
(2004) 05 AHC CK 0221
In the Allahabad High Court

Commissioner, Sales Tax

APPELLANT

Vs

Ashok Grah Udyog Kendra (P) Ltd.

RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 2(e1)

Citation : (2007) 8 VST 716

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Prakash Krishna, J.—This revision is directed against the order of the 1 Tribunal passed in second appeal Nos. 961 of 1985 and 453 of 1985 for the assessment years 1980-81 and 1981-82.

2. In the memo of revision the following question of law have been framed:

Whether the Sales Tax Tribunal was legally justified to hold that ground masala obtained from sabut masala are one and the same commodity and no manufacturing process is involved therein despite the fact that the honourable High Court of Allahabad has held otherwise in the case of The Commissioner of Sales Tax Vs. Kaderul Sehat Dawakhana and Another,

3. Heard the learned Standing Counsel and perused the record. None appeared for the dealer-opposite party.

4. The dealer-opposite party deals in spices and condiments. These are locally purchased tax-paid goods. The appellant grinds spices and condiments and in some cases it mixes them together and sells them accordingly for the last several years. For the assessment year in question the department accepted the book version of the dealer.

5. However, the assessing officer was of the opinion that the grinding activity of the dealer amounts manufacturing and as such levied tax on the grinded masala,

though tax paid sabut masala was purchased. This part of the order of the assessing officer has been set aside by the Tribunal. It has been held by the order under revision that by grinding sabut masala, no new commodity in common parlance has come into existence.

6. The learned Standing Counsel in support of the revision has invited my attention towards the relevant notification No. ST-II-4949 dated May 30, 1975. Entry No. 8 of the notification reads as follows:

"Spices, dry fruits and condiments including saunf, supari, M or I 5 per cent" illaichi, seenk, gum, catechu, kala zeera, joz, javitri, jaifal, kala namak, dal chini, amchur, laung, but excluding salt.

7. By the subsequent notification dated May 31, 1976 the rate of tax was enhanced from 5 per cent to 6 per cent, vide, Notification No. 1968 of March 31, 1976.

8. The word "manufacture" has been defined in Section 2(e-1) of the U.P. Sales Tax Act, 1948. The said definition is very widely worded. However, it has been held that every change as mentioned in the definition of manufacture is not manufacturing activity, unless and until a new commodity that is commercially different has come into existence on account of such activity. Manufacturing masala implies a change. But every change is not manufacture. Some thing more is necessary. There must be transformation and new and different article must emerge having a distinct name, character or use. There was a difference of opinion of Members of the Tribunal in this case and the matter was referred to a third Member. The third Member agreed that by grinding whole masala no new commercial commodity has come into existence. This finding could not be disputed by the learned Standing Counsel except that the activity of grinding is processing and therefore the dealer is a manufacturer. I am unable to agree with the aforesaid contention of the learned Standing Counsel. The notification mentioned above, does not use the word "whole" or "grinded". It simply enumerates the various kinds of masala.

9. The Supreme Court in the case of Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., has held vide paragraphs 4 and 5 as follows:

4. ...Each one of the items enumerates various goods, which could be brought to tax. The purpose of sales tax is to levy tax on sale of goods of each variety and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type. We are fortified in this view by the decision in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, . What is to be seen in the present case is whether stone gitti, chips, etc., continue to be identifiable with

the stone boulders, which have been brought by the dealer.

5. ...Where the dealer had brought into existence new commercial goods by consuming the boulders to bring out small pieces of stone, it was held that such activity attracted purchase tax. In the present case, however, stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different. Even if gitti, kankar, stone ballast, etc., may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, yet it cannot be presumed that entry 40 of the notification is intended to describe the same as not stone at all. In fact the term "stone" is wide enough to include the various forms such as gitti, kankar, stone ballast. In that view of the matter, we think that the view taken by the majority of the Tribunal and affirmed by the High Court stands to reason. We are, therefore, not inclined to interfere with the same.

10. The aforesaid judgment of the Supreme Court has been followed in State of Maharashtra Vs. Mahalaxmi Stores, . In view of the aforesaid judgments I am of the opinion that grinding of sabut masala does not amount to manufacture within the meaning of Section 2(e-1) of the U.P. Sales Tax Act.

11. In the result there is no merit in the revisions. Both the revisions are dismissed.