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GUJARAT STEEL TUBES LTD. ETC.

v.

STATE OF KERALA & ORS.

MAY 5, 1989

B

[R.S. PATHAK CJ., SABYASACHI MUKHARJI AND
S. NATARAJAN, JJ.]

Central Sales Tax Act, 1956: Section 14(iv)(xi).

C

Steel pipe—Galvanisation of—Whether changes essential character of pipe—Galvanised iron pipes and tubes—Whether steel tubes.

Kerala General Sales Tax Act, 1963: First Schedule—Entry 46.

Galvanised iron pipes and tubes—Tax-levy of.

D

The appellant company was manufacturing and selling black and galvanised steel tubes and pipes. In the assessment proceedings for the years 1982-83 and 1983-84 under the Kerala General Sales Tax Act, 1963 the appellant contended that since the galvanised pipes manufactured by it were “declared goods” they were not liable to additional sales tax as well as surcharge. Rejecting the contention, the assessing authority

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taxed the turnover of galvanized iron pipes at four per cent and also assessed an additional tax and surcharge treating the galvanized iron pipes as ‘goods’ falling under Entry 46 of the First Schedule to the Kerala Sales Tax Act. Demands were raised from the Appellant company accordingly.

F

The Company filed a writ petition in the High Court. The High Court, held that as a result of the process of galvanisation the galvanised iron pipes had acquired different commercial identity and therefore, could not be identified with steel tubes mentioned in Section 14(iv)(xi) of the Central Sales Tax Act.

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In these appeals on the question: whether galvanised iron pipes and tubes are a commercially different commodity from steel tubes mentioned in Section 14(iv)(xi) of the Central Sales Tax Act.

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Allowing the appeals and setting aside the judgment and order of the High Court, this Court,

HELD: 1. Galvanised pipes are steel tubes within the meaning of Section 14(iv)(xi) of the Central Sales Tax Act. The view taken by the High Court to the contrary was erroneous. [213E] A

2. Galvanisation is done on steel tubes or pipes as a protective measure only, i.e., to make it weather-proof. Merely because the steel tube has been galvanised does not mean that it ceases to be a steel tube. It still remains a steel tube and neither its structure nor function is altered. Galvanisation does not bring a new commodity into existence and as a commercial item it is not different from a steel tube. [212H, 213A-C] B

Commissioner of Sales Tax v. Mitra Industries, [1988] 69 S.T.C. (Note No. 55 at p. 16) applied. C

Associated Mechanical Industries v. Commissioner of Commercial Taxes, Bangalore, [1986] 61 S.T.C. 225; *Commissioner of Sales Tax v. Om Engineering Works*, [1986] U.P.T.C. 55; *State of Gujarat v. Shah Veljibhai Motichand Lunawada*, [1969] 23 S.T.C. 288 and *Sales Tax Commissioner and Ors. v. Jammu Iron and Steel Syndicate*, [1980] 45 S.T.C. 99, approved. D

Apollo Tubes Limited v. State of Kerala, [1986] 61 S.T.C. 275, overruled. E

Deputy Commissioner of Commercial Taxes, Tiruchirapalli v. P.C. Mohammed Ibrahim Marakayar Sons, [1980] 46 S.T.C. 22, Not approved.

Deputy Commissioner of Sales Tax (Law) Board of Revenue v. G.S. Pai & Co., [1980] 1 S.C.R. 938, Distinguished. F

CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2025-26, 2873-75, 1537 of 1986.

From the Judgment and Order dated 24.3.86 and 20.3.86 of the Kerala High Court in O.P. No. 7621/85-I, 4411/85-Y, 2785/83-G, 9366/84-I and 4740/82-J respectively. G

Soli J. Sorabjee, Dr. Y.S. Chitale, T.S. Krishnamoorthy Iyer, Harish N. Salve, K.J. John, M.N. Jha, Mrs. A.K. Verma and D.N. Misra for the Appellants. H

A V.J. Francis, N.M. Popli and W.K. Jose for the Respondents.

The Judgment of the Court was delivered by

B PATHAK, CJ. These appeals by certificate granted by the High Court of Kerala raise the question whether galvanised iron pipes and tubes are a commercially different commodity from steel tubes mentioned in s. 14(iv)(xi) of the Central Sales Tax Act.

C The appellant is a company registered under the Companies Act, 1956. It has its registered office at Ahmedabad in Gujarat. It is engaged in the manufacture and sale of steel tubes and pipes, both black and galvanised.

D In the assessment proceedings for the assessment years 1982-83 and 1983-84 under the Kerala General Sales Tax Act, 1963, the appellant contended that the galvanised iron pipes manufactured by it are "declared goods" and are not liable to additional sales tax as well as surcharge. The appellant's contention was not accepted by the assessing authority, who taxed the turnover of galvanised iron pipes at four per cent and also assessed an additional tax and surcharge treating the galvanised iron pipes as goods falling under Entry 46 of the First Schedule to the Kerala Sales Tax Act. Demands were raised accordingly.

E It appears that the matter was brought to the High Court by writ petition, and the High Court held on the basis of its decision in *Apollo Tubes Limited v. State of Kerala*, [1986] 61 STC 275 that the category of goods called galvanised iron pipes had acquired a different commercial identity as a result of the process of galvanisation and could not be identified with steel tubes mentioned in s. 14(iv)(xi) of the Central Sales Tax Act. Cases on the other side of the line are *Associated Mechanical Industries v. Commissioner of Commercial Taxes, Bangalore*, [1986] 61 STC 225 and *Commissioner of Sales Tax v. Om Engineering Works*, [1986] U.P.T.C. 55. The High Court preferred to follow its own decision and on 24 March, 1986 held against the appellant. A certificate having been granted by the High Court these appeals are now before us.

H The purpose of galvanising a pipe is merely to make it weather-proof. It remains a steel tube. By being put through the process of galvanising it is made rust-proof. Neither its structure nor function is altered. As a commercial item it is not different from a steel tube. That

galvanisation is done on steel tubes or pipes as a protective measure only was the basis of the decision of the Karnataka High Court in *Associated Mechanical Industries*, (supra). Merely because the steel tube has been galvanised does not mean that it ceases to be a steel tube. The Gujarat High Court in *State of Gujarat v. Shah Veljibhai Motichand, Lunawada*, [1969] 23 S.T.C. 288 held that merely because iron is given the shape of a sheet and is subjected to corrugation does not take it out of the description of "iron and steel". So also in *Sales Tax Commissioner and Others v. Jammu Iron and Steel Syndicate*, [1980] 45 S.T.C. 99 the High Court of Jammu and Kashmir held that galvanisation and corrugation do not change the essential character of iron sheets, and they remain iron sheets.

We are unable to agree with the view taken by the Madras High Court in *Deputy Commissioner of Commercial Taxes, Tiruchirapalli v. P.C. Mohammed Ibrahim Marakayar Sons*, [1980] 46 S.T.C. 22. The limited purpose of galvanisation does not, it seems to us, bring a new commodity into existence. The respondents rely on *Deputy Commissioner of Sales Tax (Law) Board of Revenue v. G.S. Pai & Co.*, [1980] 1 S.C.R. 938 but in that case this Court held that Bullion as understood popularly does not include ornaments or other articles of gold. It was pointed out that Bullion was commonly treated as a commodity distinct and separate from ornaments and articles of gold. Gold ornaments and articles were manufactured or finished products of gold. A number of other cases were cited on behalf of the respondents, but we do not find any of them to be of assistance to the respondents.

We are of the view that galvanised pipes are steel tubes within the meaning of s. 14(iv)(xi) of the Central Sales Tax Act. The view taken by the High Court is erroneous.

We may not that shortly after judgment was reserved in the present appeals, an identical point arose before a Bench of this Court on 28 April, 1988 in S.L.P. (Civil) No. 3549 of 1988—*Commissioner of Sales Tax v. Mitra Industries*, [1988] 69 S.T.C. Note No. 55 at p. 16 and the learned Judges took the same view which finds favour with us here.

In the result, the appeals are allowed, the impugned judgment and order of the High Court and the orders of the tax authorities in each case are set aside. The Sales Tax Officer will now proceed to re-assess the appellant in accordance with law and the observations contained in this judgment.