
(1973) 11 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : Sales Tax Reference No. 40 of 1971

Pyare Lal Khushwant Rai

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 06-11-1973

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 22, 5, 6

Citation : (1975) 2 ILR (P&H) 653 : (1974) 34 STC 341

Hon'ble Judges : Harbans Singh, C.J.; Prem Chand Jain, J

Bench : Division Bench

Advocate : J.N. Kaushal and Ashok Bhan, for the Appellant; Harbans Lal, for Advocate-General, for the Respondent

Judgement

Prem Chand Jain, J.—This judgment, of ours would dispose of Sales Tax References Nos. 40 and 41 of 1971, which relate to the same firm, that is, Messrs. Pyare Lal Khushwant Rai (hereinafter referred to as the assessee-firm). The references relate to the assessment years 1959-60 and 1960-61. The assessee-firm is an unregistered dealer in firewood. It was held liable to pay sales tax by the Assessing Authority and the order of the Assessing Authority was upheld though with a little modification by the highest revisional authority. An application was made u/s 22(1) of the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the Act) for referring certain questions of law arising out of the order of the Financial Commissioner (Taxation), Punjab, but the same was dismissed as time barred by the Presiding Officer, Sales Tax Tribunal, Punjab. The matter was brought to this court by filing petitions u/s 22(2) of the Act for issuing direction to the Sales Tax Tribunal, Punjab, to refer the question of law, which were allowed by D.K. Mahajan and B.R. Tuli, JJ., on 28th October, 1970. Thereafter the matter again went back to the Presiding Officer, Sales Tax Tribunal, Punjab, who has referred the following question of law for our decision:

Whether the business of firewood carried on by the applicant-firm can be called a manufacturing business and it can be called a manufacturer and further whether

the liability of assessee to pay tax arises at Rs. 50,000 or Rs. 10,000?

2. The relevant provision of the Act, which would be relevant for the decision of the question referred to, reads as under:

4. (1) Subject to the provisions of Sections 5 and 6, every dealer except one dealing exclusively in goods declared tax-free u/s 6 whose gross turnover during the year immediately preceding the commencement of this Act exceeded the taxable quantum shall be liable to pay tax under this Act on all sales effected after the coming into force of this Act and purchase made after the commencement of the East Punjab General Sales Tax (Amendment) Act, 1958....

(2) Every dealer to whom Sub-section (1) does not apply or who does not deal exclusively in goods declared to be tax-free u/s 6 shall be liable to pay tax under this Act on the expiry of 30 days after the date on which his gross turnover during any year first exceeds the taxable quantum:

Provided that in the case of a dealer who imports any goods for sale or use in manufacturing or processing, or who manufactures or processes any goods for sale, the liability to pay tax shall commence with effect from the date on which his gross turnover during any year first exceeds the taxable quantum.

3. The assessee-firm has been assessed as a dealer who manufactures goods for sale. The contention of Mr. J.N. Kaushal, Senior Advocate, was that, in the circumstances and on the facts of this case, the assessee-firm could not be held a manufacturer of goods and that it had to be assessed as a general dealer. After giving our thoughtful consideration to the entire matter, in the light of the submissions made before us by the learned counsel for the parties, we are of the view that there is considerable force in the contention, of the learned counsel for the assessee-firm. From the statement of the case we find that the case of the department was that the assessee was an authorised contractor engaged in the purchase of firewood, removed trees from the forest and brought the same to his business premises, chopped and sold the same as firewood. The question that arises for consideration is whether all this process results in manufacture of any goods? The answer, in our view, has to be in the negative. As observed by their Lordships of the Supreme Court in Commissioner of Sales Tax, U. P., Lucknow v. Harbilas Rai and Sons [1968] 21 S.T.C. 17 (S.C.) the word "manufacture" has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. As to what do we mean by the word "manufacture", in another decision of the Supreme Court in Union of India (UOI) Vs. Delhi Cloth and General Mills, , it was observed as follows:

The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in

Permanent Edition of Words and Phrases, Vol. 26, from an American judgment. The passage runs thus:

"Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation ; a new and different article must emerge having a distinctive name, character or use.

4. The trees which are felled by the assessee in the jungle are wood and can be either timber or fuel wood. By chopping off the branches or by cutting it into small pieces, the nature is not changed nor does such a transformation take place by which a different article emerges having a distinctive name or character. After felling the tree when it is sold as such or after cutting it into pieces, it remains fuel wood. The trees by the name of beri, kikar, dhak, jand, etc., are used only as fuel wood and after felling the same their nature would not change and still they would only be used as firewood. Even after cutting the trees into small pieces or big pieces, the raw material retains the same character. In a given case, the customer may just purchase a tree at a lower rate and may himself cut it into pieces and use it as fuel wood while, in another case, the dealer may cut it into pieces and sell the same as fuel wood. In both the cases, the character of the material remains the same. No transformation takes place nor does a different article having a distinctive name or character emerge. It has been observed by Bhutt, J., in *State of Madhya Pradesh v. Wasudeo* [1955] 6 S.T.C. 30, that without any work of art the trees are liable to be sold only as raw material, whether as fuel or timber. In another Division Bench decision of the Madhya Pradesh High Court in *Mohanlal Vishram v. Commissioner of Sales Tax, Madhya Pradesh, Indore* [1969] 24 S.T.C. 101, Pandey, J., who prepared the judgment, while interpreting similar provision of law, observed that by felling standing timber trees, cutting them and converting some of them into ballis, the assessee did not alter their character as timber or used them for manufacture of "other goods" within the meaning of Section 8(1) of the M. P. General Sales Tax Act, 1958. Mr. Harbans Lal, the learned counsel for the department, drew our attention to a single Bench decision of the Calcutta High Court in *Shaw Bros, and Co. v. State of West Bengal* [1963] 14 S.T.C. 878, wherein it has been held that chopping of timber into firewood is a manufacturing process and, therefore, firewood is a manufactured article. With great respect we are unable to agree with this view for the reasons recorded in the earlier part of the judgment. In the light of the discussion above we hold that the business of firewood carried on by the assessee-firm could not be called a manufacturing business nor could the assessee-firm be called a manufacturer and the liability of the assessee-firm to pay the tax arose at Rs. 50,000. Consequently, the answer to the question referred to us is returned in the negative, i.e., against the department. The assessee-firm shall have its costs in both the references separately which are assessed at Rs. 150 each.