

(2000) 04 RAJ CK 0061

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No. 645 of 1999

M/s. Triveni Oil Field Services Ltd.

APPELLANT

Vs

C.T.O.

RESPONDENT

Date of Decision : 03-04-2000

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(3)
Rajasthan Sales Tax Act, 1954 — Section 9(1)

Citation : (2001) 1 RLW 588 : (2001) 4 WLC 725 : (2002) 1 WLN 501

Hon'ble Judges : Rajesh Balia, J

Bench : Single Bench

Advocate : Vineet Kothari, for the Appellant; Sanjeev Johari, for the Respondent

Judgement

Balia, J.—This revision petition is filed against the order dated 21.7.1997 passed by the Rajasthan Tax Board, Ajmer.

(2). The brief facts of the case are: that the petitioner is a person who holds certificate of registration under the Rajasthan Sales Tax Act, 1954 as also the Central Sales Tax Act, 1956. The business of the assessee has been described in the Certificate of registration as "Execution of Work Contract and Drilling of Wells of Oil India Limited". The petitioner executes the work contracts for Oil India Limited in excavating crude oil by using drilling machines. In his certificate of registration, the goods are described for the purpose of sub-S. (1) and (3) of Sec. 8 of the Central Sales Tax Act, and it is mentioned that the sale of those goods in the course of inter state trade to the dealer shall be taxable at the rate specified in that sub-Sec. subject to the provisions of sub-s. (1) of the Sec. 8 of the Act. The column for re-sale has been filled by Nil. The column (b) provides for use in the manufacture or processing of goods and against that, it is mentioned for sale, execution of work contract list enclosed as per rules applicable. The column No. (c) provides for use in mining and against this column, it is mentioned Nil.

(3). However, by his application dated 8.2.1994, the assessee prayed for

amendment in his certificate of registration stating that since he is engaged in the activity of drilling of wells for Oil India Limited, which activity includes the excavating Oil mineral and gas from the earth and, therefore, the words "mining activity" may be added along with the word "manufacturing activity". The said application has been rejected by the Assessing Officer vide his order dated 13.4.1994 on the ground that the assessee is only doing service contract of drilling and is not owner of the mines and therefore, his activity cannot be considered as "mining activity" and the excavation of mineral has been held to be not an activity of manufacture of goods. In this respect, reliance was placed on *Vasudhara Tube Wells vs. State of M.P.* (1).

(4). Against that order dated 13.4.1994, the assessee filed an appeal before the Deputy Commissioner (Appeals) who also rejected the appeal vide his Judgment dated 19.12.1994. Being dissatisfied with the Judgment dated 19.12.1994, the assessee further filed an appeal before the Rajasthan Tax Board, Ajmer, which also came to be rejected by the Rajasthan Tax Board vide its judgment dated 21.7.1997. Thereafter, the assessee filed second appeal before the Rajasthan Taxation Tribunal, which also came to be rejected vide its Judgment dated 7.8.1997. Hence this revision.

(5). The Rajasthan Tax Board primarily rested its decision on the ground that since the assessee is not the owner of the Oil Wells nor the lessee in respect of the mineral oil. However, the Board found that under the contract, the petitioner company is responsible to make arrangement of all equipments, machines, materials or any other resources for drilling for the purpose of execution of the contract and the Oil India Company Limited has undertaken to make available casings, pipes, cement etc. In these circumstances, the assessee cannot be said to be reasonable in claiming to be engaging in the activity of mining and the activity of drilling has been held to be not a mining activity following the decision in *Vasudhara Tube Wells* case (supra).

(6). I have heard Mr. Vineet Kothari, the learned counsel for the petitioner and Mr. Sanjeev Johari, the learned counsel for the respondent and have carefully gone through the case.

(7). It has been urged by Mr. Vineet Kothari, the learned counsel for the petitioner that since the petitioner is engaged in drilling of Oil Wells, he is a manufacturer as he extracts oil from the earth and, therefore, he is entitled to the benefit of Sec. 8(3) of the Central Sales Tax Act. He submitted that, without prejudice to his contention that drilling activity for excavating mineral oil from the earth is a manufacture process, the petitioner has primarily applied for the amendment in certificate of his registration to claim the benefit of concessional rate of tax prescribed in Sub-s. (1) of Sec. 8 of the Central Sales Tax Act, 1956. Even assuming that excavation and drilling of mineral oil is not a manufacturing activity, but it certainly is a mining activity. Purchase of goods by a registered dealer for use in mining is equally eligible to fall in the class of goods in sub-sec. (3)(b) to be included in goods which can be specified in the certificate of

registration. It cannot be doubted that excavation of mineral or by his agent is an activity of mining and it is also settled that resale of goods by the person who carries on manufacturing or mining activities is not a necessary condition to specify the goods in certificate of registration. It was urged that sale of goods by the manufacture himself or the person engage in mining activity itself is not necessary. The sale of goods that come into existence by manufacturing or the mineral that is won can be sold by other person also for whom the goods have been manufactured or minerals have been won. In support of his contention, he has placed reliance on *Assessing Authority vs. East India Mfg. Co. Ltd.* (2).

(8). The learned counsel for the respondent urged that the Tribunal has rightly reached its conclusion that the assessee being not a mine owner of the holder of the mining lease in respect of the mineral in question, his activity cannot be considered to be a mining activity. He also contends on the envit of the decision of the Madhya Pradesh High Court in *Vasudhara Tube Well's case* (supra) that activity of excavating mineral is not a manufacturing activity.

(9). Having considered carefully the contentions raised before me and having gone through the record of the case that has been placed before me, I am of the opinion that so far as the submission of the learned counsel for the petitioner to hold the activity of excavation as an activity of manufacturing is concerned it cannot be sustained. In the absence of any legal fiction to that effect, "Manufacture" even in its widest term would imply existence of some raw material over which some manual or mechanic process can be applied for effecting it more useable or converting into a different commodity but it cannot be applied to an activity of mining inasmuch as mining is not a process applied to a thing or a substance which has already come into existence for being subjected to process. Mineral is the natural resource, which has to be obtained in raw form from beneath the earth by applying some process. Reaching to the source of the existence of the substance cannot be a process of manufacture. It may be seen that while the definition of very wide amplitude has been designed under the Rajasthan Sales Tax Act of the term "manufacture" but it does not include the activity of exavation.

(10). The learned counsel for the petitioner has urged that the term "extraction" has been used which is equivalent to the term "excavation". This is contrary to the ordinary dictionary meaning of two terms.

(11). The word "extract" has been assigned the meaning in the Chambers Dictionary "to obtain by chemical or physical means from containing or combined matter". It has been defined as a noun as "anything drawn from a substance by heat, distillation, solvents etc. as an essence. Activity of extraction implies existence of some substance, by applying same process from which its essence can be secured.

(12). In contrast, the word "excavate" means "to dig out", "to lay bare by digging" "to hollow or scoop out". Word "Excavation" a noun, has been defined

as "the act of excavating a hollow or cavity", "made by excavating and archeological site", "a dig". The term "extraction" has been applied to an act of extracting, "derivation from a stock or family, birth lineage" "that which is extracted". The essence of an activity of an extraction is to draw out the essence from a substance which may be combination of composition of so many other things. In these circumstances, I am of the opinion that the activity of mining in the absence of any legal fiction to the contrary cannot be equated with the activity of manufacture in its plain meaning taken in its wide amplitude. Else it would mean to make a statement of fact that a person manufacture, which otherwise is a creation of nature.

(13). However, I am not impressed by the contention of the learned counsel for the revenue that since the mining activity is not a manufacturing activity and mineral oil excavated by the petitioner is not to be sold by him, his case does not fall within the purview of sub-sec. (3) and principle stated in Vasudhara Tube well's case (supra) by the Madhya Pradesh High Court governs the case.

(14). The question whether the activity falls within the ambit of mining did not find consideration before the Madhya Pradesh High Court. The only limited question that appears to have been raised and which has been decided by the High Court is whether digging of wells amount to an activity of manufacture? In this connection, it would apt to quote sub-Sec. (1) and (3) of Sec. 8 of the Central Sales Tax Act, 1956 in extenso:

"8. Rates of tax on sales in the course of inter-state trade or commerce. (1) every dealer who in the course of inter- state trade or commerce.-

(a) sells to the Govt. any goods, or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section shall be liable to pay tax under this Act, which shall be 4% of his turn over.

(2)

(3) The goods referred to in clause(b) of Sub-s. (1).-

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rule made by the Central Govt. In this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

(c) are containers or other materials specified in the certificate of registration of the registered dealer purchasing the goods being containers or materials intended for being used for the packing of goods for sale

(d) are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration referred to in clause (b) or for the packing of any containers or other materials specified in the

certificate of registration referred to in clause(c)."

(15). While Sub-Sec.(1) provides the rate of taxes payable by the dealer who in the course of inter state trade or commerce sells any goods to the Govt. or sells to a registered dealer other than the Govt. goods of the description referred to in sub-sec. (3). The goods described in clause (b) of Sec. 8(3) are classified as goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods. On analysing the provision it can be seen that such goods are which are purchased:

(i) as being intended for resale by him

(ii) for use by him in the manufacture or processing of goods for sale

(iii) for use in mining;

(iv) for use in the generation or distribution of electricity or any other form of power.

(16). The aforesaid dissection of the provision makes two things clear that where the condition of sale of goods by the purchaser is attached only with such goods as purchased for resale or for use in manufacturing or processing the goods. The condition of selling the goods by the purchaser is not attached when the goods purchased by the registered dealer for use in the mining or in generation or distribution of electricity. Therefore, for the purpose of specifying the goods in certificate of registration of a dealer who is engaged in mining, it is sufficient If purchase of such goods is for use in mining, and cannot be connected with the question whether the person carrying on mining activity will also be selling goods excavated therefrom. In view of our conclusion that petitioner is engaged in mining, the petition deserves to succeed on this ground alone.

(17). So far as the question of purchase of goods for use in manufacture is concerned, what is required is that goods so manufactured or processed must be for sale. His not required that sale of such manufactured or processed goods must be only the purchasing manufacturer or processor himself. A person who only does job work for others is also a manufacturer and if goods manufactured or processed by him on job work are intended for sale by the person for whom he has carried out the job work, that satisfied the condition. The expression used in this regard is only "the manufacturer or processing of goods for sale" and not "the manufacturing or processing of goods for sale by him" as the expression has been used in connection with "for resale by him". This is the ratio of decision in the case of Assessing Authority vs. East India Cotton Mfg. Co. Ltd. (supra), wherein the Supreme Court has affirmed the decision of the Punjab and Haryana High Court in East India Cotton Mft. Co. P. Ltd. vs. Assessing Authority (3) and overruled the earlier decisions of the Kerala and Gujarat High Courts in O. Paramasivan vs. State of Kerala (4) and Commissioner of Sales Tax vs. Sheocharan Radheyshyam Sharma (5) and Navasari Cotton Silk Mills Ltd. vs. State of Gujarat (G). The Court had said:

"Now here we find that the expression used by the legislature as also the rule-making authority is simpliciter "for use.....in the manufacture.....of goods for sale" without any addition of words indicating that the sale must be by any particular individual. The legislature has designedly abstained from using any words of limitation indicating that the sale should be by the registered dealer manufacturing the goods. It is significant to note that where the legislature wanted to restrict the sale to one by the registered dealer himself, the legislature used the qualifying words "by him" after the words "for sale" in the first sub-clause of section 8(3)(b) indicating clearly that the resale contemplated by that provision is resale by the registered dealer purchasing the goods and by no one else, but while enacting the second sub-clause of section 8(3)(b) the legislature did not qualify the words "for sale" by adding the words "by him". This deliberate omission of the words "by him" after the words "for sale" clearly indicates that the legislature did not intend that the sale of the manufactured goods should be restricted to the registered dealer manufacturing the goods.....To read the words "by him" after the words "for sale" in sec. 8(3)(b) would not be construction but judicial paraphrase which is impermissible to the court. It is also important to note that the word "use" is followed by the words "by him" clearly indicating that the use of the goods purchased in the manufacture of goods for sale must be by the registered dealer himself but these words are significantly absent after the words "for sale". On a plain grammatical construction these words govern and qualify only "use" and cannot be projected into the words "for sale". The goods purchased by the registered dealer must be used by him in the manufacture of goods which are intended for sale but such sale need not be by the registered dealer himself; it may be by anyone".

(18). The ratio laid down by the Supreme Court in Assessing Authority's case (supra) fully supports the conclusion to which I have reached above. In the case of a person engaged in mining activity the purpose of goods to be used in mining to fall in the category of goods u/S. 8(1)(b), the sale of such goods by the purchasing or any other dealer thereafter is not the condition. Specifying such articles in the registration certificate, therefore, could not have been denied to the petitioner for that reason.

(19). As a result, this petition is allowed and it is held that the activity of drilling oil wells for Oil India is an activity of mining and if that activity is undertaken by the petitioner for Oil India, the petitioner is equally entitled to be called "as a person engaged in the mining activity" and to be treated as such. For the person to be engaged in mining it is not necessary that he should be carrying out mining activity for himself as owner or lessee of the mining lease. As there is no dispute on facts that the assessee was responsible for arrangement for all equipments etc. for carrying out mining operation for digging out wells and his activity though cannot be termed as an activity of manufacturing but he is entitled to be treated as "a person engaged in mining" in his certificate of registration. The impugned judgment dated 21.7.1997 passed by the Rajasthan Taxation Tribunal, Jodhpur is set aside. The competent Officer is accordingly directed to make

necessary amendment in the certificate of registration issued to the petitioner under the Act.

(20). There will be no order as to costs.