single sub-clause or sub-division cannot be regarded as one single type of commercial commodity having a single identity for the purpose of single point taxation.

The real ratio decidendi of the Supreme Court's decision has been set out in the earlier Bench decision of this Court in *State of Tamil Nadu v. Syam Steel Rolling Mills (P) Ltd.* [1977] 40 STC 156, to which we have made reference earlier. In that decision it was observed :

Thus it will be seen that the emphasis is on the retention of the identity as a particular commercial commodity and that once that identity is lost, there is no question of the commodity being exempt on the ground that the commercial commodity from which it was changed into a new commodity had already suffered tax.

"It was suggested that this understanding of the Supreme Court's judgment would require reconsideration by a larger Bench. There is no need for such a course since we hold that the rule laid down by the Supreme Court is not capable of any other meaning, and has, if we may say so, been properly applied in the

said case. It follows that the same rule should be applied to the present case as well.

The commercial character or identity of steel scrap is wholly different from steel ingots, steel billets, steel bars and rods. The fact that the steel scrap had already suffered tax at some point earlier would not confer immunity from taxation, when the steel scrap was converted into steel ingots, steel billets, steel bars and rods and sold. Thus the levy of tax in this case on the sale of converted items would not be wrong."

69. A different view was taken by the Division Bench of the Karnataka High Court in *Bahri Steel Wires v. Additional Commercial Tax Officer* [1992] 84 STC 418 assuming as follows :

"Having regard to the scheme of sections 14 and 15 of the Central Act and the purpose behind it being to minimise the tax burden on the declared goods, it can be assumed that each sub-item forms one category of goods and any goods falling within the same sub-item cannot be treated as a different taxable commodity just because the said goods are produced out of another goods which also fall within the same sub-item. Each sub-item comprised within itself a particular category of taxable commodity for the purpose of section 14 of the Central Act."

70. However, in *Surana Industries* case [1985] 11 STJ 282 it has been held as follows :

"Finally, it is argued that each one of the 16 sub-items mentioned in item 2 of the Third Schedule of the Andhra Pradesh General Sales Tax Act refer to only one single commodity. We find that this submission is totally without any warrant. For example, sub-item (xiv) deals with wheels, tyres, axles and wheel sets. If the argument of the learned counsel is right, tyres and axles cannot be taxed, because wheels have been taxed. Similarly the last sub-item deals with the defectives, rejects, cuttings or end pieces of any of the above categories. Accepting the learned counsel's argument, we do not know how to give any meaning to that entry."

71. Thus, this Court has taken a different view from that of the Karnataka High Court and we are bound by the decision of the Division Bench of this Court. Following *Surana Industries* case [1985] 11 STJ 282 we have to hold that cast iron made from pig iron and iron scrap by the respondents before us is liable to be taxed as declared goods. As we have taken the view that rough or crude cast iron castings are also cast iron they are also liable to be taxed as declared goods under sub-item (i) of item 2 of the Third Schedule to the Act. The Tribunal has not looked into this aspect of the matter. When the Tribunal decided these matters, it did not have the benefit of the decision of the Division Bench of this Court in *Deccan Engineers* case [1992] 84 STC 92. We have already observed that the Tribunal had not enquired into the nature and character of the commodities made and sold by the respondents and merely proceeded on the

basis that they were all cast iron castings.

72. In the circumstances and for the reasons stated above, we are inclined to set aside the orders of the Tribunal and remit the matters back to the Tribunal. Accordingly the tax revision cases are allowed, the orders of the Tribunal are set aside and the matters are remitted back to the Tribunal for deciding in the light of our judgment and in accordance with law after hearing both sides. The respondents before us who are the appellants before the Tribunal shall be at liberty to file additional material before the Tribunal for substantiating their cases as regards the nature and character of the goods which form the subject-matter of the disputed turnovers and the Tribunal shall give reasonable time to the respondents, if they so desire, for that purpose. No costs.

73. Petitions allowed.