(1965) 04 OHC CK 0013

In the Orissa High Court

Case No : O.J.C. No''s. 151, 161, 162, 209 and 210 of 1957

Jammula Srirangam Bros. — APPELLANT

Vs

Sales Tax Officer — RESPONDENT

Date of Decision : 24-04-1965

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 6

Citation : (1965) 31 CLT 858 : (1966) 17 STC 69

Hon'ble Judges : K. Ahmad, C.J;S. Barman, J

Bench : Division Bench

Advocate : N.V. Ramdas and P.V.B. Rao, for the Appellant; R.K. Ghose, for the Respondent

Final Decision : Allowed

Judgement

S. Barman, J.—These five writ petitions along with others involving the same question of law were all originally heard together and were disposed of in one judgment by a Division Bench of this Court dated 13th March, 1959. The State of Orissa filed appeals before the Supreme Court including Civil Appeals Nos. 84 to 88 of 1963 which relate to the said five writ petitions now before us. The Supreme Court set aside the order of the High Court in the said appeals and remanded the writ petitions to the High Court for disposal in accordance with law in the circumstances hereinafter stated.

2. The petitioners are merchants of Berhampur town carrying on the business of selling gold and silver ornaments. They claim exemption from payment of sales tax in respect of the sales of some gold ornaments on the ground that they were manufacturers of those ornaments and that while selling the same they were charging separately for the value of gold and the cost of manufacture. The exemption was claimed by virtue of notification No. 8728-C.T-66/49 F. dated the 1st July, 1949, of the Government of Orissa in the Finance Department issued in pursuance of Section 6 of the Orissa Sales Tax Act, 1947, exempting certain classes of sales from payment of sales tax. The item with which we are

concerned in these petitions is item 33 of the said notification :-

33. Gold ornaments-When sold by the manufacturer who charges separately for the value of gold and the cost of manufacture.

There was also a press note issued by the Government to the effect that gold ornaments will also be exempted from sales tax when the manufacturer charges them separately for the value of gold and the cost of manufacture.

3. The question before the High Court was whether the petitioners were "manufacturers". The Court was to construe the exemption clause which purports to exempt manufacturer-sellers when they sell gold ornaments and charge separately for the gold and for making charges. This Court, before remand by the Supreme Court, took the view that the expression "manufacturer" occurring in the aforesaid exemption clause means the first owner of the finished product for whom it is made, either by his paid employees or even by independent artisans on receipt of raw materials and labour charges from him. On the findings of the Sales Tax Officer this Court held that the petitioners are entitled to exemption from sales tax because it is admitted that while selling the finished goods to the consumers, they used to charge separately for the value of the gold and for the cost of manufacture. The writ petitions were accordingly allowed and the Sales Tax Department was directed to revise the assessment of sales tax on the basis of the observations made in the said judgment which was passed on 13th March, 1959, reported in J. Srirangam Brothers and Ors. v. Sales Tax Officer Ganjam Circle, Berhampur [1959] 10 S.T.C. 257. The State of Orissa appealed from the said judgment to the Supreme Court being Civil Appeals Nos. 84 to 88 of 1963 arising out of the present writ petitions as aforesaid.

4. Since the said judgment by this Court in 1959 what in the meantime intervened was this: In 1961 in order to validate assessments made on gold ornament dealers under the Orissa Sales Tax Act, 1947, the Orissa Legislature enacted the Orissa Sales Tax Validation Act, 1961 (Orissa Act 7 of 1961). Section 2 of the Validation Act is this :

2. Notwithstanding anything contained in any judgment, decree or order of any court, the word ''manufacturer'' occurring against item 33 in the Schedule to the notification of the Government of Orissa in the Finance Department No. 5602-F., dated the 28th July, 1947, as amended by notification of the Government of Orissa in the Finance Department No. 8728-F., dated the 1st July, 1949, shall mean and shall always be deemed to have meant a person who by his own labour works up materials into suitable forms and a person who owns or runs a manufactory for the purpose of business with respect to the articles manufactured therein.

Subsequent to the decision of the High Court in the said writ petitions the Supreme Court in Epari Chinna Krishna Moorthy, Proprietor, Epari Chinna Moorthy and Sons, Berhampur, Orissa Vs. State of Orissa, , held that the order of the High Court therein was wrong in view of the Orissa Sales Tax Validation Act, 1961.

5. In Civil Appeals Nos. 84 to 88 of 1963 arising out of the present writ petitions before remand it was argued on behalf of the dealers before the Supreme Court that they run a "manufactory" for the purpose of business with respect to articles manufactured therein within the meaning of Section 2 of the Validation Act 7 of 1961. In Epari Chinna Krishna Moorthy, Proprietor, Epari Chinna Moorthy and Sons, Berhampur, Orissa Vs. State of Orissa, , mentioned above the Supreme Court had not defined the meaning of the word "manufactory" as the parties therein did not claim that they run any manufactory within the meaning of the said section. In view of the statement filed by the dealers before the Commercial Tax Officer, as quoted in extenso in the judgment of the Supreme Court by which the said appeals were remanded to this Court, the Supreme Court noted the position that the dealers are stated to have had workshops and they were having the ornaments made in the manner described in the statement.

6. In view of the statement made on behalf of the dealers the Supreme Court remanded the case to the High Court. The reasoning on which the Supreme Court made the order of remand is (as quoted from the judgment) this :

The question is whether in the circumstances pleaded by them (dealers), they run a ''manufactory'' within the meaning of Section 2 of Act 7 of 1961. The High Court did not go into that question, for at the time it decided the case the amending Act had not come into force. The High Court held that the expression ''manufacturer'' in the Notification issued u/s 6 of Act 14 of 1947 meant the first owner of the finished product for whom it was made, either by his paid employees or even by independent artisans on receipt of raw materials and labour charges from him. That view was sumceint for deciding the case in favour of the respondents. But the new Act by its retrospective operation dislodged the said decision given in favour of the respondents. They had no opportunity at that stage to plead that they were running a ''manufactory'' though they alleged some facts which might be relied upon in support of their contention. In the circumstances it is just and proper that the respondents should be given an opportunity to establish their case that they run a ''manufactory'' within the meaning of Section 2 of Act 7 of 1961. The order of the High Court in the said appeals is set aside and the said appeals are remanded to the High Court for disposal in accordance with law. We should make it clear that we have not expressed any opinion on the question whether on the facts pleaded the respondents run a ''manufactory'' within the meaning of Section 2 of Act 7 of 1961.

7. Now the point is : Do the dealers here own or run a "manufactory" within the meaning of Section 2 of the Validation Act of 1961 ? The dealers'' case is that they own or run a "manufactory". The case of the Sales Tax Department is that the ornaments are manufactured by independent artisans and that the dealers here neither own nor run a manufactory within the meaning of the Act.

8. What is the meaning of the word "manufactory" ? According to Corpus Juris Secundutn, Vol. 55, p. 676, "manufactory" and "factory" are different forms of the same word, the word "factory" being a contraction of "manufactory". "Factory" is a general term, and primarily means a physical plant, or a place or building, where manufacturing is carried on. It has been defined as meaning a house or place where anything is manufactured ; a building, the main or principal design or use of which is to be a place for producing articles as products of labour ; a structure or plant where something is made or manufactured from raw or partly wrought materials into forms suitable for use ; a place for fashioning raw materials, by human labour and machinery, into a product suitable for use in a different form. It is in this manner that the word "manufactory" has been given a connotation on the facts of each particular case. A manufactory (which is not defined in the Act) must be a place where a manufacture is carried on.

9. The first question is : What is manufacture ? In Benington and Sons v. The Metropolitan Board of Works 54 L.T. 837., Mr. Justice Chitty rightly observed that each case must be decided upon its own facts. Many cases may be put of (sic) more or less difficulty as to what is manufacture. In the light of the observations made in this English decision we take the view that in the present case there is a manufacture of ornament because the process by which gold is converted from its natural state to the article of commerce known as ornament is a manufacture. The dealers'' point is that they carry on manufacture of ornaments in that they take the raw material, as they call it, which is gold, and that they convert it into a new article of commerce. The nature of their operations is this : They take the gold and they submit it to a process so as to convert it to ornaments of different kinds. By passing raw gold through these operations they produce articles which they call gold ornaments.

10. Now as regards the number of workers actually engaged by the petitioners in their premises for such manufacture of ornaments, in an affidavit dated 1st December, 1964, made on behalf of the petitioners, it was stated that out of 43 karigars (skilled artisans in the employment of the petitioners) it was only 10 artisans who actually work in the petitioners'' premises at Big Bazar, Berhampur, as the place cannot accommodate for more workers, while the remaining workers prepare or produce the ornaments at their respective residences at Berhampur. In the course of hearing of these writ petitions it was conceded on behalf of the petitioners that it was only with regard to the ornaments made by these ten artisans actually working at the petitioners'' premises that the petitioners claim exemption.

11. Then the question arises : Can it be said that these ten artisans engaged by the dealers in the dealers'' premises for making the ornaments form a "manufactory" run by the dealers ? Our considered answer is : Yes. In support of the petitioners'' contention, they rely on certain affidavits-all dated 1st December, 1964-made by goldsmiths engaged by the petitioners in making gold ornaments in the workshop of the petitioners. The material portion of the

affidavits of five among these goldsmiths engaged by the petitioners is this :

I have been engaged in the workshop of M/s. Jammula Srirangam Brothers, Big Bazar, Berhampur, since more than...years. I have been attending daily at their workshop located in their business premises at Berhampur and am in his continuous service since then. I earn remuneration on piece-work basis. The petitioner supplies us the raw material, viz., gold, alum etc. and also some of the implements required for a workshop such as desk, vice, blowpipe etc., though not all. We convert the raw materials into ornaments as per directions and specification given by the petitioner and under his direct supervision. I do not prepare any ornaments of others in the workshop of the petitioner excepting those entrusted to me by the petitioner as stated above.

Three other goldsmiths engaged by the petitioners also filed affidavits all dated 1st December, 1964, stating that-

The premises where the gold ornaments are actually produced by skilled artisans, out of the raw materials like gold etc. belonging to the petitioner can accommodate not more than 10 such workers. The petitioners have in their continuous employment goldsmith artisans, (about 30 others) including myself, who out of gold supplied by the petitioners, produce ornaments as per the specifications given by them, in their residence.

The petitioner Jammula Srirangam himself filed an affidavit dated 1st December, 1964. The petitioners'' case as stated therein is this:

That the petitioner supplies to these workers the raw materials, gold etc. They are also given electric facilities and are supplied with implements like desk, vice fitted to the desk, pipes etc. The skilled workers however bring their special instruments which are sometimes required for preparation of special nature and accustomed to handle. The karigars prepare and produce the ornaments according to the specifications given by the petitioner and under his direct supervision.

* * * The list of 10 karigars actually working in the premises of the petitioners where the gold ornaments are manufactured, and the list of remaining karigars who prepare the ornaments at their respective residences, and the gold supplied to them, the wages earned by them are also shown in the ledgers.

12. It is quite clear from these affidavits that the 10 karigars make these ornaments under the direct supervision and control of the petitioners at the petitioners'' workshop, Thus these 10 karigars in the petitioners'' workshop form a "manufactory" owned or run by the petitioners for the purpose of business with respect to the articles manufactured therein.

13. In a further affidavit filed by the petitioner, Jammula Srirangam, in this Court it was mentioned by name which particular 10 karigars were in the petitioners'' continuous service and employment working in the petitioners'' workshop at Big Bazar, Berhampur. This shows that these 10 karigars were working in the

petitioners'' premises under their direct control in the manufactory owned or run by the petitioners.

14. It is stated in the said affidavit of Jammula Srirangam that the petitioners are maintaining the accounts of all the 43 karigars in the regular course of business which are said to have been produced and scrutinised by the Sales Tax Officers. The original ledgers are also now produced by him, and true copies of the relevant ledger accounts are said to have been already supplied.

15. In view of the position that the account in respect of the work done by the 10 karigars in the petitioners'' workshop forming the manufactory owned or run by the petitioners is mixed up with the account in respect of the remaining other karigars working in their respective residences, the work of the particular 10 karigars has to be separated from the others for determining the actual figure on which exemption has to be granted and the assessment has to be revised accordingly.

16. In the result, therefore, the assessment made by the Sales Tax Officer in respect of the 7 quarters from the one ending on 30th September, 1954, to the one ending on 31st March, 1956, must be quashed. The writ petitions are accordingly allowed, and all these assessment cases are remanded to the Sales Tax Officer with a direction to him to revise the assessment of sales tax in respect of the said quarters on the basis of the aforesaid observations. In the circumstances of the case there will be no order for costs.

K. Ahmad, C.J.

17. I agree.