

Case Note: The issue is what is the meaning of metallurgical industry and whether petitioner industry is engaged in metallurgical industry? and whether Cess Act applies to the industry running by the petitioner.

This document is available at www.ielrc.org/content/e8807.pdf

Equivalent Citation: 1988(36)BLJR707

IN THE HIGH COURT OF PATNA

C.W.J.C. Nos. 2417, 2419, 2649, 2650, 2651 and 2652 of 1985 and 1320 and 1329 of 1987

Decided On: 27.05.1988

Tata Engineering and Locomotive Company Ltd.

Vs.

State of Bihar and Ors.

Hon'ble Judges:

Birendra Prasad Sinha and R.N. Lal, JJ.

JUDGMENT

Birendra Prasad Sinha, J.

1. All these Writ Petitions have been heard together and are being disposed by this common judgment

2. What is the meaning of a "metallurgical industry"? This is the principal question which has come up for consideration in this batch of the writ petitions. The Tata Engineering and locomotive Company Limited, Jamshedpur is the petitioner. The petitioner is a Company incorporated under a fresh certificate of Incorporation dated 24.9.1960, consequent to change of name of the Tata locomotive and Engineering Company Limited, under a resolution passed in terms of Section 2 of the Companies Act, 1956 with the approval of the Central Government. It is claimed that the petitioner in accordance with its Memorandum of Association has been pursuing its object of carrying on the business of manufacturing, assembling, selling, altering, importing, exporting, distributing and dealing in locomotives, boulders, engines, steam gas, electrical or otherwise, turbine, tankers, motor vehicles, trucks, lorries, buses, bulldozers, steak rollers, excavators and the kind. The head office of the company is located at Bombay and the factory is located at Jamshedpur within the State of Bihar and at Poona in the State of Maharashtra.

3. It has been stated that the petitioner undertook the manufacture of open goods wagons in 1946, which was discontinued in 1948. Then they undertook' manufacture of Tata Marshall Steam Road Rollers in collaboration with Messrs Marshall of the United Kingdom. This was also discontinued in 1956. In 1949 the petitioner had also undertaken manufacture of underframes for passenger carriages, which too was discontinued in the year 1956. Thereupon the petitioner-Company under a

collaboration agreement entered into in 1954 with Dalwar Benz undertook the manufacture of commercial vehicles. The first vehicle rolled out of its Jamshedpur Workshop on the 15th of October, 1954. In 1960 the Company started manufacturing truck engines also at its Jamshedpur Workshop and in 1961 in collaboration with Messrs Fawling and Harnigohfigger (United States) excavators etc. Since 1969 the Tata Mercedes Benz Diesel vehicles are being rolled out of its workshops. From 1980 Turbo Engine 1516 L.P.T. with bus chassis was converted to truck ; and from in collaboration with Hitachi, Japan, the petitioner-Company has been manufacturing Hydraulic excavators. It is thus claimed that the petitioner company is engaged in the manufacture of automobiles, hydraulic excavators, long crawlers, shovels, dragline, claimshell and back hoe and is known and called as an Engineering Industry.

4. The petitioner received a notice issued under Section 5 of the Water (Prevention and Control) of Pollution Cess Act, 1977 (hereinafter to be called as the Cess Act) to furnish returns. The liability to pay cess under the provision of the Cess Act was denied by the petitioner-Company vide letter dated the 20th of September, 1983 (Annexure-4). Thereupon the Member Secretary of the Bihar State Pollution Control Board, Patna) respondent No. 4) (hereinafter to be called as "the Board") called upon the petitioner-company to pay the amount of Rs. 79,559.90 paise towards the cess payable for the period from July, 1984 to September, 1984, vide Annexure-2. Similar demands were made for other period, which are the subject matter of the other connected writ petitions.

5. The petitioner-company filed several appeals against the orders of the Member Secretary of the Board (respondent No. 4) before the Appellate Committee of the said Board (respondent No. 5) under the provisions of Section 13 of the Cess Act. The appeals were disposed of on the 20th of March, 1985 by a common order as contained in Annexure-1. It may be stated here that some of the appeals related to the assessment in respect of Work Establishment of the petitioner-company and other appeals related to consumption of water in the Township-Establishment of the petitioner-company. The present writ petitions in respect of the assessment of cess in relation to the Work Establishment of the petitioner-company.

6. The appellate authority of the Board held that the petitioner-company is engaged in metallurgical industry "because metallurgical industry involves processes including metal cutting, metal using and metal shaping, the use of a foundry and forge is a typical example where metallurgical processes are used in manufacture of a variety of engineering products. Admittedly, the Company is using the metallurgical processes and has a foundry," Accordingly, it was held that the Company was liable to pay water cess in terms of Entry No. 1/2 under Schedule I to the Cess Act.

7. In order to appreciate the submission made on behalf of the petitioner-company, it may be relevant to extract here some of the provisions of the Cess Act. The Water (Prevention and Control of Pollution) Act, 1974 was enacted by the Parliament under Article 252 of the Constitution of India with a view to control the pollution of rivers and streams which has assumed considerable importance and urgency as a result of increasing industrialisation and urbanisation. The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter called the Pollution Act) intended to ensure that the domestic and industrial effluents are not allowed to be discharged into water courses without adequate treatment. Under the provisions of the Pollution Act of 1974, the Central Government and the State Government have to provide funds to the Central

Board and the State Boards for prevention and control of water pollution respectively for implementing the provisions of the said Pollution Act. Due to the pressure on the water resources the State Governments were found to be not able to provide adequate funds to the State Board for their effective functioning. It was, therefore, proposed to levy a cess on the local authority and on certain 'specified industries'. It was proposed to levy cess on the basis of water consumption by such local authorities and 'specified industries'. It was with this object that the Cess Act of 1977 was enacted to provide for levy and collection of cess on water consumption by persons carrying on certain industries and by local authorities. Section 3 of the Cess Act, 1977 provides for collection of cess. Section 3 of the 1977 Cess Act reads as under : -

3. Levy and collection of cess-

(1) There shall be levied and collected a cess for the purposes of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) and utilisation thereunder.

(2) The cess under Sub-section (1) shall be payable by--

(a) every person carrying on any specified industry ; and

(b) every local authority, and shall be calculated on the basis of the water consumed by such person or local authority, as the case may be, for any of the purposes specified in column (1) of Schedule II, at such rate, not exceeding the rate specified in the corresponding entry in column (2) thereof, as the Central Government may, by notification in the Official Gazette, from time to time, specify.

(3) Where any local authority supplies water any person carrying on any specified industry or to any other local authority and such person or other local authority is liable to pay cess under Sub-section (2) in respect of the water so supplied, then, notwithstanding anything contained in that sub-section, the local authority first mentioned shall not be liable to pay such cess in respect of such water.

"Specified industry" has been defined under Section 2(c) of the 1977 Cess Act, and it means industry specified in Schedule I. Schedule I has identified industries as under :-

1. Ferrous metallurgical industry.
2. Non-ferrous metallurgical industry.
3. Mining industry.
4. Ore processing industry.
5. Petroleum industry.
6. Petro-chemical industry.
7. Chemical industry.
8. Ceramic industry.
9. Cement industry.

10. Textile industry.
 11. Paper industry.
 12. Fertilizer industry.
 13. Coal (including coke) industry.
 14. Power (thermal and diesel) generating industry.
 15. Processing of animal or vegetable product industry.
8. As provided under Section 16 of the Cess Act the Central Government may by notification in the official Gazette, and to Schedule I any industry having regard to the consumption of water in the carrying on of such industry and the consequent discharge thereof resulting in pollution of any stream and thereupon Schedule I shall, subject to the provisions of Sub-section (2), be deemed to be amended accordingly. This shows that any industry which has not been identified in Schedule I can be added by the Central Government, if it is found necessary.
9. According to the respondents, the petitioner-company is engaged in a metallurgical industry and is thus liable to pay the cess under the provisions of the 1977 Cess Act. They claim that a metallurgical industry involves processes including metal cutting, metal using and metal shaping. According to them, the use of foundry and forge is a typical example where metallurgical processes are used in manufacture of a variety of engineering products.
10. Mr. Gobind Das, learned counsel appearing on behalf of the petitioner submitted that the meaning of metallurgical being a process of extracting mineral from the raw ores, the ores extraction and treatment relating to such metal cannot be comprehended within the scope of a metallurgical industry. According to the learned counsel, the nature of the activities of the petitioner-company essentially and predominantly being engineering, it cannot fall within the classification of a metallurgical industry. His next submission is that the petitioner-company is not discharging any polluted water so that it may affect the public and the sine qua non of this Act being pollution, if the industry was not polluting any stream or river then the Cess Act or the Pollution Act were not applicable. Learned counsel also submitted that if the meaning of a metallurgical industry is capable of two interpretations then the Cess Act being a fiscal statute, the matter should be resolved in favour of the subject and not in favour of the revenue.
11. The first and the primary question for consideration is as to what is the meaning of a 'metallurgical industry'.

The term 'metallurgy' as defined in the Engineering Encyclopedia is "the art of extricating metals from their crest and the term has, by custom, been restricted to the commercial methods used as opposed to those which are employed in the laboratory."

In the Encyclopedia of metallurgical terms by Tootleman, published by Longmans, London the term 'metallugry' is defined to embrace "the practice and science of extracting metals from their ores, the refining of crude metal, the production of alloys and the study of their constitution, structure and properties and relationship and

physical and mechanical properties to thermal and mechanical treatment of metals and alloys "

W. H. Dennis in his book 'Metallurgy in the service of Man', published by Macdonals, London observes that the word 'Metallurgy' is derived from the Greek words-metallon (a metal) and ergon (work) and thus literally means the working of metal. It begins with ore-the product of the mine-the first operational stage involving removal by mechanical means as much as possible of the valueless rock known as gangue which invariably accompanies the desired mineral. This primary separatory process whereby the metal is obtained in the form of enriched mineral concentrate is known as mineral dressing. The next step involves the decomposition of mineral, generally by the application of heat and the attainment of the metal in a relatively impure form. Iron ores are invariably treated by furnace methods, the pig iron primarily produced forming the raw materials for steel production. Smelting also figures prominently in the production of metals other than iron known collectively as the non-ferrous metals, such as copper, lead, zinc and tin. This branch of industry is known as metallurgy. "He further writes that "having obtained the metal or alloy in refined form, it has to be adapted or shaped to the requirements of consumer industry. The adoption takes either of two forms Casting, which relates to shaping by changing from the liquid to the solid state is carried out by pouring liquid metals into mould of the desired shape. Mechanical working, on the other hand, relates to shaping in the solid state and is brought by the application of mechanical forces. It is made possible by a metallic property known as plasticity which enables the metal to be deformed without rupture. It involves such processes as forging, rolling for production of sheets, bars, rods, rails etc., extrusion for production of tubes and piping and drawing for producing wire."

Collins Concise Encyclopedia defines 'metallurgy' as "science of metals including their extraction from ores and purification, formation of alloys and study of their properties and behaviour."

In the Random House Dictionary, the word 'metallurgy' is defined as "the technique or science of separating metals from their ores ; the technique or science of making and compounding alloy ; the technique or science of working or retreading metals so as to give them certain desired shape or properties."

According to Shorter Oxford Dictionary, it is "the art of working metals comprising the separation of them from other metals in the ore smelting and refining often in a narrower sense, the process of extracting metals from their ores."

According to some opinion, the science of metallurgy is based on the two fundamental sciences, physics and chemistry and is commonly subdivided into two major fields, namely, physical metallurgy, which deals with the structure, fabrication and behaviour and process metallurgy also called chemical metallurgy, which deals with smelting of ores and minerals and with the refining and furnace reactions of molten metals.

12. On the basis of all these authorities, it was submitted on behalf of the petitioner that after taking out the iron ores from the mines, it has to be refined and made pure by melting and removing its impurity. After its smelting, the iron has to be combined with other materials to make it steel and that steel is to be formed in coils, sheets, bars, rods, tubes or plates. It is here that the metallurgical process or the metallurgical

industry ends. The wire-sheets, bars, rods etc, are then released for use by the consumer industries for the purpose of making automobiles, refrigerators and thousands of other products. This process is carried on by an Engineering industry or any other industry other than a metallurgical industry. They adapt the standard stock for their own use and are distinct from the industry which manufactures steel. The industry thus using the steel released from the metallurgical industry are consumers of the ferrous and non-ferrous metallurgical standard stocks. The operations or processes in the industrial world assume their specific names and are identified as a particular industry distinct from metallurgical industry.

13. On the other hand, Mr. G. Ramaswamy, Addl. Solicitor General of India submitted that the working of metal is part of metallurgical industry. The term should be used in a wide sense. According to him, it is not confined to extraction of metal from ores. The dominant purpose is the use of metal. Learned counsel contended that in the commercial world, the word 'metallurgy' is an adjective to the word 'metal' and is not confined only to extraction of metal from ore Relying upon a decision of the Supreme Court in the case of Harakh chand Ratanchand Banthia v. Union of India and Ors. 1970 S. C. 1453. Mr. Ramaswamy contended that the metallurgical industry has been in the Cess Act in the sense of grouping of industry, as the same has been used in the Industrial Development Regulation Act, 1951. He submitted that if it is not read as a group of industries, and the petitioner-company is not held to be a metallurgical industry, then Schedule 1 of the Cess Act will be hit by Article 14 of the Constitution of India.

14. As regards the meaning of metallurgy, Mr. Ramaswamy referred to the Compact Edition of Oxford English Dictionary, Volume I, which defines 'metallurgy' as "the art of working metals comprising separation of them from other metals in the ore, melting and refining: often in a narrower sense, the process of extracting metal from the ores".

Webster's New World Dictionary defines 'metallurgy' as such "working in metals or mines : the art or science of separating metals from their ores and preparing them for use, by smelting, refining etc.

He referred to Mc-Graw Hill Encyclopedia of Science and Technology, according to which, metallurgy is "the technology and science of metallic materials. Metallurgy as a branch of engineering is concerned with the production of metals and alloys, their adaptation to use and their performance in service. As a science, metallurgy is concerned with the chemical reactions involved in the processes by which metals are produced and the physical, and mechanical behavior of materials "

He also referred to the New Encyclopedia Britannica (16th Ed). It says that "metallurgy is the science of extracting metals from their ores, refining, purifying and working them, mechanically or otherwise, to adapt them to use. It is also concerned with the chemical and physical properties of metals, their atomic and crystalline structure, the principles of combining them to form alloys, the means for improving or enhancing their properties for particular applications, and the relations between properties, structures and uses. Further, it includes thermal and mechanical processing of metals as materials of manufacture. According to it, metallurgy is a particularly broad subject, its scope overlapping many other sciences and technologies, such as

physics, chemistry, mining, mechanical and chemical engineering, economics and manufacturing,

15. From all these definitions from the authoritative texts, referred to above, one thing appears to be clear that the scope and ambit of a metallurgical industry starts from extracting mineral ores, refining them by mechanical and chemical processes and finally producing steel in various forms. With this the function of the metallurgical industry ends. The final product of metallurgical industry is the stock of steel either in the form of rods or sheets etc. and is ready for being used by consumer industries of different denominations As suggested, it is true, that it is a science and art of producing steel but after certain stage, the nature of the industry changes. There are various branches of engineering education, such as, civil engineering, mechanical engineering, metallurgical engineering mining engineering, production engineering and the like. They are all different disciplines. A metallurgical engineer cannot be employed for the purpose of producing automobiles or for that matter doing a civil work. Similarly, a mechanical engineer is not trained to extract iron-ore and convert that into the end product, namely steel. If they were not different science, then there was no need to have different branches of engineering because then a metallurgical engineer will extract iron ores, convert it into steel and then manufacture automobiles. It is always the nature, the process and the end product which determines the nature of an industry.

16. Schedule I of the Cess Act refers to various industries and there is hardly any one of it where steel, is not used in one form or the other. It is possible that a mining industry or for that matter a cement or textile industry has to cut and shape the steel for their own use in some form or the other, but for that reason that industry will not become a metallurgical industry. An industrial establishment consuming coal for its furnace for the production of its goods cannot be said to be a coal industry. A transporting agency employing automobiles for transport and using petroleum cannot be identified as a petroleum industry. Similarly, a caterer employing the potteries for its business cannot be described as engaged in a ceramic industry nor the builders, who use cement in construction work, be said to be engaged in a cement industry.

17. It was asserted on behalf of the respondents (see the counter-affidavit on behalf of respondent No. 3) that as part of its working the petitioner-industry has been handling, processing, fabricating, refining alloying, shaping, treating and changing the composition of metal to needs through its different plants and shops like forge shop., foundry shop, plant shop and electroplating shop. It is further asserted that the petitioner-company uses mostly metals as its base and applied the said principle of metallurgical engineering. This has been categorically denied by the petitioner and it has been stated on their behalf that although the petitioner has ore and induction furnace but these are only for metal scraps for the purpose of casting only and it does not make steel for forging. It was contended that there was no question of changing the composition of the ores. This being the position, it is not possible to hold that the petitioner-industry i& engaged in metallurgical industry,

18. In the common parlance, the petitioner is an engineering industry which starts from where the metallurgical industry ends. The nature of the petitioner-industry being essentially and predominantly engineering is not covered by Schedule I

19. Mr. Ramaswamy, learned counsel appearing for the respondents urged that the word "metallurgical industry" has been used in the Act in the sense of grouping of industries. The Parliament has used this word in the Cess Act as meant under Regulation Act, otherwise according to him, the Schedule will become unconstitutional. In this connection, he relied upon the case of Harakhchand Ratanchand Banthia (*supra*). Referring to the case of State of Kerala v. M.K. Krishna Nair 1978 S.C 747 learned counsel submitted that in the commercial parlour, the word 'metallurgy' is an adjective of the word "metal". He also relied upon various other decisions of the Supreme Court such as :

1. K.L. Arora v. State of Uttar Pradesh and Ors. 1964 S.C. 1230
2. Porritts and Spencer (Asia) Ltd. v. State of Haryana 1979 S.C. 300
3. Moti Zamindari Co. (Private) Ltd. v. State of Bihar 1962 B. L. J.R. 365
4. The Commissioner of Sales Tax (M.P.) Indore v. MIS Jaswant Singh Charan Singh 1967 S.C. 1454
5. Ramavtar Budhaiprasad etc. v. Assistant Sales Tax Officer, Akola and Anr. 1961 S.C. 1325

According to Mr. Ramaswamy, the Parliament has used this word as 'ferrous and non-ferrous" in the Schedule as including manufacture and it is incorrect to confine it only to extracting metals. According to him, in case it is held to be confined to taking out metals, the Court should give it a 'broader meaning. His other objection is that this Court should not decide what is metallurgical industry. He relied upon an unreported decision of the Kerala High Court in this connection i.e. W.A.No. 329 and analogous cases of 1985 decided on 2nd of April, 1986.

20. Crories on Statute law says that there are two rules as to the way in which terms and expressions are to be construed when used in an Act of Parliament. The first rule is that general will *prima facie* be presumed to use words in their popular sense. In other words the words which are not applied to any particular science or art are to be construed as they are understood in common language. The obvious and popular meaning of the language should be followed. If a statute contains language which is capable of being construed in a popular sense, such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but it is to be construed in its popular sense that people conversant with the subject matter with which the statute is dealing could attribute to it. In *Macbeth v. Chislet* 1910 A.C. 220 Lord Loreburn L.C. stated that "it would be a new terror in the construction of Acts of Parliament if we were required to limit a word to an unnatural sense because in some Act which is not incorporated or referred to such an interpretation is given to it if for the purpose of that Act alone." In that case the argument was that the meaning given to "seamen" in the repealed Merchant Shipping Act, 1854 was to be imported into the Employers and Workmen Act and the Employers' Liability Act, 1880. The argument advanced by Mr. Ramaswamy that the word "Metallurgical industry" should be given the same meaning as it has been used in the Regulation Act has on the same analogy to be rejected.

21. The next rule is with regard to the scientific and technical language in a statute. If the statute is with reference to a particular trade, business or transaction, then the

word used therein which everybody conversant with trade, business or transaction knows and understands to have a particular meaning of it, then those words should be construed as having that particular meaning which may differ from the ordinary or popular meaning. In Holt and Company v Collyer 1881-16 Ch. Division 718. Fry J. said it is a word which is of a technical or scientific character then it must be construed according to that which is its primary meaning, namely, its technical or scientific meaning.

22. In the case of Holt and Company (Supra), the question for consideration was as what was the meaning of a 'Beer House'? The defendant Collyer was a lessee of a shop and he had entered into a covenant, to the benefit of which the plaintiffs were entitled, not to use the same as "a public house, tavern, or beerhouse." One defendant admitted to have opened the shop as a grocer's shop and had taken out a license to sell beer thereby retail, not to be drunk on the premises. The question which came up at the trial was as to whether such a use of the shop was a breach of the covenant. Fry J stated that the principle upon which words are to be construed in instruments is very plain where there is a popular and common word used in an instrument, that word must be construed *prima facie* in its popular and common sense. If it is a word of a technical or legal character, it must be construed according to its technical or legal meaning. If it was a word which was of a technical and scientific character, then it must be construed according to that which is its primary meaning, namely, its technical and scientific meaning. Fry J. further stated that no evidence can be allowed to be given as regards the secondary meaning of the word unless the Court was satisfied from the instrument itself or from the circumstances of the case that the word should be construed not in its popular or primary signification but according to its secondary intention. While considering the meaning of the word "beerhouse", he observed that a beerhouse was a place where beer was sold to be consumed on the premises whereas the beer-shop was a place where there the beer is sold to be consumed off the premises. The word "beerhouse" had obtained a technical meaning and, therefore, must be so taken. In ordinary usage and ordinary parlance where beer was sold at a grocer's shop either by whole sale or retail, it could not be called a beerhouse, when the principal business carried on in that shop was that of a grocer and the business of the trade of beer was merely ancillary to that business of a grocer.

23. Now applying the said principle, can it be said that the word "metallurgical industry" has been used in the statute as including an engineering industry, popularly known in common parlance. There is no doubt that these words have acquired a technical and scientific meaning and everybody connected with trade and industry, science and engineering and even a common man understand the word "metallurgical industry" in a particular sense and give to it a particular meaning. Now, if an engineering industry, such as, the petitioner-company has a foundry and where metal is cut and shaped, can it be said that this will make it a metallurgical industry. That foundry or cutting or shaping metal must be construed to be only ancillary to the main industry or producing the end products, namely, automobiles etc. while construing these words, the dominant purpose of the industry has to be kept in mind. The dominant purpose of a metallurgical industry in its technical and popular sense appears to be extracting ores, refining it and converting it into the stock of steel and that is where it ends. On the other hand , the dominant purpose of an engineering industry is to manufacture automobiles and the other consumable articles by using and converting that steel into a finished product. In my opinion, this technical and

scientific meaning must be given to the word "metallurgical industry" and I am inclined to hold that the meaning put to it by the respondent-Board or as submitted by Mr. Ramaswamy cannot be accepted. While identifying the nature of an industry, the totality of its activities and its dominant primary purpose should be the guiding factor and the mere presence of some identical processes of one industry cannot be guiding factor of another industry,

24. I, accordingly, hold that the Cess Act does not apply the industry running by the petitioner, in as much as, it is not one of the specified industry within the meaning of Section 2(c) of the Cess Act, since it is not included in the schedule.

25. Mr. Gobind Das then submitted in the alternative that if a word capable of two interpretations and was not free from doubt, then in a fiscal statute the matter should be resolved in favour of the citizens and not the revenue. In this connection, he relied upon the decision of the Supreme Court in the case of the Central India Spinning Weaving and Manufacturing Co. Ltd., v. the Municipal Committee, Wardha 1958 S. C. 341, in which it was held that if in construing a taxing statute, there are two interpretations possible, then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him. In the case of Commissioner of Income Tax, West Bengal, Calcutta v. Naga Mills Tea Co, Ltd. 1973 S.C. 2524, it was again reiterated that if a provision of a taxing statute can be reasonably interpreted into two ways, interpretation which is favourable to the assessee has got to be accepted. In the case of J.K Steel Ltd. v. Union of India and Ors. 1970 S.C. 1173, the same view was taken and it was observed by Hegde J. that in interpreting a fiscal statute the Court cannot proceed to make good deficiencies if there may be any; the Court must interpret the statute as it stands and in case of doubt in a manner favourable to the tax payer. Reference may be also made to the case of Diwan Bros. v. v. The Central Bank of India, Bombay and Ors. 1976 S. C 1503 : 1974 (3) S. C. C. 800, equal to and the case of Kuramchand Premchand v. Commissioner of Income Tax 1960 S. C. 1175. The well known observation of Lord Russel in Inland Revenue Commissioner v. Duke of Westminster 1936 A. C. 1, may be usefully quoted here :-

I confess that I view with disfavor the doctrine that in taxation cases the subject is to be taxed if in accordance with the Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case.

Lord Cairns ia Partington v. The Attorney General 1869 4 H. L.122, observed :

As I understand the principle of all fiscal legislation it is this:

If the person sought to be taxed comes within the letter of the law he must be taxed however great the hardship may appear to the judicial mind to be. On the other hand, if the crown, seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.

Even if the interpretation put by Mr. Ramaswamy appearing for the respondent-Board is considered plausible, to my mind, the interpretation put on behalf of the petitioner is no less reasonable and more acceptable In such a situation, where a doubt arises,

although I have no doubt in my mind about the interpretation put the word "metallurgical industry" on behalf of the petitioner, the matter has to be resolved in favour of the subject while interpreting this taxing statute and the benefit cannot go to the revenue. On this point also, therefore, I agree with the submission of Mr. Gobind Das.

26. Having found that the Cess Act does not apply in the case of the petitioner-industry and that at any rate the matter has to be resolved in favour of the petitioner, I do not think it necessary to go into the next submission of Mr. Gobind Das that the water used in the works is re-cycled and does not pollute any stream or river and, therefore, the provisions of the Pollution Act of the Cess Act are not applicable in the case of the factory.

27. The result is that this writ application i.e. C.W.J.C. No. 2651 of 1985 succeeds and the order passed by the Appellate Committee contained in Annexure-1 relating to the period July, 84 to September' 84 in respect of the Workshop of the Factory and the demand notice under Annexure-2 are quashed.

28. Along with C.W.J.C. No. 2651 of 1985 other writ petitions, namely, C.W.J.C. Nos. 2652 of 1985, 2650 of 1985, 2649 of 1985, 2417 of 1985, 1329 of 1987 and 1320 of 1987 were also heard. In respect of many of these cases, the appeals were also heard together. Either from the appeal order or from the demand notices which have been challenged in these writ petitions barring C W. J. C. No. 2651 of 1985, it is not clear as to which of these cases relate to the Workshop of the Petitioner-Company.

29. It may be stated here that any of the demand notices were in respect of the water discharged from the township and appeals against some of such cases were also heard together. I tried to ascertain this fact from Mr. Ojha, learned counsel appearing on behalf of the respondent-Board as also from Shri Arun Kumar Singh No. 3 but they were also not in a position to clarify this. As such, it is not possible to pass any order in respect of the writ petitions other than C W. J. C. No. 2651 of 1985. They are, accordingly, delinked from this case and shall be placed for hearing separately when the Court will pass necessary orders. This judgment will, therefore, govern only C.W.J.C. No. 2651 of 1985.

30 In the facts and circumstances of this case, the parties will bear their own costs.

R.N. Lal, J.

31. My learned brother, B. P. Sinha J; has taken great pain in finding out the definition of "metallurgy". The scope and ambit of metallurgical industry starts from extraction of mineral ores and then refining them by mechanical and chemical processes and finally producing of steel in various forms like sheets, rods, bars etc. ready for being used by consumer industries of different denominations.

32. Mr. Gobind Das, learned counsel for the petitioner has argued that the dominant purpose of the petitioner industry is to produce automobiles etc. and not to produce finished sheets in the form of sheets, rods and bars to be used in consumer industries, rather according to him, the production of steel in different forms like rods, bars and sheets etc. is consumed by the petitioner-industry itself in producing the automobiles and the production of automobiles is essentially and predominantly an 'engineering industry' and not a 'metallurgical industry.'

33. Looking at the argument submitted above, it is clear that the petitioner-industry has two functions the minor one is the melting of scraps and producing steel in the form of rods, sheets and bars etc. and the second part is the using of those products in the manufacture of automobiles. So, the dominant purpose of the petitioner-industry is to produce automobiles but the secondary purpose is the production of steel rods, bars and sheets etc. for consumption in the production of those automobiles. The petitioner-industry is a large industry consuming water and discharging the same after use in various processes like melting the scraps and producing steel products like sheets, rods and bars etc. It has been argued that the discharged water is recycled and the industry is not polluting any stream or river, but looking at the judgment of the Appellate Committee, I find that the learned Committee in paragraph 3 of its order has said as given below:

The second point raised is that no waste water exits from the factory, but is recycled from within. This is factually incorrect, as proved by the company's own chemical analysis of 1983, 1984 containing unacceptable levels of pollutant para meters found by the Company on analysis.

In other words, the Company has itself found that water discharged from the factory contains unacceptable levels of pollutants. The metallurgical industry involves processes including metal cutting, metal using and metal using and metal shaping. Scraps are melted in a foundry run by the company before the rods and sheets are produced. Thus, admittedly some water is discharged from the industry engaged in the secondary part having metallurgical processes and to that extent the Company must be held liable to pay cess due to the discharge of water containing pollutants.

Now the question may arise about the assessment of cess regarding the quantity of discharged polluted water but that is not discussed in the impugned appellate committee order and unless that be ascertained as to what quantity of polluted water is discharged outside the factory it will be difficult for the Board to fix the amount of cess. That amount of cess on the metallurgical part of the company has not been calculated. Rather a composite assessment had been made. In my view, the Board could have separately calculated the amount of cess assessable on the secondary part of the functioning of the company. In other words, the water discharged from the metallurgical processes employed by the Company has not been ascertained and hence it is difficult to assess cess thereon and the cess being levied on the entire process involving the dominant purpose of the production of automobiles, which is the 'engineering part of the industry', cannot be assessed to cess. Thus, the assessment made in the composite way is not correct as a small metallurgical industry involving consumption of much less water can be taxed to cess but a big industry like that of the petitioner involving metallurgical part also will escape the assessment. I think the assessment so made over the entire industry is not according to law. Accordingly, I agree with the findings of my learned brother, B. P. Sinha, J. though on some different ground as well.

Note: This document has been provided online by International Environmental Law Research Centre (IELRC) for the convenience of researchers and other readers interested in water law. IELRC makes no claim as to the accuracy of the text reproduced which should under no circumstances be deemed to constitute the official version of the document.