
(1979) 07 AHC CK 0009
In the Allahabad High Court
Case No : Sales Tax Revision No. 426 of 1978

Commissioner, Sales Tax

APPELLANT

Vs

Deoki Nandan Pandey

RESPONDENT

Date of Decision : 19-07-1979

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11, 2(e1)

Citation : (1980) 45 STC 145

Hon'ble Judges : R.R. Rastogi, J

Bench : Single Bench

Advocate : V.D. Ojha, for the Respondent

Final Decision : Dismissed

Judgement

R.R. Rastogi, J.—The respondent-assessee deals in purchase and sale of coal ash collected from railway yard. The assessment year involved is 1974-75 and the short question is as to whether the assessee is a manufacturer within the meaning of Section 2(e-1) of the U.P. Sales Tax Act. The assessing authority has treated the assessee as a manufacturer and the first appellate court has confirmed that finding. It has essentially relied on Clause 1 of the agreement which the assessee had entered with the railway administration. That clause reads:

In consideration of the contractors agreeing to pay to the railway the sum of Rs. 35,272.80 yearly in advance as hereinafter provided the railway agrees to permit the contractor to remove ashes of all sizes dumped by railway engines in ash-pits and traffic yard and shed mentioned in annexure A appended hereunto for a period commencing from 20th June, 1973, to 31st March, 1975.

2. The appellate authority laid emphasis on the words "ashes of all sizes" and the nature of the business of the assessee has been taken to be sifting of ash and coal particles of different sizes and selling them thereafter. That has been treated to amount to manufacture.

3. In revision, the learned revising authority has taken a different view. According to the revising authority, the assessee does not manufacture any item of his own. He merely purchases coal ash from the railway yards and for that purpose a certificate issued by the railway administration on 31st December, 1977, was produced before him. The learned revising authority has hence held that the assessee is not liable to any tax. Aggrieved, the Commissioner of Sales Tax, U.P., Lucknow, has filed this revision u/s 11 of the U.P. Sales Tax Act.

4. It was submitted before me by the standing counsel that the definition of the word "manufacture" as contained in Section 2(e-1) of the Act is of a much wider import and would cover the activity which is being carried on by the assessee. I am not inclined to accept this submission. The definition of the word "manufacture" as contained in Section 2(e-1) reads as under:

2. (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 manufactures or manufacturing processes as may be prescribed.

5. As held by the Supreme Court in *Commissioner of Sales Tax v. Harbilas Rai and Sons* [1968] 21 STC 17 (SC) the word "manufacture" has various shades of meaning and, in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial commodity it cannot be said that the final product is the result of manufacture. Sales of pig bristles to foreign countries after they had been treated with chemicals and put to a certain manual process were not regarded as manufactured goods within explanation II(ii) of Section 2(h) of the Act. It is correct that that decision was rendered before the aforesaid definition of the word "manufacture" was inserted in the Act. It was so inserted by U.P. Act No. 38 of 1975 with effect from 13th October, 1972. Anyhow, grinding of wheat into flour has not been held to be manufacture, vide *U.P. Atta Chakki Vyavasai Sangh, Varanasi v. Krishi Utpadan Mandi Samiti, Varanasi* 1976 U.P.T.C. 322. Similarly, in the case of a dealer, who purchased til oil and, after adding scent to it, sold it as hair-oil, it was held that the mixing of scents in ordinary til oil does not amount to manufacture of perfumed oil, vide *Commissioner of Sales Tax v. Bechu Ram Kishori Lal* 1976 U.P.T.C. 253.

6. It would be seen, therefore, that the activity of the assessee, which, at best, consists of sifting of ash and small pieces of coal of different sizes, cannot amount to manufacture. For my satisfaction, the agreement relating to the year under consideration, Clause 1 of which has been extracted by the Appellate Assistant Commissioner (Judicial), was produced before me. The heading of the agreement is:

Agreement for ash-pit cleaning and ash handling in traffic yard at PBH including purchases and removal of day-to-day accumulation of fresh ashes from traffic yard and shed.

7. Now, what is the process which the assessee is actually following has not been

brought out on record. The assessing authority has merely made inferences about the process. Anyhow, sifting of ash and pieces of burnt coal of different sizes and sale of the same cannot be regarded as a manufacturing process within the meaning of Section 2(e-1) of the Act and I agree with the view taken by the learned revising authority.

8. The revision application is hence dismissed with Rs. 200 as costs to the respondent-assessee.