

(1975) 01 BOM CK 0034

In the Bombay High Court

Case No : Sales Tax Reference No. 42 of 1968

Commissioner of Sales Tax

APPELLANT

Vs

Trinity Products

RESPONDENT

Date of Decision : 29-01-1975

Acts Referred:

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

Citation : (1975) 35 STC 502

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

Madon, J.—This is a reference u/s 61(1) of the Bombay Sales Tax Act, 1959. The facts which have given rise to this reference are that the respondents purchase from different dealers who were registered under the said Act glass bottles, rubber nipples and plastic caps and put them loose in one packing carton and sell the same as "auto feeders".

2. The respondents applied to the Commissioner of Sales Tax u/s 52(1) of the said Act to determine the question whether their aforesaid activity amounted to "manufacture" as defined by clause (17) of section 2 of the said Act. By his order dated 29th December, 1964, the Commissioner of Sales Tax came to the conclusion that this activity amounted to "manufacture" because before packing these three articles in the carton the respondents would have to see that none of them was defective, that the rubber nipples or teats and the plastic caps would fit the glass bottles properly and that all the said three articles would then be kept together. He accordingly held that what had come into being was a commercial commodity different from its "ingredients". The respondents thereupon went it appeal to the Tribunal. The Tribunal, however, came to the conclusion that in spite of the very wide definition of the term "manufacture" contained in clause (17) of the said section 2, the activity of the respondents

could not be termed as "manufacture". At the instance of the Commissioner of Sales Tax, the Tribunal has stated a case and referred the following question to us :

"Whether the Tribunal was justified in law in holding that the activity of the respondents in purchasing three items, namely, glass bottles, rubber nipples and plastic caps, from different registered dealers and collecting these three items together which fit in with one another and putting them loose in one packing carton before sales as auto feeder did not amount to manufacturing within the meaning of section 2(17) of the Bombay Sales Tax Act, 1959 ?"

3. In Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co. [1975] 35 S.T.C. 493 (Sales Tax Reference No. 9 of 1973), decided by us yesterday, we have considered all the relevant authorities and laid down the test for determining what constitutes "manufacture" within the meaning of the definition of clause (17) of the said section 2. In that case we have held that it is not sufficient for an activity to amount to "manufacture" for the goods purchased to be sold under a different label or trade name, even if that label or trade name is known in the market as a separate commercial commodity different from that by which the goods purchased are known in the market. What is essential is that a commercially different commodity should come into being as a result of one of the activities described in clause (17) of the said section 2, namely, producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods. It is not possible in the present case to describe the activity of the respondents by any of the activities set out in clause (17) of section 2.

4. Mr. Shah on behalf of the applicant, however, submitted that by putting these three articles in one carton and calling it auto feeder the respondents were adapting the articles originally purchased by them. It is not possible to accept this submission. Adoption means modification or alteration. None of the three articles purchased by the respondents, namely, glass bottles, rubber nipples and plastic caps, are in any manner modified or altered. It is quite incorrect to refer to these three articles as "ingredients", as the Commissioner of Sales Tax has done. They are not the ingredients of a finished product or of a new product. They are three different articles put in one carton and sold under a different label, and selling articles under a different label or trade name cannot amount to "manufacture" within the meaning of clause (17) of the said section 2.

5. We, accordingly, answer the question submitted to us in the affirmative.

6. The applicant will pay to the respondents the costs of this reference.

7. Reference answered in the affirmative.