

Commissioner, Sales Tax Vs Hindustan Metal Works

Court: Allahabad High Court

Date of Decision: May 9, 1963

Acts Referred: Uttar Pradesh Sales Tax Act, 1948 " Section 11(6)

Citation: (1964) 15 STC 97

Hon'ble Judges: M.C. Desai, C.J; K.B. Asthana, J

Bench: Division Bench

Advocate: B.L. Gupta and V.K. Burman, for the Respondent

Judgement

M.C. Desai, C.J.

The Judge (Revisions), Sales Tax, U.P., has at the instance of the Commissioner of Sales Tax, U.P., referred to this

Court a statement of the case from which the following question of law arises:-

Whether the sale of phosphor bronze ingots made from an alloy of tin and copper with a total addition of not more than 1 per cent. of phosphorus

and lead would be taxable?

2. The assessee sold an article called phosphor bronze ingots to the Indian Railways in accordance with a contract entered into between it and the

railways. Under the contract it was to supply to the railways an article, the composition of which was:-

Tin between 6 and 8 per cent., lead 5 per cent., phosphorus between 4 and 6 per cent. and copper of the balance.

3. Thus the article namely phosphor bronze ingots to be sold by the opposite party to the railways was to consist of at least 90.9 per cent. copper,

of 6 to 8 per cent. of tin, of not more than 5 per cent. of lead and of 4 to 6 per cent. of phosphorus. In compliance with these contracts the

opposite party sold to the railways ingots containing 0.1 per cent. of lead, 0.4 per cent. of phosphorus, 6 to 8 per cent, of tin and at least 90.9 per

cent, of copper. The question arose before the assessing authorities whether the turnover of sale of these ingots was exempt from payment of sales

tax under Notification no. ST. 3085/X-902(16)-49 dated 3rd August, 1949, which read's as follows:-

...the Governor is hereby pleased to order that...the provision of Section 3 of the Act shall not apply to the sales of copper, tin, nickel and zinc or

any alloy containing any of these metals only.

4. A copy of the notification was sent by the State Government to the Commissioner, Sales Tax, with the remark that small impurities up to 1 per

cent, in metals or alloys thereof stated above should be ignored for the purposes of granting exemption. It was contended on behalf of the assessee

that lead and phosphorus contained in the ingots were only impurities and that since their percentage did not exceed one they should be ignored

for the purposes of granting exemption and the exemption should be granted to it. This contention was accepted by the Judge (Revisions) and he

has not referred the question to this Court.

5. The first question that arises is of the legal effect of the direction" given by the State Government to the Commissioner, Sales Tax. u/s 4(a) the

Government could exempt an article only by a notification in the official Gazette and not otherwise. They have exempted under the notification

mentioned above only sales of copper, tin, nickel and zinc and any alloy containing any of these metals. The direction given by them to the

Commissioner is not a part of the notification at all; it is nothing more than an administrative instruction given to the Commissioner. Since it is not a

part of the notification and since the Government's power of exempting an article is only through a notification the direction does not entitle any

assessee to claim an exemption. An assessee can claim an exemption only under the notification and not under the direction. After having issued the

notification that all alloy of only copper, tin, nickel and zinc is exempt it was not open to them to direct the Commissioner, Sales Tax, to exempt an

alloy of these articles and another metal provided it did not exceed 1 per cent. The assessee cannot claim the exemption under the direction, and

the direction is not binding upon the Court. It was argued that the Commissioner never contended before the Sales Tax Officer, the Judge

(Appeals) and even the Judge (Revisions) that the direction has no legal force and does not bind him or the Sales Tax Authorities. It was argued

that whether the direction has any legal force or not is not a question that can be said to arise out of the order of the Judge (Revisions) because it

was never raised before him. But the question is directly involved in the question referred to this Court; the question referred to this Court can be

answered in the assessee's favour only if the direction is given effect to and the direction can be given effect to only if this Court finds that it has

legal force. If this Court finds that the direction has got no legal effect it cannot be given effect to and the sale of ingots cannot be exempted. The

Sales Tax Commissioner could resist the exemption claimed by the assessee either on the ground that it is not covered by the words of the

direction or on the ground that the direction is illegal and without jurisdiction or on both the grounds. It may be that in this case he challenged the

claim to exemption on the first ground only, but it cannot be disputed that the other ground is another aspect of the question that has been referred

to this Court. When the Judge (Revisions) held that the assessee is entitled to the exemption under the direction he necessarily decided that the

direction has legal force entitling the assessee to claim the exemption. Therefore, the order passed by him impliedly contained the decision that the

direction has legal force. I am, therefore, of the opinion that the direction must be ignored, not being a part of the notification, and that the assessee

cannot claim the exemption under it. It has not claimed the exemption under the notification itself. Admittedly the ingots contained lead and

phosphorus and cannot be said to be alloys of only the four metals mentioned in the notification.

6. Even if the direction were to be placed on the same footing as the notification I do not think that the claim to exemption is justified at all because

lead and phosphorus added to copper and tin cannot be said to be impurities within the meaning of the direction. "Impure" means according to

Murray's Dictionary "mixed with or containing some extraneous or foreign matter, especially of an inferior or baser kind; contaminated,

adulterated" and "impurity" means "foreign matter which detracts from the purity of any substance." Whether there is an extraneous or foreign

matter included in an article or not depends upon what the article purports to be; extraneous or foreign means extraneous or foreign to the nature

of the article, i.e., to what the article purports to be. Nothing can be said to be extraneous or foreign to an article if the article purports to contain it.

If an article purports to be copper any extraneous or foreign matter contained in it is an impurity. So if an article purporting to be copper contains

lead and phosphorus, as copper it is impure and lead and phosphorus are impurities. But if the article purports to be an alloy of copper, lead and

phosphorus then lead and phosphorus cannot be said to be extraneous or foreign to the alloy because without them there would be no such alloy at

all. As an alloy it is a pure alloy containing no impurity because it purports to be an alloy of copper, lead and phosphorus. Therefore the question

whether there is an extraneous or foreign matter or not depends upon what the article purports to be. We are concerned here with an article sold

by the assessee to the railways and the question is whether that article contains impurities, namely foreign and extraneous matter. We have,

therefore, to see what is the article that the assessee purported to sell and the railways purported to buy. If they purported to sell and buy an alloy

containing copper, tin, lead and phosphorus it is no more possible to say that lead and phosphorus are foreign or extraneous matter than to say that

copper and tin are foreign or extraneous matter. When the article purports to be an alloy of these four metals or elements no one of them can be

said to be an extraneous or foreign matter. The percentage in which they are mixed together is irrelevant so long as they are all required to be

mixed under the contract between the parties. There would be an impurity only if the ingots contained something other than these four substances

but they do not contain anything else. Therefore, there were no impurities in the ingots that were sold by the assessee to the railways. It is to be

noted that the direction uses the word impurities and not other ingredients or other metals ; it comes into application only when there are impurities

and not when there are other ingredients or metals. Whether a substance is an impurity or not depends upon its nature and not upon its quantity.

Impurity is a qualitative and not quantitative description. If an alloy of 99% copper and 1% of lead is required for a certain purpose and is

prepared out of copper and lead mixed in these proportions, it cannot be said that the resulting article is copper with lead as an impurity merely

because it is of 1%. If in an alloy required to contain 50% copper and 50% lead neither can be said to be an impurity, lead required to be of 1% in

any alloy of copper and lead cannot be said to be an impurity simply because it is of such a small proportion. Therefore, lead and phosphorus in

the alloy which was required to contain them cannot be said to be impurities. If an alloy was required to consist of 25% of copper, 25% of tin,

25% of lead and 25% of phosphorus nobody would have dreamt of calling it an alloy of copper and tin with lead and phosphorus as impurities.

The alloy in the instant case cannot be said to contain lead and phosphorus as impurities simply because their percentages are so small. If there

were no impurities it follows that the ingots were an alloy of copper, tin, lead and phosphorus and such an alloy is expressly barred from the scope

of the notification which is emphatic in laying down that an alloy containing only copper, tin, nickel and zinc is exempt and no other alloy. Any alloy

containing something other than these four metals is not within the scope of the notification regardless of the percentage of the foreign thing. When

the railways themselves wanted an alloy containing lead and phosphorus it is wrong to say that lead and phosphorus included by the assessee in the

ingots within the permissible limits were impurities. It may be conceded that an impurity can be introduced deliberately but it ceases to be an

impurity if the article purports to contain it and is the very article required by the purchaser. An essential ingredient of an article cannot be said to

be an impurity because it is not an extraneous or foreign matter. The assessee sold, and the railways bought, an alloy of copper, tin, lead and

phosphorus and the ingots consisting of this alloy did not contain any extraneous or foreign matter, that is an impurity. If they had purported to sell

and buy an alloy of copper and nickel only, it could be said that lead and phosphorus were impurities but that is not the case here. I have,

therefore, no doubt that the ingots are not within the scope of the direction. What is exempted under it is small impurities in alloys consisting only of

copper and tin. The direction does not apply to any impurities in alloys of copper, tin, lead and phosphorus; so even if the ingots had a fifth

ingredient of not more than 1% they would not be exempt because the fifth ingredient even though amounting to an impurity would be an impurity in

an alloy consisting of copper, tin, lead and phosphorus which is not an alloy covered by the notification.

7. Sri Burman brought to our notice the fact that in subsequent assessment years it has been held by this Court that there was no sale by the

assessee to the railways and that it had only performed a contract of work. But that is irrelevant because the question before us assumes that there

was a sale by the assessee to the Indian Railways. The Judge (Revisions) rejected the contention of the assessee that there was only a performance

of a contract of work and not sale ; so it may be said that a question whether the assessee sold the articles or performed a contract of work does

arise out of the order passed by him but it is not a question referred to this Court by him.

8. My answer to the question, therefore, would be in the affirmative.

K.B. Asthana, J.

9. I have had the advantage of hearing the opinion just delivered by My Lord the Chief Justice but I find myself in respectful disagreement with his

conclusion. The facts of the case have been sufficiently stated in the order of My Lord the Chief Justice and it is not necessary for me to repeat the

same in this judgment.

10. The answer to the question which has been referred for opinion at the instance of the Commissioner, Sales Tax, U.P., turns on the scope and

the extent of Notification No. S.T. 3085/X 908(16)-49 dated 3rd August, 1949, and a note by way of information sent to the Commissioner,

Sales Tax, which has been appended below that notification. The notification in question says that the provisions of Section 3 of the Act shall not

apply to the sales of copper, tin, nickel and zinc or any alloy containing any of these metals only. Then it appears that while forwarding the copy of

the said notification for information to the Commissioner, Sales Tax, it was remarked that small impurities up to 1 % in metals or alloys thereof

stated above should be ignored for the purposes of granting exemption. This has been treated by the Appellate Authority as well as the Revising

Authority as an explanation to the exemption clause of the said notification. Neither the statement of the case nor the record discloses that it was

ever questioned on behalf of the Commissioner of Sales Tax that it ought not to be so treated. A suggestion was made at the Bar by Sri Shanti

Bhushan, Senior Standing Counsel appearing for the Commissioner, Sales Tax, that the abovesaid remark, while forwarding the copy of the

notification for the information to the Commissioner, Sales Tax, ought to be ignored in deciding the matter. In my opinion, it is not legitimate on the

part of the Commissioner, Sales Tax, to ask this Court to ignore the said remark when the case before the tax authorities was allowed to proceed

on the basis that the said remark be treated as an explanation to the exemption clause contained in the notification. Sri Burman, who appeared for

the assessee, rightly contended that had such a question been raised at the earlier stages it would have been possible for the assessee to show that

the said remark was binding on the assessing authority in considering the question of exemption. It has not been suggested on behalf of the

Commissioner, Sales Tax, that as a matter of departmental practice he did not issue directions to the assessing authorities in accordance with the

said remark and no information has been laid before the Court that the assessing authority did not ever act accordingly while considering the

question of exemptions under the said notification arising in any assessment proceedings before them. It is to be noticed that the Judge (Appeals)

had accepted the contention of the assessee that the impurities in the alloy in question were below 1 % and the sale of phosphor bronze ingots

made by the assessee was exempt from tax under the notification. The Commissioner, Sales Tax, went up in revision against the decision of the

Judge (Appeals) and no ground was raised in the grounds of revision by the Commissioner, Sales Tax, that even assuming that the admixture of

lead and phosphorus in the alloy amounted to an impurity below 1 % that ought to have been ignored as the exemption clause in the notification did

not warrant that fact to be taken into consideration. What was mentioned in the grounds was that phosphor bronze was taxable in view of the

admixture of lead and phosphorus which could not be treated as impurities. It was in this light that the Judge (Revisions) considered the case and

after recording a finding that the percentage of lead admixed was 0.1%, and that of phosphorus admixed 0.4%, the total of lead and phosphorus

which was admixed in the alloy in question was 0.5% much below the limit of 1% and he held that the alloy in question was exempt from sales tax.

Even in his application u/s 11 of the Act made before the Judge (Revisions) no ground was raised that the abovesaid remarks which accompanied

the copy of the notification forwarded for information to the Commissioner, Sales Tax, was not binding and ought not to have been taken into

consideration while granting exemption. In these circumstances, in my judgment, this Court would not be justified in refusing to take into

consideration the abovesaid remarks in finding whether the alloy of phosphor bronze ingots was exempt under the notification. The said remarks,

therefore, ought to be treated as an explanation to the main exemption clause of the notification for the purpose of answering the question referred.

11. It would be seen from the notification that the exemption was granted with respect to the sale of four metals, namely, copper, tin, nickel and

zinc or any alloy that is any admixture containing all these metals. By the remarks which were sent to the Commissioner, Sales Tax, which is to be

read as an explanation to the exemption clause it was provided that impurities up to 1% in the metals or alloys thereof was to be ignored for the

purposes of granting exemption. Any foreign matter which detracts from the purity of any substance will amount to an impurity. If any of the metals

mentioned in the notification were sold but they contained a foreign material up to 1 %, namely, a material which was not copper, tin, nickel or

zinc, it will have to be ignored and the metals so sold containing that foreign matter up to the permissible limit would be treated for the purpose of

exemption as the sale of the pure metal. Likewise, if an admixture of one or more of the exempted metals, that is, an alloy, contained any matter up

to 1% which was neither copper, tin, nickel or zinc, it will have to be ignored for the purpose of granting exemption and the alloy would be treated

as a pure alloy containing any of those metals only for the purpose of exemption. I do not agree with the contention of the learned Senior Standing

Counsel that whether a foreign material amounts to an impurity in the alloy containing the exempted metals will depend upon the intention of the

party who prepares such an alloy. It was conceded by the learned Senior Standing Counsel that a foreign material in the composition of a

particular alloy or of any metal can deliberately be introduced and even then it would be physically or chemically an impurity vis-a-vis that alloy or

metal. No doubt, on the facts of the present case the phosphorus and lead up to 0.5% was introduced in the composition of the admixture of

copper and tin which were the exempted metals deliberately at the instance of the purchaser who wanted phosphor bronze ingots of that

composition, but all the same phosphorus and lead so mixed would be impurities within the meaning of the explanation vis-a-vis the admixture of tin

and copper. It is difficult for me to accept the argument made on behalf of the Commissioner, Sales Tax, that on the facts of the case as the railway

authorities wanted an alloy of tin, copper, phosphorus and lead in certain proportions, such an alloy not being an alloy of tin and copper-the

exempted metals-but an alloy of all those four metals, namely, tin, copper, phosphorus and lead, phosphorus and lead cannot be said to be

impurities as they were deliberately required in that composition and the phosphor bronze ingots in question would fall outside the exemption. That

the element of phosphorus and lead, having been deliberately introduced in the admixture of tin and copper, would cease to be an impurity for the

purpose of granting exemption, only because those metals were introduced by the assessee at the instance of the purchaser, involves an approach

to the whole question depending on the intention of the seller or the purchaser which, to my mind, is wholly irrelevant for the purposes of judging

whether the alloy of copper and tin mixed with phosphorus and lead to the extent of 0.5% was to be treated as an alloy of tin and copper only

within the meaning of the said notification.

12. In my opinion, for the purposes of applying the exemption clause what has to be found out is that the alloy which has been sold is an alloy

containing at least 99% copper and tin. As far as the notification is concerned it would remain an alloy of copper and tin only even if up to 1% any

metal or material not exempted under the said notification is found admixed with that alloy, as in relation to copper and tin or alloy of copper and

tin, phosphorus and lead being foreign materials would be excusable impurities. It does not matter as to how and why they were so admixed. The

extent of impurity, that is the existence of foreign matter, is to be measured solely on the basis of physical or chemical composition of the alloy sold

and the motive with which or the purpose for which the foreign material is mixed in the whole composition will be immaterial. In their physical

properties phosphorus and lead would always be foreign to tin and copper and they would remain impurities whether they creep in the alloy of tin

and copper unintentionally or mixed deliberately.

13. I would, therefore, answer the question in favour of the assessee and hold that the lead and phosphorus being far below 1% in the admixture of

tin and copper ought to have been ignored and the phosphor bronze ingots sold by the assessee to the railway ought to be treated as an alloy of

copper and tin only and exempt from tax.

14. I would assess the costs of the assessee at Rs. 100 to be paid by the Commissioner, Sales Tax,

15. There being a difference of opinion between Desai, C.J., and Asthana, J., the Court made the following order on 18th March, 1963.

ORDER

16. There being a difference of opinion, the case may be placed before the Honourable the Chief Justice for referring it to a third Judge.

17. In pursuance of the abovesaid order the case came on for hearing before Dwivedi, J., and the learned Judge delivered the following judgment

on 8th May, 1963.

JUDGMENT

S.N. Dwivedi, J.

18. This case comes to me on difference of opinion between the Chief Justice and Asthana, J.

19. The facts of the case are fully detailed in the judgment of the Chief Justice. I would therefore mention only the facts which are essential for a

correct appreciation of the controversy in the case.

20. On 3rd August, 1949, the State Government exempted by a notification sales of copper, tin, nickel and zinc or any alloy containing any of

these metals only from sales tax. The notification was published in the U.P. Gazette. A copy of it was forwarded to the Commissioner of Sales Tax

with the remark that small impurities up to 1% in metals or alloys thereof should be ignored for the purpose of granting exemption. The remark

(herein below called the rider) was never published in the Gazette.

21. The assessee sold phosphor bronze ingots to the railways. The components of the ingots were copper, tin, lead and phosphorus, as agreed to

between the parties. The assessee claimed that the sale was exempt from tax in view of the rider ; the department said that, as lead and phosphorus,

though below 1% in the ingots, are not impurities in phosphor bronze, the sale is subject to tax. This dispute between them is the reason for the

reference to the Court.

22. The Chief Justice and Asthana, J., have differed in their answer to three questions :

(1) Whether the rider has the force of law ?

(2) Whether the first question is referred to the Court ?

(3) Whether the sale of phosphor bronze ingots is taxable ?

23. On the first question the Chief Justice has taken the view that the rider has not got the force of law. On the second question his opinion is that the

first question is necessarily implied in the question referred to the Court. On the third question his opinion is that the sale is liable to tax. Asthana, J.,

on the other hand, is of opinion that the rider ought to be treated as an explanation to the notification and that it has got the force of law. On the

second question he seems to be inclined to the view that the first question has not been referred to the Court. On the third question his opinion is that

the sale is not liable tax.

24. Re. question (1): According to Section 3 of the Sales Tax Act tax is payable on all sales of goods. Section 4 provides for exemption from tax.

Sub-section (1) of Section 4, in so far as it is material to the Case, reads:-

No tax shall be payable on-

(a) the sale...of any other goods which the State Government may by notification in the official Gazette exempt.

25. The Sub-section delegates subordinate legislative power to the State Government to exempt sales of certain goods from tax. On the

sub-legislative power the Legislature has imposed the procedural check of the publication of the subordinate law in the Gazette. The object

underlying the check is, I think, to give notice to the dealers and the public at large of the exemption. It seems also to be designed to protect

purchasers from exaction of tax on the sale of exempted goods by unscrupulous dealers. It is accordingly a mandatory provision. If a notification or

a part thereof is not published in the Gazette it would not have the force of subordinate law. Accordingly, I agree with the Chief Justice that the

rider is not law.

26. This answer, however, does not conclude the matter ; it invokes enquiry into the true import of the notification. The notification is addressed

primarily and principally to the men of trade and industry" it is in the main to be observed and worked upon by them. It would, therefore, prima

facie not be illegitimate to understand it in the sense which they would give to it. The rule-making authority should be presumed to have intended to

give it the meaning which it is likely to receive from the business world. The language of the notification is. not inconsistent with such a presumption.

27. I then ask myself in what sense the world of commerce would understand the notification. A metal is rarely absolutely pure. Even the so-called

purest metal contains as an inseparable concomitant some foreign substance in 10 percentage. The men of trade and industry therefore speak of

metals as commercially pure. : They overlook the inseparable foreign substances in a metal as 10 impurities and still call it a pure metal.

(Encyclopaedia of Chemical Technology, 1949 Edn., Vol. IV, page 432).

28. If the notification is to be construed in the commercial sense, as I think it should be, then in spite of the presence of the unavoidable

concomitant foreign substances in them in negligible quantities copper, tin, zinc and nickel shall be deemed to be commercially pure metals, and no

tax shall be leviable on their sales. Similarly an alloy prepared from a solution of two or more of those metals, which themselves are commercially

pure in the sense already described, shall be regarded to be commercially pure, and no tax shall be levied on the sale of it.

29. It may be observed that broadly speaking the rider is really expository of the notification. It makes explicit what is, as shown above,

necessarily implicit in the notification. It should, however, not be understood that I am engrafting it on the notification. Far from it, however, I do

emphasise that the notification, independently of it, is intended to provide that small impurities in the metals, which the commercial world would

ignore, should be overlooked.

30. Re. question (2): In view of my answer to the first question the second question loses its importance. However I am inclined to agree with the

Chief Justice that the first question is directly and necessarily involved in the question referred to the Court and should accordingly be deemed to

have been referred to the Court.

31. Re. question (3) : It is proposed to give the answer in the light of the interpretation placed on the notification by me as well as on the

assumption of the rider's validity.

32. The notification exempts tax on the sale of alloys prepared from the solution of two or more of the metals enumerated therein. On account of

the word "only" the sale of an alloy prepared from the solution of two or more of those metals and some other substance or substances would not

be exempt from tax. The assessee sold an alloy called phosphor bronze which was prepared from the solution of copper, tin, phosphorus and lead.

Phosphorus and lead are not mentioned in the notification. They are deliberately added by the assessee as per agreement between the parties. The

sale is, therefore, Prima facie liable to be taxed.

33. It has, however, been argued on behalf of the assessee that, if the admixture of phosphorus and lead below 1% in the alloy of copper and tin

were ignored as pardonable impurity, the sale would be exempt from tax. If the major premise is correct, then the conclusion is irresistible.

34. The major premise assumes two things: (1) phosphor bronze is an alloy of copper and tin and (2) phosphorus and lead below 1 % in that alloy

are only impurities. Both the assumptions are in my judgment fallacious. Both bronze and phosphor bronze are industrially known as copperbased

alloys. Whereas bronze is an alloy of copper and tin only, phosphor bronze is an alloy of copper, tin and phosphorus. The alloy of copper and tin,

popularly called bronze, is industrially known as tin bronze. The physical properties, the internal structure and the application of the alloy of

phosphor bronze are different from those of the alloy of tin bronze.

35. In metals foreign elements may be found for three reasons: (1) they may be present for they could not be eliminated in the act of refining; (2)

they may have been added as deoxidizers; (3) they may have been added or allowed to remain for some specific purpose. (Ibid, Vol. IV, page

435). If their presence is explained by the first reason, they are overlooked as to impurities (Ibid, page 435). Phosphorus and lead are not found in

copper and tin for the first reason ; phosphorus is present in them for the second reason and lead for the third reason (Ibid, Vol. IV, pages 435,

443 and 444). Lead is deliberately added to copper and tin to improve the machining properties. In phosphor bronze it is added to secure a more

conformable bearing alloy. (Ibid, Vol. XIV, page 149). Phosphorus is fluxed with copper and tin to produce a hard strong metal which is required

for valves, bushes of bearings, etc. (Encyclopaedia Britannica 1959 Edn., Vol. IV, page 240). When a substance is added deliberately to achieve a

specific purpose, it is hardly legitimate to call it an impurity.

36. My answer, therefore, is that the sale of phosphor bronze ingots does not fall within the ambit of the notification as interpreted by me or of the

rider.

37. To sum up, my answers are :

Question (1)-No, subject to what I have already explained.

Question (2)-Yes.

Question (3):-Yes.

38. The case came on for final hearing before Demi, C.J., and Asthana, J., and the Court made the following order on 9th May, 1963.

ORDER

39. In view of the opinion of the third Judge our answer to the question is in the affirmative.

40. We direct that the copies of this judgment shall be sent to the judge (Revisions) and the Commissioner of Sales Tax, U.P., under the signature

of the Registrar and seal of the Court as required by Section 11(6) of the U.P. Sales Tax Act.

41. We further direct that the assessee shall pay the cost of this reference which we assess at Rs. 100 to the Commissioner, Sales Tax, U.P.

Counsel's fee is assessed at Rs. 100.