
(2010) 02 CHH CK 0004
In the Chhattisgarh High Court

Commissioner of Sales Tax

APPELLANT

Vs

Jisco Enterprises

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 12, 2(j)

Citation : (2010) 30 VST 218

Hon'ble Judges : Satish K. Agnihotri, J; Manindra Mohan Shrivastava, J

Bench : Full Bench

Judgement

Satish K. Agnihotri, J.—This order shall dispose of the S.T.R. No. 150 of 1998 and S.T.R. No. 151 of 1998, as both the references arise from the common order dated July 6, 1998.

2. By the common order dated July 6, 1998, passed by the Board of Revenue, Madhya Pradesh, Gwalior, the following questions of law have been referred for consideration of this Court:

(i) Whether the Tribunal was justified in holding that the drawing of ribbed bar from iron scrap amounted to manufacture when the dealer got the process done by others?

(ii) Whether the Tribunal was justified in relying upon a decision of the Tribunal dated November 22, 1991 in Appeal No. 111-111/89 which is actually the opinion of only one Member of the Division Bench?

3. The relevant facts, in a nutshell, are that for the period of assessment, i.e., October 25, 1984 to October 12, 1985 and November 3, 1986 to October 22, 1987 the non-applicant/assessee claimed exemption of purchase tax on purchase of M.S. scrap as it was converted into ribbed bar by some other party. It was found by the assessing officer that the assessee did not have any machine for conversion of M.S. scrap into ribbed bar. The conversion of this intermediate product to CTD bar was got done by the assessee. The period of exemption as per the certificate of eligibility dated September 28, 1985, was from May 26,

1985 to May 25, 1989.

4. The case of the non-applicant before the Tribunal was that the process taken up by the dealer amounts to manufacture and the Tribunal was justified in accepting the appeal.

5. The case of the applicant before the Tribunal was that the work of the non-applicant did not amount to manufacture as he got the M.S. scrap processed by other party and therefore, the same was not manufactured by the applicant.

6. Thus, the above-quoted questions of law have been referred for our consideration.

7. The learned Counsel appearing for the non-applicant emphatically relied on a decision in *Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others*, wherein the honourable Supreme Court considered the special definition of "manufacture" given in Section 2(j) of the M.P. General Sales Tax Act, 1958 (for short "the Act, 1958"), which reads as under:

2. Definitions.- In this Act, unless there is anything repugnant in the subject or context-

(j) "manufacture" includes any process or manner of producing, collecting, extracting, preparing or making any goods, and in respect of trees which have been severed from the land or which have been felled, also the process of lopping the branches, cutting the trunks or converting them into logs, poles or "bailies or any other articles of wood, but does not include such manufactures or manufacturing processes as may be notified.

8. In *Ashirwad Ispat Udyog* [1999] 112 STC 207 (SC), in the facts of the case that the State Government issued a notification on October 16, 1986 u/s 12 of the Act, 1958 granting exemption to dealers, who were registered under the Act, 1958 and had established eligible industrial units in any district in the State and held a provisional or permanent eligibility certificate issued by an officer authorised for the purpose, from payment of tax to the extent stated therein and that under the terms of the said notification the appellants obtained eligibility certificates from the District Level Committees established for the purpose, after due enquiry and verification; the Supreme Court observed as under (at page 210):

9. Decisions construing the meaning of the word "manufacture" as used in other statutes do not apply unless the definition of that word in the particular statute under consideration is similar to that construed in the decisions. The plain construction of the special definition of the word in a particular Act must prevail. In the special definition given in Section 2(j) of the said Act "manufacture" has been defined as including a process or manner of producing, collecting, extracting, preparing or making any goods. There can be no doubt whatsoever that "collecting" goods does not result in the production of a new article. There is, therefore, inherent evidence in the definition itself that the narrow meaning of

the word "manufacture" was not intended to be applied in the said Act. Again, the definition speaks of "the process of lopping the branches (of trees), cutting the trunks". The lopping of branches and the cutting of trunks of trees also, self evidently, does not produce a new article. The clear words of the definition, therefore, must be given due weight and cannot be overlooked merely because in other contexts the word "manufacture" has been judicially held to refer to the process of manufacture of new articles.

10. The appellants treat iron and steel scrap of considerable bulk by cutting it down by mechanical processes into pieces that may be conveniently utilised in rolling mills and foundries. Such treatment, making saleable goods, would, in our opinion, fall within the wide definition of "manufacture" u/s 2(j) of the said Act.

9. The learned Counsel appearing for the applicant does not dispute the above-stated settled position of law.

10. Whether "manufacture" process was done by the assessee or it was got done by other agency, the process itself comes within the definition of "manufacture", as aforesaid. There is no material, further, to examine the facts as to whether the other agency was within the control of the assessee or outside the unit, independently. We are examining the issue as to whether the process of drawing of ribbed bar from iron scrap amounted to manufacture. In view of the definition as aforesaid, under the provisions of the Act, 1958, the process is "manufacture".

11. With regard to the second question, i.e., since the order passed by one Member appears to have been approved by the Tribunal and subsequently by this Court, it is not necessary to decide the second question of law referred to us for consideration. This issue may be decided in an appropriate case.

12. The finding of the Board of Revenue is that the non-applicant manu-actured the ribbed bar from iron scrap, thus there is no reason to take a contrary view as nothing has been produced that the manufacturing process was done by other agency, who was also an assessee, independently.

13. In view of the above, we answer the above referred first question of law in affirmation to the effect that the Tribunal was justified in holding that the drawing of ribbed bar from iron scrap amounted to manufacture when the dealer got the process done by others.

14. Accordingly, this reference stands disposed of. The relief shall be granted to the non-applicant by the applicant/authorities in consonance with the order dated April 21, 1992 passed by the Tribunal.