
(2009) 10 RAJ CK 0051
In the Rajasthan High Court

Commercial Taxes Officer, Anti Evasion	APPELLANT
Vs	
Jain Plaster Industries	RESPONDENT

Date of Decision : 15-10-2009

Acts Referred:

Rajasthan Sales Tax Act, 1994 — Section 86(2)

Citation : (2010) 2 RLW 1835 : (2009) 4 WLN 441

Hon'ble Judges : Gopal Krishan Vyas, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Gopal Krishan Vyas, J.—Upon similar facts and circumstances, both the above revision petitions involve identical controversy. Hence, both these revision petitions are decided by common order while taking into consideration facts and figures from S.B. Civil (Sales Tax) Revision Petition No. 795/1999.

2. In the revision petition filed u/s 86(2) of the Rajasthan Sales Tax Act, 1994, the petitioner Commercial Taxes Officer, Anti Evasion, Bikaner is challenging the judgment dated 30.9.1998 passed by the Rajasthan Tax Board, Ajmer in appeal No. 67/91/Bikaner by which the learned Tax Board confirmed order dated 21.12.1990 passed by the Deputy Commissioner (Appeals), Jodhpur in Appeal No. 17/RST/Hanu./90-91 and quashed the assessment order dated 13.6.1990 passed by the Assessing Authority for assessment year 1989-90.

3. Brief facts of the case are that the assessing authority vide assessment order Annex. 1 dated 13.6.1990 came to the conclusion that grinding of gypsum is not an activity of manufacturing and respondent assessee is not entitled to concessional rate of tax and treated the taxable turnover of Rs. 8,61,251/- and imposed the tax in the sum of Rs. 86,125/-. Consequential interest was also imposed u/s 11B(i)(f) of the Act. Being aggrieved by the said assessment order, the respondent preferred an appeal before the Deputy Commissioner (Appeals), Jodhpur. The said appellate authority vide order dated 21.12.1990 upheld the tax

and penalty in respect of non-disclosure of sale worth Rs. 3,790/- but allowed the appeal and quashed the order of imposing tax upon taxable turn-over of Rs. 8,61,151/- on the ground that grinding of gypsum yield new product in the market and, therefore, the said activity amounts to "manufacture" and the assessee was entitled to concessional rate of tax on the purchase of gypsum u/s 5-C of the Act.

4. The Department preferred second appeal before the Rajasthan Tax Board, Ajmer against the judgment of the Deputy Commissioner (Appeals) dated 21.12.1990; but, the second appeal filed by the Department was also dismissed against which this revision petition has been filed by the Department.

5. It is worthwhile to mention here that earlier the instant revision petition was dismissed vide order dated 2.3.2000 by co-ordinate Bench of this Court while following the judgment rendered in S.B. Sales Tax Revision Petition No. 793/1999, decided on 1.2.2000 (C.T.O. Anti Evasion, Bikaner v. Jain Plaster Ltd). The said judgment was, however, challenged before the Hon"ble Supreme Court by way of filing SLP and the Hon"ble Supreme Court remanded the case to this Court vide order dated 19.1.2006 with the following order:

Since the High Court failed to record a finding as to whether the respondent was undertaking any activity of manufacture or not, we accept these appeals and remand the cases back to the High Court for a fresh decision in accordance with law. The appeals stand disposed of accordingly. No cost.

The above order was passed in Civil Appeals No. 6937 and 6938 of 2000.

6. Learned Counsel for the Department, while inviting attention towards the order passed by the Hon"ble Supreme Court submits that in this case, the matter is to be adjudicated whether the grinding of gypsum giving out the powder form of the same product can ever be called manufacture within the definition of "manufacture" given in Section 2(k) of the Act of 1954. Further whether the benefits of concessional rate of taxation u/s 5 of the Act of 1954 could be availed by the respondent assessee by deeming itself as manufacturer in the instant case. For the said purpose, learned Counsel for the Department vehemently argued that respondent assessee is not a manufacturer; in fact, it purchases gypsum on concessional rate of tax and, thereafter, grinds it and sells it again. Therefore, it is obvious that it proved beyond doubt that the same is not manufacturing as per the Act of 1954 as any new product does not come out, therefore, the assessing authority rightly assessed the taxable turn over and total taxable turn-over of Rs. 8,97,525/-has been assessed upon which tax at the rate of 10% was imposed. Further, interest Rs. 11,309/- u/s 11-B(i)(f) was also imposed. As per learned counsel for the Department, no error was committed by the assessing authority but, upon appeal filed by the assessee, the first appellate Court as well as second appellate Court upheld only tax of Rs. 159.20 and penalty u/s 16(1)(i) amounting to Rs. 200/- and remaining substantial and main part of the assessment order has been set aside mainly on the ground that

grinding of gypsum yields new product, therefore, concessional rate of tax u/s 5-C can be availed. Such finding is totally erroneous on the ground that the respondent assessee is not a manufacturer because it purchases gypsum on concessional rate of tax and, thereafter, grinds it and sells it again.

7. On the other hand, learned Counsel appearing on behalf of the assessee vehemently argued that the finding given by the assessing authority is totally contrary to law, so also, the assessing authority has wrongly given the finding that the respondent firm is not entitled to avail the benefit of concessional rate of tax. In fact, the process which is undertaken for the purpose of transforming non-tradable goods into tradable goods which falls in the definition of manufacturing goods. In this connection, learned Counsel for the respondent dealer invited my attention towards judgment rendered by the co-ordinate Bench of this Court in *Surana Minerals & Others*. Learned Counsel for the respondent dealer also placed reliance upon the following judgments:

(1) Tax Up-Date Vol. (2) 2002, page 220.

(2) *D.D. Shah and Brothers Vs. Union of India (UOI) and Another*,

(3) 2007 (295) ITC 148 *Arihant Tiles & Marbles v. Income Tax Officer*.

It is submitted by learned Counsel for the respondent dealer that if any blocks of any mineral produced from the earth by itself are not useful for any purpose and, therefore, to make the same usable various processes could be applied to bring the goods to that stage which would amount to manufacturing. In this case also, the respondent firm is purchasing gypsum on concessional rate of tax and, thereafter, after processing they are making the same usable or tradable article and, then, they are selling the same. Therefore, as per definition given in Section 2(k), their case falls under the category of "manufacturing". Hence, both the appellate Courts below have rightly set aside the order of the assessing authority whereby the assessing authority has assessed taxable turn-over at Rs. 8,97,525/- and imposed tax. Therefore, no interference is warranted in this case and this revision petition may be dismissed.

8. After hearing both the sides and perusing the entire record of the case, in my opinion, first of all, definition enumerated u/s 2(k) of the Act is required to be seen:

"manufacturing" includes every processing of goods which bring into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government.

From perusal of the above definition, it is clearly revealed that where any commodity is subjected to a process or treatment with a view to its development or preparation for marketing it would amount to processing of the commodity. In the case of *Surana Marbles*, co-ordinate Bench of this Court gave finding that *prima facie* the marble stone obviously cannot be used for the same purpose as its chips or powder and two commodities are marketed differently. If conversion

of marble at the quarry site into different shape and size makes out different marketable commodity to be used differently by specific identity of their own, then, certainly the process of converting uneven sized dimension into different category of distinct marble commodities to be used for distinct purpose, shall qualify it to be treated as manufacturing process within the meaning of Rajasthan Sales Tax Act.

9. In this case also, admittedly, the respondent firm is purchasing gypsum and after complete processing they are selling it in different form like plaster of paris powder etc.; meaning thereby, the respondent firm is not selling the gypsum in the form in which they are purchasing but, first, they process the said commodity for the purpose of making it tradable or marketable. Without this process, the consumers cannot use the said commodity for different purposes; meaning thereby, whenever gypsum is converted into fine powder after grinding at different gradation for marketing, it amounts to the process of manufacturing as the plaster of gypsum becomes totally a different commodity.

10. Similarly, plaster of paris has been explained as a quick setting plaster derived from Calcium Sulphate in the form of heimatride or semi hydrated calcium sulphate which hardens when moistened and allowed to dry. It is called wall or hard-wall plaster; meaning thereby, change of commodity and its character partially or completely for its functional utility after due process certainly falls within the definition of "manufacturing". Likewise, there are different uses of gypsum and, for the said purposes, different processes are to be undertaken. Therefore, by application of some process manually or mechanically, the commodity with different functional utility comes into existence and is treated to be different commodity, such process is required to be considered as process of manufacturing. In my opinion, the respondent firm is selling the goods not in the form it has purchased; but, after processing the said commodity "gypsum" in different ways, they are selling the commodity which is usable for various purposes, therefore, in common parlance, they are manufacturing the goods after bring into existence the desired shape and making it usable.

11. The Division Bench of this Court, in Arihant Tiles & Marbles P. Ltd. v. Income Tax Officer reported in (2007) 295 ITR 148 (Raj.), held that when any process applied makes it a valuable marketable commodity, it amounts to manufacturing of thing or article; meaning thereby, the finding given by the Division Bench of this Court in the case of Arihant Tiles & Marbles" case fully covers the controversy involved in this case because while deciding the identical controversy the Division Bench held that marble blocks obtained as a mineral produce from the earth by itself would not be usable for any purpose, therefore, to make it usable various processes which could be applied to bring it to that stage would amount to manufacturing.

12. Here, in these cases, also the respondent firm is purchasing raw gypsum and, thereafter, through undergoing complete process, they are making the goods marketable and usable because gypsum boulders as obtained from the

earth cannot be put to use for any purpose in the same form. Therefore, it falls within the definition u/s 2(k) of the Act of 1954. In this view of the matter, concurrent finding given by both the appellate Courts below does not require any interference because the assessing authority has completely ignored the fact that after due process gypsum boulders are converted into marketable/usable commodity. Therefore, in commercial parlance, it is process of manufacturing.

13. Consequently, both these revision petitions are devoid of any force and are hereby dismissed.