
(1984) 01 AHC CK 0051
In the Allahabad High Court
Case No : S.T.R. No's. 591 and 592 of 1982

Commissioner of Sales Tax	Vs	APPELLANT
Pyarelal Jai Prakash		RESPONDENT

Date of Decision : 11-01-1984

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11(1)

Citation : (1984) 57 STC 252

Hon'ble Judges : R.B. Lal, J

Bench : Single Bench

Advocate : Ravi Kiran Jain, for the Respondent

Final Decision : Dismissed

Judgement

R.B. Lal, J.—These two revisions u/s 11(1) of the U. P. Sales Tax Act (briefly the Act) have been filed by the Commissioner, Sales Tax, U. P., Lucknow, and are directed against the order of the Sales Tax Tribunal, Sahranpur Bench, Sahranpur, dated 9th June, 1982. Both these revisions raised common question of law for consideration and therefore they are being disposed of by a common judgment.

2. The assessee-opposite party (hereinafter referred to as the assessee) carried on the business of sale of brassware and utensils inside and outside U. P. It also carried on sale of brass scrap. After 31st May, 1975, brass scrap was not taxable except in the case of sale by a manufacturer. The assessing authority treated the assessee as manufacturer after 31st May, 1975, and therefore held that the sales of scrap after 31st May, 1975, in the assessment year 1975-76 and during the year 1976-77 were liable to tax. The authority determined the taxable turnover for this commodity for the period after 31st May, 1975, and created a demand of sales tax. The assessee filed two appeals, one for the assessment year 1975-76 and the other for the assessment year 1976-77. In these appeals the contention of the assessee before the appellate authority was that it was purchasing old condemned utensils and selling them as scrap to the manufacturers. It was not a

manufacturer itself and its transactions did not come within the definition of the term "manufacture". The appellate authority did not accept the contention of the assessee and held that the definition of the term "manufacture" was wide enough to cover the case of the appellant. Other submissions of the appellant were also repelled. In the result, the appeals were dismissed.

3. The assessee did not feel satisfied and filed two appeals before the Sales Tax Tribunal. One of the points urged on behalf of the assessee was that it was neither a manufacturer nor an importer of brass scrap, and therefore, the sale of brass scrap by it was not liable to tax. It only purchased brass utensils which were of the utility and sold them to the manufacturers or other intermediaries. This act could not be called collecting within the meaning of the term manufacturing. The assessee raised some other points as well which are not relevant in connection with these revisions. The Tribunal held that the sale of brass scrap by the appellant was not taxable as he could not be considered to be a manufacturer. Other pleas of the appellant were not accepted. In the result, the two appeals were allowed partly and the demands of sales tax were reduced.

4. The Commissioner, Sales Tax, filed these revisions. The question of law for consideration in these revisions is whether on the facts and circumstances of the case, the assessee was not covered under the definition of "manufacture" as contained in Clause (e-1) of Section 2 of the Act.

5. The learned Standing Counsel has urged that the definition of the term "manufacturer" is a wide one and "collecting" is also to be deemed "manufacture" the act of the assessee in collecting old and condemned utensils from his customers could squarely fall within the definition of the term "manufacture" and the assessee would be deemed to be a manufacturer in relation to sale of old and condemned utensils.

6. The definition of the term "manufacture" reads :

(e-1) "manufacture" means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods; but does not include such manufacture or manufacturing processes as may be prescribed.

7. The term "manufacturer" has been defined thus, in Clause (ee) of Section 2 of the Act:

(ee) "manufacturer", in relation to any goods means the dealer who makes the first sale of such goods in the State after their manufacture.

8. In his judgment the appellate authority observed that the appellant had admitted that it purchased old utensils and made them into scrap and then sold that scrap. The correctness of this observation was challenged by the learned counsel for the assessee, and therefore, the learned Standing Counsel was directed to obtain the relevant records from the sales tax authorities. The learned Standing Counsel has submitted that only the record for the assessment

year 1975-76 has come and in that record there is no statement of the dealer to the effect that it converted old utensils into scrap and thereafter sold the same. The learned Standing Counsel has further urged that the record for the assessment year 1976-77 has not been received on account of some confusion. The Tribunal did not say in its judgment that the assessee was turning old condemned brass utensils into scrap and thereafter selling the same. It merely said that the assessee purchased old and condemned utensils from his customers while selling utensils to them and sold those old, condemned utensils to the manufacturers or intermediaries. Thus, the position remains that the assessee was selling old and condemned utensils in that very form in which it received them from its customers against sale of utensils.

9. The dictionary meaning of the word "manufacture" is to transform or fashion raw materials into a changed form for use. A new and different article must emerge having a distinctive name, character or use. But in the Act the term "manufacture" has been given an artificially extended meaning which is much wider than the common notion of the word "manufacture".

10. The term "manufacture" has been defined in Section 2(17) of the Bombay Sales Tax Act. The definition has striking similarity with the definition in Section 2(e-1) of the Act except that words mining, collecting, do not appear in it.

11. The Bombay High Court considered the definition of the term "manufacture" in Section 2(17) of the Bombay Sales Tax Act in the case, Commissioner of Sales Tax Vs. Dunkin Coffee Manufacturing Co., , and observed thus:

The various activities enumerated in the definition, namely, producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting, have been specifically mentioned, lest any contention might arise that one or the other of them would not, in ordinary parlance and according to the ordinary notions, constitute manufacture. Each of these activities, however, before it can amount to manufacture must result in a commodity commercially different from the commodity or commodities to which the activity was applied.

12. The definition of the term "manufacture" in Section 2(e-1) of the Act came up for consideration in the decision, Mineral Sales Corporation v. Commissioner of Sales Tax 1980 UPTC 382. In that case some minerals (emery powder, dolomite powder, etc.) were sold after powdering and not in the form in which they were obtained from mine. The question for consideration was if this activity of crushing those minerals fell within the term "manufacture". The learned single Judge who decided that case observed, thus :

The argument is correct only to the extent that even processing amounts to manufacture. But if by processing no new commercial commodity has been produced it is doubtful if it can be treated as separate item for taxability. Manufacture means to produce, to bring out something. If nothing has been produced, no new thing has been brought out, then an item cannot be said to have been manufactured. It was open to the legislature to give an artificial

meaning to the word "manufacture". But that did not result in altering the basic concept of taxable event which arises by coming into being of different or new commodity and not by the inclusion of the word "process" in "manufacture".

13. The word "collecting" occurring in the term "manufacture" is not to be understood in the wide sense in which the learned Standing Counsel would like it to be understood. The definition of the term "manufacture" enumerates various stages or steps in the process of producing a new or a distinct commercial commodity. The expression "collecting" in the definition should, therefore, be understood in that light as a part of that process and not simply as it is understood in common parlance. The mere collection of old and condemned utensils for sale in that very shape to others who might be manufacturing utensils or other articles out of the metal of such utensils is not carrying on any process in the direction of producing any new or distinct commodity. Since nothing like this is involved in the act of the assessee, it cannot be considered to be a manufacturer in relation to the old and condemned utensils obtained by it during the course of its business.

14. There is yet another angle. As is clear from the judgment of the Tribunal, the assessee received old and condemned utensils from its customers of new utensils as a part of the price of the utensils sold. It (assessee) did not purchase old and condemned utensils independently for sale to other for profit. Since the assessee received old and condemned utensils in the course of its business of sale of new utensils, it had in the very nature of things, (sic) or who were intermediaries. Receiving old and condemned utensils in such circumstances cannot be deemed collecting within the meaning of this word as it is understood in common parlance.

15. For the above reasons, the answer to the question of law is that the assessee is not covered under the definition of "manufacture" and its act does not fall within the definition of the term "manufacture". The view of the Tribunal that the brass scrap consisting of old and condemned brass utensils was not taxable was, therefore, correct.

16. In the result, both the revisions have no merit and are dismissed with costs which are assessed at Rs. 200.