

CIVIL APPEAL Nos.3886-3888 OF 2003

M/s. P.C. Malpani & Co. ...Appellant(s)

Versus

State of Kerala ...Respondent(s)

W I T H

CIVIL APPEALS NOS.3140/2004, 3141/2004, 7608/2004,
7609/2004 AND 664/2007

O R D E R

In this batch of Civil Appeals, we are concerned with classification dispute under the provisions of Kerala General Sales Tax Act, 1963.

The Entries in question are as follows:

Sl. No.	Description of goods	Point of levy	Rate of tax (per cent)
6.	Aluminium products and products of aluminium alloys not elsewhere mentioned in this Schedule	At the point of first sale in the State by a dealer who is liable to tax under Section 5	12.5 (1.4.92 to 31.3.94) 6 (from 1.4.94)
82.	All metals, alloys and metallic products or articles or articles made of iron and steel in combination with other metals other than those specified elsewhere in the Schedule	At the point of first sale in the State by a dealer who is liable to tax under Section 5	10

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The appellant-assessee is a dealer in products of aluminium such as aluminium sheets (also known as rolled steel sections) as well as aluminium corrugated sheets. The principal question involved in this batch of Civil Appeals is: Whether the above two items in question fall under Entry 6, quoted above, of Schedule I to the said 1963 Act, as claimed by the assessee, or whether they relate to Entry 82, quoted above, of Schedule I to the said 1963 Act.

At the outset, we extract herein-below the process

of manufacturing aluminium sheets and aluminium corrugated sheets:

PROCESS OF MANUFACTURING ALUMINIUM METAL
IN PRIMARY SENSE (SALEABLE) FROM BAUXITE

Bauxite Ore

Alumina Refineries

Mined and Refined by
Chemical Process

Alumina
(Aluminium Oxide)

Smelters/Reduction Plants

Electrolysis

Molten Aluminium Metal

Carbon Dioxide

Pots in Cast
House

Ingots

...3/-

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PROCESS OF MANUFACTURING ALUMINIUM
ROLLED PRODUCTS (ALUMINIUM SHEETS ETC.) AND
EXTRUSIONS FROM INGOTS

Ingots

Melted in
Furnace

Addition of
elements/alloys/
metals like
Copper, Zinc,
Magnesium

Molten Aluminium with Additives

By Rolling through
machine

Machine

Billets

Die

Rolled products
(Aluminium sheets etc.)

Extrusions

One has to keep in mind the above process when interpreting Entry 6 and Entry 82 in Schedule I to the said 1963 Act.

Before reading these Entries, one needs to keep in mind certain rules of interpretation in cases where the classification dispute arises before this Court. we are dealing with General Sales Tax Act. unless the intention of the Legislature is to the contrary, one has to apply the test of common parlance in such cases. In this case, applying the test of common parlance, we find that there is a dichotomy between a finished product on one

Firstly,

Generally,

...4/-

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hand and a primary product on the other hand. This dichotomy is clearly indicated if one reads Entry 6 in juxtaposition with Entry 82. Entry 6 refers to 'aluminium products' whereas Entry 82 refers to 'all metals'.

Further, one has to also apply what is called the companion test. This companion test flows from a basic rule of interpretation which is called as rule of ejusdem generis.

Applying the said test, one finds that the expression "all metals" in Entry 82 is followed by a comma and it is followed by a distinct product, namely, alloys and metallic products or articles made of iron and steel in combination with other metals. This aspect is important

because "comma" indicates that the expression "all metals" would cover primary metals and it has to be read applying the companion test with the words which follow, namely, alloys and metal products or articles made of iron and

steel. Articles made of iron and steel in Entry 82 show that "articles" as such are to be of iron and steel.

Entry

82, therefore, seeks to tax not iron and steel but products or articles of iron and steel. In this case, we are concerned only with the words "all metals" in Entry 82 and, applying the above tests, it is clear that the words "all

metals" would cover primary metals and not finished products from primary metals. Lastly, Entry 82 is a

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residuary entry. It clearly indicates that if an item falls in Entry 6, then, it will not fall in Entry 82. This is the meaning to be assigned to the expression "other than those specified elsewhere in the Schedule" in Entry 82. In any event, even according to the Department, the words "all metals" in Entry 82 refer only to primary metals. Therefore, the only limited argument which the Department has advanced before us is that aluminium sheets and aluminium corrugated sheets are primary metals because finished products are made therefrom. We do not find merit in this argument of the Department. The process enumerated in the chart is based on the judgment of this Court in the case of Hindustan Aluminium Corporation Ltd. Vs. State of U.P., reported in 1981 (3) SCC 578. Vide para 12, this Court has held that rolled steel sections (aluminium sheets) are a different commodity from iron ingots. This Court has further held in terms that when iron ingots are converted into rolled steel sections, they go through the process of manufacture which brings into existence a new marketable commodity.

In our view, for the afore-stated reasons, it is not open to the Department to say that aluminium sheets or aluminium corrugated sheets are primary metals falling under Entry 82. In our view, both these products come in

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the category of aluminium products under Entry 6 of Schedule I to the 1963 Act as these products are manufactured by the process indicated in the chart from ingots and billets. Neither aluminium sheet nor aluminium corrugated sheets are articles made from iron and steel, hence, Entry 82 has no application.

For the afore-stated reasons, we allow the Civil Appeals filed by the assessee (C.A.Nos.3886-3888/2003 & 664/2007) and dismiss the Civil Appeals filed by the Department (C.A.Nos.3140/2004, 3141/2004, 7608/2004 & 7609/2004) with no order as to costs.

.....J.
(S.H. KAPADIA)

.....J.
(Dr. B.S. CHAUHAN)

New Delhi,
October 27, 2009.
ITEM NO.102

COURT NO.2

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL NO(s). 3886-3888 OF 2003

M/S. P.C. MALPANI & CO.

Appellant (s)

VERSUS

STATE OF KERALA

Respondent(s)

(With office report)

WITH C.A.Nos.3140, 3141, 7608, 7609 of 2004 and 664 of 2007
(With office report)

Date: 27/10/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE DR. JUSTICE B.S. CHAUHAN

For Assessee: Mr. Aman Hingorani, Adv.
for M/s. Hingorani & Associates, Advs.

For State(s) Mr. T.L.V. Iyer, Sr.Adv.
Mr. P.V. Dinesh, Adv.
Mr. Jojo Joseph, Adv.
Mr. P. Rajesh, Adv.
Ms. Sindhu T.P., Adv.
Mr. P.V. Dinesh, Adv.
Mr. K.R. Sasiprabhu, Adv. (NP)

UPON hearing counsel the Court made the following
O R D E R

Civil Appeals filed by the assessee (C.A.Nos.3886-3888/2003 & 664/2007) are allowed and Civil Appeals filed by the Department (C.A.Nos.3140/2004, 3141/2004, 7608/2004 & 7609/2004) are dismissed with no order as to costs, in terms of the signed order.

(N. ANNAPURNA)
COURT MASTER

(MADHU SAXENA)
COURT MASTER

(Signed order is placed on the file)