
(1975) 01 BOM CK 0033
In the Bombay High Court
Case No : S.T.R. No. 43 of 1968

Commissioner of Sales Tax

APPELLANT

Vs

Musarafalli Kutbuddin

RESPONDENT

Date of Decision : 29-01-1975

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2(17), 61(1)

Citation : (1975) 4 CTR 78 : (1975) 35 STC 503

Hon'ble Judges : M.H. Kania, J;D.P. Madon, J

Bench : Division Bench

Advocate : M.H. Shah and V.C. Kotwal, for the Appellant; R.V. Patel, for the Respondent

Judgement

Kania, J.—This is a reference made at the instance of the Commissioner of Sales Tax u/s 61(1) of the Bombay Sales Tax Act, 1959 (hereinafter referred to as "the said Act").

2. The facts giving rise to this reference can be briefly stated : The respondent carries on business in old furniture. He purchases old or second-hand articles of furniture and after polishing and colouring the same, if necessary, sells them. In the assessment for the period from 1st January, 1960, to 31st December, 1962, the respondent was assessed as a manufacturer by the Sales Tax Officer concerned. The respondent preferred an appeal, which was dismissed by the Assistant Commissioner of Sales Tax. The respondent then preferred a second appeal to the Sales Tax Tribunal, where he succeeded. The Tribunal found that what the respondent used to purchase were items of second-hand furniture such as tables, cots and chairs and what he used to sell were also the same articles. It was urged by the department before the Tribunal that the respondent was carrying on the activity of finishing the second-hand furniture purchased by him. This contention was rejected by the Tribunal as it came to the conclusion that the term "finishing" means putting an end to the processes which have already started earlier. One can only put an end to a thing which has already started and

which is in progress. As far as the respondent was concerned, he was not carrying on any such activity, according to the Tribunal. The Tribunal, therefore, came to the conclusion that the respondent was not a manufacturer for the purposes of the said Act.

3. The question, which has been referred to us for our consideration, is as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that the activity of the respondent in polishing or colouring old furniture, if necessary, before sale did not amount to "manufacture" within the meaning of section 2(17) of the Bombay Sales Tax Act, 1959 ?"

4. Mr. Shah, the learned counsel for the applicant, has drawn our attention to the definition of the term "manufacture" contained in section 2(17) of the said Act, which runs 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."

5. The contention of Mr. Shah before us was that polishing and colouring of old or second-hand furniture, wherever necessary, before selling of the same would amount to finishing or treating such old or second-hand furniture. We have very grave doubt as to whether this activity could be said to be finishing or treating of old or second-hand furniture at all. However, even assuming that this activity does amount to either finishing or treating in general parlance, in our view, the activity cannot be said to amount to manufacture, as it is clear that no new or different commercial commodity or article comes into being as a result of such activity. As we have already held in *Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co.* [1975] 35 S.T.C. 493 (Sales Tax Reference No. 9 of 1973), decided on 28th January, 1975 (per Madon, J.), in spite of the wide definition of the term "manufacture" contained in section 2(17) of the said Act, it is yet necessary for any activity to amount to manufacture that a new or different commercial commodity or article must come into existence as a result thereof. In the present case, as clearly found by the Tribunal, what the respondent purchased was old or second-hand furniture and even after this furniture was polished or coloured, it still remained old or second-hand furniture and, therefore, no new or different commercial commodity or article came into being. This activity of the respondent cannot, therefore, be said to amount to "manufacture" and, in our view, the respondent cannot be regarded as a manufacturer for the purposes of the said Act. The Tribunal was, therefore, right in the conclusion to which it arrived.

6. In the result, the question referred to us is answered in the affirmative. The applicant to pay to the respondent the costs of this reference.

7. Reference answered in the affirmative.