(1985) 01 RAJ CK 0047

In the Rajasthan High Court

Case No : Sales Tax Reference No. 12 of 1977

Assistant Commercial Taxes Officer APPELLANT

Vs

Sitaram Badrilal RESPONDENT

Date of Decision : 16-01-1985

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 2(k), 5C

Citation : (1985) RLW 204 : (1986) 61 STC 258 : (1986) 26 TAXMAN 118 : (1985) 1 WLN 628

Hon'ble Judges : S.N. Bhargava, J;S.K. Mal Lodha, J

Bench : Division Bench

Advocate : K.C. Bhandari, for the Appellant; N.P. Gupta, for the Respondent

Judgement

S.K. Mal Lodha, J.—In pursuance of the order dated 6th September, 1976, passed by this Court in D. B. Civil Sales Tax Reference No. 216 of 1975, the Board of Revenue for Rajasthan, Ajmer ("the Board" herein), has referred the following question for our opinion :

Whether the polishing of stones comes within the term ''manufacture'' and, therefore, attracts concessional rate u/s 5C of the Rajasthan Sales Tax Act ?

2. The Assistant Commercial Taxes Officer, Ward A, Chittorgarh (ACTO), determined the tax liability of M/s. Sitaram Badrilal, Manpura Branch, Station Road, Chittorgarh, u/s 10(3) of the Rajasthan Sales Tax Act, 1954 (for short "the Act"), for the assessment years 1967-68 and 1968-69, vide his assessment order dated 6th May, 1969. The dealer-assessee was dealing in stones during this period and his gross turnover was determined at Rs. 1,59,520.46. After deducting from it, the turnover relating to goods not liable to tax and inter-State sales, the assessing authority determined the taxable turnover of the assessee at Rs. 23,640. It may be mentioned that the assessee had purchased stones of Rs. 23,330.09 and sand of Rs. 1,575 from the unregistered dealers. The sand was utilised for polishing the stones with the help of machines. In the opinion of the assessing authority, the dealer was a manufacturer and after making allowance

for the stock of stones worth Rs. 3,420.50 transferred to the account of the head office of the assessee, levied tax at 1 per cent u/s 6C of the Act on the purchase of stones of Rs. 19,910 and sand of Rs. 1,575. The tax was thus levied on the dealer for the years of the assessment in question. The assessee filed an appeal and the Deputy Commissioner (Appeals), Commercial Taxes, Udaipur, by his order dated 13th April, 1970, reduced the taxable turnover by Rs. 3,420.50. He also set aside the tax on purchase of sand of Rs. 1,675. He further maintained the levy of tax at 1 per cent on purchase of stones worth Rs. 19,910 on the ground that polishing of stones was included in the definition of "manufacture" given in Section 2(k) of the Act. A revision was preferred before the Board u/s 14(2) of the Act against the order of the Deputy Commissioner (Appeals). The learned Member of the Board sitting in single Bench was of the opinion that polishing of stones constitutes the process of manufacture and rejected the revision petition on 26th February, 1973. A special appeal u/s 14(4A) of the Act was preferred before a Division Bench of the Board and it by its order dated 19th April, 1974, came to the conclusion that the identity of the so-called polished stones sold by the appellants had not been changed from what it had been when they were originally purchased. It further opined that little polishing of the stones could not be described as a process of manufacture. It, therefore, set aside the order dated 26th February, 1973, of the learned Member of the Board passed in revision and also set aside the levy of tax on purchase of stones at 1 per cent. The Division Bench of the Board considered Kulkarni v. The State [1957] 8 STC 294, Tungabhadra Industries Ltd. v. Commercial Tax Officer [1960] 11 STC 827 , State of Gujarat v. Sakarwala Brothers [1967] 19 STC 24 and Ganesh Trading Co. v. State of Haryana [1973] 32 STC 623 . An application was filed by the assessee u/s 16(1) of the Act on 16th September, 1974. The application could not be disposed of within 180 days of the receipt of the order of the Division Bench of the Board and, therefore, it ordered on 6th June, 1975, to stop further proceedings. Thereafter, a reference application u/s 15(3A) of the Act was filed in this Court for directing the Board to refer the question of law arising out of its order dated 19th April, 1974. This Court vide its order dated 6th September, 1976, directed the Board to refer the aforesaid question. Hence, the aforesaid question has been referred.

3. We have heard Mr. K. C. Bhandari, learned counsel for the department, and Mr. N. P. Gupta, learned counsel for the dealer-assessee.

4. The expression "manufacture" as it stood then has been defined in Section 2(k) of the Act as under :

Section 2. (k) ''manufacture'' includes any process or manner of producing, collecting, extracting, preparing or making any goods.

5. In this case, we are concerned with "process" or "manner of preparing or making any goods". "Prepare" has been defined in Chambers Twentieth Century Dictionary as follows :

to subject to a process for bringing into a required state : to make, produce : to cook and dress :.

6. The word "make" has been defined in the same dictionary as follows :

to fashion, frame, construct, compose, or form : to create : to bring into being: to produce : to conclude...to convert or turn, etc."

Process" as a noun has been defined as under :

a state of being in progress or being carried on :...a sequence of operations or changes undergone.

7. Keeping these definitions in view, we have to consider whether for polishing of the stones, process involved is that of manufacture or not.

8. The meaning of the word "manufacture" in connection with the question relating to the applicability of explanation II(ii) to Section 2(h) of the U.P. Sales Tax Act, 1948, came up for consideration before their Lordships of the Supreme Court in Commissioner of Sales Tax v. Harbilas Rai & Sons [1968] 21 STC 17. It was observed as under :

In our view, the word ''manufacture'' has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture.

9. One of the important tests which is apparent from the aforesaid decision of their Lordships of the Supreme Court is that even if labour is applied to a particular commodity but if that commodity essentially remains the same commercial article then it cannot be said that the product which comes out after the application of the labour is the result of the manufacture.

10. In Deputy Commissioner of Sales Tax v. Pio Food Packers [1980] 46 STC 63 , the question that arose was whether the turnover of pineapple fruit purchased for preparing pineapple slices for sale in sealed cans is not covered by Section 5A(1)(a) of the Kerala General Sales Tax Act, 1963. It was held therein that when pineapple fruit is processed into pineapple slices for the purpose of being sold in sealed cans, there is no consumption of the original pineapple fruit for the purpose of manufacture and the case does not fall within Section 6A(1)(a) of the Kerala General Sales Tax Act, 1963. The dominant consideration in this regard was of essential identity of the two commodities and on that ground it was opined that there is no essential difference between pineapple fruit and the canned pineapple slices and the dealer and the consumer regard both as pineapple. It was concluded that the only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, the pineapple slices were held to possess the same identity as the original

pineapple fruit.

11. In East Texas Motor Freight Lines v. Frozen Food Express 100 LEd 917 it has been ruled as under :

Killing, dressing and freezing a chicken is certainly a change in the commodity. But it is no more drastic a change than the change which takes place in milk from pasteurizing, homogenizing, adding vitamin concentrates, standardising, and bottling.

12. It was also observed :

...there is hardly less difference between cotton in the field and cotton at the gin or in the bale or between cotton seed in the field and cotton seed at the gin, than between a chicken in the pen and one that is dressed. The ginned and baled cotton and the cotton seed, as well as the dressed chicken, have gone through a processing stage. But neither has been ''manufactured'' in the normal sense of the word.

13. We are tempted here to refer Anheuser-Busch Brewing Association v. United States 52 L Ed 336 wherein the Court said :

Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary.... There must be transformation; a new and different article must emerge, ''having a distinctive name, character or use''.

14. And it was further stated :

At some point processing and manufacturing will merge. But where the commodity retains a continuing substantial identity through the processing stage we cannot say that it has been ''manufactured''.

15. It may be stated that the comments made therein were applied by their Lordships of the Supreme Court in Deputy Commissioner of Sales Tax''s case [1980] 46 STC 63.

16. Learned counsel appearing for the department, however, relied on G. R. Kulkarni''s case [1957] 8 STC 294, Commissioner of Sales Tax v. Hastimal Ratanlal [1972] 30 STC 484 and Commissioner of Sales Tax v. Radha Dyeing & Printing Mills [1981] 48 STC 61. G. R. Kulkarni''s case [1957] 8 STC 294 was considered in Commissioner of Sales Tax''s case [1968] 21 STC 17 . In G. R. Kulkarni''s case [1957] 8 STC 294 the Madhya Pradesh High Court held that the breaking of boulders into metal (gitti) was "manufacture" within the meaning of Section 2(i)(a) of the M.P. General Sales Tax Act, 1947. It was held that the essence of manufacture is the changing of one object into another for the purpose of making it marketable.

17. It was observed as under :

...the man who manufactures metal is manufacturing a new article which has got a different price and that price includes labour which goes into its manufacture.

18. The rough stones purchased by the dealer after going through the process of polishing, retain the same identity, *''. e., in the form in which they are brought. G. R. Kulkarni''s case [1957] 8 STC 294 is distinguishable on facts.

19. In Commissioner of Sales Tax''s case [1972] 30 STC 484, the assessee purchased white cotton yarn, dyed it into different colours and then sold the coloured yarn. The department contended that when the assessee purchased uncoloured yarn and dyed it, he consumed the uncoloured yarn and manufactured coloured yarn out of it and that since the assessee was exempt from sales tax by virtue of Section 6 of the M.P. General Sales Tax Act, 1958, on the sale of uncoloured yarn, he was liable to pay purchase tax u/s 7. The assessee contended that he was not liable to pay purchase tax as no manufacturing process was involvedand that cotton being one of the declared goods under the Central Sales Tax Act, 1956, it could not be taxed twice or at a rate more than two per cent. The Board of Revenue accepted the first contention of the assessee and did not consider the second contention. On a reference, the M.P. High Court held that the dyeing of white cotton yarn was a process of manufacture within the meaning of Section 2(j) of the M.P. Act. "Manufacture" has been defined in Section 2(j) of the M.P. Act. The definition was construed to be very wide and inclusive of any process or manner of producing or preparing any goods. The M.P. High Court opined that when uncoloured yarn is dyed, it is preparing dyed cotton yarn, and the use of dyed cotton yarn is necessarily different from that of uncoloured yarn and a person who wants dyed yarn will not be satisfied with undyed yarn. On the basis of this reasoning, it was held that it was a process of manufacture within the meaning of Section 2(j) of the M.P. Act. Commissioner of Sales Tax''s case [1972] 30 STC 484 is hardly of any avail to the learned counsel for the department.

20. In Commissioner of Sales Tax''s case [1981] 48 STC 61 the question was whether on a true and proper interpretation of Section 41(2) of the Bombay Sales Tax Act, 1969, read with the notifications issued thereunder, the Tribunal was justified in law in coming to the conclusion that a precise quantification of the tax is not possible thereunder and; therefore, that provision was unenforceable. While dealing with the question whether the dyeing and printing would be a process carried out on cloth and would result in a new marketable commodity corning into existence. D. P. Madon, J. (as he then was), with whom Sujata V. Manohar, J., agreed held that dyeing and printing cloth would be manufacture within the meaning of Section 2(17) of the Bombay Sales Tax Act. It may be stated that Section 2(17) of the Bombay Sales Tax Act defines the term "manufacture" as follows :

''Manufacture'', with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed.

21. Hiralal Jitmal v. Commissioner of Sales Tax [1957] 8 STC 325 was referred, which was considered in Commissioner of Sales Tax''s case [1968] 21 STC 17 , wherein their Lordships extracted the observations made in Hiralal Jitmal''s case [1957] 8 STC 325 and thereafter, observed that the word "manufacture" had various shades of meaning and thereafter, they made the observations which have already been extracted hereinabove. This decision in Commissioner of Sales Tax''s case [1981] 48 STC 61 is not of much assistance.

22. A Division Bench of this Court in State v. Sahachari Udhyog Mandir [1986] 61 STC 30 considered the term "manufacture". It was observed that it is pertinent to consider whether by this process, an altogether different commercial commodity for specific utility had come into existence. Stones are polished but even after polishing those stones do not lose the original identity and a separate commercial article does not come into being for being marketable. Essentially, it is the same commercial commodity. The polished stones are nothing but product of stones which they were.

23. Adopting the reasons given in Commissioner of Sales Tax''s case [1968] 21 STC 17 , we are of opinion that the polishing of stones does not involve that process so as to fall within the term "manufacture" as defined in Section 2(k) of the Act. In our considered opinion, the view taken by the Division Bench of the Board in its order dated 19th April, 1974, is the correct one when it held that the identity of the so-called polished stones sold by the dealer-assessee had not been changed from what it had been when they were originally purchased. The Division Bench of the Board was right in holding that the polishing of stones does not come within the term of "manufacture" and, therefore, the dealer-assessee is not liable to pay sales tax at the concessional rate u/s 5C of the Act.

24. The question referred for our decision is answered in the negative, i.e., in favour of the dealer-assessee and against the department.

25. In the circumstances of the case, there will be no order as to costs of this reference.

26. Let the answer be returned to the Board u/s 15(5) of the Act.