REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4149 OF 2007

SMT. B. NARASAMMA …APPELLANT

VERSUS

DEPUTY COMMISSIONER COMMERCIAL TAXES KARNATAKA & ANR. ...RESPONDENTS

WITH

CIVIL APPEAL NO.4318 OF 2007

CIVIL APPEAL NO.4319 OF 2007

CIVIL APPEAL NO. 7400 OF 2016
(ARISING OUT OF SLP(CIVIL) NO.15253 OF 2015)

CIVIL APPEAL NOS. 7401-7872 OF 2016
(ARISING OUT OF SLP(CIVIL) NOS.18646-19117 OF 2015)

CIVIL APPEAL NOS. 7873-7916 OF 2016
(ARISING OUT OF SLP(CIVIL) NOS.10081-10124 OF 2015)

J U D G M E N T

R.F. Nariman, J.

1. Leave granted in SLP(C) Nos.15253/2015, 18646-19117/2015, 10081-10124/2015.

2. This group of appeals concerns the rate of taxability of declared goods – i.e. goods declared to be of special importance under Section 14 of the Central Sales Tax Act, 1956. The question that has to be answered in these appeals is whether iron and steel reinforcements of cement concrete that are used in buildings lose their character as iron and steel at the point of taxability, that is, at the point of accretion in a works contract. All these appeals come from the State of Karnataka and can be divided into two groups – one group relatable to the provisions of the Karnataka Sales Tax Act, 1957 and post 1.4.2005, appeals that are relatable to the Karnataka Value Added Tax Act, 2003. The facts in these appeals are more or less similar. Iron and Steel products are used in the execution of works contracts for reinforcement of cement, the iron and steel products becoming part of pillars, beams, roofs, etc. which are all parts of the ultimate immovable structure that is the building or other structure to be constructed.

3. Before coming to the submissions of learned counsel for the parties, it is necessary to first set out the relevant provisions

of the Constitution, the Central Sales Tax Act and the two Karnataka Acts in question.

4. Article 286(3) of the Constitution reads as follows:-

> "**Article 286. Restrictions as to imposition of tax on the sale or purchase of goods**
> xx xx xx
> (3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,
> (a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter State trade or commerce; or
> (b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub clause (b), sub clause (c) or sub clause (d) of clause 29 A of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify."

5. Section 14 of the Central Sales Tax Act, insofar as it is relevant to the present case reads as follows:

> "Section-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:-
>
> (iv) iron and steel, that is to say,-
>
> (i) [pig iron, sponge iron and] cast iron including [ingot moulds, bottom plates], iron scrap, cost 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-bar and sleeper bars;
(iv) Steel bars, rounds, rods, squares, flat, 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);
(vi) sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition;
(vii) Plates both plain and chequered in all qualities;
(viii) Discs, rings, forgings and steel castings;
(ix) Tools, alloy and special steels of any of the above categories;
(x) Steel melting scrap in all forms including steel skull, turnings and borings;
(xi) Steel tubes, both welded and seamless, of all diameters and lengths including tube fittings;
(xii) Tin-plates, both hot dipped and electrolytic and tin free plates;
(xiii) Fist plate bars, bearing plate bars, crossing sleeper bars, fish plates, bearing plates, crossing sleepers and pressed steel sleepers--heavy and light crane rails;
(xiv) Wheels, tyres, axles and wheels 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;]

Section 15

> **Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State.**
> Every sales tax law of a State shall, in so far as it imposes or authorizes the imposition of a tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely:
>
> The tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed [five per cent.] of the sale or purchase price thereof [***];"

6. By the 46th Amendment of the Constitution, Article 366 (29A) was added, by which it became possible by a deeming fiction to tax sale of goods involved in a works contract. Declared goods were taxable under Section 5(4) of the Act, which is set out hereunder:

> "Section 5(4)
>
> Notwithstanding anything contained in sub-section (1) or Section 5-B or Section 5-C a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchase in each year relating to such goods:"

The Karnataka Sales Tax Act was amended to tax goods involved in works contracts. Taking advantage of the constitutional amendment, Section 5-B was inserted in the Karnataka Sales Tax Act, 1957. This Section reads as follows:-

> "**Section 5-B: Levy of tax on transfer of property in goods** (whether as goods or in some other forms) involved in the execution of works contracts. Notwithstanding anything contained in sub-section (1) or sub-section (3) or sub-section (3-C) of Section 5, but subject to sub-section (4), (5) or (6) of the said Section, every dealer shall pay for each year, a tax under this Act on his taxable turnover of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract mentioned in column (2) of the Sixth Schedule at the rates specified in the corresponding entries in column (3) of the said Schedule."

7. The Fourth Schedule of the said Act, which deals with declared goods in respect of which a single point tax is leviable under Section 5(4) reads as follows:

"Act 3 of 1983 (From 1-11-1982)

Sl No	Description of the Goods	Point of levy	Period for which applicable	Rate of tax
1	2	3	4	5
2.	"Iron and steel, that is to say,-"			
	[(a)] (i) pig iron and cast iron including ingot			

moulds, bottom plates			
-do- **From 1-11-82 4%**			
(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes)	-do-	**From 15-7-75**	**4%**
(iii) skelp bars, tin bars, sheet bars, hoe-bars and sleeper bars;			
(iv) steel bars (rounds, rods, squares, flats, octagon 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);			
(vi) sheets, hoops, strips and skelp, both black and galvanized, hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition;			

	(vii) plates both plain and chequered in all qualities;		
	(viii) discs, rings, forgings and steel castings; sales by the first or the earliest of the successive dealers in the state liable to tax under this Act.		
	(ix) tool, alloy and special steels of any of the above categories;		
	Act 30 of 1975 (15-7-75 to 31-10-82)		
	(x) steel melting scrap in All forms including steel skull turnings and borings;	-do-	15.7.75 to 31.10.82 4%

8. Similarly, the Sixth Schedule, which is to be read with Section 5-B, insofar as it is relevant, reads as under:-

Sl. No.	Description of works Contact	period for which applicable	Rate of Tax
1	2	3	4
6.	Civil works like construction	1-4-86 to 31-3-95	Five per cent
	of building, bridges, roads, etc.	1-4-95 to 31-3-91	Eight per cent

9. Post 1.4.2005, the Karnataka Value Added Tax Act, 2003, taxed declared goods and works contracts generally as follows:-

Section 4 - **Liability to tax and rates thereof.**

(1) Every dealer who is or is required to be registered as specified in Sections 22 and 24, shall be liable to pay tax, on his taxable turnover,

(a) in respect of goods mentioned in,-

(i) Second Schedule, at the rate of one per cent,

(ii) Third Schedule, at the rate of four per cent in respect of goods specified in serial number 30 and five per cent in respect of other goods, and

(iii) Fourth Schedule, at the rate of twenty per cent.

(b) in respect of.-

(i) cigarettes, cigars, gutkha and other manufactured tobacco at the rate of fifteen per cent;

(ii) other goods at the rate of thirteen and one half per cent.

(c) in respect of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract specified in column (2) of the Sixth Schedule, subject to Sections 14 and 15 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), at the rates specified in the corresponding entries in column (3) of the said Schedule.

Third Schedule:

30. Declared goods as specified in Section 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956)

Sixth Schedule:

23.	All other works contracts not specified in any of the above categories including composite contracts with one or more of The above categories Fourteen and one half per cent	Fourteen and one half per cent

10. We have in the main to deal with the impugned judgment dated 1.9.2006 in Civil Appeal No.4318 of 2007, and judgment dated 12.8.2004 in Civil Appeal No. 4149 of 2007 in favour of Revenue, and a detailed impugned judgment which is challenged by the State of Karnataka dated 10.12.2013 in **State of Karnataka and etc. etc.** v. **M/s. Reddy Structures Pvt. Ltd. and etc. etc.** in Civil Appeals arising out of SLP (Civil) Nos.18646-19117/2015.

11. Shri N. Venkatraman led the arguments on behalf of the assessees, after whom Shri S.K. Bagaria, Shri K.V.

Viswanathan, and some others followed. According to learned counsel, the present matter is concluded by two judgments of this Court, namely, **Builders' Assn. of India v. Union of India,** (1989) 2 SCC 645, and **Gannon Dunkerley and Co. v. State of Rajasthan,** (1993) 1 SCC 364. The detailed judgment dated 10.12.2013 correctly extracts all the relevant passages from the aforesaid judgments to reach the conclusion that under the Karnataka Value Added Tax Act, 2003, the iron and steel products that are reinforced for cement concrete used in buildings and structures, remains exactly the same goods at the point of taxability – that is, the point of accretion, and that mere cutting into different shapes and bending does not make these items lose their identity as declared goods. Therefore, according to learned counsel, only tax at the rate of 4% can be levied, and not the higher rate levied in respect of civil construction works generally. Other learned counsel more or less argued along the same lines as Shri N. Venkatraman, only adding that it cannot be said that the identity of the iron and steel goods had changed at the point of taxability, and they cited several judgments to show that mere cutting and shaping

of these products would not amount to “manufacture” and hence the very goods that were declared goods alone were taxable at the rate of 4%, both under the Karnataka Sales Tax Act as well as the Karnataka Value Added Tax Act, 2003.

12. Shri K.N. Bhat, learned senior advocate appearing on behalf of the State, relied strongly on **State of Tamil Nadu** v. **M/s. Pyare Lal Malhotra and Others**, (1976) 1 SCC 834, in order to buttress his submission that the iron and steel products did not continue as iron and steel products but somehow became different goods at the point of accretion and that, therefore, they could be taxed at the higher rate applicable to civil constructions generally. He did not dispute the law laid down in the two Supreme Court judgments cited by Shri N. Venkatraman, and very fairly submitted that if the iron and steel products continued as declared goods then even though they were in a works contract they were subject to the drill of Section 15 of the Central Sales Tax Act, and would therefore be chargeable at 4% if it were found that the said products continue to remain the same.

13. Having heard learned counsel for the parties, we are of the opinion that Shri N. Venkatraman is right. The matter is no longer *res integra*. Two important propositions emerge on a conjoint reading of **Builders Association** and **M/s. Gannon Dunkerley (supra).** First, that works contracts that are liable to be taxed after the 46th Constitution Amendment are subject to the drill of Article 286(3) read with Section 15 of the Central Sales Tax Act, namely, that they are chargeable at a single point and at a rate not exceeding 4% at the relevant time. Further, the point at which these iron and steel products are taxable is the point of accretion, that is, the point of incorporation into the building or structure.

14. The relevant paragraphs from these two decisions, therefore, need to be set out. In **Builders Association** (supra), this Court held:

> "We are of the view that all transfers, deliveries and supplies of goods referred to in clauses (*a*) to (*f*) of clause (29-A) of Article 366 of the Constitution are subject to the restrictions and conditions mentioned in clause (1), clause (2) and sub-clause (*a*) of clause (3) of Article 286 of the Constitution and the transfers and deliveries that take place under sub-clauses (*b*), (*c*) and (*d*) of clause (29-A) of Article 366 of the Constitution are subject to an

additional restriction mentioned in sub-clause (*b*) of Article 286(3) of the Constitution. [para 32]

In Benjamin's *Sale of Goods* (3rd Edn.) in para 43 at p. 36 it is stated thus:
"*Chattel to be affixed to land or another chattel*.— Where work is to be done on the land of the employer or on a chattel belonging to him, which involves the use or affixing of materials belonging to the person employed, the contract will ordinarily be one for work and materials, the property in the latter passing to the employer by accession and not under any contract of sale. Sometimes, however, there may instead be a sale of an article with an additional and subsidiary agreement to affix it. The property then passes before the article is affixed, by virtue of the contract of sale itself or an appropriation made under it."

In view of the foregoing statements with regard to the passing of the property in goods which are involved in works contract and the legal fiction created by clause (29-A) of Article 366 of the Constitution it is difficult to agree with the contention of the States that the properties that are transferred to the owner in the execution of a works contract are not the goods involved in the execution of the works contract, but a conglomerate, that is the entire building that is actually constructed. After the 46th Amendment it is not possible to accede to the plea of the States that what is transferred in a works contract is the right in the immovable property.

The 46th Amendment does no more than making it possible for the States to levy sales tax on the price of goods and materials used in works contracts as if there was a sale of such goods and materials.

We are surprised at the attitude of the States which have put forward the plea that on the passing

of the 46th Amendment the Constitution had conferred on the States a larger freedom than what they had before in regard to their power to levy sales tax under entry 54 of the State List. The 46th Amendment does no more than making it possible for the States to levy sales tax on the price of goods and materials used in works contracts as if there was a sale of such goods and materials. We do not accept the argument that sub-clause (*b*) of Article 366(29-A) should be read as being equivalent to a separate entry in List II of the Seventh Schedule to the Constitution enabling the States to levy tax on sales and purchases independent of entry 54 thereof. As the Constitution exists today the power of the States to levy taxes on sales and purchases of goods including the "deemed" sales and purchases of goods under clause (29-A) of Article 366 is to be found only in entry 54 and not outside it. We may recapitulate here the observations of the Constitution Bench in the case of *Bengal Immunity Company Ltd.* [AIR 1955 SC 661 : (1955) 2 SCR 603 : (1955) 6 STC 446] in which this Court has held that the operative provisions of the several parts of Article 286 which imposes restrictions on the levy of sales tax by the States are intended to deal with different topics and one could not be projected or read into another and each one of them has to be obeyed while any sale or purchase is taxed under entry 54 of the State List.

We, therefore, declare that sales tax laws passed by the legislatures of States levying taxes on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract are subject to the restrictions and conditions mentioned in each clause or sub-clause of Article 286 of the Constitution. We, however, make it clear that the cases argued before and considered by us relate to one specie of the generic concept of "works contracts". The case-book is full

of the illustrations of the infinite variety of the manifestation of “works contracts”. Whatever might be the situational differences of individual cases, the constitutional limitations on the taxing power of the State as are applicable to “works contracts” represented by “building contracts” in the context of the expanded concept of “tax on the sale or purchase of goods” as constitutionally defined under Article 366(29-A), would equally apply to other species of “works contracts” with the requisite situational modifications.” (Paras 38-41)

In **M/s. Gannon Dunkerley** (supra), this Court held:

“Apart from the limitations referred to above which curtail the ambit of the legislative competence of the State Legislatures, there is clause (3) of Article 286 which enables Parliament to make a law placing restrictions and conditions on the exercise of the legislative power of the State under Entry 54 in State List in regard to the system of levy, rates and other incidents of tax. Such a law may be in relation to (*a*) goods declared by Parliament by law to be of special importance in inter-State trade or commerce, or (*b*) to taxes of the nature referred to in sub-clauses (*b*), (*c*) and (*d*) of clause (29-A) of Article 366. When such a law is enacted by Parliament the legislative power of the States under Entry 54 in State List has to be exercised subject to the restrictions and conditions specified in that law. In exercise of the power conferred by Article 286(3)(*a*) Parliament has enacted Sections 14 and 15 of the Central Sales Tax Act, 1956. No law has, however, been made by Parliament in exercise of its power under Article 286(3)(*b*).

For the same reasons Sections 14 and 15 of the Central Sales Tax Act would also be applicable to the deemed sales resulting from transfer of property

in goods involved in the execution of a works contract and the legislative power under Entry 54 in State List will have to be exercised subject to the restrictions and conditions prescribed in the said provisions in respect of goods that have been declared to be of special importance in inter-State trade or commerce.

So also it is not permissible for the State Legislature to impose a tax on goods declared to be of special importance in inter-State trade or commerce under Section 14 of the Central Sales Tax Act except in accordance with the restrictions and conditions contained in Section 15 of the Central Sales Tax Act.

Since the taxable event is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in the works and not the cost of acquisition of the goods by the contractor. We are also unable to accept the contention urged on behalf of the States that in addition to the value of the goods involved in the execution of the works contract the cost of incorporation of the goods in the works can be included in the measure for levy of tax. Incorporation of the goods in the works forms part of the contract relating to work and labour which is distinct from the contract for transfer of property in goods and, therefore, the cost of incorporation of the goods in the works cannot be made a part of the measure for levy of tax contemplated by Article 366(29-A)(*b*)." [paras 31, 37, 41 and 45]

15. At this juncture, it is important to note the fact situation in a typical case before us. The Karnataka Appellate Tribunal in an order dated 18.10.2010 in Civil Appeals arising out of SLP(C) Nos. 18646-19117 of 2015 narrates the factual position thus:

> "Different types of steel bars/ rods of different diameters are used as reinforcement (like TMT bars, CTD bars etc). The reinforcement bars/ rods need to be bent at the ends in a particular fashion to withstand the bending moments and flexural shear. The main reinforcement bars/ rods have to be placed parallely along the direction of the longer span. The diameters of such main reinforcement rods/bars and the distance between any two main reinforcement bars/rods is calculated depending on the required loads to be carried by the reinforced cement concrete structure to be built based on various engineering parameters. At right angles to the main reinforcement bas/rods, distribution bars/rods of appropriate lesser diameters are placed and the intersections between the distribution bars/rods and main reinforcement bars/rods are tied together with binding wire. The tying is not for the purposes of fabrication but is to see that the iron bars or rods are not displaced during the course of concreting from the assigned positions as per the drawings. Welding of longitudinal main bars and transverse distribution bars is not done. In fact, welding is contra-indicated because it imparts too much rigidity to the reinforcement which hampers the capacity of the roof structure to oscillate or bend to compensate varying loads on the structure besides welding reduces the cross section of the bars/ rods weakening their tensile strength. The reinforcements are placed and tied together in appropriate locations in accordance with the

detailed principles and drawings found in standard bar bending schedules which lay down the exact parameters of interspaces between bars/ rods, the required diameters of the steel reinforcement bars/ rods and contain the required engineering drawings for placement of bars in a particular manner. The placement of reinforcement bars/ rods for different structures is done under the supervision of qualified bar tenders and site engineers who are well versed with the engineering aspects related to steel reinforcement for creating reinforced cement concrete of desired load bearing capacities.

The appellant company has submitted general photographs showing the progress of the work of placement and binding of reinforcement bars/ rods at its work sites. The said photographs also establish the correctness of the aforesaid findings relating to placement and binding together of steel reinforcement bars/ rods before such bars/ rods are embedded in cement concrete mixtures. In another case in STA No.1328/2008 decided by this Tribunal on 10.2.2009 (in the case of Sri J. Bhaskar Rao) which is relied on by the appellant, in the agreement between the Government of Karnataka, Minor Irrigation Department and the said appellant (who was a civil contractor engaged in the civil construction activity), specification for placement and binding together of reinforcement bars/ rods were stipulated by the Government of Karnataka as follows:

> "Reinforcing steel shall conform accurately to the dimensions given in the bar bending schedules shown on the relevant drawings. Bars shall be bent cold to the specific shape and dimensions or as directed by the Engineer in-charge using a proper bar

bender, operated by hand or power to attain proper radii of bends."

"PLACING OF REINFORCEMENTS:

All reinforcement bars shall be accurately placed in exact position shown on the drawings and shall be securely held in position during placing of concrete by annealed binding wire not less than 1mm. in size and conforming to IS;280, and by using stays, blocks or metal chairs, spacers, metal hangers, supporting wires or other approved devices at sufficiently close intervals. Bars will not be allowed to end between supports not displaced during concreting or any other operation over the work …. As far as possible, bars of full length shall be used. In case this is not possible, overlapping bars shall not touch each other, but be kept apart by 25mm, or 1 (1/4) times the maximum size of the coarse aggregate whichever is greater, by concrete between them. Where not feasible, overlapping bars shall be bound with annealed steel wire, not less than, 1mm. thickness twisted tight. The overlaps shall be staggered for different bars and located at points along the span where neither shear nor bending moment is maximum."

The above specification which are standard for all civil construction works also confirms the correctness of the findings recorded by us supra. Welding of bars/ rods reduces their cross section and to that extent decreases the tensile strength of the reinforcement bars/ rods defeating the very purpose of steel reinforcement in cement concrete.

When bars/ rods are just joined together loosely by the use of binding wires, the elasticity of the steel bar/ rod is in no way hampered and each reinforcement bar/ rod acts independently. By the combined action of the main reinforcement bars/ rods and the distribution bars/ rods, the reinforced cement structures like roofs act as a rigid diaphragm whose elements displace equally in the direction of the applied in-plane loads.

From the above discussion it is clear that largely in building construction works, no pre-fabrication of any steel structure is done before embedding them in cement concrete mixture to form reinforced cement concrete structures. The findings of the lower authorities to the contrary effect in the cases on hand are entirely opposed to facts.

The only process to which the steel reinforcement rods/ bars are subjected to before being embedded with cement concrete mixture is bending at its ends after cutting of steel rods/ bars to the required size and tying them at the intersections with binding wire. None of these processes constitute a manufacturing process and no new commodity is produced before incorporation into the works."

16. Given this factual scenario, Shri K.N. Bhat referred to the judgment in **State of Tamil Nadu** v. **M/s. Pyare Lal Malhotra and Others**, (1976) 1 SCC 834, and relied on paragraphs 9 and 10 of this judgment which read as follows:

"If the object was to make iron and steel taxable as a substance, the entry could have been: "Goods of Iron and Steel". Perhaps even this would not have

been clear enough. The entry, to clearly have that meaning, would have to be: “Iron and Steel irrespective of change of form or shape or character of goods made out of them”. This is the very unusual meaning which the respondents would like us to adopt. If that was the meaning, sales tax law itself would undergo a change from being a law which normally taxes sales of “goods” to a law which taxes sales of substances, out of which goods are made. We, however, prefer the more natural and normal interpretation which follows plainly from the fact of separate specification and numbering of each item. This means that each item so specified forms a separate species for each series of sales although they may all belong to the genus: “Iron and Steel”. Hence, if iron and steel “plates” are melted and converted into “wire” and then sold in the market, such wire would only be taxable once so long as it retains its identity as a commercial goods belonging to the category “wire” made of either iron or steel. The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was sold as a separate commercial commodity, would make no difference for purposes of the law of sales tax. The object appears to us to be to tax sales of goods of each variety and not the sale of the substance out of which they are made.

As we all know, sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain

> commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type." [paras 9 and 10]

17. Given the fact situation in these appeals, it is obvious that paragraph 10 of this judgment squarely covers the case against the State, where, commercial goods without change of their identity as such, are merely subject to some processing or finishing, or are merely joined together, and therefore remain commercially the same goods which cannot be taxed again, given the rigor of Section 15 of the Central Sales Tax Act. We fail to see how the aforesaid judgment can further carry the case of the revenue.

18. We may note that in Civil Appeal No.4318 of 2007, **Larsen & Toubro Ltd. v. State of Karnataka & Another**, the Appellate Tribunal had passed an order dated 11.1.2002 in which it decided the case against the assessee on the ground that since the iron and steel products went into cement concrete, they changed form, and since they changed form, they were no longer declared goods and could be taxed without the constraints mentioned in Section 15 of the Central Sales

Tax Act. A Sales Tax Revision Petition filed before the High Court yielded an order dated 14.6.2007 by which the assessee was sent back to the Appellate Tribunal for rectification. This rectification petition was dismissed by an order dated 30.11.2005. A Sales Tax Revision Petition was thereafter filed against both orders, namely, 11.1.2002 and 30.11.2005. The High Court, in the impugned judgment dated 1.9.2006, unfortunately adverted only to the rectification order dated 30.11.2005 and not to the original order of 11.1.2002 and thus dismissed the revision petition stating that no question of law arose. Ordinarily, we would have set aside the judgment and remanded the matter back to the High Court to determine the matter on merits, but at this point of time we find this would not serve any purpose. Instead, it is enough to set aside both the judgments impugned by the assessees, dated 1.9.2006 and 12.8.2004, in light of the law laid down in **Builders Association** and **M/s. Gannon Dunkerley** (supra), and declare that the declared goods in question can only be taxed at the rate of 4%.

19. In the State Appeals, we find that the lead impugned judgment in Civil Appeals arising out of SLP(C)

Nos.18646-19117 of 2015 dated 10.12.2013 is an exhaustive judgment which has considered not only the facts in great detail but also the law laid down by the Supreme Court. We affirm the said judgment and dismiss the appeals of the State of Karnataka.

Civil Appeal No.4319 of 2007

M/s. Ananth Engineering Works v. State of Karnataka

20. This appeal is by the assessee from a judgment dated 26.10.2006 allowing a revision against the Appellate Tribunal's order dated 19.1.2006. In this appeal, we are concerned with Rule 6(4)(m) of the Karnataka Sales Tax Rules, 1957.

> "Rule 6(4):
>
> **6. DETERMINATION OF TOTAL AND TAXABLE TURNOVER:**
>
> (1).....
>
> .....
>
> (4) In determining the table turnover, the amount specified in clause (a) to (p) shall, subject to the conditions specified therein, be deducted from the total turnover of a dealer as determined under clauses (a) to (e) of sub-Rule (1).
>
> (a).....

(b)….

…..

(m) In the case of works contract specified in Serial Numbers 1,2,3,4,5,7,8,9,10,11,12,17,26,27,35,36,40 and 42 of the Sixth Schedule;

(i) all amounts received or receivable in respect of goods other than the goods taxable under sub-section (1-A) or (1-B) or Section 5 which are purchased form registered dealers liable to pay tax under the Act and used in the execution of works contract in the same form in which such goods are purchased.

(ii) ……

…….**EXPLANATION-III** For the purpose of sub-rule (4), the expression 'in the same form' used in sub-clause (i) of clause (m) shall not include such goods which, after being purchased, are either consumed or used in the manufacture of other goods which in turn are used in the execution of works contract."

21. On facts in this case, it has been found that the appellant is engaged in works contracts of fabrication and creation of doors, window frames, grills, etc. in which they claimed exemption for iron and steel goods that went into the creation of these items, after which the said doors, window frames, grills, etc. were fitted into buildings and other structures. On facts, therefore, we find that the High Court's judgment is correct and

does not need to be interfered with inasmuch as the iron and steel goods, after being purchased, are used in the manufacture of other goods, namely, doors, window frames, grills, etc. which in turn are used in the execution of works contracts and are therefore not exempt from tax.

22. The appeal of the assessee is therefore dismissed.

…..……J.
(A.K. Sikri)

…..……J.
(R.F. Nariman)

New Delhi;
August 11, 2016