
(1963) 06 CAL CK 0009
In the Calcutta High Court
Case No : Civil Rule No. 39 (W) of 1962

Shaw Bros. and Co.

APPELLANT

Vs

The State of West Bengal

RESPONDENT

Date of Decision : 26-06-1963

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1963) 14 STC 878

Hon'ble Judges : B.N. Banerjee, J

Bench : Single Bench

Advocate : Radha Kanta Bhattacharya and Ajit Kumar Roy, for the Appellant;
Amal Chakravarty, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Banerjee, J.—The petitioner-firm is a dealer within the meaning of the Bengal Finance (Sales Tax) Act, 1941. According to the petitioner-firm, the business carried on by the firm consists of: (1) running a saw-mill for sawing of wood supplied by the customers on remuneration, (2) sale of sized planks made from logs and damaged timber purchased for that purpose, and (3) manufacture of furniture. The petitioner-firm did not get itself registered as a dealer under the Bengal Finance (Sales Tax) Act. The Commercial Tax Officer, Alipore Charge, caused production of the books of account of the petitioner-firm and inspected them sometime in May, 1959. Thereafter, being of the opinion that the petitioner-firm was assessable to sales tax he started proceedings for assessment against the petitioner-firm. Admittedly, the petitioner-firm did not co-operate in the assessment, did not produce its account books before the Commercial Tax Officer and ultimately suffered a best judgment assessment. The Commercial Tax Officer found that the total taxable turnover of the petitioner-firm was Rs. 23,875-00 and imposed a tax of Rs. 1,193-75 nP. thereupon. He also imposed a penalty of Rs. 125-00 on the petitioner-firm for having carried on business in contravention of Section 7(1) of the Bengal Finance (Sales Tax) Act.

2. Against the order of assessment, the petitioner preferred an appeal before the Assistant Commissioner of Commercial Taxes but that appeal failed.

3. It is in these circumstances that the petitioner-firm moved this Court, under Article 226 of the Constitution, praying for a writ of certiorari for the quashing of the order of assessment made by the Commercial Tax Officer as affirmed in appeal and for a consequential writ of mandamus restraining them from giving effect thereto and obtained this Rule.

4. Mr. Radha Kanta Bhattacharya, learned Advocate for the petitioner, argued the following points for my consideration. He contended that the sawed and sized planks sold by the petitioner-firm were in no way different from logs and timber and were not goods on which sales tax could be charged. He further contended that sawing of planks from timber or sizing the same was not producing any manufactured commodity and the petitioner-firm must not be treated as a manufacturer. In support of his contention he relied upon the following observation by Das Gupta, J., in the judgment of the Supreme Court in the case of Union of India (UOI) Vs. Delhi Cloth and General Mills, , made in the context of the Central Excises and Salt Act:

According to the learned counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. 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.

5. In my opinion, the observation quoted above will not help Mr. Bhattacharya. When planks are sawed out of logs, what is produced is a different thing from logs capable of being put to different uses. Therefore, when planks are made from logs or damaged wood, a new kind of commodity is manufactured because plank made out of timber is not timber in its nascent state.

6. In the view I take I find no substance in the contention raised by Mr. Bhattacharya and I decline to interfere with the order. The Rule is discharged. There will be no order as to costs.