
(1995) 01 BOM CK 0022

In the Bombay High Court

Case No : Sales Tax Ref. No. 50 of 1986 in Ref. Application No. 23 of 1981

Commissioner of Sales Tax, Bombay

APPELLANT

Vs

Rajshree Electronics

RESPONDENT

Date of Decision : 31-01-1995

Acts Referred:

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

Citation : (1996) 1 MhLj 534

Hon'ble Judges : D.K. Trivedi, J; B.P. Saraf, J

Bench : Division Bench

Advocate : Shri M.D. Siodia, for the Appellant; Shri B.G. Joshi and Ms. Badheka, for the Respondent

Judgement

B.P. Saraf, J.—By this reference u/s 61(1) of the Bombay Sales Tax Act, 1959 made at the instance of the revenue, the Maharashtra Sales Tax Tribunal has referred following question of law to this Court for opinion :-

"Whether on the facts and circumstances of the case, the Tribunal was justified in law in holding that the activity of recording songs and programmes on blank cassette tape does not bring into existence a commercially different commodity and the activity did not amount to "manufacture" within the meaning of sub-section (17) of Section 2 of the Bombay Sales Tax Act, 1959 ?"

2. The assessee deals in cassette-tapes. On 25th August, 1978, he purchased 1050 pieces of C-60 (red) cassette-tapes at the rate of Rs. 10/- per piece from one M/s. Teisco Electronics on payment of sales tax at the rate of 15 paise in a rupee. These cassettes were then given by the assessee to one M/s. Oriental Melodies for recording songs and programmes for which a sum of Rs. 5/- per cassette was charged by the said concern. From these cassettes, 35 cassettes with the pre-recorded songs and programmes were sold to one M/s. Bharat Electronics Corporation as per bill dated 18th September, 1978. A controversy arose as to whether recording songs and programmes on cassette tapes amounted to "manufacture" within the meaning of Section 2(17) of the Bombay

Sales Tax Act, 1959 ("Act").

3. The assessee, therefore, made an application u/s 52(1)(b) of the Act seeking determination of the question whether the activity of recording songs and programmes on the cassettes purchased by the assessee resulted in manufacture of goods within in the meaning of Section 2(17) of the Act. The Deputy Commissioner of Sales Tax, who determined the controversy, held that the activity of recording songs and programmes on cassettes with blank tapes amounted to manufacture, because as a result of this activity a new article viz. cassettes with recorded songs and programmes came into existence which was different and distinct from cassettes purchased by the assessee with blank tapes. Aggrieved by the above determination of the Deputy Commissioner, the assessee appealed to the Maharashtra Sales Tax Tribunal ("Tribunal"). It was contended by the assessee before the Tribunal that the activity of recording songs did not result in emergence of a new commodity amounting to manufacture. According to the assessee, the cassettes remained cassettes despite recording of songs and programmes. It was pointed out that the recorded songs and programmes could be easily wiped out and the taps restored to their original condition of blank tapes. The Tribunal found merit in the above contentions of the assessee and held that by reason of the activity of recording songs and programmes on the blank cassette tapes, no physical change took place in the tapes, and the tapes, even recording, remained tapes. No new commercially different commodity came into existence. It, therefore, held that the activity of recording songs and programmes on blank cassettes did not amount to "manufacture". Hence, this reference at the instance of the revenue.

4. We have carefully considered the submissions of the parties. There is no controversy in regard to the nature of the activity carried on the assessee which comprises; inter alia, of purchasing blank cassette tapes, getting songs and programmes recorded thereon, and selling the same. According to the revenue, the process of recording songs and programmes amounts to "manufacture" or "production" of recorded cassettes. The contention of the assessee, on the other hand, is that by any stretch of imagination, such process cannot be held to manufacture. The expression "manufacture" is defined in Section 2(17) of the Act to mean : "producing, making extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods except such manufactures or manufacturing process as may be prescribed." This definition came up for consideration before Supreme Court in State of Maharashtra v. Shiv Datt and Sons (1992) 84 STC 497. The contention of the revenue before the Supreme Court in that case was that the definition of "manufacture" contained in Section 2(17) of the Act being very wide and unrestricted, any process with reference to the goods purchased will, according to the definition, amount to a process of manufacture and consequently render the goods resold goods of different class altogether. Referring to this contention of the revenue, the Supreme Court observed :

"If such a wide interpretation is given there may be very absurd results flowing as a consequence thereof. For instance, the definition includes the word "ornamenting". If a dealer purchases certain goods and merely adds some decorative material thereto, according to the State's interpretation, there will be a "manufacture". For instance, if a car is purchased and some special gadgets are added thereto, the interpretation will result in rendering the resale of the same car the resale of a different commodity. Again, if a piece of furniture is sold in a dismantled condition and the distributor puts the parts together and sells it, the definition, if construed as widely as interpreted by the State, can be said to amount to manufacture and render the furniture sold a different item of goods from the furniture purchased. This clearly is not the intention of the legislature..."

The Supreme Court emphasized the necessity of interpreting the expression "manufacture" in a practical and workable manner and observed that the mere fact that the words used in the definition of "manufacture" are very wide should not lead one to so widely interpret them as to render the provision practically meaningless and so as to treat the goods sold as different merely because some slight additions or changes are made in the goods which are purchased before they are sold. It was observed :

"It is true that u/s 2(17) it is not necessary that there should be "Manufacture" in the sense that a new commodity has been brought into existence as would have been required if that word is interpreted in its literal sense. But, at the same time, the section should be so interpreted to mean only such of the various processes referred to in the definition and applied to the goods as are of such a character as to have an impact on the nature of the goods. This is indeed made clear by the closing word of the definition which refer to "manufacture or manufacturing processes."

The Supreme Court quoted certain observations of this Court in *Nilgiri Ceylon Tea Supplying Co. v. State of Bombay* (1959) 10 STC 500 and approved the reading down of the words "processes of alters in any manner after such purchase" appearing in the proviso to Clause (a) of Section 8 of the Central Sales Tax Act, which were very wide, by holding that for the purposes of the definition there should be some alteration in the nature or character of the goods. It was held that the interpretation of Section 2(17) called for a like limitation on the words used by the statute because, if a very wide interpretation was given, it might lead to impractical consequences. The ratio of the above decision, in our opinion, squarely applies to the facts of the present case. Applying the same, it is difficult to hold that the activity of recording songs on blank cassettes for making them marketable would amount to manufacture. It can more appropriately be regarded as "processing".

5. The difference between "processing" and "manufacture" is by now well-understood and well recognised. "Processing" means subjecting a commodity to a process or treatment so as to develop it or make it fit for market. With each process, the original commodity undergoes a change. But it is only when the

change takes the commodity to a point where it can be no longer regarded as the original commodity but is recognised in the trade as new and distinct commodity that a manufacture can be said place. (See Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, . Where the commodity retains a continuing substantial identity through the processing stage, it cannot be said that there has been a "manufacture". It was in the light of above interpretation of "manufacture" that in Pio Food Packers the Supreme Court held that preparation of pineapple slices for sale in sealed cans did not amount to manufacture, because, despite the processing involved in preparing pineapple slices from the original fruit, the commodity continued to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it or adding sugar to preserve it. Applying the same test, in Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, the Supreme Court held that processed or frozen shrimps, prawns and lobsters are commercially regarded the same commodity as shrimps, prawns and lobsters. It was observed that when raw shrimps, prawns and lobsters are subjected to the process of cutting of heads and tails, peeling, deveining ,cleaning and freezing they do not cease to be shrimps, prawns, and lobsters and become another distinct commodity. In common parlance, they are known as shrimps, prawns and lobsters. The Court took note of the fact that processed shrimps, prawns and lobsters are the result of subjecting raw shrimps, prawns and lobsters to a certain degree of processing and held that even so they continued to possess their original character and identity notwithstanding the process undertaken on them to make them fit for the table. It was, therefore, held that processing of prawns for making them fit for the market is not process of manufacture.

6. The ratio of the above decisions is clear that every process undertaken by the assessee on the goods to make them fit for the market for improving their marketability does not amount to process of manufacture. The legal position that emerges from the decisions referred to above and various other decisions can be summed up thus : (i) Manufacture implies a change, but every change is not manufacture. Something more is necessary. There must be transformation and a new different article must emerge, having a distinctive name, character or use. (ii) The true test for determining whether manufacture can be said to have taken place is whether the commodity which is subjected to the process of manufacture can no longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. (iii) Where the commodity retains a continuing substantial identity through the processing stage, it cannot be said that it has been manufactured.

7. Turning to the facts of the present case, the admitted position is that the only process undertaken on the cassette tapes is recording songs and programmes. The decisive factor for deciding whether such process amounted to "manufacture" is whether the cassette tapes after recording of songs and programmes lost their original identity and became a new and distinct

marketable commodity. The answer obviously has to be in the negative. Moreover, even the recording is not irreversible. It could be easily erased and the cassette tapes again used for fresh recording as blank cassette tapes. It is thus difficult to hold that blank cassette-tapes and the recorded cassette tapes are two different and distinct commercial commodities having separate identity. The position, however, might be different where cassettes are sold with recorded songs and programmes with a distinct name and make to make them different commercial commodity in the market to be purchased as such on account of its name or title. We do not propose to deal with that aspect of the matter as it would be academic in the present case. So far as the case before us is concerned, it is clear that the process undertaken by the assessee did not in any manner result in the emergence of any new commercial commodity and hence, it cannot be said that by recording songs on the cassette tapes, the assessee manufactured anything. In that view of the matter, we are of the clear opinion that Tribunal was correct in holding that the activity of recording songs and programmes on blank cassette tapes did not bring existence a commercial commodity different and distinct from the blank cassette-tapes and hence, it would not amount to "manufacture" within the meaning of sub-section (17) of Section 2 of the Act. We, therefore, answer the question referred to us in the affirmative and in favour of the assessee.

8. This reference is disposed of accordingly.

9. No costs.