



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY**

**ORDINARY ORIGINAL CIVIL JURISDICTION**

**SALES TAX REFERENCE NO. 58 OF 2012**

**IN**

**REFERENCE APPLICATION NO.54 OF 1997**

The Commissioner of Sales Tax

..Applicant

**Vs.**

M/s. Jai Hind Industries Limited

..Respondent

Mr. V. A. Sonpal, Special Counsel, for the Applicant State.

Mr. P. C. Joshi a/w Mr. Piyush Shah, for the Respondent.

**CORAM :- S. C. DHARMADHIKARI, J. &  
B. P. COLABAWALLA, J.**

**RESERVED ON :- September 15, 2015.**

**PRONOUNCED ON :- October 30, 2015.**

**JUDGMENT :- [Per B. P. Colabawalla, J]**

1. By this Reference, the First Bench of the Maharashtra Sales Tax Tribunal (for short, the “**MSTT**”) has referred the following questions of law for a decision of this Court under

Section 61 of the Bombay Sales Tax Act, 1959 (for short the “**BST Act**”):-

- (a) *Whether on the facts and circumstances of the case and on true and correct interpretation of Entry C-I-29 of Part I of Schedule-C, the Tribunal was justified in law in holding that the non-ferrous metal castings as manufactured and sold by the respondents (original appellants) are nothing but non-ferrous metal ingots?*
- (b) *Whether on the facts and circumstances of the case and on true and correct interpretation of Entry C-I-29, the Tribunal was justified in law in holding that the non-ferrous metal castings, namely aluminum castings manufactured and sold by the respondents (original appellants) are covered by Entry C-I-29?*

2. The real dispute in the present Reference is whether raw aluminum castings manufactured and sold by the Respondent herein, are covered by the residual Entry C-II-102 of the BST Act and exigible to tax @ 10% or whether they fall under Entry C-I-29 exigible to tax @ 4%.

3. The brief facts giving rise to the present controversy are that the Respondent herein (M/s. Jai Hind Industries Limited) manufactures raw aluminum castings required by the automobile industry. It had sold such castings for cylinder head cover supplier part to M/s Tata Engineering and Locomotive Company

Ltd (for short, "**TELCO Ltd.**"), vide invoice No.1682 dated 13<sup>th</sup> December, 1994. It is the case of the Respondent that they purchase aluminum alloy in the form of ingots which are then melted with the help of a melting furnace at 700° C. This molten metal is put into a dye through a special opening and considerable pressure is applied to the molten aluminum, due to which it reaches all the cavities inside the mould to form a necessary casting on solidification. This casting is then ejected and further cleaned, after which it is dispatched to their customers. At the time of making sale to their customers, the Respondent charged 4% sales tax on the sale of the aforesaid raw aluminum castings. This was done on the basis of a judgment of the MSTT in the case of *M/s Ceepla Industries v/s The State of Maharashtra (Second Appeal No. 3 of 1991 dated 20<sup>th</sup> December, 1991)*. However, subsequently the Respondent learnt about the another judgment of the MSTT in the case of *M/s B. S. J. Foundries and Works v/s the State of Maharashtra (S. A. No.1242 of 1991 dated 31<sup>st</sup> October, 1994)*, wherein the MSTT took a different view in respect of non-ferrous raw castings. In this decision, the MSTT had diverted from the earlier view and non-ferrous castings were held to be covered by the residual Entry C-II-102.

4. In this view of the matter, the Respondent on or about 28<sup>th</sup> December, 1994 filed an application under Section 52 of the BST Act before the Commissioner of Sales Tax and sought determination regarding the rate of sales tax applicable on the sale of raw aluminum castings. The Commissioner, by his order dated 13<sup>th</sup> January, 1996 (under Section 52(2) of the BST Act) came to the conclusion that the sale of raw aluminum castings for cylinder head covers sold vide invoice No.1682 dated 13<sup>th</sup> December, 1994 by the Respondent to TELCO Ltd. were covered by Schedule Entry C-II-102 and liable to tax at 10%. This order further clarified that this determination would not affect the Respondent's previous liability up to 30<sup>th</sup> June, 1993 provided they had not collected more than 4% sales tax on the sale of the same goods i.e. the aluminum castings.

5. Being aggrieved by this order of determination, the Respondent approached the MSTT by filing Appeal No.33 of 1996. This Appeal, along with the Appeals filed by M/s Jay Bhawani Engineering Works (Appeal No.26 of 1996) and M/s Balwant Industries (Appeal No.28 of 1996) were heard by the Third Bench

of the MSTT at Mumbai and after considering the arguments of the Revenue as well as the respective Appellants before it, the MSTT allowed the Appeals and held that the sale of raw aluminum castings would fall under Entry C-I-29 exigible to tax @ 4% and not under Entry C-II-102 exigible to tax @ 10%.

6. Being aggrieved thereby, the Revenue preferred a Reference Application No.54 of 1997 before the MSTT requesting it to refer the questions of law set out in paragraph 1 above, to this Court under Section 61(1) of the BST Act. The said Reference Application No.54 of 1997 was rejected by the MSTT vide its judgment and order dated 16<sup>th</sup> December, 2000. On this rejection, the Revenue moved this Court by filing an application under the first proviso to Section 61(1) of the BST Act which application was registered as Sales Tax Application No.3 of 2001. When this Sales Tax Application No.3 of 2001 reached hearing before this Court, by an order dated 25<sup>th</sup> July, 2003, this Court directed the MSTT to draw and refer the questions of law set out in paragraph 1 above to this Court for its decision. It is in these circumstances that this Reference has come up for our consideration.

7. In this background, Mr Sonpal, Special Counsel for the Applicant - Revenue contended that raw aluminum castings sold by the Respondent herein could never be classified under Entry C-I-29 of the Bombay Sales Tax Act 1959. It was the submission of Mr Sonpal that what was manufactured by the Respondent was in fact a new commercial commodity different from what was described in the aforesaid Entry. He submitted that raw aluminum castings could never fall within the meaning of the word 'ingots' appearing in Entry C-I-29. It was therefore his submission that raw aluminum castings were correctly classified under the residual Entry C-II-102, and the MSTT was in error in overturning the order of determination passed by the Commissioner dated 13<sup>th</sup> January, 1996. In support of the aforesaid submission, Mr Sonpal placed heavy reliance on a decision of the Supreme Court in the case of **Bengal Oil Corporation and another v/s Commercial Tax Officer and others.**<sup>1</sup> He submitted that the present case was squarely covered by the ratio laid down by the Supreme Court in **Bengal Oil Corporation's case.**<sup>1</sup>

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1 1994 Supp (1) SCC 310

8. It was the submission of Mr. Sonpal that on the other hand, the MSTT placed reliance on another decision of the Supreme Court in the case of **Vasantham Foundry v/s Union of India and others<sup>2</sup>** and on the basis thereof, overturned the order of the Commissioner and held that the items sold by the Respondent herein vide their Invoice No.1682 dated 13<sup>th</sup> December, 1994 fell in Entry C-I-29 exigible to tax at 4% and not in the residual Entry C-II-102 exigible to tax at 10%. He submitted that the reliance placed on the decision of the Supreme Court in **Vasantham Foundry's case<sup>2</sup>** was wholly misplaced as the facts in that case were totally different from the facts before us. He therefore submitted that the questions of law referred to this Court for its determination and which are set out in paragraph 1 of this judgment be answered in the negative and in favour of the Revenue.

9. On the other hand, Mr Joshi, learned counsel appearing on behalf of the Respondent, sought to support the order of the MSTT on all counts. He submitted that there was no question of law and which could be termed as substantial, that required our consideration in view of the fact that the MSTT had

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2 (1995) 5 SCC 289

come to the findings that it had on the basis of the factual matrix before it. The MSTT has taken into consideration all the facts including the processes that are required to be undertaken for manufacturing raw aluminum castings as well as the processes these castings further undergo at the purchaser's end before they are put to use. He submitted that in this factual matrix, the case of the Respondent was squarely covered by the decision of the Supreme Court in the case of **Vasantham Foundry<sup>2</sup>** and therefore, in any event, the question of law as framed in paragraph 1 above ought to be answered in the affirmative and in favour of the Respondent.

10. We have perused the papers and proceedings in the Sales Tax Reference alongwith the order of determination dated 13<sup>th</sup> January, 1996 passed by the Commissioner, the order dated 13<sup>th</sup> June, 1997 passed by the MSTT in Appeal No.33 of 1996 as well as the order of Reference dated 29<sup>th</sup> January, 2004. The narrow dispute that arises for our consideration is whether raw aluminum castings manufactured and sold by the Respondent fall within Entry C-I-29 of the BST Act, or whether the same could be classified under the residual Entry C-II-102. Entry C-I-29 reads as

under :-

Sr. No.	Description of Goods	Rate of Sales Tax	Rate of Purchase tax	Period of operation
1	2	3	4	5
29	(i) Non-ferrous metal powder and scrap  (ii) Non-ferrous metal foils, sheets, rods, wires, bars, slabs, blocks, ingots, circles, tubes, angles, strips, plates and slugs (other than those of gold and silver specified in entry 1 of Part 1 of this Schedule) which are bare and not coated, covered baked or laminated with any other material.  Explanation : For the purpose of sub-entry (ii)  (i) the term 'tubes' does not include tubular containers intended for packing or storing of any goods, and  (ii) the term 'angles' does not include slotted or perforated angles.	4%	4%	1-4-1994 to 30-9-1995
		4%	4%	1-4-1994 to 30-9-1995

Similarly, Entry C-II-102 reads as under:-

Sr.No	Description of Goods	Rate of Sales Tax	Rate of Purchase tax	Period of operation
1	2	3	4	5
102	All goods other than those covered from time to time by the other schedules and the preceding entries of this schedule.	10%	10%	1-9-1990 to 30-9-1995

11. It is not in dispute before us that aluminum is a non-ferrous metal. The facts before us and which have been elaborately set out in the order of the MSTT dated 13<sup>th</sup> June, 1997 are really undisputed. The facts are that the Respondent manufactures raw aluminum castings required by the automobile industry. It sells its castings to Telco Ltd. as well as Premier Automobiles Ltd. Initially, the Respondent purchases aluminum alloy in the form of ingots. These ingots are then melted with the help of a melting furnace at 700° C. This molten metal is then put into a dye through a special opening and considerable pressure is applied to the molten aluminum, due to which the metal reaches all the cavities inside the mould to form the necessary casting on solidification. This casting is then ejected. After this, the raw casting is subjected to preliminary machining, such as milling or drilling operations to suit the jigs and fixtures for further finishing. The proof machining and final machining operations are not carried out by the Respondent but by their customers viz. Telco Ltd. and Premier Automobiles Ltd. It is in these circumstances and looking to these facts that the Respondent contended that therefore these are raw castings. In support of the aforesaid argument, Mr Joshi pointed out that M/s Telco Ltd. and

M/s. Premier Automobiles Ltd. had issued Certificates that raw castings procured by them from the Respondent are subjected to extensive machining such as milling, drilling, tapping etc. at their end before they are further used in the manufacture of a motor vehicle / chassis. At paragraph 22 of the order dated 13<sup>th</sup> June 1997, we find that these Certificates have been relied upon by the MSTT. It is not the case of the Revenue that these Certificates are not genuine and / or could not be relied upon for any reason.

12. On the basis of these facts, we have to now examine whether the case of the Respondent falls within the ratio of the decision of the Supreme Court in the case of **Vasantham Foundry<sup>2</sup>** or whether the same would be covered by **Bengal Iron Corporation's case<sup>1</sup>**.

13. The facts of **Bengal Iron Corporation's case<sup>1</sup>** reveal that the Appellant before the Supreme Court manufactured and sold cast iron pipes, manhole covers, bends etc. These items manufactured by the Appellant (Bengal Iron Corporation) were assessed to sales tax on the turnover of sale by treating them as general goods. It was the Appellant's contention that these goods /

products were 'cast iron' within the meaning of Item (2) (i) of Schedule III to the Andhra Pradesh General Sales Tax Act, 1957 and therefore liable to tax only at 4%. The Assessing Officer rejected this claim of the Appellant and held that 'cast iron castings' manufactured by the Appellant were not declared goods falling within the relevant entries of the Andhra Pradesh General Sales Tax Act, 1957 and correspondingly not liable to tax only at the rate of 4%. When this matter was carried all the way to the highest court of the land, the Supreme Court, after relying upon another judgment of the Andhra Pradesh High Court in the case of ***Deccan Engineers v/s State of Andhra Pradesh [1992 Vol.84 S.T.C. 92 (AP)]*** came to the conclusion that the words 'cast iron' were different from 'cast iron castings' manufactured by the Appellant. The Supreme Court came to a categorical finding that the products manufactured by the Appellant, in common commercial parlance, were different and distinct from the 'cast iron' from which they were manufactured. The relevant portion of the aforesaid decision is set out at paragraph 6 (of SCC Report) and reads as under:-

*“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."*

(emphasis supplied)

14. What can be discerned from the aforesaid decision is that the products manufactured by Bengal Iron Corporation though called 'cast iron castings' were different from the words 'cast iron' and were in fact different and distinct goods from 'cast iron' being manufactured and sold in the market. It is in this factual scenario that the Supreme Court opined that 'cast iron castings' manufactured by the Appellant were different from 'cast iron' as appearing in the relevant Entry under section 14 of the Central Sales Tax Act, 1956 as also in Schedule III of the Andhra Pradesh General Sales Tax Act, 1957.

15. As far as the decision of the Supreme Court in **Vasantham Foundry<sup>2</sup>** is concerned, it was the case of the Appellant therein that the basic materials for producing 'cast iron' were pig iron, steel scrap, iron scrap, cast iron scrap etc. After melting these raw materials and adding the requisite quantity of carbon, silica etc., the molten metal in the cupola furnace was poured into moulds of different specifications to get the 'cast iron castings' as required by the end users. The foundry owners like the Appellant manufactured these rough 'cast iron castings' according to the specifications of their customers, who in turn, after putting them through various other processes like machining, grinding, polishing etc., manufactured final products like manhole covers, pipes, components, agricultural implements etc. It was the argument of the Appellant that the proposition laid down **Bengal Iron Corporation's case<sup>1</sup>** was that if agricultural implements or of parts of motor vehicles or manhole covers, bends or cast iron pipes etc were being produced, they could not be treated as 'cast iron' but would have to be treated as finished goods made of 'cast iron'. In other words, it was argued in **Vasantham Foundry's case<sup>2</sup>** that if in a given case, it is found that

the products / goods manufactured from 'cast iron' are finished goods, it is only in those circumstances that the ratio of **Bengal Iron Corporation's case**<sup>1</sup> would apply. If 'cast iron castings' in its raw form and at its preliminary stage are manufactured, they would fall within the words 'cast iron' exigible to tax at 4%. In this light, it was argued by the Appellant that the judgment of the Supreme Court in the case of **Bengal Iron Corporation**<sup>1</sup> was being misconstrued and misunderstood by all the States' Revenue Authorities. After considering its decision in **Bengal Iron Corporation**<sup>1</sup> and upholding this contention, the Supreme Court at paragraphs 15, 16 and 17 (of the SCC report) held thus:-

*“15. In our judgment, this contention must be upheld. When Section 14 declared certain goods as of special importance in inter-State trade or commerce, it could not have the molten metal in contemplation. It is nobody's case that the molten metal is bought and sold in the market. What is bought and sold is cast iron, which is obtained by pouring molten metal in the moulds. The moulds may be of various shapes or sizes, but the type or nature or the size of the mould will not decide the question whether the end product will be 'cast iron' or not. Cast iron has to be in some shape, whether as a bar, as a billet or in some other form. The molten metal has to be poured into some mould to obtain 'cast iron' so that it can be traded, transported and used in obtaining finished goods out of it. It is not the shape of this rough mould that is determinative of the issue. What is determinative is whether it is a finished product or only a rough mould to be used in manufacturing finished products. The fact that the rough mould approximates in shape to the finished goods that will be ultimately made out of it does not make it any the less a rough mould. What emerges from the moulds is a cast iron*

*casting in its primary form, that is to say, rough cast iron casting. But, that will not take it out of the ambit of declared goods. If cast iron or cast iron casting in the primary form is not to be treated as declared goods, then the whole purpose of including cast iron in the list of declared goods will be defeated.*

*16. The Central Sales Tax Act imposed a levy of tax on sale or purchase of goods that takes place in course of inter-State trade or commerce. "Declared goods" and 'goods' have been defined in sub-sections (c) and (d) of Section 2 of the Act:*

- "2. (c) 'declared goods' means goods declared under Section 14 to be of special importance in inter-State trade or commerce;*
- (d) 'goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities;"*

*17. By including 'cast iron' among the goods of special importance in inter-State trade or commerce, the legislature could not have given the phrase 'cast iron' a narrow and limited meaning so as to exclude everything made out of cast iron in molten form. Only some of the goods which are dealt with in inter-State trade or commerce, have been declared as goods of special importance. On these goods tax can be levied only at one point and the rate of tax will not exceed 4% of its price. It is not conceivable that molten metal can be sold or purchased in course of inter-State trade or for that matter even in course of intra-State sale or purchase. Assuming for argument's sake that a quantity of molten metal can be purchased by a customer, it can only be delivered by a foundry in a container. The molten metal will solidify on cooling and acquire the shape and size of the container. In other words, the molten metal will become rough cast iron casting. Similarly, if the molten metal is delivered in moulds, it will acquire the size and shape of the moulds as soon as it cools down. It is nobody's case that it is the molten metal which is dealt with in inter-State trade or commerce. When the Central Government declared cast iron as goods of special importance in inter-State trade or commerce, it must have in contemplation some commodity which is actually traded in inter-State trade or commerce. If rough cast iron castings are treated*

as something distinct and separate from cast iron, the purpose behind Sections 14 and 15 will be defeated.”

(emphasis supplied)

16. On perusing both the aforesaid judgments of the Supreme Court, what is clear is that there is no conflict between the two. They both operate in different fields. In ***Bengal Iron Corporation's case***<sup>1</sup>, it is held that goods manufactured from 'cast iron' and which are finished products / goods, would not fall within the words 'cast iron' and would be exigible to sales tax as general goods. On the other hand, in ***Vasantham Foundry's case***<sup>2</sup>, the Supreme Court has held that raw 'cast iron castings' (and which require some further processes by the purchaser before they are put to use), would be included in the words 'cast iron' and would therefore be exigible to tax at 4%. To put it simply, if cast iron castings are in the raw form, it would be exigible to tax at 4%, whereas if they culminate into finished goods they would be exigible to tax as general goods under the respective sales tax legislations.

17. Having noted this distinction, we would now have to examine which one applies in the present case. It is not disputed that the Respondent herein is purchasing non-ferrous metal ingots

and are manufacturing primary and unfinished non-ferrous castings (aluminum castings). The MSTT, at paragraph 22 of its order dated 13<sup>th</sup> June, 1997 has categorically held that this fact has been proved by the Respondent herein. Whilst coming to this finding, the MSTT has relied upon several Certificates issued, including the ones from M/s Telco Ltd. as well as M/s Premier Automobiles Ltd. The Certificate issued by M/s Telco Ltd. dated 30<sup>th</sup> October, 1994 reads as under:-

*“We state that the raw castings being procured by us from M/s Jayahind Industries Ltd. are subjected to extensive machining such as milling, drilling, tapping etc. at our end, before they are further used in the manufacture of our motor vehicle/chassis.”*

(emphasis supplied)

Similarly, the Certificate dated 17<sup>th</sup> October, 1994 from M/s Premier Automobiles Ltd. reads thus:-

*“This is to certify that the various types of raw castings manufactured and supplied by M/s Jaya Hind Industries Ltd., Pune to us are being further processed at our end for carrying out various operations viz. drilling, milling, tapping etc. and thereafter used in the manufacture of our make cars.”*

(emphasis supplied)

18. From these Certificates it will be amply clear that what is manufactured by the Respondent herein is very much in the

raw, unfinished and primary form and are not finished goods. These findings of fact have been arrived at by the MSTT after taking into consideration all the material placed before it and we do not think that these findings are in any way perverse and/or contrary to the record. Further it is not even the case of the Applicant - Revenue that these Certificates are unreliable and therefore the MSTT was in error in placing reliance thereon. To be fair to Mr. Sonpal, he did not even urge such an argument.

19. In view of this factual position, we find that the reliance placed by Mr Joshi on the decision of the Supreme Court in **Vasantham Foundry's case<sup>2</sup>** is well founded. We find that the aluminum castings manufactured and sold by the Respondent herein to the automobile industry, are in its raw, unfinished and primary form which require further processes such as milling, drilling, tapping etc. by the purchaser before they are used in the manufacture of their motor vehicles / chassis. This being the case, we find that the ratio of the Supreme Court in the case of **Vasantham Foundry<sup>2</sup>** would apply with full force and accordingly, the raw aluminum castings manufactured by the Respondent herein would fall within Entry C-I-29 of the Bombay Sales Tax Act,

1959 and not within the residual Entry C-II-102.

20. Having said this, we must now deal the argument of Mr Sonpal, that the word 'castings' is not found in Entry C-I-29 appended to the Bombay Sales Tax Act, 1959 and therefore the raw aluminum castings manufactured by the Respondent cannot be classified under Entry C-I-29. This aspect of the matter has been elaborately dealt with by the MSTT in paragraphs 29 to 31 of its order and judgment dated 13<sup>th</sup> June, 1997. After relying upon several dictionary meanings of the terms 'castings' and 'ingots' as well as relying upon its earlier decision in the case of Ceepla Industries v/s State of Maharashtra (Second Appeal No.3 of 1991 dated 20<sup>th</sup> December 1991), the MSTT has come to the conclusion that 'casting' is nothing but an 'ingot' of a particular shape and that the generic term 'ingot' includes a mass of a particular shape and size.

21. We have carefully perused the aforesaid findings of the MSTT and we are in full agreement with the same. In this view of the matter, we are unable to agree with the argument of Mr Sonpal that merely because the word 'castings' is not found in Entry C-I-

29, the raw aluminum castings manufactured by the Respondent cannot fall within the aforesaid Entry. In any event, we do not think that the findings rendered by the MSTT on this aspect can by any stretch of the imagination be termed as perverse or suffering from any patent illegality giving rise to any substantial question of law that would persuade us to take a different view.

22. In view of our discussion earlier in this judgment, both the questions of law referred to this Court and set out in paragraph 1 above, are answered in the affirmative and in favour of the Respondent. The Sales Tax Reference is disposed of in the aforesaid terms. However, in the facts and circumstances of the case, there shall be no order as to costs.

**(B.P. COLABAWALLA, J.)**

**(S.C.DHARMADHIKARI J.)**