

**(1991) 04 MAD CK 0074**

**In the Madras High Court**

**Case No :** S.L.P. (CIVIL) No's. 9851-9855 OF 1991, T.C. (R) . No's. 1108 of 1981, 1387 of 1984 and 248 to 250 of 1989 and W.P. No's. 6689 and 6690 of 1984 and 3116, 3250 and 3251 of 1986

The State of Tamil Nadu

APPELLANT

Vs

Muthu Agencies

RESPONDENT

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**Date of Decision :** 16-04-1991

**Acts Referred:**

Tamil Nadu General Sales Tax Act, 1959 — Section 16, 3, 3(1)

**Citation :** (1992) 85 STC 561

**Hon'ble Judges :** Raju, J;A.S. Anand, J

**Bench :** Division Bench

**Advocate :** R. Lokapriya, Government Advocate Taxes, C. Natarajan, Mrs. R.C. Chitra Venkataraman and K. J. Chandran, for the Appellant;

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## **Judgement**

Raju, J.—The above batch of cases are dealt with in common since they deal with a common and identical question as to whether "ultramarine blue" will fall under item 110 or 138 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, hereinafter referred to as "the Act."

2. T.C. No. 1108 of 1981. - The Revenue is the petitioner before this Court. The assessee is a dealer in dyes and chemicals. For the assessment year 1978-79, the Joint Commercial Tax Officer, Madurai, while finalising the assessment, disallowed their claim in respect of (a) exemption of a turnover of Rs. 24,830.41 as second sales, and (b) dispute of rate of tax on a turnover of Rs. 17,35,113.26, being the sale of "ultramarine blue" to be 8 per cent instead of ten per cent. In respect of the second of the claim, the assessing authority held the sale of "ultramarine blue" to fall under item 110 of the First Schedule treating the same to be "colour". On appeal, the appellate authority, though held "ultramarine blue" to fall under item 110, was of the view that it was pigment. Before the Tribunal, it was held to be a chemical falling under item 138 of the First Schedule. Hence, the revision by the State.

3. T.C. No. 1387 of 1984. - The Revenue is the petitioner and the assessee being the same as in T.C. No. 1108 of 1981. For the assessment year 1979-80, the sales of "ultramarine blue" to the tune of Rs. 14,90,016 was subjected to levy under item 110 of the First Schedule. On appeal, the appellate authority held the same to fall under item 138 following an order of the Tribunal in respect of the assessment year 1978-79. Before the Tribunal, the Revenue filed an enhancement petition objecting to the claim in respect of "ultramarine blue" and contending that it is covered by item 110. The Tribunal rejected the claim and, therefore, the Revenue has filed the above revision.

4. T.C. No. 248 of 1989. - The Revenue has filed this revision. The assessee is a dealer in "ultramarine blue". For the assessment year 1983-84, the sales have been subjected to 10 per cent tax apparently treating them to fall under item 110 of the First Schedule having regard to the fact that the dealers themselves have collected tax at 10 per cent. On appeal, the appellate authority sustained the levy holding it to be a "pigment" only and, therefore, not falling under item 138. The Tribunal, on further appeal, held the same to fall neither under item 110 nor under item 138, but to be subject to levy at multi-point u/s 3(1) of the Act. (5 per cent at that point of time). Hence, the revision by the State.

5. T.C. Nos. 249 of 1989. - The Revenue is the petitioner in these cases also. The assessees are dealers in "ultramarine blue" as in the other cases. They relate to the assessment year 1983-84. As in T.C. No. 248 of 1989, the assessing authority subjected the sales to tax at 10 per cent which was confirmed by the appellate authority. On appeal, the Tribunal held the same to be taxable at multi-point at the rate of 5 per cent u/s 3(1) of the Act. Hence, the revisions by the State.

6. W.P. Nos. 6689 and 6690 of 1984. - The writ petitioners have prayed for writs of mandamus directing the respondents to forbear from levying and assessing "ultramarine blue" manufactured and marketed by them under their brand name u/s 3(1) of the Act. The assessees claimed that "ultramarine blue" is nothing but a "pigment" falling under item 110 of the First Schedule to the Act, that the assessments and the reassessments of the turnover relating to the sale of "ultramarine blue" at multi-point are illegal, that the authorities have not only assessed their transactions treating them to fall under item 110 and recovered from the petitioners tax at 10 per cent which in their turn they collected from their purchasers and handed over to the State, but the authorities are again assessing their purchasers also at 5 per cent multi-point exposing the petitioners to reimbursement claims from such purchasers who are stockists and dealers of the product manufactured by the petitioners and that consequent upon the total uncertainty regarding the stage as well as the rate of tax hampering their business, the petitioners claim that they are constrained to file the above writ petitions.

7. W.P. Nos. 3116, 3250 and 3251 of 1986. - The petitioners are the same dealers/assesseees who are respondents in T.C. Nos. 1108 of 1981 and 1387 of

1984. They have prayed for writs of certiorari seeking to quash the proceedings of the assessing authority pertaining to assessment years 1984-85, 1980-81 and 1981-82, respectively. For the assessment year 1984-85, an order of assessment has been made. So far as the assessment years 1980-81 and 1981-82 are concerned, the writ petitions have been filed to quash the pre-assessment notice issued invoking the powers u/s 16 of the Act proposing to revise the assessment by subjecting the turnover relating to sales of "ultramarine blue" to tax at 10 per cent treating the commodity as a "pigment" as against the earlier rate of 8 per cent applied. The core as well as the sum and substance of the submission of the petitioners in the above writ proceedings are that "ultramarine blue" falls under item 138 as has been held by the Tribunal in their cases on earlier occasions, that applying the principles of ejusdem generis, "ultramarine blue" could not be considered to fall under any of the heads mentioned in item 110 of the First Schedule, that by the deletion of entries "dyes and chemicals" from the Schedule, the sales of "ultramarine blue" is to be treated as subject to multi-point rate of tax of 5 per cent and that it was not open to the department to take inconsistent and contradictory stands and make statements in different cases as they arise for consideration.

8. At the time of final hearing, Mrs. Chitra Venkataraman appearing for some of the assesseees, contended that the sales of "ultramarine blue" would fall under item 138 which dealt with "dyes and chemicals" other than those specifically mentioned in the Schedule and liable to tax at 8 per cent at the point of first sale with effect from July 25, 1977 and on and from July 1, 1982, when the said entry came to be deleted, the sales of "ultramarine blue" will be subject to multi-point levy u/s 3(1) of the Act at the rate in force from time to time and, therefore, cannot be brought within item 110. Mr. C. Natarajan, learned counsel appearing for two manufacturers as well as a dealer contended that the sales of "ultramarine blue" will fall only under item 110 of the First Schedule to the Act, and, therefore, are subjected to tax at the point of first sale in the State at the prevailing rates of taxation from time to time.

9. Mr. R. Lokapriya, learned counsel appearing for the Revenue, in conformity with the stand taken in the tax cases filed before this Court contended that the sales of "ultramarine blue" will be covered under item 110 of the First Schedule and the levy and collection of tax, applying the rates and at the stage provided for under item 110, are not only in accordance with law, but was the only and proper course of action to be adopted in subjecting the sales of "ultramarine blue" to sales tax under the Act.

10. The following case law was cited at the Bar in support of the respective submissions of the learned counsel on either side. In Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, , the Supreme Court was concerned with the question as to whether "coal" includes "charcoal" and adds to how an item found in a taxing enactment should be construed. The Apex Court opined that in statutes like the Sales Tax Acts, resort should be had not to the

scientific or technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense. In *Industrial Gases Ltd. v. Commissioner, Sales Tax* [1968] 21 STC 124, a Division Bench of the Allahabad High Court was considering the question as to whether "oxygen" manufactured by the assessee is a "chemical" or a "medicine". The assessee in that case manufactured oxygen gas by the industrial process known as "fractional distillation" of liquid air and sold them both for industrial and medicinal purposes. The Division Bench held that "oxygen" is a "chemical" to be taxed as such when sold for industrial purposes and "medicine" when sold for medicinal purposes and taxed as such. The said view was arrived at applying the principle that if an article was capable of being used for different purposes, the question as to the description into which it will fall would depend upon how it was treated by the vendor. In *Commissioner, Sales Tax v. Prayag Chemical Works* [1970] 25 STC 85, a Full Bench of the Allahabad High Court held ("sodium silicate" to fall within the expression "chemicals of all kinds" and in coming to such a conclusion, applied the principle that when otherwise the commodity concerned satisfied a particular description, the use to which the particular vendor puts the commodity becomes irrelevant but has to be construed with reference to the general properties which make it saleable to the entire range of prospective buyers.

11. In *Har Narain Purshottam Dass v. Commissioner, Sales Tax* [1971] 28 STC 77, a Division Bench of the Allahabad High Court construed "Tinopal" to fall under the expression "chemicals of all kinds" applying the principle that though a chemical may be also used as a washing material, that by itself cannot take it outside the category of "chemicals of all kinds" because it is the sense in which the mercantile community and consumer public understand that becomes relevant. Under the particular local sales tax law in question, "washing material" came to be specified as a specific entry subsequently and not during the assessment year under consideration before the court. In *Avadh Sugar Mills Ltd. v. Sales Tax Officer* [1973] 31 STC 469, the Supreme Court had an occasion to consider the question of the true meaning of "oil-seeds" and also as to whether "groundnut" will come under the expression "oil-seeds". The Apex Court opined that in finding out the true meaning of "oil-seeds" found in the sales tax law of U.P. State, the court has not to refer to dictionaries but to ascertain the meaning ascribed to it in commercial parlance and that there can hardly be any doubt that in commercial circles, groundnut is dealt with as an oil-seed and mostly also used for manufacture of groundnut oil. The Apex Court rendered its finding that groundnut oil. The Apex Court rendered its finding that groundnut will fall under the expression "oil-seed" for the purpose of the purchase tax under the said Act.

12. The Madhya Pradesh High Court had an occasion to consider the classification of the very commodity "ultramarine blue" with which we are concerned now, in a decision reported in *Ganu Bhai v. Commissioner of Sales Tax* [1975] 36 STC 421. The court was of the view that it is the "common use" which would determine how an article or commodity is to be categorised and that the use to which "neel"

is ordinarily put to being as a brightening agent, neel or ultramarine blue as it is also called, is not a dye. The Division Bench in that case opined thus :

"14. Treating neel as a dye arises out of the failure to distinguish "dye" in its true meaning from a pigment and from the "blue, a powder used by laundresses." This powder cannot be used to impregnate tissues when the material is in a raw state to yield more permanent results. It is not capable of being fixed to the fabric as when it is used on the fabric it is fugitive, not fast to light, nor resistant to action of water and is not capable of diluting acids or alkalies. It is seriously disputed that neel is used after the clothes are washed, usually at the first rinsing, and that with each rinsing it gets washed away. It cannot resist or withstands the use of detergents or even washing-soda which is alkaline in nature. Finally, it is neither a direct dye nor a mordant."

13. A Division Bench of this Court, in a decision reported in *State of Tamil Nadu v. Indian Eyelets Industries* [1984] 55 STC 354, considered the scope of item 138 of the First Schedule and the question as to whether "Fiksol-S. 69", an all purpose adhesive used for binding various surfaces such as leather, rubber, etc., though made of certain ingredients which are in the form of chemicals, can be treated as a chemical by itself when the use of it by itself cannot be said to produce any chemical effect or result in any chemical change, viz., "dyes and chemicals". The court opined that the commodity in question sold as an adhesive is not an intermediary product producing a chemical effect, but is an end-product which is to be used only as an adhesive and the use of which does not produce any chemical effect or bring about any chemical change. In *State of Tamil Nadu v. Southern Explosive Co.* [1984] 57 STC 173, a Division Bench of this Court had an occasion to consider the question as to whether the sales turnover on three items, namely, explosives, detonators and safety fuses fall under entry 53 or 138 of the First Schedule to the Act and are liable to multi-point tax. The learned judges approved the view of the Tribunal that neither item 53 nor item 138 of the First Schedule will apply and that it attracts multi-point levy, which view was taken by the Tribunal following a decision of the Andhra Pradesh High Court in *State of Andhra Pradesh v. Indian Detonators Ltd.* [1971] 28 STC 84 holding that in such cases, the question has to be considered according to the popular meaning or the meaning attached to the word in commercial world. In *Assistant Commercial Taxes Officer v. Rajasthan Chemical Corporation* [1987] 65 STC 356, the question as to whether "neel" (ultramarine blue) will fall under the expression "pigment" came up for consideration before a Division Bench of the Rajasthan High Court. The learned Judges were of the view that in common parlance "neel" is understood as a substance which is used to whiten clothes and not as a colour and therefore it cannot be said to be a "pigment". The conclusions of the Division Bench are as hereunder :

"It is well-settled by catena of cases of the Apex Court of the country that in interpreting the meaning of the words in taxing statutes we should not be guided by their technical and scientific meaning alone but the terms should be

understood in the manner in which merchants dealing with them and consumers using them generally understand. In other words they should be understood in the sense in which they are popularly understood by those who deal in them and who purchase and use them. Reference may be made to Commissioner of Sales Tax, U.P. Vs. S.R. Brothers, Kanpur, . The word "pigment" in item No. 18 has been used along with dyes, paints and varnishes, dry colours, etc., The dictionary meanings of the word "pigment" is "any substance used for colouring : that which gives colour to animal and vegetable tissues." "Pigment brown"; "pigment carmine"; "pigment chrome yellow"; "pigment fast orange"; "pigment fast red"; "pigment fast scarlet"; "pigment fast yellow"; "pigment purple"; "pigment red"; "pigment scarlet"; "pigment violet" are used to convey colouring, by particular colour. "Neel" (ultramarine blue) is not a colour. In common parlance, "neel" (ultramarine blue) is understood as a substance, which is used to whiten clothes. It is not understood as colour. It is a whitening agent for laundry purposes, used by washermen or by house-holders. Ultramarine blue is not a colour as it is used to whiten clothes."

14. In Union of India v. C.M.C. India [1979] ELT 298, a Division Bench of the Gujarat High Court considered the dutiability of "ultramarine blue" under item 14 of the Excise Tariff. The Division Bench was of the view that "ultramarine blue" is not known to manufacturers, traders and common people as "pigment" and consequently not dutiable under item 14(1)(5) of the Excise Tariff. The learned judges repelled the plea based on the booklet published by the Indian Standard Institution containing "specification for ultramarine blue for paints" where "ultramarine blue" was found described as a "pigment", and came to the conclusion that the product is known to consumers and commercial community only as "ultramarine blue". While considering further the question as to whether the said "ultramarine blue" can be called a "pigment", the Division Bench held as follows :

"As pointed out by the Supreme Court of India in the case of South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, :

As the Act does not define goods the Legislature must be taken to have used that word in its ordinary dictionary meaning. The dictionary meaning is that to become goods it must be something which can ordinarily come to the market to be bought and sold and is known to the market.

We have already pointed out that the goods on which duty is sought to be levied are known to the market or the trade as "ultramarine blue" and not as pigment and in that case, it is difficult to say that ultramarine blue falls within item 14(1)(5) of the First Schedule. This shows that the products in question in these cases cannot be said to be excisable goods as contemplated by section 3 of the Act and they cannot be charged with any duty under item 14(1)(5) of the First Schedule."

15. The question as to whether "ultramarine blue" is a "pigment" for purpose of assessment under item No. 14(1)(5) of the Excise Tariff also came up for

consideration before a learned single Judge of the Calcutta High Court in the decision reported in *Nilsin Company v. Collector of Central Excise* (1984) ECR 928. The learned Judge considered the matter at length applying the principle that a word which is not defined in the statute ought to be construed not in any technical sense but as understood in common parlance and that a word of everyday use must be construed in its popular sense, meaning that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. That apart, the dictionary meaning of the word was also taken into account as well as the physical constituents of the products. As could be seen from the report, the petitioner before the said court has not questioned the correctness of the raw material used in the manufacture of "ultramarine blue" to be sulphur, soda ash, pitch, China clay and silica or that the physical properties of "ultramarine blue" constitute the same as an inorganic pigment in its technical or scientific sense. On the other hand, the contention of the petitioner before the said Court appears to be that according to the popular view, the product "ultramarine blue" is understood as a separate product distinct from pigments, colours and paints, and in popular mind, "ultramarine blue" is not associated with pigments, colours and paints. The publication of the Indian Standards Institution was also taken into account. After such analysis in great detail, Chittatosh Mookerjee, J., rendered his ultimate findings as hereunder :

"(13) The respondents in paragraph 17 of the affidavit-in-opposition have averred that in paints like emulsion paints or water paint, pigment finishes for leather, printing ink, textile printing, ultramarine blue is compounded in larger proportion. They have also set out in paragraph 18 of their affidavit-in-opposition the definition of the expression "pigment" given in various dictionaries. In the book *Modern Surface Coating* by Paul Nylén and Edward Sunderland, at page 349, of the said book has described "pigment" as the internationally accepted term for the powdered material intended to be dispersed in liquid or solid binders for the production of paints, printing inks, plastic material, rubbers, vitreous enamels." In the said book ultramarine blue has been classified as a synthetic and inorganic pigment. The respondents have also relied upon Webster's 3rd International Dictionary, 1968, page 1714, which describes "pigment", inter alia, as a natural or synthetic inorganic or organic substance that imparts a colour including black or white to other materials, especially, a powder or easily powdered substance mixed with a liquid in which it is relatively soluble and used in making paints, enamels and other coating materials, inks, plastic, rubber and also for imparting opacity and other desirable properties as well as colour.

(14) After the hearing was concluded, the learned advocate for the petitioner placed before me the *Condensed Chemical Dictionary* 10th Edition, revised by Gessner G. Hawley, published by Van Nostrand Reinhold Co. Incidentally the respondents in paragraph 17 of their affidavit-in-opposition had relied upon the 1953 edition of Van Nostrand's *Chemical Dictionary* for the definition of "pigment" as a colouring substance. The said *Condensed Chemical Dictionary* claims to contain three distinct types of information, namely (i) technical

descriptions, (ii) extended definition, and (iii) descriptions or identifications of wide range of trade mark products. The said dictionary, in my view, does not support the claim laid by the petitioner. Thus at page 1068 of the said dictionary the properties of ultramarine blue have been, inter alia, described as "inorganic pigment; blue powder; good alkali and heat resistance .....". The said dictionary mentions the following uses of ultramarine blue : "Colorant for machinery and toy enamels; while baking enamels; printing inks, rubber products, soaps and laundry blues, cosmetic; textile printing." "Note : Used in very low percentage to intensify whiteness of white enamels, rubber compounds, laundered clothing, etc., by offsetting yellowish undertones; gives a "blue" rather than a "yellow", white". According to the same dictionary, the expression "colorants" means "any substance that imparts colour to another material or mixture." "Colorants are either dyes or pigments" (vide page 267 of the book). I may now also refer to the definition of "pigment" given at page 817 of the said Condensed Chemical Dictionary :

"Any substance, usually in the form of a dry powder, that imparts colour to another substance or mixture. Most pigments are insoluble in inorganic solvents and water. .... To qualify as a pigment, a material must have positive colorant value."

The definition given in the said book excludes certain substances including whiting. Mr. Bhattacharyya is not correct in contending that ultramarine blue is whiting because according to the said dictionary, whiting is entirely a distinct product consisting of finely ground, naturally occurring calcium carbonate derived from chalk, limestone, etc., and used as filler, putty, etc. One of the properties of ultramarine blue is that it is a whitener, i.e., of white pigment or colorant used in the paper and textile industries (vide Condensed Chemical Dictionary page 1096). Therefore, I conclude that the Condensed Chemical Dictionary 10th Edn. relied upon by the petitioner shows that ultramarine blue is a pigment having various uses, one of which is whitening or brightening textiles and clothes.

(15) For the foregoing reasons, I conclude that there is overwhelming evidence that ultramarine blue is a pigment. Ultramarine blue does not constitute a separate product as contended by the petitioner. People conversant with and dealing with the said product understand ultramarine blue as a pigment, i.e., as a colorant. It is used for imparting colour to various substances." Thus, not only from the standpoint of its physical constituent but also from the standpoints of its various uses and of popular understanding ultramarine blue is a pigment. In this connection, it is also necessary to note the comprehensive manner in which the entry No. 14 gave description of the goods which were subject to the rate of duty specified in the said item. Item No. 14I(5) was broadly in the form of a residuary clause for inclusion of pigments, colours, paints and enamels which have not been otherwise specified. Thus, pigments, colours, paints, and enamels which have not been mentioned in any other sub-items would be covered by item No. 14I(5) of the First Schedule to the Central Excises and Salt Act, 1944.

Accordingly, I hold that the petitioner is not entitled to challenge the validity of the excise duties imposed upon the product ultramarine blue manufactured by the petitioner. No question also arises of commanding the respondents to refund excise duties recovered from the petitioner under item No. 14I(5) of the First Schedule to the Central Excises and Salt Act, 1944."

16. Apart from the said rulings and the interpretation sought to be placed on the entries in question relying upon them Mr. Natarajan, learned counsel appearing for some of the assesseees referred to us in great detail the circular orders of the Commissioner of Commercial Taxes issued from time to time indicating the stand of the Revenue regarding the treatment of the transactions of sale relating to "ultramarine blue" for levy of sales tax. On the basis of such circular orders of the Commissioner, it was contended, relying upon the decision of the Supreme Court reported in *State of Tamil Nadu v. Mahi Traders* [1989] 73 STC 228, 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 and that such interpretation should be shown to be clearly wrong before it is overturned. It was also submitted that the view expressed by the authorities in the form of various circular orders provides, on the facts of the case, a valuable guideline in properly construing the nature of the commodity and the item under which they could be said to attract tax under the Act. The decision reported in *K.R. Subbier Vs. The State of Madras*, was brought to our notice to substantiate the submission that though the Board of Revenue took a particular view with reference to an article, produced and sold by a particular individual, that could not to be taken as a statutory notification or order applicable to all the assesseees and that as there could be no estoppel against a statute, whatever view the Board of Revenue might have taken in respect of a particular individual, will not estop the Government from enforcing the statutory provisions.

17. Reliance was also placed on the decision of the Apex Court in *Mathra Prashad and Sons Vs. State of Punjab*, , that there can be no estoppel against a statute and that any assurance that tax would not be collected under a particular circumstance would not bind the Government whenever the State chose to collect it in terms of the statutory provisions contained in an enactment.

18. After a careful consideration of the above materials and the plea of the counsel on either side, we are of the view that "ultramarine blue" will squarely fall under item 110 of the First Schedule to the Act. Where no definition as such is provided in the statute itself for ascertaining the correct meaning of a fiscal entry, mere reference to the dictionary meaning alone is not always either safe or a correct guide. It is by now a well-settled principle of construction that where the particular word has both a scientific or technical meaning and also an ordinary meaning according to common parlance, unless a contrary intention is expressed in the statute itself, it is to be construed in its popular sense, ascribing that meaning which people conversant with the subject-matter would attribute to it. So far as item 138 is concerned, it is in the nature of a residuary entry so far

as dyes and chemicals are concerned, inasmuch as it was designed so as to take within its fold such of those dyes and chemicals not otherwise falling under any other item in the Schedule. Therefore, before advertng to item 138, it requires to be considered as to whether the product in question answers the description of "dyes and chemicals" and if so falls within any other item in the Schedule. It is in that process that item 110 becomes really relevant for our consideration. Item 110 of the First Schedule to the Act reads as follows :

| of the goods | Point of levy | Rate of | Sl. No. | Description of tax %                                                                                                                                                                                                                                                                                                                                                          |
|--------------|---------------|---------|---------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|              |               |         | 110.    | Paints, colours, dry distempers, At the point of varnishes and blacks, cellulose first sale in 10 lacquers, polish including metal the State. polishing bars (but not boot polish), pigments, indigo, enamels, cement based waterpaints, oilbound distemper, water pigments, finishes for leather, plastic emulsion paints, turpentine oil, bale oil, white oil and thinners. |

19. In our view, "ultramarine blue" with which we are concerned, cannot be treated as a "dye" since it can neither be said to have the peculiar attributes of a "dye" nor any one treats or uses it as a "dye". Equally the product does not answer the description of a "chemical" since it neither has any attribute or use as a chemical nor can it be said to be handled by those concerned in the trade or its users as a "chemical". The product under our consideration does not have the characteristic or familiarity among those handling it to generate a chemical effect or chemical change. The question is whether it can be called "pigment" in the context in which it has been found used in item 110. As to what is a "pigment" has been considered at length in the decision of the Calcutta High Court in Nilsin Company's case (1984) ECR 928 (Cal). "Ultramarine blue" is found uniformly defined or classified as an inorganic pigment used in a low percentage to intensify whiteness and white elements. Pigment is also described as a natural or synthetic inorganic or organic substance that imparts a colour including black or white to other materials. It is also a whitener, i.e., white pigment having regard to its ordinary use by those who deal in them. People conversant with "ultramarine blue" and dealing with the same understand it to be valuable for imparting colour to various substances. Having regard to the fact that among various other uses, ultramarine blue is used for brightening or whitening textiles and clothes, the same will answer the description of "pigment" falling within item 110. In view of what has been stated above, "ultramarine blue" will not fall under item 138 and it also cannot be considered to be a commodity attracting multi-point levy u/s 3(1) of the Act since, in our view, it falls under item 110 of the First Schedule to the Act. No doubt, the department has been, in its circulars, reiterating, in the context of some clarifications sought for, that the product answers the description of item No. 110. That factor alone, in our view, does not constitute that the last word on the subject; nor could it be said to bind a quasi-judicial authority exercising statutory functions or the competent court so as to

deprive them of their powers to adjudicate the same unmindful of their constraining influence, if any. But, inasmuch as we have arrived at a finding on this question even de hors those circular orders, there is no need to advert to the other aspects raised based upon the efficacy or relevance of those circulars in the matter of interpretation of item 110 of the First Schedule to the Act by the courts as well as the quasi-judicial authorities functioning under the Act. The orders of the Tribunal in so far as they held "ultramarine blue" to be subject to sales tax under item 138 of the First Schedule or to a multi-point levy u/s 3(1) of the Act cannot be sustained in law.

20. Consequently, T.C. Nos. 1108 of 1981, 1387 of 1984 and T.C. Nos. 248 to 250 of 1989 shall stand allowed and the turnover in question relating to sales of ultramarine blue is liable to sales tax only under item 110 of the First Schedule to the Act. In the light of the declaration of the law as above, no further orders or specific relief require to be granted separately in W.P. Nos. 6689 and 6690 of 1984 since the State will implement the provisions of the Act for the relevant period in the light of the position of law now laid down by us. The writ petitions are ordered accordingly. So far as W.P. Nos. 3116, 3250 and 3251 of 1986 are concerned, the plea of the writ petitioners has to fail, on the view taken by us, as above, and these writ petitions shall stand dismissed; but in the circumstances, there will be no order as to costs.