(1990) 07 MP CK 0015

In the Madhya Pradesh High Court

Case No : Miscellaneous Petition No. 3727 of 1988

Kher Stone Crusher APPELLANT

Vs

General Manager, District Industries Centre and Another RESPONDENT

Date of Decision : 03-07-1990

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 2

Citation : (1992) 61 ELT 586 : (1990) 79 STC 149

Hon'ble Judges : S.K Jha, C.J;K.M. Agrawal, J;D.M. Dharmadhikari, J

Bench : Full Bench

Advocate : B.L. Nema, for the Appellant; The A.G., for the Respondent

Final Decision : Allowed

Judgement

D.M. Dharmadhikari, J.—The present case has been placed for decision of the Full Bench to resolve the so called apparent conflict between two Division Bench decisions of this Court in G.R. Kulkarni v. State [1957] 8 STC 294 and Bheraghat Mineral Industries v. Divisional Deputy Commissioner of Sales Tax (printed at page 156 infra); [1987] 20 VKN 290.

2. The main question for decision in this case is whether the petitioner which is a registered small-scale industry, is entitled to eligibility certificate for availing of sales tax exemption and whether its trading activity that is conversion of boulders or stones into "gitti" can be held to be covered by the definition of "manufacture" u/s 2(j) of the Madhya Pradesh General Sales Tax Act, 1958 (for brevity hereinafter referred as "the Act").

3. The petition was filed claiming grant of eligibility certificate for sales tax exemption because by the impugned communication dated July 11, 1988 (annexure F), the General Manager, District Industries Centre, Jabalpur (respondent No. 1) refused to grant eligibility certificate applied for by the petitioner, on the ground that conversion of stones into "gittis" cannot be termed as a manufacturing process. The Division Bench of this Court in the case of G.R.

Kulkarni [1957] 8 STC 294, held that making of metal for the purpose of ballast and road is a process of manufacture in which a new commercial article of different size and price comes into existence. According to the above Division Bench the process of preparation of "gitti" from boulders or stones is a process of manufacture within the definition of that term in the Act. The reference to the Full Bench was occasioned because the Division Bench of this Court in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290, raised doubt on the correctness of the decision of the Division Bench in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), in view of the subsequent decision of the Supreme Court in the case of State of Orissa v. Titaghur Paper Mills Co. Ltd. [1985] 60 STC 213.

4. Learned counsel appearing for the petitioner submitted before us that the Division Bench decision in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), was correctly decided and is squarely applicable to the present case which is also concerning manufacture of "gittis" from boulders or stones. The learned counsel also submitted that the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), was with regard to the lumps of dolomite which was crushed for making chips and powder. As a result of conversion of dolomite into dolomite chips and powder, no different commercial commodity was said to have been created to describe the process as "manufacture" within the definition of the Act. According to the learned counsel for the petitioner, the decision in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), is distinguishable on the basis of a different manufacturing process involved therein compared to the process involved in the present case.

5. Learned counsel appearing for the State supported the order passed by the respondent No. 1, General Manager, District Industries Centre, Jabalpur, refusing eligibility certificate for grant of sales tax exemption and sought assistance for his submission from the "decision rendered by the Division Bench in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP).

6. Having heard the counsel for the parties and gone through the various decisions relied on and referred to by the Division Bench in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), we have formed an opinion that the present case is squarely covered by the decision in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), which according to us has been correctly decided. The definition of "manufacture" in the Act is so wide as to include within it the process of making a different commercial commodity from one commodity. The definition of "manufacture" u/s 2(j) of the Act reads as under :

"''Manufacture'' includes any process or manner of producing, collecting, extracting, preparing or making any goods, and in respect of trees which have been severed from the land or which have been felled, also the process of lopping the branches, cutting the trunks or converting them into logs, poles or bailies, or any other articles of wood, but does not include such manufactures or manufacturing processes as may be prescribed".

7. The petitioner is a holder of quarry lease for extracting stones and the stones are crushed into crushers to make "gittis", ballast or metal of different specified shapes and sizes. The commodity processed or prepared does not remain stone, but a new commercial commodity, befitting for use in construction of roads or houses, is made out. Such a process squarely falls within the definition of "manufacture" in the Act. In the decision of G.R. Kulkarni [1957] 8 STC 294 (MP), in paragraph 5, the manufacturing process is explained and commented as under to hold that it is covered by the definition of "manufacture" under the Act.

"5. Now it cannot be denied that the metal which the assessee produces is ''goods'' within the meaning of the Indian Sale of Goods Act or the Constitution. Once we reach the conclusion that what he produces is ''goods'' and that some process of manufacture enters into it, in our opinion, the definition in Section 2(i) is fully met. In State of Madhya Pradesh v. Wasudeo [1955] 6 STC 30 (Nag), there is a reference to the fashioning of timber into logs for the purposes of sale, and Bhutt, J., who decided the case, held that it is a manufacturing process. It is contended that on a parity of reasoning the chopping of wood into fuel would be a manufacturing process. Perhaps, that is an extreme example, and we are not called upon to pronounce upon it ; but the making of metal for the purposes of ballast and road is a well-known trade and occupation and is a very fruitful source of income to one who shapes larger stone into smaller ones of a pre-determined size. It is well-known that metal has to be within a particular size. Each piece cannot be smaller than a designated size nor above another designated size. The size therefore determines the skill necessary to fashion the stone. In Kent v. Astley LR 5 QB 19, Cockbum, C.J., dealing with the case of preparing slates after quarrying said that it was a manufacturing process. There also the slate blocks which were won were merely split into sheets with the use of a hammer and chisel or wedges. The entire process was manual. We do not see any distinction between the fashioning of slate from a block and the fashioning of a graded size metal from a big block or boulder of stone. The essential condition is the same, viz., that there is an expenditure of some skill in fashioning an object of a different size and shape, ready for a commercial deal. In the present case, the man who manufactures metal is manufacturing a new article which has got a different price and that price includes the labour which goes into its manufacture."

It may be seen from the quotation above that the Division Bench in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), did not rely on the single Bench decision of G.R. Bhutt, J. (as he then was) in the case of State of M.P. v. Wasudeo [1955] 6 STC 30 (Nag), but the said single Bench decision was only referred to having been cited by the parties in the case.

8. In our opinion, the decision in the case of Bheraghat Mineral Industries

(printed at page 156 infra) ; [1987] 20 VKN 290 (MP), is distinguishable on facts because a different manufacturing process was under consideration in that case. The Division Bench in that case held that the preparation of chips and powder from dolomite lumps is not "manufacture" because no new commercial commodity from dolomite comes into existence. The following observations of the Division Bench contained in paragraph 10 in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), may be seen :

"10. Here, the petitioner, after purchasing lumps of dolomite from registered dealers, crushed them and sold chips and powder to glass manufacturers. What was purchased was dolomite and sale was also of dolomite. Chips and powder of dolomite are not different commercial commodities than dolomite lumps. It is not the respondents'' case in their return that anything more is required to be done, except crushing the lumps to get chips and powder from the lumps and that the composition of the end-product is different from lumps. The lumps are broken into chips and powder for convenience in use but they retain the same characteristics and qualities of dolomite lumps. Except for change in shape, there is absolutely no transformation into composition to bring about a new commercial commodity."

9. From the ratio of the decision in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), it is clear that the matter whether a particular process is a manufacturing process within the meaning of the Act or not, is dependent upon the nature of the process involved in each case and no general principle can be evolved. One of the tests laid down by the Supreme Court in Deputy Commissioner of Sales Tax v. Pio Food Packers [1980] 46 STC 63, by relying on the decision of the American Supreme Court is stated to be the following :

"Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary.........There must be transformation ; a new and different article must emerge, ''having a distinctive name, character or use''."

Applying the above test laid down by the Supreme Court to the case in hand we have no difficulty in holding that when bigger stones and boulders are cut and shaped into sizes in crushers for manufacture of ballast, metal or "gitti", there is transformation of the stone and a new different commercial article is produced as a result of treatment, labour and manipulation in the crusher. The process, therefore, clearly falls within the definition of "manufacture" under the Act and there was no justification for the respondent No. 1 to hold that the petitioner is not involved in any manufacturing activity and could not claim the eligibility certificate for sales tax exemption.

10. We feel it necessary to point out that in paragraph 9 of the Division Bench decision in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), reference has been made to the case of G.R. Kulkarni

[1957] 8 STC 294 (MP), which is said to be based on a single Bench decision of this Court in the case of Wasudeo [1955] 6 STC 30 (Nag) and the later decision of the single Bench is held to be contrary to the decision of the Supreme Court in the case of Titaghur Paper Mills [1985] 60 STC 213. The contents of para 9 of the decision of the Division Bench case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), may be quoted for understanding its ratio:

"9. However, in G.R. Kulkarni v. State [1957] 8 STC 294, a Division Bench of this Court held that the breaking of boulders into metal (gitti) is manufacture within the meaning of the Madhya Pradesh Sales Tax Act, 1947, and the essence of manufacture is the changing of one object into another for the purpose of making it marketable. For this purpose, the Division Bench relied on another single Bench decision of this Court in State of M.P. v. Wasudeo [1955] 6 STC 30, where it has been held that fashioning of timber into logs for the purpose of sale, is manufacture. But this decision was dissented from by another Division Bench in Mohanlal Vishram v. Commissioner of Sales Tax [1969] 24 STC 101 (MP), that by felling standing timber trees, cutting trees and converting some of them into ballis, did not alter their character as timber or using them for the manufacture of other goods'' within the meaning of Section 8(1) of the Madhya Pradesh General Sales Tax Act, 1958. The court observed : ''with all due respect, we think that the so-called advance from the original form did not alter their basic character as timber and, therefore, purchase tax could not be levied u/s 8(1) of the Act'', It may be mentioned that the view taken in State of M,P. v. Wasudeo [1955] 6 STC 30 (Nag), is contrary to the subsequent decision of the Supreme Court in State of Orissa v. Titaghur Paper Mills [1985] 60 STC 213. Relying on the decision of the Supreme Court in Deputy Commissioner of Sales Tax v. Pio Food Packers [1980] 46 STC 63, a Division Bench of the Karnataka High Court in Reliable Rocks Builders and Suppliers v. State of Karnataka [1982] 49 STC 110, has held that the process of breaking boulders into jelly cannot be described as a manufacturing process. A Division Bench of the Kerala High Court in Deputy Commissioner of Sales Tax v. Sulaiman [1986] 61 STC 331, has held that bone-meal manufactured for sale as fertiliser in market has a separate commercial identity distinct from those raw-bones purchased, even though the process of manufacture involved is only the crushing and powdering such raw-bones, by relying on the decision of the Supreme Court in Deputy Commissioner of Sales Tax v.Pio Food Packers [1980] 46 STC 63. The Bench dissented from the contrary decision of the Division Bench of the Madras High Court in State of Tamil Nadu v. Subbaraj and Co. [1981] 47 STC 30."

The comments made by the Division Bench in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), in paragraph 9, do create an impression that the Division Bench did not consider the case of G.R. Kulkarni [1957] 8 STC 294 (MP), as laying down a correct law. On perusal of all the referred cases in the decision of the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), we find that the Division

Bench was not correct in throwing a doubt on the correctness of the decision in the case of G.R. Kulkarni [1957] 8 STC 294 (MP). We may clarify that the single Bench decision of this Court in the case of Wasudeo [1955] 6 STC 30 (Nag), was a case of cutting of standing trees and converting them into timber of transportable size. The above single Bench decision was only referred to by the Division Bench in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), but no reliance was placed on the same in paragraph 5 of the said decision, obviously because the manufacturing process under consideration in G.R. Kulkarni''s case [1957] 8 STC 294 (MP), was making of metal or ballast from the stones.

11. The case of Titaghur Paper Mills [1985] 60 STC 213 (SC), of the Supreme Court was concerning the taxability of commodity, timber, which was purchased by the mill from the State of Orissa as standing trees. On the said timber, after those were sized into logs, the respondent-firm had already been assessed to sales tax and, therefore, the Supreme Court held that there would be no tax on the said timber on sales to the mills from the State Government The case of Titaghur Paper Mills [1985] 60 STC 213 (SC) is, therefore, distinguishable on facts and the nature of controversy involved therein. The Division Bench in the case of Bheraghat Mineral Industries (printed at page 156 infra) ; [1987] 20 VKN 290 (MP), in paragraph 9 of its order quoted above did not say in so many words that the Division Bench decision in G.R. Kulkarni''s case [1957] 8 STC 294 (MP), was wrongly decided, but referred to the same being a decision based on a single Bench decision in the case of Wasudeo [1955] 6 STC 30 (Nag), which according to the Division Bench was contrary to the decision of the Supreme Court in the case of Titaghur Paper Mills [1985] 60 STC 213. As we have explained above, the Division Bench in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), has not placed any reliance on the decision of the single Bench in the case of Wasudeo [1955] 6 STC 30 (Nag) and in any case the decision of the Supreme Court in the case of Titaghur Paper Mills [1985] 60 STC 213, being distinguishable on facts, the correctness of the Division Bench decision in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), cannot be doubted.

12. In view of the discussion aforesaid and relying on the decision in the case of G.R. Kulkarni [1957] 8 STC 294 (MP), the petition succeeds and is hereby allowed. The impugned order dated July 11, 1988 (annexure F) passed by the General Manager, District Industries Centre, Jabalpur, is hereby quashed. The respondents are directed to consider the application for grant of eligibility certificate to the petitioner treating his small-scale industry as being involved in the process of manufacture of "gittis" from stones, within the definition of Section 2(j) of the Act. The petitioner shall get costs of this petition. Counsel''s fee Rs. 500, if certified.

