

PETITIONER:
BENGAL IRON CORPORATION AND ANR.

Vs.

RESPONDENT:
COMMERCIAL TAX OFFICER AND ORS.

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:

%

Andhra Pradesh General Sales Tax Act, 1957:
Sub item (i) of Item No. 2 of the Third Schedule-Whether includes cast iron castings.
Interpretative circulars issued by Government on statutory provisions-Legal effect of if in derogation of the provisions of the Act.

HEADNOTE:

Section 6 of-Andhra Pradesh General Sales Tax Act, 1957 provides a single point tax @ 4 % on declared goods, mentioned in the Third Schedule to that Act. Item (2) of the Third Schedule describes the articles made of Iron & steel which fall in the category of 'declared goods'; sub-item (i) of Item (2) pertains to "pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skill scrap". 'Cast iron' is defined in the Concise Oxford Dictionary as "a hard alloy of iron, carbon and silicon cast in a mould". On February 28, 1977 the Department of Revenue & Banking (Revenue Wing) Government of India issued a letter to all Finance/ Revenue Secretaries of all State Governments and Union Territories, explaining the term 'Cast Iron' mentioned in section 14 (iv) (i) of the Central Sales Tax Act 1956. This letter said to have been issued in consultation with the Directorate General of Technical Development, Chief Chemist and the Ministry of Law, Justice & Company Affairs, extended the scope of the expression 'cast iron' to "cover 'cast iron casting' also".

Based on similar clarifications, the Department of Revenue (S) Department of the Government of Andhra Pradesh issued a clarificatory order under s. 42(2) of the Act vide GOMs No. 383 dated April 17, 1985 extending the scope of the expression 'cast iron' to include "cast iron castings". This order was also published in the State's official Gazette. Section 42 (2) of A.P. General Sales Tax Act empowers the State Government to make, by an order, such provisions as appear to them necessary & expedient to remove difficulty in the implementation of this Act, provided that these are not inconsistent with the provisions of the Act.

The appellant manufactures and sells products like cast iron pipes, man-

434

hole covers, etc. He claims that read with the above clarificatory orders, he is liable to pay only 4% sales Tax under Section 6 of the A.P. General Sales Tax Act. But, for the assessment year 1989-90 the Commercial Tax Officer C.T.O.) Narayanaguda Circle, Hyderabad levied Sales Tax on the said products at the rate applicable to general goods. The C.T.O. having overruled the appellant's contentions, the latter appealed to the Appellate Deputy Commissioner. During the pendency of appeal a notice was issued to the appellant calling upon him to pay the tax assessed, since no stay has been granted in appeal. Against this notice the appellant filed a writ petition No. 9315 of 1992 in the High Court of Andhra Pradesh. The Division Bench of the High Court rejected the appellant's main contention that his products were covered by Item (2) (i) of the Third Schedule to the A.P. General Sales Tax Act, and dismissed the writ petition. Vide Civil Appeal No. 4474 of 1992 (with Writ Petition (Civil) No. 763 of 1992). The appellant questions before this Court the above view of the High Court.

Rejecting the appellant's contentions and upholding the judgment and order of the High Court, this Court,

HELD: Law is what is declared by this Court and the High Court. An executive authority can, at best, only opine its own understanding of the statute; such opinion is not binding upon the quasi-judicial functioning of the authorities under the Act. (444-B)

Sanjeev Coke Manufacturing Company v. M/s Bharat Cooking Coal Ltd. and another, AIR 1983 SC 239, referred to.

The Government cannot use the powers, conferred by section 42 (2) of the A.P. General Sales Tax Act, to dispense with a levy created by the Act. (444D)

The Van Nostrand's Scientific Encyclopaedia treats 'cast iron' 'and cast-iron' (with a hyphen) as two different words. The Act speaks of 'cast iron' (that is without a hyphen between the two words) (437-G-H)

Hence, the expression 'cast iron' in Item (2) (i) of A.P. General Sales Tax Act does not include the products cast-iron pipes, man-hole covers, bends etc. (437-F)

Deccan Engineers v. State of Andhra Pradesh. 1991 Vol. 12 A.P. Sales Tax Journal 138 referred to.

435

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4474 of 1992. From the Judgment and order dated 28.7.1992 of the Andhra Pradesh High Court in W.P. No. 9315 of 1992.

WITH

WRIT PETITION (CIVIL) NO. 763 OF 1992.

(Under Article 32 of the Constitution of India)

A.K. Ganguli, Rakesh K. Khanna for R.P. Singh for the Appellant/ Petitioners.

C. Sitaramiah, Ms. Pushpa Reddy and Mrs. T.V.S. Narasimhachari for the Respondents.

The Judgment of the Court was delivered by

B.P. JEEVAN REDDY. J. CIVIL APPEAL NO. 4474 OF 1992.

The appellant is engaged in the manufacture and sale of products like cast iron pipes, man-hole covers, bends etc. For the assessment year 1989-90, the Commercial Tax Officer, Narayanguda Circle, Hyderabad levied sales tax upon the turn-over 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 17.4.1985, his products are 'declared goods' and are, therefore, liable to tax only @4%.

The Division Bench of the High Court dismissed the writ petition following its earlier decision in Deccan Engineers v. State of Andhra Pradesh (reported in 1991, Vol. 12 A.P. Sales Tax Generals, 138: 84 STC 92). 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, man-hole covers and bends etc. In this appeal, the correctness of the said view is questioned.

Third Schedule to the Andhra Pradesh General Sales Tax Act pertains to

436

"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 to the A.P. Act reads as follows:

THIRD SCHEDULE

(As amended upto 15th August 1987)

Declared goods in respect of which a single point tax only is leviable under Section 6.

S.No.	Description of goods	Points of levy	Rate of Tax
(1)	(2)	(3)	(4)
(1)			
(2)	Iron and steel, that is to say; -(3002)	-do-	*4-do-
	(i) pig iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skill scrap;		
	(ii) steel sends (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 length);		
	(v) steel structurals (angles, joints, channels, tees, sheet piling sections. Z 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 revitted condition;

(vii) plates both plain and chequered 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 not 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) defectives, rejects, cuttings or end pieces of any of the above categories.

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.

The precise question that was considered in Deccan Engineering (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 C.S.T. 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 upto 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

438

castings' is brought out in the following extract from the Judgment in 'Deccan Engineering', which is equally true in the case of the appellant as well:

.LM15

"The assessee manufacturers 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 petitioners 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, 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 IIIrd 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."

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 petitioner's 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 viz., G.O. Ms. No. 383 dated 17.4.1985. It is, therefore, necessary to refer to them.

The earliest clarification is the one contained in the

latter dated 28th February, 1977 from the Department of Revenue and Banking (Revenue Wing)

439

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. 24/3n3-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 re-examined 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."

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 III 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 12.3.1982.

The next clarification from the Government of India was on 31st January, 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 31st January, 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

440

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

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."

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

On 20th July, 1984 the Government of Andhra Pradesh, Revenue (S) Department issued a memorandum referring to the aforesaid letter of the Central Government dated 31st January, 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." On 27th March, 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,

441
'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. On 17th April, 1985 the Government of Andhra Pradesh issued a clarification contained in G.O.Ms. No. 383 under subsection (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 17.04.1985

Read the followings:-

1. Govt. Memo. 2216/SI/83-4. dt. 20.7.84,
2. Lr. No. 2216/83-4, dt. 20.7.84 addressed to Secretary A.P. Small Scale Industries Association, Vijayawada
3. From the CCT's Ref. D.O.FE.Lr. III (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/(i) /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.

442

2. This matter was examined at length by the Government of India in consultation with 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 castings" are covered within the term "cast iron including ingot, moulds, bottom plates" occurred 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."

Section 42 of the A.P. Act confers upon the State Government the power to remove difficulties. Sub-section (i) 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

443

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."

An order issued under section 42, is undoubtedly statutory in character.

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. v. Mill Mazdoor Sabha* [1967] 1 SCR 15 as amounting to excessive delegation of legislative power. However, in a subsequent decision in *Gammon India Limited etc. v. Union of India & Ors. etc.* [1974] 3 S.C.R. 665, it has been explained by another Constitution Bench that the decision in *Jalan*

Trading 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 can not 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. 3,83.

So far as clarifications kirculars 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 leviabale according to law., There can be no estoppel against the statute. the understanding of the Government, whether in favour or against the assessee, is

444

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 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 Manufacturing Company v. Mls. Bharat Coking Coal Ltd. and another, A.I.R. 1983 SC 239.

Now coming to G.O. Ms. 383, it is undoubtedly of a statutorily characterbut, 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 can not 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. 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. 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.

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 (The State of A.P. v. Pratap Steel) applying G.O. Ms. 383 and giving relief to the dealer. It is argued that the Division Bench ought to have taken the same view in Deccan Engineers as well. We have perused the decision in Pratap Steel. It is a short judgment dismissing the Revision applying G.O.Ms. 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.

445

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 subclause exhaustive or otherwise.

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 of the Andhra Pradesh General Sales Tax Act or within Section 14 (iv)(i) of the Central Sales Tax Act.

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

W. P. No.763 OF 1992

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 to the pending assessments. For the reasons stated hereinabove this writ petition fails and is accordingly dismissed. No costs.

G.S.B. Appeal and petition dismissed.

446