
(1999) 03 SHI CK 0004
In the High Court Of Himachal Pradesh
Case No : C.W.P. No. 605 of 1998

Panth Stone

APPELLANT

Vs

The State of H.P. and Others

RESPONDENT

Date of Decision : 26-03-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Himachal Pradesh General Sales Tax Act, 1968 — Section 30, 31, 4, 5A(1), 6
Himachal Pradesh General Sales Tax Rules, 1970 — Rule 31
Income Tax Act, 1961 — Section 80HH
Transfer of Property Act, 1882 — Section 106

Citation : (1999) 2 ShimLC 355

Hon'ble Judges : D. Raju, C.J.; Lokeshwar Singh Pant, J

Bench : Division Bench

Advocate : M.M. Khanna, for the Appellant; Sanjay Karol, General, for the Respondent

Final Decision : Dismissed

Judgement

D. Raju, C.J.—The above writ petition has been filed seeking for the issue of a writ of certiorari to quash the order of assessment dated 28.7.1997 filed as Annexure P-1 passed by the third Respondent, for the reason that the crushing of the stone-boulders does not constitute any manufacture and the fourth Respondent, who sold the leasing rights has also paid the tax and consequently, refund the tax and penalty levied with a further direction that the Petitioner is not eligible to have himself registered under the Himachal Pradesh, General Sales Tax Act, 1968 and pay the tax thereunder.

2. The Petitioner is said to be running the business of "stone-crusher" at Dhambi-Halog in Tehsil and District Shimla. It is stated for the Petitioner that the stone crushing is a processing industry and not a manufacturing industry and in the process no new substance is manufactured except the bigger boulders are crushed and sized into smaller crushed stones. It is also stated for the Petitioner that even according to the third Respondent for the assessment year 1993-94,

the Petitioner did not even have taxable quantum of turnover but for the assessment year 1994-95 the Petitioner was held to have the taxable quantum of Rs. 40,000/- on 30.11.1994 and as a consequence thereof liable to pay tax under the Act with effect from 1.12.1994 and consequently, determined the tax payable by the Petitioner for the assessment year 1994-95 at Rs. 3,564/- with penalty at Rs. 900/-, in all amounting to Rs. 4,463/-. For the assessment year 1995-96 the tax liability was fixed at Rs. 19,440/- with penalty at Rs. 4,860/-, determining the total liability to Rs. 24,300/-. Similarly for the assessment year 1996-97, the tax liability was fixed at Rs. 21,606/- with a penalty of Rs. 5,419/- and thereby the total liability at Rs. 27,025/-. The dealer was directed to pay the tax by 27th August, 1997 with a default clause that on failure to do so, the interest at the rate of 18% will be charged thereafter from the due date in respect of the assessment for the years 1994-96 onwards.

3. The further claim on behalf of the Petitioner is that the impugned assessment is bad in law since the items in question have been taxed at the first stage of sale within the State and the Petitioner had already paid tax on royalty for the extraction of stones to the Mining Office, Shimla, from whom the mining rights have been procured and inasmuch as the amount of royalty which has been treated as a price for the procurement of such rights, has already been taxed under the Act, no tax can be levied on the sale of crushed stone when the same is sold in view of Section 6(2) of the Act. Adverting to Section 8 of the Act, it is claimed that the persons dealing in the items on which tax is and has been charged at the first stage of sale are not required to be registered and as the Petitioner has paid tax at the time of purchased of mining rights, he is not required to register and the entire assessment so framed is bad in law. The Petitioner has not chosen to invoke and exhaust any effective alternative remedies under the Act but straightaway came to this Court contending that there is no other efficacious remedy available to him in order to justify his recourse to writ jurisdiction.

4. Respondent No. 2 has filed a reply on behalf of Respondents 1 to 3 contending that the levy u/s 6 of the Act is quite legal and valid. While adverting to the claim that the metal, commonly known as "bajri" or "gitti" obtained from crushing the boulders and the process involved in the said activity is not a manufacturing process, it is contended for the Respondents that the writ petition substantially involves disputed questions of fact and the same could not be undertaken for adjudication under Article 226 of the Constitution of India. An objection is also raised that the Petitioner had a remedy of appeal, which he could have filed within 60 days from the date of communication of the order u/s 30 and thereafter, a revision u/s 31 of the Act and the Petitioner having not availed of and exhausted the effective alternative remedies, the writ petition ought not to be entertained. While contending that the order passed in Annexure P-1 is quite in accordance with law and well within the competency of the authority, which passed the same and none of the fundamental rights of the Petitioner could be said to have been violated or any grievance of infringement of principles of

natural justice could be effectively projected, it is stated that there is no justification for the Petitioner to approach this Court directly. It is also contended that the Petitioner has not adduced any evidence regarding the alleged payment of tax for the extraction of boulder stones before the assessing authority in the manner stipulated u/s 6(2) read with Rule 31(xi) of the Rules, during the course of inquiry, which resulted in passing of the impugned order. Adverting to Annexure P-2, which is the Form "M" it is stated that there is no indication therein as to the name and quality of the mineral, name of the person/party to whom the mineral is being despatched, vehicles number, volume of the mineral, page number of the production register or Export Pass and the time and date of despatch or even the value of the boulder stones or the amount said to have been charged by way of royalty or the tax said to have been paid thereon and therefore, Annexure P-2 does not serve any purpose to decide the issues raised in the writ petition. It is stated that even this Form has not been produced before the Assessing Authority for its consideration. It is further contended for the Respondents that the conversion of boulder stones into metal resulted in the creation of a new commercial commodity bearing distinctive nomenclature, character, market and use and therefore, the process constitute manufacture. According to the Respondents, the boulder stones by their nomenclature, character, marketability and use are distinctively a different commodity than the "bajri" or "gitti" into which it has been converted and the resultant product obtained by applying labour, manual or mechanical does not essentially remain the same commodity, viz. boulder and on the other hand, it resulted into a different and new commodity. The Metal manufactured as such is said to be commercially a new article and got a different price and use and such price included the labour which goes into manufacture and the entire processing definitely constitute a manufacturing process. While dealing with the various points raised in the petition, it is contended that the Petitioner is a manufacturing concern, that the resultant produce, the metal commonly known as "bajri" or "gitti" is obtained as a result of manufacturing process undertaken and render the sale of such material taxable under the Act. It is also stated for the Respondents that the Government of Himachal Pradesh no doubt, have in their Notification dated 6.12.1990 fixed the levy for the purpose of Section 6(2) with effect from 1.1.1991, and the stages of levy of tax are hereasunder:

(a) in the case of the dealer who imports into Himachal Pradesh any such goods from any place outside Himachal Pradesh, be the stage of sale when such dealer sells such goods for the first time within Himachal Pradesh;

(b) in the case of a dealer who manufactures such goods within Himachal Pradesh, be the stage of sale when such dealer sells such goods for the first time within Himachal Pradesh; and

(c) in the case of other dealer who has not purchased such goods from a dealer referred to in the proceeding clauses, be the stage at which such dealer sells such goods for the first time in Himachal Pradesh.

5. Adverting to the said notification as also Section 6 of the Act, it is claimed for the Respondents that the first stage of sale of the commodity manufactured or produced by the Petitioner, called in common parlance as "bajri", will be only when he sells the aforesaid commodity for the first time after such manufacture. While adverting to Section 8 of the Act and the incidental provisions such as Section 6(2) and Section 4 of the Act and the relevant rules, it has been stated for the Respondents that the first proviso to Section 8(1) will apply to those dealers who after purchasing the goods resell the same, as it is, without subjecting them to further processing or to any manufacturing process unlike the Petitioner, who by subjecting the boulders to manual mechanical processing converts boulders into a different commercial commodity for different price, purpose, use and business, and that, therefore, the levy made against him and the consequential penalty for the default committed in not getting himself registered, submitting returns and paying the tax in time, are quite in accordance with law and are unassailable.

6. Adverting to the alleged payment of tax at the time of paying royalty, it is contended for the Respondents that apart from the fact that the said payment, even if, any, will not enure to exonerate the Petitioner to pay the sales tax on the newly manufactured/produced goods commercially known as "bajri", even that claim of the so-called payment has not been substantiated in the manner known to and as prescribed in the rules by furnishing to the Assessing Authority the prescribed form and manner a certificate duly filled in and signed by the registered dealer from whom the goods were purchased to the effect that the tax on such goods has been paid at the first stage.

7. At the time of hearing of the writ petition, Mr. M.M. Khanna, learned Counsel for the Petitioner confined his submissions and contentions by way of challenge to the impugned proceedings, mainly and only to the solitary ground of making a claim that the metal, commonly known as "bajri" or "gitti", was not a product different from the original big boulders and that the conversion of the boulders into "bajri" or "gitti" does not involve or constitute any manufacturing process resulting in a new and different product. In support of the said claim, the learned Counsel placed reliance upon the decisions reported in (1978) 41 S.T.C. 364 Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. PTO Good Packers; (1980) 46 STC 63 Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. PIO Food Packers; (1981) 47 STC 30 The State of Tamil Nadu v. Subbaraj and Co.; (1992) 87 STC 339 State of Tamil Nadu v. O.P. Aliyar (1993) 91 STC 450 Commissioner of Income Tax v. N.C. Budharaja and Co.; (1995) 97 STC 601 Commissioner of Sales Tax, Maharashtra State, Bombay v. Mahalaxmi Stores; (1998) 111 STC 705 Jayalakshmi Granite Metal Industries v. State of Kerala and Ors.; (1990) 111 STC 7 and Union of India (UOI) and Others Vs. J.G. Glass Industries Ltd. and Others, . Per contra, learned Advocate-General, appearing for the Respondents while reiterating the stand taken in the reply filed on this particular aspect placed reliance upon the decisions reported in Idandas Vs. Anant Ramchandra Phadke (Dead) by Lrs, and

8. We have carefully considered the submissions of the learned Counsel appearing on either side. Before advert to the consideration of the points raised, it would be appropriate to advert to the decisions relied upon by the learned Counsel appearing on either side and some of the decisions really touching the question now raised for our consideration.

9. (1978) 41 STC 364 (supra) is that of a Division Bench of the Kerala High Court, the decision in which, according to us, turned mainly upon the peculiar wording of Section 5A(1)(a), which envisaged the levy of purchase tax only when the goods purchased had been consumed in the manufacture of other goods for sale or otherwise. The Division Bench of the Kerala High Court appears to have laid stress on the words, manufacture of "other goods" for sale and in that process considered that the pineapples, which were purchased, when sliced after cutting and rejecting the inedible portions and thereafter slices were processed and packed in tin containers for being available in the market, there was no consumption of the commodity as such, nor any process of manufacture was carried out for producing other goods. It may be pointed at this stage that the relevant portion of the provision "or otherwise" and its significance or impact does not appear to have been properly adverted to and considered therein, on account of the peculiar fact situation presented in that case.

10. In (1980) 46 STC 63 (supra), the apex Court with a Bench consisting of three of their Lordships, affirmed the decision of the Kerala High Court reported in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes) Vs. Pio Food Packers, A careful reading of the said decision would also go to show that their Lordships specifically observed that though a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it and inasmuch as Section 5A(1)(a) of the Act envisaged the consumption of a commodity in the manufacture of another commodity, unless the goods purchased are shown to have been consumed in the process of manufacture resulting in the production of other goods, with the original commodity experiencing and undergoing such a change to make it commercially a different product and no longer the original commodity, the manufacture cannot be said to have been taken place. It is appropriate even at this stage to point out that in (1994) 95 STC 601 Assistant Commissioner (Intelligence IV, Hyderabad v. Nandanam Construction Co.), yet another Bench consisting of three of their Lordships of the apex Court noticed a direct conflict between the decisions of two Benches of the Supreme Court of co-ordinate strength in Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh (1969) 24 STC 343 and Deputy Commissioner of Sales Tax v. Pio Food Packers (1980) 46 STC 63 , on the interpretation of the words "either consumes such goods in the manufacture of other goods for sale or otherwise" and directed the case to be placed before the Hon'ble Chief Justice for reference to a larger

Bench. In doing so, it was observed therein that, "left to ourselves, we would have preferred the view taken by Shah, J., in *Ganesh Prasad Dixit Vs. Commissioner of Sales Tax, Madhya Pradesh*, but since there is a direct conflict between two Benches of co-ordinate strength, we are obliged to refer the matter for resolving the conflict." The decision in (1969) 24 STC 343 (supra), which weighed with the learned Judges in this case as to reflect the correct position specifically adverted to the other part of the clause, in a similar provision, that consumption of goods in the manufacture of other goods for sale is one thing and consumption of such goods "otherwise" is an another thing and that either manner of such consumption was sufficient to attract the purchase tax envisaged under the relevant provisions of those Legislations.

11. In (1981) 47 STC 30 (supra), a Division Bench of the Madras High Court had an occasion to deal with a dealer who purchased the raw bones for conversion into crushed bones by a process of breaking in disintegrator and sale locally of such bone grists, bone-meal, fluff horns and hoof obtained in that process. The said Division Bench considered the matter by placing strong reliance upon the decision of the apex Court reported in *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, that as long as the goods purchased have not been consumed or used in the manufacture of some other goods, the levy is not attracted u/s 7-A(1)(a) of the Tamil Nadu Act and the resultant goods in that case also cannot be said to be of "other goods".

12. It may be incidently noticed here at this stage that an identical provision in the Andhra Pradesh Act, namely, Section 6-A (ii) (a) came up for consideration before a Division Bench of the Andhra Pradesh High Court in the decision reported in (1989) 72 STC 317 P. Subba Raju and Company v. The State of A.P. and adverting specifically to the decision of the Division Bench of the Madras High Court reported in *The State of Tamil Nadu Vs. Subbaraj and Co.*, the Division Bench of the Andhra Pradesh High Court after analysing all the other decisions of the Apex Court, as on that date, held that sinews and bone-meal are commodities different from raw bones as understood in commercial circles and those resultant products which were meant for sale by the Petitioners constituted different commodities and, therefore, attracted levy under the Andhra Act.

13. In (1992) 87 STC 339 *State of Tamil Nadu v. O.P. Aliyar*, a Division Bench of the Madras High Court held in a case where blue metal jelly is obtained by crushing stone boulders into smaller stones of varying sizes, that the process does not result in new goods so as to attract levy u/s 7-A(1)(a) of the Tamil Nadu Act and such decision was arrived at mainly on the basis of the Division Bench judgment of the Kerala High Court reported in 41 STC 354 (supra) and of the Madras High Court reported in *The State of Tamil Nadu Vs. Subbaraj and Co.*, , without much discussion or consideration, in what may be stated to be a short judgment. In (1993) 91 STC 450 *Commissioner of Income Tax v. N.C. Budharaja & Co. and Anr.*, the expression "manufacture" and "produce" were the subject-matter of consideration, viz-a-viz, a claim u/s 80-HH of the Income Tax

Act, 1961 and in our view, the said decision does not really have much bearing on the question before us, particularly, having regard to a context of a law relating to levy of tax of sales or purchases.

14. In (1995) 97 STC 601 (supra), a Division Bench of the Bombay High Court had an occasion to consider the definition of "manufacture" in Section 2(17) of the Bombay Act and it was held therein that the process of crushing boulders to obtain stones of smaller sizes termed as "gitti" cannot be regarded as a process of manufacture, and the taxable item being stone, boulders and "gitti" are but merely different sizes of the same stone and there is no alteration of the nature and character of the stone by converting the stones of bigger sizes into pieces of relatively smaller sizes. On that view, it was observed that the process of crushing cannot be regarded as a process of manufacture. It may be noticed at this stage that the Division Bench of Bombay High Court specifically adverted to and dissented from the decision rendered by a Full Bench of Madhya Pradesh High Court reported in (1990) 79 STC 149 (Kher Stone Crusher v. General Manager, District Industries Centre, Jabalpur and Anr.) and that of Rajasthan High Court reported in (1994) 94 STC 118 C.T.O. v. Bhonri Lal Jain. In (1990) 79 STC 149 (supra) a Full Bench of the Madhya Pradesh High Court while approving an earlier decision of the same Court reported in (1957) 8 STC 294 Kulkarni v. State, applied the very principles laid down by the apex Court in (1980) 46 STC 63 (supra) and held that when bigger stones and boulders are cut and shaped into specified shapes and sizes in crushers for manufacture of ballast, metal or "gitti", there is transformation of the stone and a new different commercial article fit for use in construction of roads and houses, is produced as a result of treatment, labour and manipulation in the crusher and the process so applied conforms to the definition of "manufacture" in the Madhya Pradesh Act. In (1994) 94 STC 118 (supra), a learned single Judge of the Rajasthan High Court had an occasion to deal with a case of excavation of blocks of stone, which were cut into specified sizes and the process of reducing the big block of stones into smaller stones having definite length, breadth and thickness was considered to be a process of manufacture since such blocks and stones had different commercial names in the common and commercial parlance.

15. In Union of India (UOI) and Others Vs. J.G. Glass Industries Ltd. and Others, the apex Court observed while laying down two-fold tests to decide as to whether a particular process amounts to "manufacture", that the first test would be as to whether by that process a different commercial commodity comes into existence or the identity of the original commodity ceases to exist and secondly whether the original commodity would have no purpose but for that process. Applying the said tests formulated, their Lordships were of the view, in that case, that the plain bottles are themselves commercial commodities and can be sold and used as such and by the process of printing names or logos on the bottles, the basic character of the commodity does not change and they continue to be bottles and therefore, it cannot be said that but for the process of printing, the bottles will serve no purpose or are of no commercial use.

16. The decision in *Idandas Vs. Anant Ramchandra Phadke (Dead)* by Lrs, on which reliance has been placed for the Respondents arose u/s 106 of the Transfer of Property Act, 1882, in the context of construing what constituted a lease for manufacturing purposes, and it was observed therein, while formulating certain tests, that (1) it must be proved that certain commodity was produced; (2) that the process of production must involve either labour or machinery; and (3) the end product which comes into existence after manufacturing process is complete, and should have a different name and should be put to a different use. On the facts of the case before their Lordships, which related to conversion of wheat into "atta", it was held that all the three tests remained fully satisfied and therefore, the relief in that the lease could be considered to be one for "manufacturing purposes". The learned Advocate-General appearing for the Respondents also placed reliance upon the decision reported in *Moti Laminates Pvt. Ltd. and Others Vs. Collector of Central Excise, Ahmedabad*, which was a case arising under General Excises and Salt Act, 1944. The apex Court was dealing therein with a case of manufacturers and sellers of laminated sheets out of various raw materials including paper and other chemicals, namely, phenol, formaldehyde, hexamine, etc. purchased from the open market after paying duty and in the manufacturing process "phenol formaldehyde" was said to have been produced out of melamine, formaldehyhde, phenol, methanol, caustic soda, hexamine and hydrochloric acid. In adjudging the exigibility to excise duty on phenol formaldehyhde so produced, which was, on facts, found to be resin at "A" stage, which was captively consumed by the Appellants before the Court, the plea of the Appellants therein was that they were not liable as the reacting mixtures were not only unstable having short life but they were not marketable in the form they were obtained in intermediate stage in a continuous process. In the teeth of absence of any dispute on facts that the resins at "A" stage/phenol formaldehyde produced by the Appellants was nothing else than what are chemically known as "resols", which according to the Revenue is an item mentioned under Item 15-A of the Tariff Schedule, and therefore was exigible to tax, such a plea on behalf of the Revenue was rejected in the case holding that although the duty of excise is on manufacture or production of the goods, any goods to attract excise duty must satisfy the test of marketability and the Tariff Schedule does not have the consequence of altering the basis character of leviability and unless the goods produced or manufactured are shown to be capable of being marketed or sold in market for consumption, no duty was exigible.

17. In (1994) 95 STC 181 *State of Andhra Pradesh v. Modern Proteins Ltd.*, the apex Court was considering an entry in the Schedule to the Andhra Pradesh Act, which dealt with "deoiled cake" and the question as to whether "groundnut protein flour" produced by processing deoiled cake by grinding and subjecting to heat and steam, to ensure removal of solvents and adding colouring agents would fall within item "deoiled cake". After analysis of some of the decisions on the subject relating to changes undergone by a particular commodity by

subjecting it to a manufacturing process the Court ultimately came to the conclusion that though both deoiled cake and groundnut protein flour contain common properties with indisputably different and distinct use and purpose, they cannot be considered to be the same, particularly when they constituted to be a distinct commodity commercially known in common parlance for distinct and different use.

18. In (1993) 91 STC 408 Rajasthan Roller Flour Mills Association and Anr. v. State of Rajasthan and Ors., their Lordships of the apex Court had an occasion to deal with a question as to whether flour, maida and suji derived from wheat are commodities different from wheat and their Lordships observed that the new goods so emerging have not only a higher utility than the commodity wheat, but are different goods commercially speaking.

19. We have carefully considered the submissions of the learned Counsel appearing on either side. So far as the case on hand is concerned, stone-boulders or blocks initially extracted from mines by excavation are subject to the process of crushing mechanically or by manual labour and by such process the resultant commodity or goods, commonly known as " bajri" or "gitti" are obtained and sold in market. There could be no serious dispute or controversy over the factual position that the stone blocks are boulders excavated from mines from the earth have different user and purpose and either cannot be an effective substitute in the matter of their own area or purpose of uses than "bajri or "gitti". Not only the manufactured product "bajri" or "gitti" is a well-known commercial product by itself and has a distinct and different purpose and use substantially and radically different from the blocks of stone/big boulders but in commercial parlance, both engaged in the trade as well as consumers who purchase are well aware of such different and distinct uses of those commodities by their well recognised and commercial names also. Merely from the fact that "bajri" or "gitti" is produced out of the stone blocks/big boulders, and such produce retain the basic metallic attributes or properties of stone, it cannot be stated that the resultant product of "bajri" or "gitti" would be one and the same as the block of stones/big boulders unearthed or excavated from earth/mines. When bigger stones and boulders are cut and shaped into specified shapes and sizes in crushers or manufactured into ballast, metal or "gitti" or "bajri", in our view, there certainly takes place the required transformation in stone boulders and in substance a different commercial article fit for construction of roads, houses, bridges and dams are produced. The decision, strongly relied upon for the Petitioner, of the apex Court reported in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, in our view, does not help the Petitioner in this case in any manner since even in the said judgment, their Lordships have concurred with the principle that if by virtue of the manufacturing process a transformation takes place and a new and different article having distinct name, character and use result, it would be a different product altogether from the original product, which has been consumed in the process. As long as the resultant product, which is sold by the Petitioner in this

case is a new one with different commercial name and use as well as purpose merely because, in the production of such goods other goods with similar basic and metallic attributes have been used or the newly, produced goods retain such attributes of metallic nature will not in any manner detract the resultant goods from being a different produce which is a distinct and separate commodity exigible to tax. In *Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others*, their Lordships of the apex Court while dealing with a question arising under the Madhya Pradesh Act, observed that the activities involved in cutting the scrap purchased in the form of defective angles, flats, channels, tubes and coils of very considerable size in such sizes for making it suitable for being utilised by the rolling mills and other manufacturers would constitute manufacture in terms of the definition of the word "manufacture", contained in the said Act. It may also be pointed out at this stage, even as a matter of general principle that though every manufacturing process or processing may not result in the production of new goods or commodity, the factum of actual production and emergence of a new commercial product, is per se sufficient proof of the original product having been subjected to or having undergone some process of manufacture. In *Gopuram Gram Mill Co. and Others Vs. State of A.P. and Others*, their Lordships of the apex Court had to consider the question as to whether parched and fried Bengal gram or dal, which had undergone the process of perching and frying would no longer be that gram or gulab gram which it was before such processing, and that any new and distinct commodity has really emerged thereby. The answer was in the affirmative that they are distinct and separate goods. In *Commissioner of Income Tax, Trivandrum Vs. Relish Goods*, though dealing with a question under the Income Tax Act, 1961, their Lordships considered an issue pertaining to a dealer in movables or goods, of the kind dealt with by the apex Court in (1986) 63 S.T.C. 239 (*Sterling Foods Case*) and observed as follows:

Apart therefrom, there is the judgment of this Court in *Sterling Foods v. The State of Karnataka and Anr.* (1986) 63 S.T.C. 239, where it has been held that processed or frozen shrimps and prawns are commercially regarded as the same commodity as raw shrimps and prawns. When raw shrimps and prawns are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing they do not cease to be shrimps and prawns and become other distinct commodities. There is no essential difference between raw shrimps and prawns and processed or frozen shrimps and prawns. In common parlance they remain known as shrimps and prawns. This judgment in *Sterling Foods* (supra) has been rightly applied by the Bombay High Court, in the case of *Commissioner of Income Tax Vs. Sterling Foods (Goa)*, to a claim u/s 80HH of the Income Tax Act and it has been held that the activity of processing of prawns is not an activity of manufacture or production.

20. The fact remains that the Himachal Act does not contain any specific definition of the word "manufacture". But even then, the basic issue to be considered is as to whether the big boulders/blocks of stone excavated and

unearthed from mines can be said to be the same as the ballast or gitti or bajri which has been produced by the Petitioner and sold and which is made the subject of levy. It has to be also considered as to whether there is no essential difference between those two categories or varieties merely because generically they may contain certain common properties or metallic elements or attributes in them,, despite different and distinct forms, names, purposes or use in common as well as commercial parlance and which are well known by such distinct names or user among the Traders as well as ultimate consumers. The blocks of stone/ big boulders as unearthed, which may and could be used for altogether different purposes cannot be said to, even after their conversion into "bajri" or "gitti" retain their original identity as commonly and commercially known and treated and for the matter even in the physical sense, consequently having regard to the distinct and different commercial use and purpose and the changed form as also the use of the resultant product, in our view, the "bajri" or "gitti" by itself constitute an independent class or category of goods by themselves, taxable under the Act, irrespective of whether as materials unearthed in the form of big boulders or stone blocks, they suffered any tax or not. The Petitioner cannot rely upon such a plea also, at any rate in this case, for the reason that the Petitioner miserably failed to satisfy the requirements of Section 8(1) of the Act by proving the said fact also, as mandated. Neither any concrete nor substantial material worth credence to substantiate their claim with reference to proviso to Section 8(1) has been produced before us nor the Petitioner does appear to have produced any such material even before the Assessing Authority. On this ground also, the claim of the Petitioner has to fail and, therefore, shall stand rejected.

21. For all the reasons stated above, we see no merit, whatsoever, in the writ petition and the same fails and shall stand dismissed. We have not adverted to the question of failure on the part of the Petitioner to exhaust the alternative remedy for the reason that having regard to the importance of the legal issue, we have chosen to decide the question of law, which is of recurring nature, in the teeth of indisputable facts on record, as projected by both parties.