CASE NO.:
Appeal (civil) 7188 of 1997

PETITIONER:
Associated Cement Co. Ltd.

RESPONDENT:
State of M.P. & Ors.

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI& G.P. Mathur.

JUDGMENT:
JUDGMENT

(with CA No\005..\005 of 2004 @SLP) No.1186 of 2000)

G.P. MATHUR,J.

1. Leave granted in SLP (c) No. 1186 of 2000 (Municipal Corporation Katni v. M/s. Associated Cement Co. Ltd.).

2. Civil appeal no. 7188 of 1997 has been preferred against the judgment and order dated 21.4.1997 of a Division Bench of Madhya Pradesh High Court deciding the issue relating to levy of export tax on certain products manufactured by M/s. Associated Cement Co. Ltd.

3. By a resolution published in M.P. Gazette dated 25.10.1991, the Municipal Corporation, Katni levied tax on export of goods from within the area of Municipal Corporation. Entry Nos. 1 and 2 in the Schedule appended to the Notification read as under:-
SCHEDULE

S. No.	Name of Article	Tax Proposed
(1)	(2)	(3)
1.	All types of Cement	=% of the cost of the consignment
2.	Materials made of cement	1% of the cost of article

4. The appellants Associated Cement Co. Ltd. filed writ petition challenging the levy of export tax on refractory cement and Acco Proof basically on the ground that they were not covered by the Schedule as they were not cement. The writ petition was dismissed by a learned Single Judge but the Letters Patent Appeal was party allowed by a Division Bench and it was held that refractory cement is a cement so as to attract liability of export tax but Acco Proof being a water proofing compound was not cement and was therefore not exigible to export tax.

5. The main question which requires consideration is whether refractory cement is cement so as to attract liability of export tax. Shri T.R. Andhyarujina, learned senior counsel appearing for the appellant has submitted that the Associated Cement Co. (hereinafter referred to as 'the appellant') has several factories in different parts of the country including a manufacturing unit by the name of Katni Refractory Works at Katni. This Unit manufactures (i) Firebricks; (ii) Ramming masses; (iii) Fireclay mortors; (iv) High Alumina Refractory Binder; (v) Refractory Castables; (vi) Whytheat Castables. The aforesaid products in the commercial parlance are known as "Refractory material" and they are entirely different from "cement" or material made "out of cement". Most of the Refractory

products are sold directly to the end users and only a small quantity is sold by way of retail sale whereas cement is sold through warehouses and cement stockists network. It has been submitted that the products manufactured by the appellant can by no stretch of imagination be equated with or used for the purposes for which cement is used. The refractory materials are used in furnaces and kilns to withstand high temperature, corrosion and abrasion and they are not usable as a substitute of cement or for construction activities. Learned counsel has further submitted that cement cannot be used for the purpose for which refractory material is used and the process of manufacturing cement and refractories are entirely different and the plant manufacturing refractories can neither be used nor can be converted for manufacturing any type of cement. The raw materials required for manufacturing refractory are also entirely different from those required for manufacturing cement. The main raw material required for manufacture of cement is limestone, silicous clay and gypsum whereas for manufacture of refractory products, the main raw material is bauxite, kyanite and fire clays. Bauxite and fire clay are not used for manufacture of cement and chemical composition and properties of the two products are entirely different. It has also been urged that so far as construction activity is concerned the most important criteria applicable in the case of cement is its strength in ordinary temperature but for refractory it is its refractoriness at high temperature. Lastly learned counsel has submitted that in common parlance and in trade, refractory can never be understood as cement. It has thus been urged that the levy of export tax on refractory is wholly illegal as the said product is not covered by the relevant entries in the schedule.

6. Shri Anoop G. Choudhary, learned senior counsel appearing for the Municipal Corporation, Katni, has submitted that Entry I in the Schedule mentions "all types of cement" and so long as the material is cement whatever be its chemical composition, nature or characteristic it will be covered by the said Entry. Learned counsel has laid emphasis on the words "all types of" and has submitted that it is a very comprehensive Entry and consequently irrespective of the purpose for which the article is used on account of its special qualities and components etc. as long as it is cement it will be covered by the Entry. According to Shri Choudhary the fact that refractories are used in furnaces and are capable of withstanding very high temperature, corrosion and abrasion will make no difference as it is still a cement and therefore it is covered by the Entry. Learned counsel has also submitted that being a taxing statute it has to be strictly construed and one has to look merely at what is clearly said and since the entry is all embracing which covers "all types of cement" it will take within its compass refractory as well as cement.

7. Learned counsel for the appellant has referred to some dictionaries and technical books to get an idea what "refractory" is and it will be useful to take note of the same.

The Cambridge Encyclopedia Materials which are neither deformed nor chemically changed by exposure to high temperatures. This makes them suitable for containers, structural materials, and components, particularly in metallurgical operations, such as furnace linings. Naturally occurring refrectories include silica, fireclay, and alumina. Synthetic refractories include the high-melting carbides and nitrides used in nuclear power plant.

The New Encyclopaedia Britannica material not deformed or damaged by high temperatures, used to make crucibles, incinerators, insulation and furnaces, particularly metallurgical furnaces. Refractories are produced in several forms; molded bricks of

various shapes(see firebrick); bulk granular materials; plastic mixtures consisting or moistened aggregate that are rammed into place: castables composed of dry aggregates and a binder that can be mixed with water and poured like concrete: and mortars and cements for laying brickwork.

The Oxford Dictionary and Thesaurus — (of a substance) hard to fuse or work, substance especially resistant to heat, corrosion etc.

New Webster's Dictionary and Thesaurus — suitable for lining furnaces because of resistance to fusion at very high temperature

The Oxford Universal Dictionary Illustrated on Historical Principles — Resisting the action of heat; difficult to fuse (or to work in any way)

Chambers Twentieth Chambers Dictionary — esp. difficult of fusion: fire-resisting \026 n. a substance that is able to resist high temperatures etc., used in lining furnaces etc.

Mc Graw-Hill Encyclopedia of Science & Technology — One of a number of ceramic materials for use in high temperatures structures or equipment. The term high temperatures is somewhat indefinite but usually means above about 1800\025 F (1000\025 C), or temperatures at which, because of melting or oxidation, the common metals cannot be used. In some special high temperature applications, the so-called refractory metals such as tungsten, molybdenum, and tantalum are used.

The greatest use of refractories is in the steel industry, where they are used for construction of linings of equipment such as blast furnaces, hot stoves and open-hearth furnaces. Other important uses of refractories are for cement kilns, glass tanks, noneferrous metallurgical furnaces, ceramic kilns, steam boilers, and paper plants. Special types of refractories are used in rockets, jets and nuclear power plants. Many refractory materials, such as aluminium oxide and silicon carbide, are also very hard and are used as abrasives; some applications, for example, aircraft brake lining, use both characteristics

Refractory materials are commonly grouped into (1) those containing mainly aluminosilicates; (2) those made predominately of silica; (3) those made of magnesite, dolomite, or chrome ore,

termed basic refractories (because of their chemical behavior); and (4) a miscellaneous category usually referred to as special refractories.

8. The appellant has also placed on record certain technical data regarding the refractories manufactured by it which are used in Iron and Steel Industry and in Fertilizer Industry. This technical data shows that different varieties of refrectories are manufactured for use in different kind of industries. Learned counsel has also laid emphasis upon the fact that for the purpose of levy of excise duty the Central Government has treated refractory as distinct from cement. Tariff Item 23 C.B.E.&C. Tariff Advice No.75/80, dated 24.11.1980 reads as under:

"It is considered and clarified for the information of the trade and all others concerned that Fire clay/Refractory Mortars and Ramming Masses are classifiable under Item 68 and not under Item 23 of Central Excise Tariff."

The relevant tariff entries are as under:

Item No.23- Cement

Item No.	Tariff Description	Rate of Duty
23.	Cement, all varieties -	
	(1) Grey portland cement (including ordinary portland cement, pozzolana cement and blast furnace slag cement), masonry cement, rapid hardening cement, low heat cement and waterproof (hydrophobic) cement	Rupees two hundred per metric tonne
	(2) All others	Forty per cent ad valorem

Item No.68-All other Goods, N.E.S.

Item No.	Tariff Descripton	Rate of duty
68.	All other goods, not elsewhere specified, but excluding	Eight per cent ad valorem
(a)	alcohol, all sorts including alcoholic liquors for human consumption.	

On the basis of above tariff entries it is submitted on behalf of the appellant that refractory is not cement.

9. The technical material referred to above shows that refractories are basically materials which are used in high temperature structures or equipment. They can withstand temperatures above one thousand degree centigrade when other metals will melt or oxide and they are generally used for lining of furnaces etc.

10. The principle to be applied for interpretation of taxing statutes which is relevant for the decision of the present case has been settled by a catena of decisions of this Court. In Commissioner of Sales Tax v. M/s. Jaswant Singh AIR 1967 SC 1454 it was held that while interpreting items in statutes like Sales Tax Acts resort should be had not to the scientific or the 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. The same view was taken in Minerals and Metals Trading Corporation of India v. Union of India & Ors. (1972) 2 SCC 620; Royal Hatcheries Pvt. Ltd. v. State of A.P. & Ors. 1994 Supp. (1) SCC 429; Dunlop India Ltd. v. Union of India 1976 (2) SCC 241. In Indian Cable Company Ltd. v. Collector of Central Excise (1994) 6 SCC 610 this principle was stated as under:-

"\005\005\005..But we would like to point out that in construing the relevant item or entry, in fiscal statutes if it is one of every day use, the authority concerned must normally, construe it, as to how it is understood in common parlance or in the commercial world or trade circles. It must be given its popular meaning. The meaning given in the dictionary must not prevail. Nor should the entry be understood in any technical or botanical or scientific sense. In the case of technical words, it may call for a different approach. The approach to be made in such cases has been stated by Lord Esher in Unwin v. Hanson (1891) 2 QB 115 thus:

"If the Act is directed to dealing with matters affecting everybody generally, the words used have the meaning attached to them in the common and ordinary use of language. If the Act is one passed with reference to a particular trade, business, or transaction and words are used which everybody conversant with that trade, business or transaction knows and understands to have a particular meaning in it then the words are to be construed as having that particular meaning, though it may differ from the common or ordinary meaning of the words."

We would only add that there should be material to enter appropriate finding in the case. The material may be either oral or documentary evidence."

The word 'cement' has not been defined in the relevant notification. Therefore it has to be understood in the same way as is understood in common parlance. Cement is exclusively used as a building material and is a commodity of everyday use. Therefore, we have to go only by the popular or commercial meaning of the term. The main property of the refractory is that it can withstand very high temperature, corrosion and abrasion. Cement is used for building roads, bridges and dams etc. and also by common people for building residential or commercial buildings. Anyone buying cement for building purpose would under no circumstance buy refractory. Similarly a mason or a supervisor would under no circumstance use refractory material in making a normal construction. The refractory is used for entirely different purpose namely for furnaces, linings and for insulation. A dealer would not supply refractory to anyone wanting to buy cement. In Cemento Corporation Ltd. Vs. Collector of Central Excise 2002 (8) SCC 139 it has been held that it is axiomatic that if the product is not cement but can be used for some purposes like cement, such product is not cement. We are, therefore, of the opinion that refractory material produced by the appellant does not fall within the Entry "all types of cement" and consequently it is not exigible to levy of export tax.

11. The challenge in the appeal preferred by the Municipal Corporation, Katni is to the order of the High Court in the matter relating to withdrawal of the amount deposited by the Associated Cement Co. Ltd. In view of our finding that refractory material is not exigible to export tax, the appeal is liable to be dismissed.

12. In the result CA No.7188 of 1997 is allowed and the judgment and order of the High Court in so far as it holds that refractory manufactured by the appellant are cement and are exigible to export tax is set aside. CA No\005\005\005.. of 2004 @ SLP) NO. 1186 of 2000 preferred by Municipal Corporation, Katni is dismissed.