

(1978) 05 AHC CK 0042
In the Allahabad High Court
Case No : S.T.R. No. 293 of 1974

National Timber Mart

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 10-05-1978

Acts Referred:

Income Tax Act, 1961 — Section 80B, 80I
Income Tax Act, 1961 — Section 80B, 80I
Income Tax Act, 1961 — Section 80B, 80I

Citation : (1979) 44 STC 205

Hon'ble Judges : S.J. Hyder, J; C.S.P. Singh, J

Bench : Division Bench

Advocate : R.C. Sharma, for the Appellant; Standing Counsel, for the Respondent

Judgement

C.S.P. Singh, J.—During the years 1967-68, the assessee was a dealer in bamboos, bailies and timber, etc. Timber and bamboo and their products were taxable at single point under Notification No. 3393/X--1012-1962. The relevant items of the notification were timber, bamboo and their products. On 31st July, 1967, a notification was issued u/s 3-A of the Act, which was to the following effect:

With effect from August 1, 1967, the turnover in respect of timber, that is to say, the wood of sheesham, teak, sal, sakhu, haldu, tun, mango, jamun, nim, goolar, sheras, deodar, chir (pine) and mahua trees whether growing or cut not including its products, shall not be liable to tax except--

(a) in the case of the aforesaid goods produced in Uttar Pradesh at the point of sale by the forest department or private owners of forests, as the case may be; and

(b) in the case of the aforesaid goods imported from outside Uttar Pradesh, at the point of sale by the importer;

and the Governor is further pleased to declare that with effect from the aforesaid date, the turnover in respect of the said goods at the aforesaid points of sale shall be liable to tax at the rate of six paise per rupee.

2. As a result of this notification timber products, which had earlier been coupled with timber, were taken out of this item and made taxable under a different item at a lower rate. The assessee's case was that the "bailies" sold by him were not liable to be taxed at the rate of 6 per cent but at a lower rate. The Sales Tax Officer rejected this contention and treating bailies as timber, taxed them at the rate of 6 per cent. On appeal being filed, the appellate authority held that, as bailies were obtained by cutting timber, it was a timber product, and not timber. This view was not accepted by the revising authority. It is not denied that the bailies are obtained by cutting one of the species of the trees mentioned in the notification of July, 1967. This being so, bailies would be timber as the notification expressly states that timber includes not only standing trees but also cut trees. Only products of timber are excluded from this notification. In the present case, the finding is that bailies sold by the assessee are obtained by cutting timber trees. This being so bailies are nothing but cut timber trees. Counsel for the assessee urged that a manufacturing process is involved in the making of bailies and the resultant commodities are new products, which do not answer the description of the word "timber" as used in the notification. He has in support of this contention relied on a decision of this Court in the case of *Singh Engineering Works Private Ltd. v. Commissioner of Income Tax, Kanpur* 1978 U.P.T.C. 322. This case has no application to the facts of the present one. There the assessee manufactured iron bars and rods out of ingots manufactured from scrap, in its own electric furnaces and billets purchased from outside. The question arose whether the assessee was entitled to relief u/s 80-I(1) of the Income Tax Act. Under that section deductions are allowed in respect of profits and gains attributable to priority industry. Priority industry is defined u/s 80-B(7) of the Income Tax Act as meaning an industry which is engaged in the manufacture or production of any one or more of the articles or things specified in the list in the Sixth Schedule of the Act. The question that arose was as to whether the making of iron bars and rods came within the purview of the phrase "manufacture or production". Honourable Satish Chandra, J., as he then was, held that making of iron bars and rods from billets was not manufacture in its true sense but involved processing in order to change the shape or size of the raw material. Here bailies are obtained by cutting trees and, inasmuch as cut timber trees are also included in the entry relating to timber, it is idle to go into the question as to whether an act of cutting trees is processing or not. This controversy in view of the phraseology of the notification does not arise for consideration. We are also not impressed with the arguments advanced before the revisional authority that as later on, i.e., with effect from 15th November, 1971, the words "including bailies" were added to the notification, it should be held that formerly bailies were not included in the word "timber" earlier to this inclusion. The subsequent notification which added the words "included bailies"

to the entry appears to be by way of clarification. By the use of the word "include" the legislature does not always intend to convey the intention that but for the inclusive language the matters referred to were not part of the earlier subject-matter. It is on many occasions used by way of clarification: see *Commissioner of Sales Tax v. Chawla Stores* 1976 U.P.T.C. 337. In the present case, as the bailies were obtained by cutting timber trees and as cut timber is also included in the notification, it is not possible to hold that bailies did not come within the category of timber, and came to be included in the category only after 1971 when the inclusive words were introduced in the notification.

3. We, accordingly, answer the question in the affirmative, in favour of the department and against the assessee. The department is entitled to its costs, which is assessed at Rs. 200. The counsel's fee is also assessed at the same figure.

4. Reference answered in the affirmative.