Bombay High Court

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

MVXA TAX APPEAL NO.1 OF 2016
IN
VAT APPEAL NO.403 OF 2013
WITH
NOTICE OF MOTION NO.624 OF 2016
IN
MVXA TAX APPEAL NO.1 OF 2016

M/s. Zamil Steel Buildings India Pvt.Ltd. ... Appellant
v/s
The State of Maharashtra ... Respondent

AND
CHAMBER SUMMONS (L) NO.1830 OF 2016
IN
MVXA TAX APPEAL NO.1 OF 2016

M/s. Zamil Steel Buildings India Pvt.Ltd. ... Appellant
v/s
The State of Maharashtra ... Respondent
And
Tata Bluescope Steel Ltd. ...Applicant

Mr V. Sridharan, Sr. Counsel with Mr Prakash Shah, Mr Rahul Thaker, Mr Ansh Desai, Ms Neha Ahuja i/b M/s Prompt Legal for Appellant.
Mr V.A. Sonpal, Special Counsel for Respondent – State.
Mr Darius Shroff, Sr. Counsel with Mr Jitendra Motwani, Mr Ajay Aggarwal, Ms Divya Jeswant i/b M/s Economic Law Practice for Applicant in Ch/Sum (L) No.1830 of 2016.

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CORAM : S.C. DHARMADHIKARI &
B.P. COLABAWALLA JJ.

Reserved On : 10th October, 2016
Pronounced On : 23rd December, 2016

JUDGMENT [PER B. P. COLABAWALLA J.]:-

1. By the present Appeal, the Appellant is challenging the validity of the order dated 7th December, 2015 passed by the Maharashtra Sales Tax Tribunal, Mumbai (for short, the **"MSTT"**) in VAT Appeal No.403 of 2013. By the impugned order, the MSTT held that the Rigid Frame Columns (for short, **"RFCs"**) sold by the Appellant were classifiable under the Residuary Entry E-1 of the Maharashtra Value Added Tax Act, 2002 (for short, the **"MVAT Act"**) and not under section 14(iv)(v) of the Central Sales Tax Act, 1956 (for short, the **"CST Act"**) read with Schedule Entry C-55(v) of the MVAT Act. The substantial questions of law as framed in this Appeal and arising out of the impugned order, are as follows:-

> **(a) Whether the MSTT was right in concluding that Rigid Frame Columns in dispute are not classifiable under section 14(iv)(v) of the Central Sales Tax Act, 1956 read with Entry C-55(v) of the Maharashtra Value Added Tax Act, 2002 but classifiable under the**

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Residuary Entry of the Maharashtra Value Added Tax, 2002?

(b) Whether the conclusion of the MSTT that Rigid Frame Columns are not classifiable under section 14(iv)(v) of the Central Sales Tax Act, 1956 read with Entry C-55(v) of the Maharashtra Value Added Tax Act, 2002 but classifiable under the Residuary Entry of the Maharashtra Value Added Tax, 2002 is perverse in the legal sense of the term?

2. In a nutshell, it is the case of the Appellant that section 14 of the CST Act deals with goods of special importance in inter-State trade or commerce. The goods sold by the Appellant (namely RFCs) would fall under section 14(iv)(v) of the CST Act which deals with the *"steel structurals"*. This section in the CST Act has to be read with Schedule Entry C-55(v) of the MVAT Act which is identical to section 14(iv)(v) of the CST Act. According to the Appellant the RFCs sold by them would directly fall within the aforesaid provisions and hence could not be classifiable under the Residuary Entry E-1 of the MVAT Act.

3. To understand the controversy in question, it would be necessary to advert to a few facts which are as under:-

(a) The Appellant is a Company duly incorporated under

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the provisions of the Companies Act, 1956 and is a registered dealer under the MVAT Act. Respondent No.1 is the State of Maharashtra and Respondent No.2 is the Commissioner of Sales Tax who is an Officer exercising powers and discharging duties conferred upon him under the provisions of the MVAT Act.

(b) The Appellant is inter alia a manufacturer of various structural steel components such as rigid frame columns, rafters, sheets, angles, etc. in their factory in Pune. The Appellant has been engaged in the supply of the said structural steel components since 2007. The Appellant has regularly been filing returns and discharging its liability under the MVAT Act.

(c) According to the Appellant, these structural steel components are fabricated / manufactured based on customer as well as geographical requirements etc. According to the Appellant, these individual components are then sold to the customers. The customers may subsequently optionally choose to avail the service of installation and erection by a sister

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concern of the Appellant or by a third party. Thus, according to the Appellant, the so-called pre-engineered buildings only emerge at the site of the customer after erection and after the completed sale of different components by the Appellant.

(d) Until the year 2011, the Appellant had been collecting VAT from its customers at the rate of 12.5% on account of RFCs (Rigid Frame Columns) and Rafters and remitting the same to the revenue. Thereafter, sometime in 2011, pursuant to a legal opinion obtained by the Appellant, the Appellant started collecting tax at the rate of 5% and not 12.5% specifically on rafters and RFCs and started remitting the same to the revenue. The opinion obtained by the Appellant was based, inter alia, on a judgment of the Rajasthan High Court in the case of **Prateek Technocom v/s State of Rajasthan [(2006) 6 VAT Reporter 9 (Rajasthan)]**. Simultaneously, the Appellant invoked the procedure for determination of disputed questions (**DDQ**) under the provisions of the MVAT Act for one of the products

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supplied by it i.e. RFCs. The invoice number referred to in the said DDQ Application (i.e. ZSB-0023/2010-2011 dated 6th April, 2010) describes the goods sold as *"Supply of Pre-Fabricated Building Components (AS PER PACKING SLIP)"*. In turn, the said packing slip describes the commodities sold as *"Rigid Frame Columns and Interior Columns"*. Accordingly, under the said DDQ Application, the Appellant applied to Respondent No.2 to determine as to whether the RFCs supplied to its customers would fall under Schedule Entry C-55(v) of the MVAT Act. We must mention here that Schedule Entry C-55(v) attracts sales tax at the rate of 5%.

(e) By his order dated 9th July, 2013 Respondent No.2 held that the RFCs sold by the Appellant do not fall under Schedule Entry C-55(v) of the MVAT Act and are therefore liable to be classified under the Residuary Entry. In a nutshell, Respondent No.2 held that rolled structural sections do not contemplate fabricated items made of iron and steel. In order to constitute structural steel as contemplated under Schedule Entry C-55(v), it

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must be a product of a rolling mill. Respondent No.2 held that the RFCs being steel structurals falling under the said Entry could not be accepted because the RFCs are not erected at site by assembling goods nor is it a product of a rolling mill contained in the Schedule Entry but instead is a 'built-up section'. Schedule Entry C-55(v) has in clear words restricted the scope of items covered therein as having been obtained by the rolling process and therefore, it falls outside the description of Schedule Entry C-55(v), was the finding in the DDQ Order. Accordingly, Respondent No.2 held that there being no other specific Entry covering the impugned product, it would then have to be placed in the Residuary Entry E-1 of the MVAT Act.

(f) Being aggrieved by this order passed by Respondent No.2, the Appellant preferred an Appeal to the MSTT. By the impugned order dated 7th December, 2015, the MSTT upheld the DDQ order for the reasons, more particularly set out therein. It is in these circumstances, and being aggrieved by the impugned order passed by the MSTT, that the Appellants are

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before us questioning the legality and validity of the impugned order.

4. In this factual backdrop, Mr Sridharan, learned Sr. Counsel appearing on behalf of the Appellant, submitted that the RFCs sold by the Appellant are squarely covered by section 14(iv)(v) of the CST Act read with the Schedule Entry C-55(v) of the MVAT Act. Mr Sridharan submitted that the words *"steel structurals"* and as appearing in section 14(iv)(v) of the CST Act as well as the Schedule Entry C-55(v) of MVAT Act have not been defined anywhere either in the CST Act or the MVAT Act. He therefore submitted that in matters where a certain term or expression has not been defined in the relevant statute, the said term or expression must be considered in the same sense as it is construed by people who deal with the said term or expression on a day-to-day basis. In this regard, Mr Sridharan placed reliance on a decision of the Supreme Court in the Case of **Royal Hatcheries Pvt. Ltd. v/s State of Andhra Pradesh and another [1994(2) STC 239 (SC)]**, and more particularly paragraph 5 thereof. According to Mr Sridharan, people involved in steel making and the steel distribution industry are the persons who would be conversant with

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the term *"steel structurals"*. Hence, the said term must be understood in the same sense as it is understood in the trade and commercial parlance. To butter this argument, Mr Sridharan placed reliance on varied material which describes the term *"steel structurals"*. The material on which Mr Sridharan placed reliance is as follows:-

(a) In Wikipedia, the term 'structural steel' has been described in the following manner:-

"Structural steel is steel construction material, a profile, formed with a specific shape or cross section and certain standards of chemical composition and mechanical properties."

(b) The book "Structural Steel: Types, Properties and Products" published by N. Subramanian, says the following:-

"The main advantages of structural steel as a building material are its strength, speed of erection, prefabrication and demountability. They are used in load-bearing frames in buildings and as members in trusses, bridges and space frames."

(c) Design on welded structures by Omer W Blodgett states the following with regards to structural steel:-

"Structural steel is one of the basic materials used in the construction of frames for most industrial buildings, bridges and advanced

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base structures."

(d) The European Standard for Construction No.EN 1990-2002+A1 has defined the said term in the following manner:-

1.5.1.6 structure: organized combination of connection parts designed to carry loads and provide adequate rigidity.

1.5.1.7 structural member: physically distinguishable part of a structure, e.g. a column, a beam, a slab, a foundation pile.

5. Adverting to the above material, Mr Sridharan submitted that *"steel structurals"* is understood as steel construction material formed with a specific shape or cross section. The method of manufacture of the particular section does not alter the fact that it would still be *"steel structurals"*. The main advantages of steel structurals as a building material are its strength, speed of erection, prefabrication and demountability. They are used in load-bearing frames in buildings and as members in trusses, bridges and space frames. Relying on all this material, Mr Sridharan submitted that the difference between a *"structure"* and *"steel structurals"* is quite clear. A structure would be a finally erected item whereas the steel structurals would be the individual components that are used to erect the said structure. In the present case, Mr Sridharan

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submitted that the Appellant is quite clearly supplying individual components and not the finally erected structure. In other words, it was the submission of Mr Sridharan that *"steel structurals"* and as appearing in section 14(iv)(v) of the CST Act read with Schedule Entry C-55(v) of the MVAT Act, were building components made of steel and which are used for load bearing purposes due to their high strength capabilities.

6. Mr Sridharan submitted that Respondent No.2 as well the MSTT had completely ignored the words *"steel structurals"* appearing in section 14(iv)(v) of the CST Act read with Schedule Entry C-55(v) of MVAT Act and came to a finding that the Appellant was not selling *"angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections"* and therefore would not fall within the aforesaid provisions. According to the authorities below, what the Appellant was selling was pre-fabricated steel building components and therefore, the product of the Appellant could not fall either under section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of the MVAT Act. It would therefore have to be classified in the Residuary Entry, was the conclusion.

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7. Mr Sridharan brought to our attention section 14(iv)(v) of CST Act as well as Schedule Entry C-55(v) of MVAT Act (in so far as they are relevant for our purpose) which read as under :-

CST Act : Section 14

"14. **Certain goods to be of special importance in inter-State trade or commerce.**—It is hereby declared that the following goods are of special importance in inter-State trade or commerce:—

(i) ……
(i) ……
(iii) ……

(iv) iron and steel, that is to say,—

(i) …..

(ii) …..

(iii) …..

(iv) steel bars (rounds, rods, squares, flats, octagons and hexagons, plain and ribbed or twisted, in coil form as well as straight lengths);

(v) steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections);

……
……"

MVAT Act – Entry C-55 (v)

"55 Iron and steel, that is to say,---

(i) …..

(ii) ….

(iii) …..

(iv) steel bars (rounds, rods, square flats, octagons and hexagons, plain and ribbed or twisted in coil form as well as straight lengths);

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(v) **steel structurals (angles, joints, channels, tees, sheet pilling sections, Z sections or any other rolled sections);**

…….

…….”

8. Looking at how the Legislature has worded the aforesaid Entries, Mr Sridharan submitted that the authorities below have completely ignored the words *“steel structurals”* appearing in section 14(iv)(v) of the CST Act and Schedule Entry No.C-55(v) of MVAT Act. Mr Sridharan submitted that the words inside the parenthesis / brackets cannot control the scope of the words outside it. To put it simply, the words within the parenthesis are merely illustrative and not exhaustive. To substantiate this argument, Mr Sridharan submitted that the word 'parenthesis' in the Oxford Advanced Learner's Dictionary, 7th Edition, is defined as a word, sentence etc. that is added to a speech or piece of writing, it is separated from rest of the text using brackets, commas or DASHES. The purpose of a parenthesis is ordinarily to insert an illustration, explanation, definition, or additional piece of information of any sort into a sentence that is logically and grammatically complete without it. In other words, a parenthesis is defined to be an explanatory or qualifying clause, sentence, or paragraph, inserted in another sentence, or in the course of a

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longer passage, without being grammatically connected with it. Applying the aforesaid principle, Mr. Sridharan submitted that whilst interpreting section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of MVAT Act, the words appearing in parenthesis / brackets cannot be allowed to control the words appearing outside it viz. *"steel structurals"*. To further substantiate this argument, Mr Sridharan also placed reliance on the following decisions:-

(a) Fuerst Day Lawson v/s Jindal Exports[1]; and

(b) Dozco v/s Doosan Infracore Co. Ltd.[2]

9. In addition to the aforesaid pronouncements, Mr Sridharan also placed reliance on certain extracts from Justice G.P. Singh's 'Principles of Statutory Interpretation' (12th Edition) as well as 'Interpretation of Statutes' by Vepa P. Sarathi, 3rd Edition.

10. In addition to the aforesaid material, Mr. Sridharan submitted that there was intrinsic evidence in the said provisions itself to indicate that the words appearing in the brackets were only illustrative and exhaustive. In this regard he brought to our attention section 14(iv)(iv) of the CST Act and Schedule Entry C-

1 (2011) 8 SCC 333
2 (2011) 6 SCC 179

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55(iv) of the MVAT Act which are identical and deal with *"steel bars (rounds, rods, square flats, octagons and hexagons, plain and ribbed or twisted in coil form as well as straight lengths)".* Mr Sridharan submitted different shapes such as rounds, squares, octagons etc. are mentioned in the bracketed portion of the Sub-Entry relating to *"steel bars"*. However, the shape "oval" for example, is not mentioned in the said Sub-Entry. He submitted that it would be absurd to suggest that oval steel bars would not fall within the Sub-Entry *"steel bars"* because the word "oval" does not find a specific mention and therefore excluded. Mr Sridharan submitted that section 14 of the CST Act deals with goods of special importance in inter-State trade or commerce. It would be ludicrous to suggest that round or square steel bars are goods of special importance whereas oval steel bars are not. Mr Sridharan submitted that the nature of property of a steel bar would be its length and uniform cross section. The shape of its section is not the criteria for determining whether an item would be a steel bar to determine whether it is goods of special importance as envisaged under section 14 of the CST Act. All this would clearly go to show that the words appearing in brackets / parenthesis are only illustrative or extra information and do not control the words outside it. He therefore submitted that the MSTT had completely gone wrong in

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coming to the conclusion that merely because the goods of the Appellant were not *"angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections"*, the same would not fall within the term *"steel structurals"* as appearing in section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of MVAT Act.

11. Mr Sridharan additionally submitted that whilst coming to the conclusion that the RFCs of the Appellant would not fall within section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act, what the authorities below had effectively done is that they had applied the principle of ejusdem generis in the reverse. Mr Sridharan submitted that it is settled law that this can never be done. In the present case, in the concerned sub-entries [section 14(iv)(v) of the CST Act and Schedule Entry No.C-55(v) of the MVAT Act], specific terms such as *"angles, joists, channels, tees, sheet piling sections, Z sections"* are followed by a general term "*or any other rolled sections"*. The authorities below had applied the above principle of ejusdem generis in the reverse direction by drawing a meaning from the general term (*"or any other rolled sections"*) used in the later portion and applying it to specific terms used in the earlier portions of the sub-entries. In other words, the

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authorities below concluded that even the specific terms namely *"angles, joists, channels, tees, sheet piling sections, Z sections"* should be *"rolled sections"*. This, according to Mr Sridharan, is an absolute incorrect application of the principle. In this regard, Mr Sridharan placed reliance on the decision of the Supreme Court in the case of **Thakur Amar Singhji v/s State of Maharashtra**[3] to contend that the true scope of the rule of ejusdem generis is that words of a general nature following specific and particular words should be limited to things which are of the same nature as those specified, and not its reverse. He therefore submitted that the authorities below completely misdirected themselves in inversely applying the principle of ejusdem generis and which can never be done as per settled law.

12. Mr Sridharan then submitted that one of the reasons for the authorities below to come to the conclusions that they did was that the description of the goods in the invoices submitted alongwith the DDQ Application did not match the description as set out in section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of the MVAT Act. To assail this finding, Mr Sridharan submitted that the description of the goods in the invoice need not tally or match

3 AIR 1955 SC 504

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with the description in the Schedule Entry. What one has to see is whether the goods sold fall within the description used in the tariff schedule. It is not at all necessary that the description given in the invoice should be identical to and/or match with the description given in the particular Entry. He submitted that what is important to see is whether the broad description of the goods fit in the expression/s used in the concerned Entry. The name of the end product, may, by reason of new technological processes change, but the basic nature and quality of the article may still answer the same description, was the submission. It was therefore the submission of Mr Sridharan that the description of the goods in the invoice is a matter which is wholly irrelevant to the classification of the said goods. What must be examined is the nature of the goods and whether they satisfy the broad description of the concerned Entry, was the submission. According to Mr Sridharan, in the facts of the present case, the RFCs in question undoubtedly are covered in the expression *"steel structurals"* as mentioned in section 14(iv)(v) of the CST Act read with Schedule Entry C-55(v) of the MVAT Act. In support of the aforesaid proposition, Mr Sridharan placed reliance on the following decisions:-

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(a) Indian Aluminium Cables Ltd. v/s Union of India.[4]; and

(b) Indian Metals and Ferro Alloys Ltd. v/s Collector of Central Excise.[5]

13. In the alternative to the above arguments, Mr Sridharan submitted that in any case, the RFCs sold by the Appellant, and which form the subject matter of the DDQ Application, in any event are covered by the term **'joists'** appearing in section 14(iv)(v) of the CST Act and Schedule Entry No.C-55(v) of the MVAT Act. In support of this argument, Mr Sridharan brought to our attention the following:-

(i) In the Indian Standards IS 800 of 2007, General Construction, published by Bureau of Indian Standards columns and beams are defined as follows:-

1.3.6 Beam – A member subjected predominantly to bending.

1.3.16 Columns – A member in upright (vertical) position which supports roof or floor system and predominantly subjected to compression.

(ii) In the British Standards No.5950-1-2000, a column is defined as follows:-

4 (1985) 3 SCC 284 : (1985) 21 ELT 3 (SC)

5 1991 Supp (1) SCC 125 : (1991) 51 ELT 165 (SC)

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1.3.7 column – a vertical member carrying axial force and possibly moments.

(iii) Wikipedia defines columns, beams, rafters as follows :

A column or pillar in architecture and structural engineering is a structural element that transmits, through compression, the weight of the structure above to other structural elements below, in other words, a column is a compression member.

A beam is a structural element that is capable of withstanding load primarily by resisting against bending. The bending force induced into the material of the beam as a result of the external loads, own weight, span and external reactions to these loads is called a bending moment. Beams are characterized by their profile (shape of cross-section), their length and their material.

Most beams in reinforced concrete buildings have rectangular cross sections, but a more efficient cross section for a beam is an I or H section which is typically seen in steel construction.

A rafter is one of the series of sloped structural members (beams) that extend from the ridge or hip to the wall plate, downslope perimeter or eave, and that are designed to support the roof deck and its associated lands.

14. Relying upon the aforesaid material, Mr Sridharan submitted that the cross section of the RFCs resemble the letter 'H' or the letter 'I' depending on how it is viewed and are hence also known as 'H' sections or 'I' sections. This is not disputed by the

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Revenue. He submitted that in the Indian Standards for Structural Engineers 1964, joists have been repeatedly depicted in a pictorial manner as 'I' / 'H' sections which is conclusive evidence of the shape of joists. He submitted that the RFCs of the Appellant are nothing but a cross section of the same being 'H' sections or 'I' sections. This being the case, Mr Sridharan submitted that in any event the RFCs that formed the subject matter of the DDQ Application were clearly covered by the term joists as appearing in section 14(iv)(v) of the CST Act and Schedule Entry No.C-55(v) of the MVAT Act.

15. For all the aforesaid reasons, Mr Sridharan submitted that the order of the MSTT dated 7th December, 2015 cannot be sustained and ought to be set aside. Consequently, the questions of law as framed and reproduced by us earlier, ought to be answered in the negative and in favour of the Appellant.

16. On the other hand, Mr Sonpal, learned counsel appearing on behalf of the Revenue, sought to justify the impugned order passed by the MSTT. Mr Sonpal submitted that the Appellant manufactures pre-engineered and pre-fabricated building components which include various items involved in the

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construction of a steel building of which all are not steel structurals. This job is done by a comprehensive contract to design, fabricate, supply and with or without erection of components, of steel buildings. Mr Sonpal submitted that the Taxation Enquiry Committee formed in 1953-54 inter alia recommended control of the rate of tax on goods which are of special importance in inter-State trade or commerce. Consequently, the CST Act was enacted and in section 14 thereof, several items were enumerated as items of special importance in inter-State trade or commerce. Section 15 provided for a cap on the rate of tax that every State sales tax law could levy not exceeding a certain percentage, which is varied from time to time. Thereafter, by amendment (with effect from 1st April, 1973) section 14(iv) was recast with the words *"iron and steel,"* followed by words *"that is to say"* with 16 sub-entries which were restrictive, exhaustive, enumerative and descriptive, stating in the items therein as to what would be covered by section 14(iv). No items other than what are described in the 16 sub-entries in section 14(iv) would be goods of special importance and controlled by the rate of tax fixed by section 15 of the CST Act, was the submission of Mr. Sonpal.

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17. In the facts of the present case, Mr Sonpal submitted that we are concerned with section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act which deals with *"steel structurals"*. The important question therefore is whether the goods described in the invoice and the packing slip fall under section 14(iv)(v) of the CST Act read with Schedule Entry C-55(v) of the MVAT Act. He submitted that two well settled principles in law are required to be kept in mind whilst interpreting statutory provisions. Firstly, each word in the statute must be given meaning and importance, not to treat any word as superfluous or otiose. This is for the simple reason that the Legislature does not use any word without purpose and meaning. Secondly, the meaning of the word is to be interpreted with the context of the words "showed with it". This is the principle of "noscitur a sociis". Applying the aforesaid principle, Mr Sonpal submitted that the words and description of items in the bracketed portion appearing in section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act are descriptive, enumerative, exhaustive and restrictive for the items for which are sought to be covered. In other words, only and only when an item being *"steel structurals"* and described in the brackets, will be covered and nothing else. In a nutshell, Mr Sonpal

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submitted that though the goods of the Appellant may be *"steel structurals"*, but if they do not fall within the description of the terms as set out in the brackets viz. *"(angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"*, then they would not be covered either under section 14(iv)(v) of CST Act or Schedule Entry C-55(v) of the MVAT Act. Mr Sonpal submitted that enumeration of the six items in the bracketed portion are with a specific purpose of restricting the meaning of the words *"steel structurals"* preceding and outside the brackets. The description in the bracketed portion is exhaustive and restrictive in view of the words *"iron and steel, - that is to say"* in the beginning of the Sub-Entry (v) of section 14(iv) of CST Act. In other words, the words *"that is to say"* are to be interpreted to be pervasive in all sub-entries of section 14(iv), was the submission. To put it differently, Mr. Sonpal submitted that only rolled steel structurals such as rolled angles, rolled joists, rolled channels, rolled tees, rolled sheet piling sections, rolled Z sections or any other rolled sections are covered under section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act and nothing else. If these are not rolled sections, then even angles, joists, channels, tees, sheet piling sections, Z sections etc. cannot fall within the said section or the

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concerned Schedule Entry C-55(v). He submitted that in the facts of the present case, it is an admitted fact that the products of the Appellant are not rolled but are fabricated from plates. They are welded. This being the position, clearly the goods of the Appellant cannot fall under section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of the MVAT Act.

18. According to Mr Sonpal, the RFCs of the Appellant are not manufactured by any rolling process but are fabricated by various processes. Due to this, an altogether new commercial commodity comes into being viz. pre-fabricated building components and cannot be described as *"(angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"* even in common parlance. He submitted that the goods covered under section 14 are goods of special importance in inter-State trade or commerce and are in the nature of raw materials. In common trade parlance, the products of the Appellant can never be termed as raw materials but as finished products, was the submission. They can never be understood as *"angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections"* as is commonly understood in commercial parlance. The RFCs of the Appellant are

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customized steel products and hence do not find place in the description as set out in section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of the MVAT Act. Hence, applying the commercial parlance test also, the products of the Appellant cannot be classified under the aforesaid provisions, was the submission of Mr Sonpal. For all the aforesaid reasons, Mr Sonpal submitted that there is absolutely nothing wrong in the view taken by the Commissioner of Sales Tax as well as the MSTT, requiring our interference. Consequently, he submitted that the questions of law as framed earlier be answered in the affirmative and in favour of the Revenue.

19. We have heard the learned counsel for the parties at length and have perused the papers and proceedings in the Appeal. We have also given our anxious consideration to the DDQ order passed by the Commissioner of Sales Tax as well as the impugned order dated 7th December, 2015 passed by the MSTT. Though elaborate arguments have been made by both sides, we find that the controversy before us is in a very narrow compass. The short question that needs to be answered is whether the RFCs manufactured by the Appellant would fall within section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of MVAT Act. During

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the course of arguments, Mr Sonpal fairly conceded that the RFCs manufactured by the Appellant could be termed as *"steel structurals"* but still would not fall within section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of the MVAT Act. This argument proceeds on the basis that the words appearing in the brackets in the aforesaid two provisions viz. *"(angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"* would control the words *"steel structurals"*. In other words, the argument appears to be that not all steel structurals are covered by the aforesaid provision but only those steel structurals that fit the description of *"angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections"*.

20. At the outset, we must mention here that even though Mr Sonpal has fairly conceded that the RFCs sold by the Appellant would fall within the term *"steel structurals"*, even otherwise, on the material produced by the Appellant and which has been referred to by us earlier whilst recording the submissions of Mr Sridharan, we are independently satisfied that the RFCs manufactured and sold by the Appellant would clearly be covered by the term *"steel structurals"* as understood in its normal sense. The question therefore that needs to be addressed by us is whether the RFCs sold

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by the Appellant falls within section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act keeping in mind the arguments canvassed by Mr. Sonpal. In other words, what we have to examine is whether the words *"steel structurals"* appearing in the aforesaid two provisions is controlled by or restricted in its meaning by the words *"angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections"*.

21. To understand this controversy, it would be necessary to understand why section 14 was brought on the statute book. The Taxation Enquiry Committee formed in 1953-54 inter alia recommended the control of the rate of tax on goods which were of special importance in inter-State trade or commerce. Pursuant thereto, the Central Sales Tax Act, 1956 was enacted. One of the provisions of the said Act was section 14 which provided for several items that were enumerated as items of special importance in inter-State trade or commerce. Initially, only some items were included in section 14(iv) for *"iron and steel"*. However, by amendment (with effect from 1st April, 1973), section 14(iv) was recast with the words *"iron and steel"* followed by the words *"that is to say"* and 16 sub-entries were added to section 14(iv). Section 14 (in its entirety) reads as under:-

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"14. **Certain goods to be of special importance in inter-State trade or commerce.**—It is hereby declared that the following goods are of special importance in inter-State trade or commerce:—

(i) cereals, that is to say,—

(i) paddy (Oryza sativa L.);

(ii) rice (Oryza sativa L.);

(iii) wheat (Triticum vulgare, T. compactum, T. sphaerococcum, T. durum, T. aestivum L., T. dicoccum);

(iv) jowar or milo (Sorghum vulgare Pers);

(v) bajra (Pennisetum typhoideum L.);

(vi) maize (Zea mays, D.);

(vii) ragi (Eleusine coracana Gaertn.);

(viii) kodon (Paspalum scrobiculatum L.);

(ix) kutki (Panicum miliare L.);

(x) barely (Hordeum vulgare L.);

(i-a) coal, including coke in all its forms, but excluding charcoal:

Provided that during the period commencing on the 23rd day of February, 1967 and ending with the date of commencement of Section 11 of the Central Sales Tax (Amendment) Act, 1972 (61 of 1972), this clause shall have effect subject to the modification that the words "but excluding charcoal" shall be omitted;

(ii) cotton, that is to say, all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton waste;

(ii-a) cotton fabrics covered under heading Nos. 52.05, 52.06, 52.07, 52.08, 52.09, 52.10, 52.11, 52.12, 58.01, 58.02, 58.03, 58.04, 58.05, 58.06, 59.01, 59.03, 59.05, 59.06 and 60.01, of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(ii-b) cotton yarn, but not including cotton yarn waste;

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(ii-c) crude oil, that is to say, crude petroleum oils and crude oils obtained from bituminous minerals (such as shale, calcareous rock, sand) whatever their composition, whether obtained from normal or condensation oil-deposits or by the destructive distillation of bituminous minerals and whether or not subjected to all or any of the following processes:—

(1) decantation;

(2) de-salting;

(3) dehydration;

(4) stabilisation in order to normalise the vapour pressure;

(5) elimination of very light fractions with a view to returning them to the oil deposits in order to improve the drainage and maintain the pressure;

(6) the addition of only those hydrocarbons previously recovered by physical methods during the course of the abovementioned processes;

(7) any other minor process (including addition of pour point depressants or flow improvers) which does not change the essential character of the substance;

(ii-d) Aviation Turbine Fuel sold to an aircraft with a maximum take-off mass of less than forty thousand kilograms operated by scheduled airlines.

Explanation.—For the purposes of this clause, "scheduled airlines" means the airlines which have been permitted by the Central Government to operate any Scheduled air transport service.

(iii) hides and skins, whether in a raw or dressed state;

(iv) **<u>iron and steel, that is to say</u>,—**

(i) pig iron, sponge iron and cast iron including ingot moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes);

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(iii) skelp bars, tin bars, sheet bar, 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 lengths);

(v) <u>steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)</u>;

(vi) sheets, hoops, strips and skelps, 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 rivetted conditions;

(vii) plates both plain and chequered in all qualities;

(viii) discs, rings, forgings and steel castings;

(ix) [* * *]

(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 hot dipped and electrolytic and tinfree 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;

(v) jute, that is to say, the fibre extracted from plants belonging to the species CorchorusCapsularis and Corchorus olitorius and the fibre known as masta or bimli extracted from plants of the species Hibiscus Cannabinus and Hibiscus Sabdariffa—Var altissima and the fibre known as Sunn or Sunn-hemp extracted from plants of the species Crotalaria junceawhether baled or otherwise;

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(v-a) liquefied petroleum gas for domestic use;

(vi) Oilseeds, that is to say,—

(i) Groundnut or Peanut (Arachis hypogaea);

(ii) Sesamum or Til (Sesamum orientale);

(iii) Cotton seeds (Gossypius Spp.);

(iv) Soyabean (Glycine seja);

(v) Rapeseed and Mustard—

(1) Torea (Brassica compestris var toria);

(2) Rai (Brassica juncea);

(3) Jamba-Taramira (Eruca Satiya);

(4) Sarson, yellow and brown (Brassica compestris var sarson);

(5) Banarsi Rai or True Mustard (Brassica nigra);

(vi) Linseed (Linum usitatissimum);

(vii) Castor (Ricinus communis);

(viii) Coconut (i.e., Copra excluding tender coconuts) (Cocos nucifera);

(ix) Sunflower (Helianthus annus);

(x) Nigar seed (Guizotia abyssinica);

(xi) Neem, vepa (Azadirachta indica);

(xii) Mahua, illupai, Ippe (Madhuca indica M. Latifolia Bassia Latifolia and Madhuca longifolia syn. M. Longifolia);

(xiii) Karanja, Pongam, Honga (Pongamia pinnata syn. P. Glabra);

(xiv) Kusum (Schleichera oleosa syn. S. Trijuga);

(xv) Punna, Undi (Calophyllum inophyllum);

(xvi) Kokum (Carcinia indica);

(xvii) Sal (Shorea robusta);

(xviii) Tung (Aleurites fordii and A. moantana);

(xix) Red palm (Elaeis guinensis);

(xx) Safflower (Carthanus tinctorious);

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(vi-a) pulses, that is to say,—

(i) gram or gulab gram (Cicerarietinum L.);

(ii) tur or arhar (Cajanus cajan);

(iii) moong or green gram (Phaseolus aureus)

(iv) masur or lentil (Lens esculenta Moench, Lens culinaris Medic);

(v) urad or black gram (Phaseolus mungo);

(vi) moth (Phaseolus aconitifolius Facq);

(vii) lakh or khesari (Lathvrus sativus L.)

(vii) man-made fabrics covered under heading Nos. 54.08, 54.09, 54.10, 54.11, 54.12, 55.07, 55.08, 55.09, 55.10, 55.11, 55.12, 58.01, 58.02, 58.03, 58.04, 58.05, 58.06, 59.01, 59.02, 59.03, 59.05, 59.06, and 60.01 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(viii) sugar covered under sub-heading Nos. 1701.20, 1701.31, 1701.39 and 1702.11 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(ix) unmanufactured tobacco and tobacco refuse covered under sub-heading No. 2401.00, cigars and cheroots of tobacco covered under heading No. 24.02, cigarettes and cigarillos of tobacco covered under sub-heading Nos. 2403.11 and 2403.21, and other manufactured tobacco covered under sub-heading Nos. 2404.11, 2404.12, 2404.13, 2404.19, 2404.21, 2404.29, 2404.31, 2404.39, 2404.41, 2404.50 and 2404.60, of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986);

(x) woven fabrics of wool covered under heading Nos. 51.06, 51.07, 58.01, 58.02, 58.03 and 58.05 of the Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).]

(xi) [Omitted.]”

22. Thereafter, section 15 of the CST Act stipulates the

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restriction and conditions in regard to tax on sale or purchase of declared goods within a State. This section clearly mandates that every Sales Tax Law of a State, in so far as it imposes or authorizes the imposition of tax on the sale or purchase of declared goods, the same would be subject to the restrictions and conditions as more particularly set out in the said section. One of the conditions is that the tax payable under the said State Sales Tax Law in respect of a sale or purchase of such declared goods inside the State shall not exceed 5% of the sale or purchase price thereof. Keeping in mind with the mandate of section 15, The State Legislature inter alia incorporated Schedule Entry C-55 in the MVAT Act. Schedule Entry C-55 reads as under:-

"*55* **Iron and steel, that is to say**,---

(i) pig iron, sponge iron and cast iron including ingots, moulds, bottom plates, iron scrap, cast iron scrap, runner scrap and iron skull scrap;

(ii) steel semis (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, square flats, octagons and hexagons, plain and ribbed or twisted in coil form as well as straight lengths);

(v) steel structurals (angles, joints, channels, tees, sheet pilling sections, Z sections or any other rolled sections);

(vi) sheets, hoops, strips, and skelp, both black and galvansied, hot and cold rolled, plain and corrugated, in all qualities in straight lengths and in coil form as rolled and in revetted conditions;

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(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, turning and boring;

(xi) steel tubes, both welded and seamless, of all diameters and lengths, including tube fittings;

(xii) tin plate, both hot 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, galvanized, aluminized, tinned or coated such as by copper;

(xvi) defectives, rejects, cuttings or end pieces of any of the above categories."

23. At the this very juncture we must note that in Schedule Entry C-55(v) there are two typographical errors. Firstly, the word *"joists"* has been misspelt as *"joints"*. Secondly, the word *"piling"* has been misspelt as *"pilling"*. Having noted this, we find that on a comparison of section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act, it is clear that they are identical. Therefore, one has to examine whether the words *"steel structurals"* as appearing in the aforesaid provisions is only restricted to *"(angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"*. For the reasons stated hereafter, we are clearly of the view that the words appearing inside the parenthesis

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/ brackets in both the aforesaid provisions, namely *"(angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"* cannot restrict or limit the words *"steel structurals"* appearing outside it. In this regard, a reference can be made to a decision of the Supreme Court in the case of **Fuerst Day Lawson v/s Jindal Exports**[1]. The issue before the Supreme Court in the aforesaid decision was whether an order, though not appealable under section 50 of the Arbitration and Conciliation Act, 1996 would nevertheless be subject to an Appeal under the relevant provisions of the Letters Patent of the High Court. In other words, even though the Arbitration Act did not envisage or permit an appeal from order, the party aggrieved by it still could have his way by-passing the Act and taking recourse to another jurisdiction. Whilst considering this issue, one of the arguments canvassed before the Supreme Court was that section 50, unlike section 39 of the Arbitration Act, 1940 and section 37 of the Arbitration and Conciliation Act, 1996 did not have the words *"(and from no others)"* and that made all the difference. The argument was that the meaning of the words appearing in the parenthesis in section 37 of the 1996 Act was significant as it clearly pointed out that unlike section 37 even though an order was not appealable under section

1 (2011) 8 SCC 333

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50, it would be subject to an appeal under the Letters Patent of the High Court. Whilst considering this argument, the Supreme Court observed as under:-

> "**45.** According to *The New Oxford Dictionary of English*, 1998 Edn., brackets are used to enclose words or figures *so as to separate them from the context*.
>
> **46.** *Oxford Advanced Learner's Dictionary*, 7th Edn., defines "bracket" to mean
>
> "either of a pair of marks, ( ) placed around *extra information* in a piece of writing or part of a problem in mathematics."
>
> (emphasis supplied)
>
> **47.** *The New Oxford Dictionary of English*, 1998 Edn., gives the meaning and use of parenthesis as:
>
> "*Parenthesis.*—noun (pl. parentheses) a word, clause, or sentence inserted *as an explanation or afterthought into a passage which is grammatically complete without it*, in writing usually marked off by brackets, dashes, or commas.
>
> —(usu. Parentheses) a pair of round brackets ( ) used to include such a word, clause, or sentence."
>
> (emphasis supplied)
>
> **48.** *Oxford Advanced Learner's Dictionary*, 7th Edn., defines the meaning of parenthesis as:
>
> "a word, sentence, etc. that is added to a speech or piece of writing, especially in order to give extra information. In writing, it is separated from rest of the text using brackets, commas or dashes."
>
> **49.** *The Complete Plain Words by Sir Ernest Gowers*, 1986 Revised Edn. by Sidney Greenbaum and Janet Whitcut, gives the purpose of parenthesis as follows:
>
> "*Parenthesis.*—The purpose of a parenthesis is ordinarily to insert an illustration, explanation, definition, or additional piece of information of any sort *into a sentence that is logically and grammatically complete without it*. A parenthesis may be marked

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off by commas, dashes or brackets. The degree of interruption of the main sentence may vary from the almost imperceptible one of explanatory words in apposition, to the violent one of a separate sentence complete in itself."

(emphasis supplied)

50. *The Merriam-Webster Online Dictionary* defines "parenthesis" as follows:

"1 *a* : an amplifying or explanatory word, phrase, or sentence inserted in a passage from which it is usually set off by punctuation *b* : a remark or passage that departs from the theme of a discourse : DIGRESSION

2: INTERLUDE, INTERVAL

3: one or both of the curved marks ( ) used in writing and printing to enclose a parenthetical expression or to group a symbolic unit in a logical or mathematical expression."

51. *The Law Lexicon, The Encyclopaedic Law Dictionary* by P. Ramanatha Aiyar, 2000 Edn., defines "parenthesis" as under:

"*Parenthesis.*—a parenthesis is defined to be an explanatory or qualifying clause, sentence, or paragraph, inserted in another sentence, or in course of a longer passage, without being grammatically connected with it. (*Cent. Dist.*)

Parenthesis is used to limit, qualify or restrict the meaning of the sentence with which it is connected, and it may be designated by the use of commas, or by a dash, or by curved lines or brackets (*United States* v. *Schilling* [53 Fed 81 : 3 CCA 440])."

52. Having regard to the grammatical use of brackets or parentheses, if the words "(and from no others)" occurring in Section 39 of the 1940 Act or Section 37 of the 1996 Act are viewed as "an explanation or afterthought" or extra information separate from the main context, then, there may be some substance in Mr Dave's submission that the words in parenthesis are surplusage and in essence the provisions of Section 39 of the 1940 Act or Section 37 of the 1996 Act are the same as Section 50 of the 1996 Act. Section 39 of the 1940 Act says no more and no less than what is stipulated in Section 50 of the 1996 Act. But there may be a different reason to contend that Section 39 of the 1940 Act or its equivalent Section 37 of the 1996 Act are fundamentally different from Section 50 of the 1996 Act and hence, the decisions rendered under Section 39 of the 1940 Act may not have any application to the facts arising under Section 50

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of the 1996 Act. But for that we need to take a look at the basic scheme of the 1996 Act and its relevant provisions.

24. What can be discerned from the aforesaid decision is that words, clauses or a sentence appearing in parenthesis / brackets are inserted in a passage as an explanation or an afterthought, which is otherwise also, grammatically complete without it. To put it simply, the purpose of a parenthesis is ordinarily to insert an illustration, explanation, definition or additional piece of information of any sort into a sentence that is logically and grammatically complete without it.

25. Another decision of the Designate of the Chief Justice of India hearing a Petition filed under section 11(6) of the Arbitration and Conciliation Act, 1996, has taken a similar view in the case of **Dozco v/s Doosan Infracore Co. Ltd.**[2] In this case, the question was of interpreting the arbitration agreement between the parties. The clause being interpreted has been set out in paragraph 4 of the aforesaid decision which reads as under:-

> **4.** The petition is countered on behalf of the respondent who opposes the same on account of maintainability. According to the respondent, only the rules of arbitration of the International

2 (2011) 6 SCC 179

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Chamber of Commerce would apply in accordance with the agreement between the parties. It is contended by the respondent that this Court will have no jurisdiction much less under Section 11(6) of the Act to appoint an arbitrator, particularly, because it has been specifically agreed in Articles 22 and 23 which are as under:

"*Article 22. Governing Laws — 22.1*: This agreement shall be governed by and construed in accordance with the laws of The Republic of Korea.

Article 23. Arbitration — 23.1: All disputes arising in connection with this agreement shall be finally settled by arbitration in Seoul, Korea (or such other place as the parties may agree in writing), pursuant to the rules of agreement then in force of the *International Chamber of Commerce.*"

26. Whilst interpreting the words in the brackets appearing in Article 23.1, the Supreme Court at paragraph 15 opined thus :-

"**15.** If we see the language of Article 23.1 in the light of Article 22.1, it is clear that the parties had agreed that the disputes arising out of the agreement between them would be finally settled by the arbitration in Seoul, Korea. Not only that, but the rules of arbitration to be made applicable were the Rules of the International Chamber of Commerce. This gives the prima facie impression that the seat of arbitration was only in Seoul, South Korea. However, Ms Mohana, learned counsel appearing on behalf of the petitioner drew our attention to the bracketed portion and contended that because of the bracketed portion which is to the effect "or such other place as the parties may agree in writing", the seat could be elsewhere also. It is based on this that Ms Mohana contended that, therefore, there is no express exclusion of Part I of the Act. It is not possible to accept this contention for the simple reason that a bracket could not be allowed to control the main clause. The bracketed portion is only for the purposes of further explanation. In my opinion, Shri Gurukrishna Kumar, learned counsel appearing on behalf of the respondent, is right in contending that the bracketed portion is meant only for the convenience of the Arbitral Tribunal and/or the parties for conducting the proceedings of the arbitration, but the bracketed portion does not, in any manner, change the seat of arbitration, which is only Seoul, Korea. The language is clearly indicative of the express exclusion of Part I of the Act. If there is

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> such exclusion, then the law laid down in *Bhatia International* v. *Bulk Trading S.A.* [(2002) 4 SCC 105] must apply holding: (SCC p. 123, para 32)
>
> "*32.* … In cases of international commercial arbitrations held out of India provisions of Part I would apply unless the parties by agreement, express or implied, exclude all or any of its provisions. In that case the laws or rules chosen by the parties would prevail. Any provision, in Part I, which is contrary to or excluded by that law or rules will not apply."

27. Looking to these authoritative pronouncements, it is clear that the utility of a bracket is only as an illustration, explanation or extra information. It is thus clarificatory. It is not always exhaustive of the terms outside the bracket. It cannot curtail or limit the scope of the terms employed outside the bracket. Eventually, no general rule can be laid down. As held by the Supreme Court, ordinarily, words appearing in brackets are illustrative and not exhaustive. Therefore, everything would depend upon the context and purpose with which in an individual statute the words in the bracket are inserted by the Competent Legislature. Applying these principles, we are unable to agree with Mr. Sonpal that though the goods of the Appellant may be *"steel structurals"*, but if they do not fall within the description of the terms as set out in the brackets viz. *"(angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"*, then they would not be covered either under section 14(iv)(v) of CST Act or

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Schedule Entry C-55(v) of the MVAT Act. We are unable to agree with Mr Sonpal that enumeration of the six items in the bracketed portion are with a specific purpose of restricting the meaning of the words *"steel structurals"* preceding and outside the brackets. In fact, we find that the six items appearing in the bracketed portion of section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act are clearly not exhaustive, but descriptive of the words *"steel structurals"*.

28. There is yet another reason why we are of the view that the words appearing in the brackets namely *"(angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"* cannot control or whittle down the width and amplitude of the term *"steel structurals"* appearing outside it. If one examines section 14(iv)(iv) of the CST Act and Schedule Entry C-55(iv) of the MVAT Act, the same deal with *"steel bars (rounds, rods, square flats, octagons and hexagons, plain and ribbed or twisted in coil form as well as straight lengths)"*. Can it be seriously suggested that oval steel bars would not be covered under the aforesaid Entry? To our mind, the answer to this would be an emphatic 'NO'. As mentioned earlier, section 14 deals with goods of special importance in inter-State trade or commerce. We do not think that it can seriously be

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suggested that a round or a square or an octagonal steel bar would be goods of special importance in inter-State trade or commerce, whereas an oval steel bar would not. Such a conclusion would be illogical. The shape of the steel bar cannot determine whether it is a product/goods of special importance in inter-State trade or commerce. We therefore find that there is intrinsic evidence in the aforesaid provisions that would indicate that the words mentioned in the brackets appearing in section 14(iv)(iv) and 14(iv)(v) of the CST Act and Schedule Entry C-55(iv) and C-55(v) of the MVAT Act are descriptive and illustrative and do not restrict the width and amplitude of the words appearing outside it (viz. *"steel bars"* and *"steel structurals"* respectively). We are therefore unable to agree with Mr Sonpal that the RFCs sold by the Appellant cannot be classified as *"steel structurals"* because they are not *angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections*. As mentioned earlier, these words are only illustrative and descriptive of the words *"steel structurals"* and do not restrict the width and amplitude thereof.

29. Equally, we are also unable to agree with the argument of Mr Sonpal as well as the finding of the MSTT that because the

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goods sold by the Appellant are brought into being by a process of welding and not rolling, the same cannot be classified under Schedule Entry C-55(v) of the MVAT Act. We find this argument totally without any merit. As mentioned earlier, the items mentioned in section 14(iv)(v) of the CST Act read with Schedule Entry C-55(v) of the MVAT Act are goods of special importance in inter-State trade or commerce. It would be ludicrous to suggest that *"steel structurals"* that are manufactured from rolled sections are goods of special importance, whereas *"steel structurals"* that are brought into being by a welding process are not goods of special importance. We see nothing in the Statute to make this distinction. Even otherwise we find that the authorities below erred in concluding that even the specific terms namely *"angles, joists, channels, tees, sheet piling sections, Z sections"* should all be *"rolled sections"*. As mentioned earlier, section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act deals with "*steel structurals (angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections)"*. According to the authorities below, the words *"or any other rolled sections"* would apply to all the other items including *"steel structurals"*. In other words, according to the Revenue, only rolled steel structurals such as rolled angles, rolled

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joists, rolled channels, rolled tees, rolled sheet piling sections, rolled Z sections or any other rolled sections are covered under section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act and nothing else. To put it differently, only goods manufactured by the process of rolling would be covered under the said provisions. We are unable to agree with this interpretation for the simple reason that the authorities below have applied the rule of ejusdem generis in reverse. This, and as rightly submitted by Mr. Sridharan, is impermissible. To support this proposition, the reliance placed by Mr. Sridharan on a decision of the Supreme Court in the case of **Thakur Amar Singhji v/s State of Maharashtra**[3] is well founded. Before the Supreme Court, the validity of the Rajasthan Land Reforms and Resumption of Jagirs Act 6 of 1952 was challenged under Article 32 of the Constitution of India. One of the grounds on which the said Act was challenged, was that it did not provide for adequate compensation, nor was there any public purpose involved in it, was discriminatory and was not saved by Article 31-A of the Constitution of India. As far as Article 31-A was concerned, it was contended that Bhomicharas were not holders of jagirs or other similar grants within the meaning of Article 31-A because a jagir could be created only by a

3 AIR 1955 SC 504

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grant by the Ruler and that the Petitioner could not be said to hold under a grant from Jodhpur because they had obtained the territory by right of conquest long before Jodhpur established its suzerainty. While dealing with this contention the Supreme Court observed thus:

> "We agree with the petitioners that a jagir can be created only by a grant, and that if it is established that Bhomichara tenure is not held under a grant, it cannot be classed as a jagir. We do not base this conclusion on the ground put forward by Mr Achhru Ram that the word "jagir" in Article 31-A should be read ejusdem generis with "other similar grants" because the true scope of the rule of ejusdem generis is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified and not its reverse, that specific words which precede are controlled by the general words which follow. But we are of opinion that it is inherent in the very conception of jagir that it should have been granted by the ruling power, and that where there is no grant, there could be no jagir. This, however, does not mean that the grant must be express. It may be implied, and the question for decision is whether on the facts of this case a grant could be impiled."

30. What has been held by the Supreme Court is that the true scope of the rule of ejusdem generis is that words of a general nature following specific and particular words should be construed as limited to things which are of the same nature as those specified, and not its reverse. When we apply this principle, then clearly the argument of the Revenue that *"angles, joists, channels, tees, sheet piling sections, Z sections"* should all be *"rolled sections"* falls to the

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ground.

31. In any event, and as rightly submitted by Mr Sridharan, significant development in the manufacturing methods has taken place due to improved low carbon steel being available which is more amenable to welding. This apart, the improved welding techniques have made welding of sections a more viable option and in fact improves the structural strength of the material. It is now well settled that technological advancements must be taken into consideration for the purposes of classification of goods in taxing tariffs. In this regard, the observations of the Supreme Court in the case of **Porrits & Spencer (Asia) Ltd. Vs. State of Haryana**[6] is apposite:-

> "**6.** Now, what are dryer felts'? They are of two kinds, cotton dryer felts and woollen dryer felts. Both are made of yarn, cotton in one case and woollen in the other. Some synthetic yarn is also used. The process employed is that of weaving according to warp and woof pattern. This is how the manufacturing process is described by the assessing authority in its order dated November 12, 1971 "the raw material used by the company is cotton and woollen yarn which they themselves manufactured from raw cotton and wool and the finished products called "felts" are manufactured on power looms from cotton and woollen yarn". "Dryer felts" are, therefore, clearly woven fabrics and must be held to fall within the ordinary meaning of the word "textiles". We do not think that the word textiles has any narrower meaning in common parlance other than the ordinary meaning given in the dictionary, namely, a woven fabric. There may be wide ranging varieties of woven fabric

6 (1979) 1 SCC 82

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and they may go on multiplying and proliferating with new developments in science and technology and inventions of new methods, materials and techniques, but nonetheless they would all be textiles. The analogy of cases where the word "vegetables" was held not to include betel leaves or sugar-cane is wholly inappropriate. There, what was disapproved by the Court was resort to the botanical meaning of the word "vegetables" when that word had acquired a popular meaning which was different. It was said by Holmes, J., in his inimitable style: "A word is not a crystal, transparent and unchanged; it is the skin of a living thought and may vary greatly in colour and content according to the circumstances and the time in which it is used". Where a word has a scientific or technical meaning and also an ordinary meaning according to common parlance, it is in the latter sense that in a taxing statute the word must be held to have been used, unless contrary intention is clearly expressed by the Legislature. The reason is that, as pointed out by Story, J., in *200 Chests of Tea*, the Legislature does "not suppose our merchants to be naturalists, or geologists, or botanists". But here the word "textiles" is not sought by the assessee to be given a scientific or technical meaning in preference to its popular meaning. It has only one meaning, namely, a woven fabric and that is the meaning which it bears in ordinary parlance. It is true that our minds are conditioned by old antiquated notions of what are textiles and, therefore, it may sound a little strange to regard "dryer felts" as "textiles": But it must be remembered that the concept of "textiles" is not a static concept. It has, having regard to newly developing materials, methods, techniques and processes, a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as "textiles". Take for example rayon and nylon fabrics which have now become very popular for making wearing apparel. When they first came to be made, they must have been intruders in the field of "textiles" because only cotton, silk and woollen fabrics were till then recognized as "textiles". But today no one can dispute that rayon and nylon fabrics are textiles and can properly be described as such. We may take another example which is nearer to the case before us. It is common knowledge that certain kinds of hats are made out of felt and though felt is not ordinarily used for making wearing apparel, can it be suggested that felt is not a "textile"? The character of a fabric or material as textile does not depend upon the use to which it may be put. The uses of textiles in a fast developing economy are manifold and it is quite common now to

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find "textiles" being used even for industrial purposes. If we look at the Customs Tariff Act, 1975, we find in Chapter 59 occurring in Section XI of the First Schedule that there is a reference to "textile fabrics" and textile articles, of a kind commonly used in machinery or plant and clause (4) of that Chapter provides that this expression shall be taken to apply *inter alia* to "woven textile felts.... of a kind commonly used in paper making or other machinery....". This reference in a statute which is intended to apply, to imports made by the trading community clearly shows that "dryer felts" which are "woven textile felts.....of a kind commonly used in paper making machinery" are regarded in common parlance, according to the sense of ordinary traders and merchants, textile fabrics. We have, therefore, no doubt that "dryer felts" are "textiles" within the meaning of that expression in Item 30 of Schedule "B"."

32. This decision of the Supreme Court was thereafter followed by our Court in the case of **CST Vs. Agarwal & Co.**[7] Paragraph 7 of this judgment reads thus:

"In the case of Porritts & Spencer (Asia) Ltd. Vs. State of Haryana reported in 42 S.T.C. 433 the SC was required to consider the interpretation of the term 'textiles'. The SC observed that in interpreting any word in any entry, one should bear in mind that it does not embody a static concept. It is the skin of a living thought, and may change its hue with new developments in technology and emergence of new items and processes. A term in a fiscal legislation should be interpreted having regard to newly developing materials, methods, techniques and processes. It held that the concept of "textiles" was not a static concept. It had, having regard to newly developing materials, methods, techniques and processes a continually expanding content and new kinds of fabric may be invented which may legitimately, without doing any violence to the language, be regarded as "textiles". In the same manner, milk in powder form can be looked upon as a result of this continually evolving technology. There is no reason why it should be excluded from the generic term 'milk.'"

7 1983 (52) STC 117 (Bom)

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33. We are, therefore, unable to agree with Mr Sonpal that if the RFCs of the Appellants are not manufactured by a rolling process but by welding, then they would not fall within section 14(iv)(v) of the CST Act and Schedule Entry C-55(v) of the MVAT Act. As mentioned earlier, the process of welding sections is a more viable option today and improves the strength of the material. Merely because *"steel structurals"* or *"angles"* or *"joists"* etc are manufactured by the process of welding, would not take it outside the scope of section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of the MVAT Act respectively. It is merely a new process by which *"steel structurals"* are now manufactured considering the advancement in technology. This by itself, with nothing more, would not disentitle *"steel structurals"* from being classified under section 14(iv)(v) of the CST Act or Schedule Entry C-55(v) of the MVAT Act.

34. We must also note for the sake of completeness that one of the reasons given by the MSTT for denying the Appellant's goods classification under Schedule Entry C-55(v) of the MVAT Act was that the description of the goods in the invoice of the Appellant did not match the description of the items mentioned Entry C-55(v)

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namely *angles, joists, channels, tees, sheet piling sections, Z sections or any other rolled sections.* They were pre-engineered building components and hence not covered by the said Schedule Entry. We are unable to agree with this reasoning. Mr Sridharan has rightly submitted that the description of the product in the invoice does not have to exactly tally or match with the description in the Schedule Entry. What is necessary to see is whether the product falls within the description used in the tariff schedule. It is not at all necessary that the description given in the invoice should be identical or match with the description given in the tariff schedule. In the facts of the present case what is important to note is that the invoice specifically states *"Supply of Pre-Fabricated Building Components (AS PER PACKING SLIP)".* If we peruse the packing slip, it clearly enumerates the goods supplied as *"Rigid Frame Columns and Interior Columns".* We, therefore, find that the MSTT erroneously concluded that the Appellants were selling *Pre-Fabricated Building Components* and hence could not be classified in Schedule Entry C-55(v) of the MVAT Act or section 14 (iv)(v) of the CST Act. What is important to note is that the invoice itself mentions the word "components" which have been specifically described in the packing slip. One of the components is a "Rigid Frame Column". What one

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therefore has to see is whether the "Rigid Frame Column" sold by the Appellant would fall within Schedule Entry C-55(v) of the MVAT Act or section 14(iv)(v) of the CST Act. The description of the goods in the invoice can never be a decisive factor to determine whether they fall within a particular Entry. These principles are too well settled but if one requires any authority on this issue, useful reliance can be placed on a decision of the Supreme Court in the matter of **Indian Aluminium Cables Ltd. v/s Union of India.**[4] Paragraph 13 of this Judgment reads thus:-

> "**13.** To sum up the true position, the process of manufacture of a product and the end use to which it is put, cannot necessarily be determinative of the classification of that product under a fiscal schedule like the Central Excise Tariff. What is more important is whether the broad description of the article fits in with the expression used in the Tariff. The aluminium wire rods, whether obtained by the extrusion process, the conventional process or by Properzi process, are still aluminium wire rods. The process of manufacture is bound to undergo transformation with the advancement in science and technology. The name of the end-product may, by reason of new technological processes, change but, the basic nature and quality of the article may still answer the same description. On the basis of the material before us, it is not possible to record a positive finding that Properzi Rods and wire rods are treated as distinct items in commercial parlance. Properzi Rod is a wire rod subjected to the Properzi process and is used for transmission of high voltage electric current."

35. A similar view has been taken again by the Supreme Court in the case of **Indian Metals and Ferro Alloys Ltd. v/s**

4 (1985) 3 SCC 284 : (1985) 21 ELT 3 (SC)

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Collector of Central Excise.[5] Paragraphs 12 & 13 of this decision read as under:-

> "**12.** The real question, therefore, is whether the goods manufactured by the appellant can be rightly classified under Item 26-AA. We think that the answer to this question should be in the affirmative. <u>It is true that there is some difference in the description of the goods. While Item 26-AA covers only pipes and tubes, the goods manufactured by the assessee are called poles. It is also true that the poles have to be manufactured by applying certain processes of heating and forging to pipes or tubes.</u> But does all this so change the commercial character of the goods marketed by the assessee as to take them away from the scope of Item 26-AA?
>
> **13.** <u>We think not</u>. The language of Tariff Item 26-AA is very wide. It covers iron and steel products of the descriptions set out therein. The sum and substance of the description given by the Assistant Collector in the assessment order is only (*a*) that the poles produced by the appellant are not ordinary pipes and tubes which convey a fluid from one place to another and (*b*) that they are manufactured by a very elaborate and sophisticated process. So far as the first point is concerned, it will be appreciated that, just as pipes and tubes are generally intended to carry a fluid from one place to another, the poles with which we are concerned enable wires to be passed through them for the transmission of electric energy, a function not very very different in nature from that of other ordinary pipes and tubes. That apart, even tubes and pipes are not always necessarily used for such purpose. They can be used as flag masts or for purposes of scaffolding or other purposes where they do not serve as a medium for the transmission of a fluid. This is not, therefore, a sound objection. In regard to the second point, it is perhaps sufficient to point out that sub-item (*iv*) of Item 26-AA refers to pipes and tubes (includings blanks thereof) all sorts, whether rolled, forged, spun, cast, drawn, annealed, welded or extruded. It is comprehensive enough to take in all sorts of pipes and tubes and even those obtained by the processes of forging, drawing and so on. The ultimate product in the present case is merely a set of pipes or tubes of different diameters attached to one another by different methods. The so-called manufacture is nothing but the putting together of a number

5 1991 Supp (1) SCC 125 : (1991) 51 ELT 165 (SC)

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> of pipes or tubes by one or other of the processes mentioned in the tariff item. The goods produced, therefore, do not cease to be iron and steel products or pipes and tubes of the description mentioned in Item 26-AA(*iv*). It may not be also correct to characterise them as a different commercial commodity. Some of them are called poles, an expression which means "a long slender piece of metal or wood commonly tapering and more or less rounded". Electric poles, being hollow ones, are not much different from pipes or tubes. The statement that they are commercially distinct commodities is merely based on their being called 'poles'. They are also available in the same market in which normally pipes and tubes are otherwise available. Neither the circumstance that certain processes are applied to the "mother" pipes or tubes nor the fact that, in order to identify the particular type of tube or pipe one needs, one may use different names is sufficient to treat the article as a commercially different commodity: See *Indian Aluminium Cables Ltd.* v. *Union* [(1985) 3 SCC 284] followed and applied in *Bharat Forge & Press Industries* v. *CCE* [(1990) 1 SCC 532]."

36. We, therefore, agree with the submissions of Mr Sridharan that the description of the goods in the invoice is not something which would determine classification of their goods in a particular Entry. What has to be seen is whether the goods sold by the Appellant fit the description of a specific Entry in the tariff schedule and only when it does not fall within a specific Entry, the residuary Entry should be resorted to.

37. Before parting, we must mention that because of the view that we have taken, we have not examined in detail whether the RFCs manufactured and sold by the Appellant would fall within

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the term *"joists"* as appearing in Schedule Entry C-55(v) of the MVAT Act and section 14(iv)(v) of the CST Act, though prima facie, on the material produced by the Appellant, we would be inclined to hold so.

38. In view of the foregoing discussions, we are clearly of the view that the RFCs manufactured and sold by the Appellant would be squarely covered by Schedule Entry C-55(v) of the MVAT Act and section 14(iv)(v) of the CST Act. Accordingly, we set aside the impugned order dated 7 December, 2015 passed by the MSTT and answer the first Question of Law in the negative and in favour of the Appellant and against the Revenue and the second Question of Law in the affirmative and in favour of the Appellant and against the Revenue. However, in the facts and circumstances of the case, we leave the parties to bear their own costs.

In light of the disposal of the Appeal itself, Notice of Motion No.624 of 2016 and Chamber Summons Lodg No.1830 of 2016 do not survive and are disposed of accordingly.

(B. P. COLABAWALLA J.) **(S. C. DHARMADHIKARI J)**

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