

Supreme Court of India

Bengal Iron Corporation vs C. T. O on 27 April, 1993

Equivalent citations: 1993 AIR 2414, 1993 SCR (3) 433

Author: B Jeevan Reddy

Bench: Jeevan Reddy, B.P. (J)

PETITIONER:

BENGAL IRON CORPORATION

Vs.

RESPONDENT:

C. T. O

DATE OF JUDGMENT 27/04/1993

BENCH:

JEEVAN REDDY, B.P. (J)

BENCH:

JEEVAN REDDY, B.P. (J)

VENKATACHALA N. (J)

CITATION:

1993 AIR 2414                      1993 SCR (3) 433

1994 SCC Supl. (1) 310 JT 1993 (3) 134

1993 SCALE (2) 702

ACT:

HEADNOTE:

JUDGMENT:

The judgment of the court was delivered by B.P.JEEVAN REDDY J.-

Civil Appeal No. 4474 of 1992

1.The appellant is engaged in the manufacture and sale of products like cast-iron pipes, manhole covers, bends etc. For the assessment year 1989-90, the Commercial Tax Officer, Narayanguda Circle, Hyderabad levied sales tax upon the turnover relating to said products treating them as general goods. He overruled the petitioner's contention that the said products are declared goods liable to tax at the rate of 4% only. The assessee's appeal preferred before the Appellate Deputy Commissioner is still pending. Evidently because no stay was granted pending the said appeal, a notice was issued to the appellant calling upon him to pay the tax assessed, against which notice he preferred a writ petition, being W.P. No. 9315 of 1992, in the High Court of Andhra Pradesh. His

main contention in the writ petition was that by virtue of G.O.Ms. No. 383 Revenue(s) Department dated April 17, 1985, his products are 'declared goods' and are, therefore, liable to tax only @ 4%.

2.The Division Bench of the High Court dismissed the writ petition following its earlier decision in Deccan Engineers v. State of A.P.<sup>1</sup> In Deccan Engineers' it was held by the A.P. High Court that the expression 'cast iron' in Item (2)(i) of the Third Schedule to the Andhra Pradesh General Sales Tax Act does not include cast-iron pipes, manhole covers and bends etc. In this appeal, the correctness of the said view is questioned.

3. Third Schedule to the Andhra Pradesh General Sales Tax Act pertains to "declared goods in respect of which a single point tax only is leviable under Section 6". Section 6 was enacted by the A.P. Legislature to accord with Sections 14 and 15 of the Central Sales Tax Act. Item (2) of the Third Schedule in the A.P. Act reads as follows: 1 (1992) 84 STC 92(AP) THIRD SCHEDULE (As amended up to 15th August 1987) Declared goods in respect of which a single point tax only is leviable under Section 6 S. Descri- Point of Rate of No. ption of levy tax goods (1) (2) (3) (4) (2) Iron and At the 4 paise steel, that point of in the is to say, first sale rupee (3002) in the State

(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 lengths);

(v)steel structurals (angles, joists, channels, tees, sheet piling sections, 2 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 checkered 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 tin free 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) detectives, rejects, cuttings or end pieces of any of the above categories.

4. Item (2) of the Third Schedule to the A.P. Act is an exact replica of Item (iv) of Section 14 of the Central Sales Tax Act. According to Section 15 of the Central Act, 'declared goods' cannot be taxed at a rate exceeding 4 or at more than one stage.

5. The precise question that was considered in Deccan Engineers' (followed in the judgment under appeal) was whether the 'cast iron castings' manufactured by the petitioner in that case are 'cast iron' within the meaning of Item (2)(i) of the Third Schedule to the A.P. Act/Item

(iv)(i) of Section 14 of the CST Act. At this stage, it is necessary to ascertain precisely what does 'cast iron' mean and how are the products of the appellant manufactured. 'Cast iron' is defined in the Concise Oxford Dictionary as "a hard alloy of iron, carbon and silicon cast in a mould". According to New Lexicon Webster's Dictionary of English Language, the word 'cast iron' means "an iron-carbon alloy produced in a blast furnace. It contains up to 4% carbon, and is more brittle, but more easily fused, than steel". According to Van Nostrand's Scientific Encyclopedia, 'cast iron' is "primarily the product of remelting and casting pig iron". (Interestingly, the expression 'cast-iron' with a hyphen between 'cast' and 'iron' has been defined separately as meaning "made of cast iron". So far as item

(iv) of Section 14 is concerned, the official publication spells the expression 'cast iron' without a hyphen. Though an authorised publication of the A.P. Act is not placed before us, we presume that the printing of the said expression in the private publication placed before us represents the correct rendering it is without a hyphen.) That 'cast iron' is different from 'cast iron castings' is brought out in the following extract from the judgment in Deccan Engineers' which is equally true in the case of the appellant as well:

"The assessee manufactures and sells various goods mentioned earlier made from cast iron which has suffered sales tax. The controversy is whether these several goods sold by the petitioner continue to be the same declared goods covered by the aforesaid entry or are different commercial commodity liable to levy of State sales tax. The case of the Revenue is that, items sold by the petitioner are commodities different from cast iron, though made out of it and are, therefore, exigible to tax as a distinct commercial commodity. It is contended by the learned counsel for the assessee that the relevant entry in Section 14 of the Central Act also Third Schedule of the State Act speak of cast iron including ingots, moulds and bottom plates, iron scrap etc. which indicates that any casting made out of cast iron also should be treated as included in the entry because of the word used 'including' in the entry. It is

further contended that the Government of India in their letters have clarified that cast iron castings are covered by cast iron and the State Government has also issued the aforesaid G.O. subsequently under Section 42(2) of the State Act clarifying that the cast iron castings are covered within the term cast iron."

6. It is thus clear that 'cast iron' is different from 'cast iron castings' manufactured by the appellant. 'Cast iron' is purchased by the appellant and from that 'cast iron', he manufactures several goods like manhole covers, bends, cast iron pipes, etc. In other words, 'cast iron' used in Item

(iv) of Section 14 of the Central Act is the material out of which the petitioners products are manufactured. Position remains the same, even if the appellant purchases iron and mixes it with carbon and silicon thereby deriving 'cast iron' and then pours it into different moulds. In sum, 'cast iron' is different from the cast iron pipes, manhole covers, bends etc. manufactured and sold by the appellant. It cannot be denied, in such a situation that the products manufactured by the appellant are, in commercial parlance, different and distinct goods from the cast iron. Indeed this aspect is not seriously disputed by Shri Ganguli, the learned counsel for the appellant. His case is entirely based upon certain clarifications and circulars issued both by the Central and State Governments and in particular upon an order issued by the Andhra Pradesh Government under Section 42(2) of the A.P. Act namely G.O.Ms. No. 383 dated April 17, 1985. It is, therefore, necessary to refer to them.

7. The earliest clarification is the one contained in the letter dated February 28, 1977 from the Department of Revenue and Banking (Revenue Wing) Government of India addressed to the Finance/Revenue Secretaries of all State Governments and Union Territories. It reads thus:

"Subject:Clarification as to whether the term 'Cast Iron' mentioned in Section 14(iv)(i) of the Central Sales Tax Act, 1956 would cover cast iron casting.

In continuation of the marginally noted communications and with reference to this Department's letter No. 24/3/73/ST dt. 20-11- 1973, I am directed to say that the question whether the expression 'cast iron' used in Section (iv)(i) of the Central Sales Tax Act, 1956 will include 'Cast iron casting' has been reexamined in consultation with the Directorate General of Technical Development, Chief Chemist and the Ministry of Law, Justice & Company Affairs. This department has been advised that the existing expression 'cast iron' in the aforesaid section will cover 'cast iron casting' also.

Yours faithfully, Sd/-

Deputy Secretary to the Govt. of India."

8. Pursuant to the above clarification by the Central Government, the Commissioner of Commercial Taxes, Government of Andhra Pradesh intimated all the Deputy Commissioners of Commercial Taxes of the State that "Cast Iron Pipes and specials should be subjected to tax as falling under 'Cast Iron' liable to tax @ 4% at the point of first sale in the State under Entry 2 of the Third Schedule of

A.P.G.S.T. Act". To the same effect is another clarification issued by the Commissioner of Commercial Taxes, Government of Andhra Pradesh to his subordinate officials on March 12, 1982.

9.The next clarification from the Government of India was on January 31, 1984. It appears that the Government of Haryana had written to the Central Government stating that 'cast iron castings' cannot be treated as declared goods and requested the Ministry of Finance, Government of India to examine the same. It was in reply to the said query that the letter dated January 31, 1984 was written by the Government of India, Ministry of Finance, Department of Revenue to the Financial Commissioner and Secretary, Government of Haryana, Excise and Taxation Department. The letter says that the matter has been considered carefully by the Department in consultation with the Ministry of Law and the Director General of Technical Development. It set out the opinion of the Ministry of Law as also the opinion of the Director General of Technical Development. The latter's opinion reads:

"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 Gray Iron, Chilled Malleable and Nodular Iron. Ingot Moulds and Bottom Plates are nothing but Cast Iron Castings."

10.After setting out the said two opinions, the Government of India expressed its opinion in the following words:

"In accordance with the above advice, cast iron castings are covered under the term 'Cast Iron' State Government may kindly bring this position to the notice of sales tax authorities of the State. If considered necessary this may be placed before the Committee of Commissioners of Sales Tax/Commercial Tax set up under this Ministry's letter No.... Receipt of this letter may please be acknowledged."

11.Copies of this letter were communicated to all the State Governments and administrations of Union Territories.

12.On July 20, 1984 the Government of Andhra Pradesh, Revenue(s) Department issued a memorandum, referring to the aforesaid letter of the Central Government dated January 31, 1984 and reaffirming that " 'cast iron castings' are covered within the item 'cast iron including ingot' in sub-item (i) of Item No. 2 of the Third Schedule to the Andhra Pradesh General Sales Tax Act". On the same day the Principal Secretary to the Government, Revenue Department addressed a letter to the Secretary, Andhra Pradesh Small Scale Industries Association, Vijayawada informing the Association that "a clarification has been issued to the Commissioner of Commercial Taxes to the effect that 'cast iron castings' are covered within the term 'cast iron including ingot' in sub- item (i) of Item No. 2 of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957."

13.On March 27, 1984, however, the Commissioner of Commercial Taxes, Government of Andhra Pradesh addressed a letter to all his subordinate officers stating that the question whether 'cast iron castings' fall within the expression I cast iron' is pending before the High Court of Andhra Pradesh

and, therefore, the collection of arrears of tax due on 'raw castings' is stayed for a period of one year. At the end of one year, he said, the matter will be reexamined.

14. On April 17, 1985 the Government of Andhra Pradesh issued a clarification contained in G.O.Ms. No. 383 under sub-section (2) of Section 42 of the A.P. Act. It will be appropriate to set out the G.O. in full:

"GOVERNMENT OF ANDHRA PRADESH ABSTRACT Andhra Pradesh General Sales Tax Act, 1957 Levy of Sales Tax on 'Cast Iron Casting' Clarification issued.

REVENUE(S) DEPARTMENT

G. O. Ms. No. 383

Dated 17-4-1985

Read the following:

1. Govt. Memo. 2216/SI/83-4, dt. 20-7-1984
2. Lr. No. 2216/83-4, dt. 20-7-1984 addressed to Secretary, A.P. Small Scale Industries Association, Vijayawada
3. From the CCT's Ref. D.O.FE. Lr. 111(3)/1490/84, dt. 24-7-1984
4. Government Memo 3166/SI/84-4, dt. 13-11-1984
5. From the CCT. D.O. on CCT's Ref. LI/(1)/1063/82
6. Govt. Memo No. 3166/SI/84-5, dt. 22-2-1985
7. From the Commissioner of Commercial Taxes, Ref. A3/LI/1093/82, dt. 19-3-1983.

ORDER The Andhra Pradesh Small Scale Industries Association Vijayawada requested the Government to clarify whether 'cast iron' and 'cast iron castings' are one and the same commercial commodity.

2. This matter was examined at length by the Government of India in consultation with the Ministry of Law, (Department of Legal Affairs) and Director General of Technical Development. The Ministry of Finance, Department of Revenue, Government of India clarified, in their letter F. No. 24/10/80-ST, dt. 31-1-1984, to the effect that 'cast iron castings' are covered within the term 'cast iron'.

3. Government have examined in detail the legal aspects of the issue and observe that the term 'cast iron including ingot, moulds, bottom plates' as in sub-item (i) of Item 2 in the Third Schedule to the Andhra Pradesh Central Sales Tax covers 'cast iron casting' and as such 'cast iron castings' is not a different commercial commodity from the commodity 'cast iron including ingot, moulds, bottom plates'.

4. Under sub-section (2) of Section 42 of the Andhra Pradesh General Sales Tax Act, 1957 the Government hereby clarify that the 'cast iron castings' are covered within the term 'cast iron including ingot, moulds, bottom plates' occurring in sub-item (i) of Item 2 of this Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957. (emphasis added) (By order in the name of the Governor of Andhra Pradesh) C.R. Nair, Principal Secretary to Government."

15. Section 42 of the A.P. Act confers upon the State Government the power to remove difficulties. Sub-section (1) confers the said power to meet the problems arising from transition from the previous Sales Tax Act to the present Sales Tax Act. An order under sub-section (1) is required to be published in the A.P. Gazette. Sub-section (2) is general in nature. An order under sub-section (2) is not required to be published in the A.P. Gazette. Section 42 reads:

"42. Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act in consequence of the transition to the said provisions from the corresponding provisions of the Acts in force immediately before the commencement of this Act, the State Government may, by order in the Andhra Pradesh Gazette, make such provisions as appear to them to be necessary or expedient for removing the difficulty.

(2) If any difficulty arises in giving effect to the provisions of this Act (otherwise than in relation to the transition from the provisions of the corresponding Act in force before the commencement of this Act), the State Government may, by order make such provisions, not inconsistent with the purposes of this Act, as appear to them to be necessary or expedient for removing the difficulty."

16. An order issued under Section 42 is undoubtedly statutory in character.

17. A word about the validity of Section 42 of the A.P. Act. Section 37 of the Payment of Bonus Act conferred a similar power upon the Central Government; it further declared that any such order would be final. It was struck down by a Constitution Bench of this Court in *Jalan Trading Co. (P) Ltd. v. Mill Mazdoor Sabha*<sup>2</sup> as amounting to excessive delegation of legislative power. However, in a subsequent decision in *Gammon India Ltd. v. Union of India*<sup>3</sup> it has been explained by another Constitution Bench that the decision in *Jalan Trading*<sup>2</sup> was influenced by the words occurring at the end of Section 37 of the Payment of Bonus Act to the effect that the direction of the Government issued thereunder was final. Inasmuch as the said words are not there in Section 34 of the Contract Labour (Regulation and Abolition) Act, 1970, it was held, Section 34 cannot be said to suffer from the vice of excessive delegation of legislative power. It is meant "for giving effect to the provisions of the Act", it was held. Sub-section (2) of Section 42 of the A.P. Act does no doubt not contain the aforesaid offending words, and cannot therefore be characterised as invalid. Yet, it must be remembered that the said power can be exercised "for giving effect to the provisions of the Act", and not in derogation thereof. As we shall presently indicate it is necessary to bear this limitation in mind while examining the effect of G.O.Ms. No.

18. So far as clarifications/circulars issued by the Central Government and/or State Government are concerned, they represent merely their understanding of the statutory provisions. They are not binding upon the courts. It is true that those clarifications and circulars were communicated to the concerned dealers but even so nothing prevents the State from recovering the tax, if in truth such tax was leviable according to law. There can be no estoppel against the statute. The understanding of the Government, whether in favour or against the assessee, is nothing more than its understanding and opinion. It is doubtful whether such clarifications and circulars bind the quasi-judicial functioning of the authorities under the Act. While acting in quasi-judicial 2 (1967) 1 SCR 15 : AIR 1967 SC 691 : (1966) 2 LLJ 546 3 (1974) 1 SCC 596: 1974 SCC (L&S) 252: (1974) 3 SCR 665 capacity, they are bound by law and not by any administrative instructions, opinions, clarifications or circulars. Law is what is declared by this Court and the High Court to wit, it is for this Court and the High Court to declare what does a particular provision of statute say, and not for the executive. Of course, the Parliament/Legislature never speaks or explains what does a provision enacted by it mean. (See Sanjeev Coke Mfg. Co. v. Bharat Coking Coal Ltd.4)

19. Now coming to G.O.Ms. No. 383, it is undoubtedly of a statutory character but, as explained hereinbefore the power under Section 42 cannot be utilised for altering the provisions of the Act but only for giving effect to the provisions of the Act. Since the goods manufactured by the appellant are different and distinct goods from cast iron, their sale attracts the levy created by the Act. In such a case, the Government cannot say, in exercise of its power under Section 42(2) that the levy created by the Act shall not be effective or operative. In other words, the said power cannot be utilised for dispensing with the levy created by the Act, over a class of goods or a class of persons, as the case may be. For doing that, the power of exemption conferred by Section 9 of the A.P. Act has to be exercised. Though it is not argued before us, we tried to see the possibility but we find it difficult to relate the order in G.O.Ms. No. 383 to the power of the Government under Section 9, apart from the fact that the nature and character of the power under Section 42 is different from the one conferred by Section 9. As exemption under Section 9 has to be granted, not only by a notification, it is also required to be published in the Andhra Pradesh Gazette. It is not suggested, nor is it brought to our notice, that G.O.Ms. No. 383 was published in the Andhra Pradesh Gazette. This does not, however, preclude the Government of Andhra Pradesh from exercising the said power of exemption, in accordance with law, if it is so advised. We need express no opinion on that score.

20. The learned counsel for the appellant brought to our notice that the very same Division Bench which rendered the decision in Deccan Engineers' had rendered another decision in Tax Revision Case No. 93 of 1990 (State of A. P. v. Pratap Steel) applying G.O.Ms. No. 383 and giving relief to the dealer. It is argued that the Division Bench ought to have taken the same view in Deccan Engineers<sup>1</sup> as well. We have perused the decision in Pratap Steel'. It is a short judgment dismissing the revision applying G.O.Ms. No. 383. It does not appear that the matter was argued in the manner it was in Deccan Engineers'. The said argument, therefore, cannot advance the case of the appellant.

21. In this view of the matter it is not necessary for us to go into the question whether the word 'including' in Section 14(iv)(i) of Central Sales Tax Act and item (2)(i) of the Third Schedule to the A.P. Act has the effect of making the said sub-clause exhaustive or otherwise.



22. Accordingly, we hold that the cast iron castings manufactured by the appellants do not fall within the expression 'cast iron' in Entry 2(i) of the Third Schedule to the Andhra Pradesh General Sales Tax Act or within Section 14(iv)(i) of the Central Sales Tax Act.

23. The appeal accordingly fails and is dismissed. No order as to costs.

4 (1983) 1 SCC 147 : AIR 1983 SC 239 W P. No. 763 of 1992

24. This writ petition preferred under Article 32 of the Constitution is directed against the notices issued by the Assessing Authority proposing to reopen the assessments of the petitioner/appellant with respect to earlier assessment years and also seeking to apply the principle of Deccan Engineers<sup>1</sup> to the pending assessments. For the reasons stated hereinabove this writ petition fails and is accordingly dismissed. No costs.