
(2016) 07 AHC CK 0238

In the Allahabad High Court

Case No : Sales/Trade Tax Revision No. 1 of 2006

M/S Shyam Behari Lal Keserwani

APPELLANT

Vs

Commissioner, U.P. Trade

RESPONDENT

Date of Decision : 18-07-2016

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 2(e-I)

Citation : (2016) 9 ADJ 583

Hon'ble Judges : Yashwant Varma, J.

Bench : Single Bench

**Advocate : Rishi Raj Kapoor and Krishna Agarwal, Advocates, for the Applicants;
C. S.C, for the Opposite Party**

Final Decision : Partly Allowed

Judgement

Yashwant Varma, J.— Heard learned counsel for the revisionist and the learned Standing Counsel.

2. The present revision which pertains to Assessment Year 200203 is restricted in respect of the assessment undertaken under the provisions of the U.P. Trade Tax Act, 1948(Act 1948). No issues have been urged insofar as the assessment of the revisionist under the Central Sales Tax Act, 1956(Act 1956) is concerned. The revisionist asserts that he purchases and sells lead and lead plates which it obtains from scrap batteries. As is recorded by the Tribunal, it was urged before the authorities that the revisionist purchases old and scrap batteries, extracts the lead plates therefrom, melts them, undertakes a cleaning process and then converts them into a flat form which is described as lead plate. These plates are then sold to manufacturers of batteries.

3. Two submissions were advanced in support of this revision. It was firstly urged that the revisionist is not liable to be treated as a "manufacturer" and could have only been classified as a dealer inasmuch the process undertaken by it did not amount to manufacture. The second issue which was raised was in respect to the

computation of turnover on best judgment basis in respect of which it was submitted that no empirical standards were followed while quantifying the turnover.

4. Sri Krishna Agarwal, learned counsel for the revisionist elaborating upon the above submissions has submitted that in the admitted facts of the case since no new commodity has come into existence, it cannot be said that the revisionist was a manufacturer. He submits that the process which was undertaken by the revisionist brought into existence only lead plates and therefore this process would not amount the manufacture. He has in this connection, referred to the judgment rendered by a learned Single Judge of the Court in M/s. Attar Singh Sarraf Bazar Natdara, Rampur v. Commissioner of Sales Tax, U.P., 1998 NTN (Vol. 12) 206 which was considering a case of a jeweller who was cleaning and performing certain processes on old ornaments. On the strength of this judgment, it was submitted that since there was no essential difference between the original commodity and the processed article, the revisionist was not liable to be taxed as a manufacturer. Insofar as the second aspect is concerned, Sri Agarwal has taken this Court through the order of the assessing authority to submit that although a survey had taken place wherein certain quantities of goods were found not to be duly reflected or accounted for in the stock register, the assessing authority has recorded no reasons for rejecting the declared turnover or for that matter assessing the turnover of the revisionist as Rs. 10,00,000/-. He has in this connection submitted that the revisionist had declared a turnover of Rs. 2,98,254/- which was enhanced by the assessing authority to Rs. 10,00,000/- and subsequently reduced by the first appellate authority to Rs. 8,00,000/-.

5. Sri B.K. Pandey, learned Standing Counsel, on the other hand, contended that as per the submissions advanced before the authorities below it was the admitted case of the dealer that the lead plates which had been obtained from scrap batteries were melted, cleaned and thereafter converted back into lead plates which were then sold to manufacturers of batteries. He submits that this clearly amounts to manufacture and therefore the view taken by the Tribunal in this regard does not commend any interference. He has further referred to what the assessing authority found in respect of the stock which had not been duly reflected or accounted for in the books. He submitted that once it was found that stock had not been duly registered or accounted for, the assessing authority had no option but to proceed to reject the books of account and assess the turnover of the revisionist on a best judgment basis.

6. Insofar as the first submission advanced by Sri Agarwal is concerned, the Court takes note of Section 2(e-1) of Act 1948, which defines the expression "manufacture" as under:

"manufacture means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods but does not include such manufacture or manufacturing processes as may be

prescribed."

7. A reading of the definition would establish that it encompasses the following activities viz. producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods.

8. The submission advanced on behalf of the revisionist and which so stands recorded by the Tribunal is that, lead plates which are extracted from scrap batteries are melted, cleaned and lead plates made therefrom. This activity in the opinion of this Court would clearly fall within the expression "manufacture" as defined under the Act. As noted above, the activities included under the definition clause of the 1948 Act includes not just producing goods but also the activities of extraction, alteration, finishing and "or otherwise processing, treating or adapting any goods". Once it was the admitted case of the assessee that the lead plates were obtained from old batteries, melted, the lead extracted therefrom, cleaned and thereafter pressed in order to make them into plates, the activity, in the opinion of this Court, would clearly fall within the expression "manufacture".

9. The submission that manufacture can only mean the production of a new commercial commodity wholly distinct from the original commodity is not liable to be accepted. There may be varied processes which a person may undertake in order to create a commodity. Admittedly, the old and scrap batteries were destroyed and only the lead extracted therefrom. The original commodity therefore ceased to exist. The revisionist thereafter extracted the lead, applied a cleaning process and thereafter the extracted lead was pressed into plate form.

10. One may in this connection also notice the expansive definition of "manufacture" under the 1948 Act when compared to other statutes. The distinctive features of the word "manufacture" as employed under the 1948 Act was also noticed by the Supreme Court in *Sonebhadra Fuels v. Commr., Trade Tax*, (2006) 7 SCC 322.

"The above definition is very wide as held by this Court in *B.P. Oil Mills Ltd. v. Sales Tax Tribunal* [(1998) 6 SCC 577 : AIR 1998 SC 3055]. The definition of "manufacture" in Section 2(e-1) of the Act includes meaning of "manufacture" in the U.P. Trade Tax Act is wider than that in the Central Excise Act, 1944. A dealer will be liable to pay tax on sale of any goods he makes by processing, treating, or adapting the goods he purchased by complying with the requirements of clause (ii) of Section 3(3)(b) of the U.P. Trade Tax Act.

22. We may mention that, as noted above, decisions construing the word "manufacture" in other statutes are not necessarily applicable when interpreting Section 2(e-1) of the U.P. Trade Tax Act. As stated above, the definition of "manufacture" in Section 2(e-1) of the U.P. Trade Tax Act is very wide, which includes processing, treating or adapting any goods. Hence, in our opinion, the expression "manufacture" covers within its sweep not only such activities which bring into existence a new commercial commodity different from the articles on

which that activity was carried on, but also such activities which do not necessarily result in bringing into existence an article different from the articles on which such activity was carried on. For example, the activity of ornamenting of goods does not result in manufacturing any goods which are commercially different from the goods which had been subjected to ornamentation, but yet it will amount to manufacture within the meaning of Section 2(e-1) of the U.P. Trade Tax Act since an artificial meaning of "manufacture" is given in Section 2(e-1). Hence, whether the commercial identity of the goods subjected to the processing, treating or adapting changes or not, is not very material."

11. The test of a new commercial commodity would not therefore come to the aid of the revisionist.

12. Lastly this Court notes that what the revisionist purchased were scrap batteries. What he manufactured was lead plates. The two commodities, therefore, even otherwise cannot be said to be identical whether one applies the "common parlance test" or the "commercial sense test".

13. Insofar as the judgment relied by Sri Agarwal is concerned, the Court notes that in the said case the jeweller was only engaged in cleaning and joining certain parts of old ornaments. This judgment notes that the steps undertaken by the jeweller was basically an exercise of processing. In the opinion of this Court, the mere act of cleaning cannot be placed on the same pedestal as the activity undertaken by the revisionist where admittedly the lead plates were melted and cleaned and the lead extracted therefrom then made into lead plates.

14. While having held against the assessee on the first score and agreeing with the view taken by the Tribunal that the assessee was liable to be treated as a manufacturer, the Court then takes up the second submission. A reading of the order of the assessing authority establishes that during the course of survey of business premises the team found various articles which had not been duly accounted for in the books of account. Having arrived at this conclusion the assessing authority obviously and justifiably proceeded to reject the books of account and undertook an exercise of assessment to the best of his judgment. What the Court however finds is that all that the assessment order records is the quantity of articles which had not been found accounted for. The quantification of estimated turnover which was placed at Rs. 10,00,000/- is not imbued by any reasoning. At least, the assessment order does not disclose as to and on what basis the value of the escaped turnover was arrived at. While, it is true that a best judgment assessment would necessarily entail a degree of guess work and confers a certain degree of discretion in the hands of the assessing authority to estimate turnover, the Court cannot lose sight of the fact that this estimation itself is to be made on the basis of "judgment". The very use of this word indicates that the exercise which the assessing authority undertakes would have to follow some empirical principles and not be wholly whimsical and capricious.

15. In view of the above and in the absence of any reasoning having been

adopted or assigned either by the assessing authority or the first appellate authority while quantifying the turnover the orders are not liable to be sustained.

16. Accordingly this revision shall stand allowed in part. The orders of the assessing authority, first appellate authority as also that of the Tribunal affirming them to the extent of quantification, shall stand set aside. The matter is remitted to the assessing authority for a decision afresh on this aspect of the matter alone and in light of the observations made here in above.