(2014) 06 GUJ CK 0022

In the Gujarat High Court

Case No : Sales Tax Reference No. 1 of 1999

Mahalaxmi Metal Quarry APPELLANT

Vs

State of Gujarat RESPONDENT

Date of Decision : 21-06-2014

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2(17)
Gujarat Sales Tax Act, 1969 — Section 2(16), 62

Citation : (2014) 74 VST 17

Hon'ble Judges : Mukesh R. Shah, J;Kaushal Jayendra Thaker, J

Bench : Division Bench

Advocate : Gargi Vyas and Tanvish U. Bhatt, Advocate for the Appellant; Jaimin Gandhi, Additional Government Pleader, Advocate for the Respondent

Judgement

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Mukesh R. Shah, J.—Present reference at the instance of the applicant-dealer is made by the learned Gujarat Sales Tax Tribunal to this court for our opinion on the following questions:

"(a) Whether, on the facts and circumstances of the case, the conclusion of the Tribunal that the activity of the applicant resulted in production of different commercial commodities or commodities known differently in common parlance, is perverse and, therefore, not tenable in law?

(b) Whether, on the facts and circumstances of the case, the honourable Tribunal is right in holding that as a result of the amendment made in the definition of ''manufacture'' in section 2(16) of the Act on April 1, 1989, activity of the applicant of preparing small size of the rough stone from larger size or rough stone without any polishing thereof would amount to manufacturing activity under the provisions of the Act as it stood after the amendment?"

The facts leading to the present reference are as under:

1.1. That the applicant-M/s. Mahalaxmi Metal Quarry was a registered dealer and its activity was to produce big stones and thereafter by hammering, it was preparing stone on different sizes. That prior to April 1, 1989 and considering the definition of "manufacture" as contained in section 2(16) of the Act which was preparing prior to April 1, 1989, it was held that its activity does not amount to manufacture. However, subsequently with effect from April 1, 1989 by Gujarat Act 15 of 1989, section 2(16) came to be substituted and which came into force from April 1, 1989. Under the circumstances, the applicant made an application before the Commissioner under section 62 of the Act for determination whether in view of the substituted section 2(16) that activity can be said to be "manufacture" or not. Considering the substituted section 2(16) of the Gujarat Sales Tax Act, 1969 which came into effect from April 1, 1989 it was held that the activity of the applicant can be said to be "manufacture" within the definition of substituted section 2(16) of the Act.

1.2. Feeling aggrieved and dissatisfied with the determination order passed by the Commissioner, the applicant preferred appeal before the learned Tribunal and learned Tribunal held against the applicant and dismissed the appeal by holding that the activity of the applicant can be said to be "manufacture" as per substituted section 2(16) of the Act. Thereafter, at the instance of the applicant, present reference has been made.

2. Ms. Gargi Vyas, learned advocate for the applicant, has vehemently submitted that as the activity of the applicant is to make small stones by hammering/ cutting big stones and there was no activity of polishing and therefore, the said activity cannot be said to be "manufacture". It is submitted that as such there was no new product which was being manufactured and therefore, also, the activity of the applicant cannot be said to be "manufacture". She has heavily relied upon the decision of the honourable Supreme Court in the case of State of Maharashtra Vs. Mahalaxmi Stores, in support of her above submissions.

3. On the other hand, Shri Jaimin, learned Additional Government Pleader for the respondent-State has submitted that as such definition of substituted section 2(16) of the Act, which came into effect from April 1, 1989 is very clear. It is submitted that as per the substituted section 2(16) of the Act in relation to marble and stone, activity of hammering, cutting, sizing or polishing can be said to be activity of manufacture. It is submitted that therefore, when the activity of the applicant is hammering as well as cutting the stones, learned Tribunal has rightly held the activity of the applicant as "manufacture". It is submitted that as such the learned Tribunal has heavily relied upon the decision of this court in the case of State of Gujarat Vs. Lina Traders, . Therefore, it is requested to answer the question in favour of the Revenue.

4. Heard the learned advocates for the respective parties at length. At the outset, it is required to be noted and even according to the applicant, activity of the applicant is hammering and cutting the big stones for the purpose of small stones. Therefore, the activity of the applicant is hammering and cutting marble

and stone, more particularly, stones. The substituted section 2(16) of the Act, 1969 substituted by Gujarat Act 15 of 1989 with effect from April 1, 1989 reads as under:

"2(16). ''Manufacture'' with all its grammatical variations and cognate expression, means producing, making, extracting, collecting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods; and includes--

(a) in relation to timber, the cutting, sawing, shaping, sizing or hewing,

(b) in relation to cotton seed oil, refining of washed cotton seed oil,

(c) in relation to marble and stone, hammering, cutting, sizing or polishing,

(d) in relation to chalk lumps, the grinding, but does not include such manufactures or manufacturing processes as may be prescribed."

5. Considering the above, in relation to marble and stone, any activity of hammering, cutting, sizing or polishing can be said to be an activity of "manufacture". Therefore, the contention on behalf of the applicant that making small stone from big stone by hammering and/or cutting but not polishing cannot be said to be activity of "manufacture" cannot be accepted. As per substituted section 2(16) of the Act as it stood "manufacture" means producing, making, extracting, collecting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods and includes (c) in relation to marble and stone, hammering, cutting, sizing or polishing. Therefore, as per substituted section 2(16) in relation to marble and stone, hammering, cutting, sizing or polishing is considered to be "manufacture" and meaning thereby the same will be new commercial product (small stone) by hammering, cutting, sizing or polishing. While passing the impugned order, the learned Tribunal has specifically observed that from the activity of the applicant, there will be a different commercial commodity. We are in complete agreement with the view taken by the learned Tribunal. Now, so far as reliance placed upon the decision of the honourable Supreme Court in the case of State of Maharashtra Vs. Mahalaxmi Stores, by the learned advocate for the applicant is concerned, considering the definition of section 2(17) of the Bombay Sales Tax Act which was under consideration by the honourable Supreme Court the said decision shall not be applicable to the facts of the case on hand and with respect to the activity carried out by the applicant. Before the honourable Supreme Court section 2(17) of the Bombay Sales Tax Act defines the term "manufacture", which reads as under (page 81 in 129 STC):

"2. (17) ''Manufacture'' with all its grammatical variations and cognate expressions, means producing, making, 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."

5.1. On interpreting and considering aforesaid section 2(17) of the Act, the honourable Supreme Court in para 6 has observed and held as under (para 5, page 81 in 129 STC):

"6. From a perusal of the definition, extracted above, it is clear that the processes of producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting of any goods fall within the meaning of the term ''manufacture''. But it may be pointed out that every type of variation of the goods or finishing of goods would not amount to manufacture unless it results in emergence of new commercial commodity. In the instant case, the very nature of the activity does not result in manufacture because no new commercial commodity comes into existence."

5.2. Under the circumstances, on facts and considering the definition of section 2(17) of the Bombay Sales Tax Act which was under consideration by the honourable Supreme Court as well as considering definition of substituted section 2(16) in the present case as reproduced hereinabove, the aforesaid decision shall not be applicable.

6. In view of the above and for the reasons stated above, both the issues referred to this court is held against the applicant and it is held that the learned Tribunal has not committed any error in concluding that the activity of the applicant resulted in production of different commercial commodities or commodities known differently in common parlance and as learned Tribunal has not committed any in holding that as a result of the amendment made in the definition of "manufacture" in section 2(16) of the Act on April 1, 1989, the activity of the applicant of preparing smaller size of the rough stone from larger size of the rough stone without any polishing, by hammering and cutting would amount to manufacturing activity under the provisions of the Act as they stood after the amendment. With this, present reference is disposed of.