

(1978) 12 GUJ CK 0006
In the Gujarat High Court
Case No : Sales Tax Reference No. 8 of 1978

S.L.M. Maneklal Industries Ltd.

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 13(B), 16, 45(1), 69, 69(4)

Citation : (1982) 50 STC 366

Hon'ble Judges : P.D. Desai, J;B.K. Mehta, J

Bench : Division Bench

Judgement

Mehta, J.—At the instance of the assessee, the Gujarat Sales Tax Tribunal has made this reference and the following question has been referred to us for our opinion u/s 69 of the Gujarat Sales Tax Act, 1969 :

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that timber sizes purchased by the applicant against form 19 were not items of consumable stores, and therefore, the applicant was liable to pay purchase tax u/s 16 of the Gujarat Sales Tax Act, 1969, on the purchases of timber sizes made against declarations in form 19 ?"

2. The reference has been made in the following facts and circumstances : The applicant is a manufacturer of heavy machinery, air-compressor and vacuum pumps. The case of the applicant was that these articles were manufactured as per specifications given by the customers and subject to test of performance to be carried out at the premises of the customers after their erection. During the period of assessment from 6th May, 1970, to 31st March, 1971, the applicant had purchased timber sizes worth Rs. 1,04,004 against declarations in form 19. These timber sizes were used for preparing crates for packing of machinery manufactured and sold by the applicant. According to the applicant, such packing was necessary for safe transportation as well as safe delivery without damage to the machinery so that the test of performance before completion of sale can be properly carried out. The Sales Tax Officer while assessing the applicant held that

timber sizes were used as packing materials, and hence the applicant had committed breach of the declarations in form 19. He therefore subjected the purchases of the timber sizes to purchase tax u/s 16 of the Gujarat Sales Tax Act, 1969, and also imposed penalty u/s 45(1) of the said Act. In appeal, the Assistant Commissioner of Sales Tax confirmed the order of the Sales Tax Officer with the result that the applicant was required to carry the matter in further appeal before the Tribunal. The Tribunal, following its earlier decision in *Vasuki Carborundum Works v. State of Gujarat* (Second Appeal No. 361 of 1974 decided on 8th May, 1975) held that the purchase of timber sizes made by the applicant and used in preparing crates for packing machinery cannot be considered as purchases of consumable stores, and the Tribunal found itself unable to enlarge the meaning of the words "used in the manufacture of goods for sale" as canvassed by the applicant so as to include the marketing activity into the word "manufacture". The Tribunal, therefore, dismissed the appeal of the assessee and confirmed the order of the authorities below. At the instance of the assessee, therefore, the question set out above is referred to us.

3. This Court has, by its decision of 17th November, 1978, in *Vasuki Carborundum Works v. State of Gujarat* (Sales Tax Reference No. 13 of 1976) [1979] 43 STC 294 at the instance of M/s. Vasuki Carborundum Works, Thangadh, disagreed with the view of the Tribunal expressed in Second Appeal No. 361 of 1974 decided on 8th May, 1975, following which the Second Appeal No. 80 of 1976 preferred by the assessee-applicant herein before us was rejected. This Court held, applying the decision of the Supreme Court in *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another*, that there is no warrant for limiting the meaning of the expression "in the manufacture of goods" to the process of production of goods only. This Court said while disagreeing with the view of the Tribunal in *Vasuki Carborundum Works v. State of Gujarat* (Sales Tax Reference No. 13 of 1976 decided on 17th November, 1978) [1979] 43 STC 294, as under :

"..... The crux of the problem in the present reference is that are the articles in question such that they can be said to be consumable stores required in the manufacture of taxable goods for sale, since admittedly it is neither raw material nor a processing material. The Supreme Court has pointed out *J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another*, that a process or an activity may not be necessary theoretically for production of finished goods, but if it is such an integral part of the ultimate manufacture of goods that in its absence the manufacture may not be commercially expedient, that activity or process must be considered the manufacturing activity itself and the goods intended for use in that process or activity should be considered to be goods required in the manufacture of taxable goods for sale. It is no doubt true that the articles which can be purchased tax-free on furnishing a prescribed certificate by a manufacturer must be either raw materials or processing materials or consumable stores. But it is not possible to say much less urged successfully that the consumable stores must necessarily partake the nature of

raw materials or processing materials or must more or less stand on the same footing. We do not think that the learned Assistant Government Pleader was right in his contention that consumable stores must be given a very restricted meaning since they are used along with the words "raw or processing materials" in section 13(1)(B). In the ultimate analysis, the relevant question is : are the articles in question the prescribed articles required in the manufacture of taxable goods for sale ? In other words, are they consumable stores or materials required in a process or activity which is integrally connected with the manufacturing activity and without which the activity of manufacture may be commercially inexpedient ? The answer, in our opinion, is that the article in question in this reference, namely, kathi (twine), is part of such consumable stores which would be necessarily required in the activity of marketing the goods which is essentially connected with the larger activity of manufacture. We do not want to say that all the articles or materials which may facilitate the business of manufacture would be such consumable goods as entitled to be purchased tax-free. The ornamental packing of an article or tying carton or boxes in which the manufactured goods are packed so as to make them attractive in the market cannot ex facie claim such exemption provided in section 13(1)(B) since they are also the articles which may be making the goods more attractive and thereby facilitating the manufacturer in his business of marketing. It is not possible in the very nature of things to lay down exhaustively or to suggest a straight jacket formula as to what would be the articles or goods required in a process or activity which though not strictly a manufacturing activity itself but is such as integral part thereof that in its absence the manufacturing activity may not be commercially expedient. It would depend on the facts and circumstances of each case but having regard to the nature of articles with which we are concerned in the present case, we must hold that having regard to its nature ..."

4. The pertinent question, therefore, before us is : are the crates necessary in the activity which is integrally connected with the manufacturing of machinery, etc., according to the specifications of the customers ? It should be noted that the assessee-applicant before us is a manufacturer of air-compressor and vacuum pumps according to the specifications given by the customers and since in the very nature of articles they should have precision bearing, the applicant claims, they should be packed in crates so that when erected on site, they would be able to pass through the test performance so as to satisfy the specifications prescribed by the customer concerned. This is essentially a question of fact, and therefore, unless there is sufficient evidence to justify the conclusion that unless the machinery manufactured by the assessee-applicant herein are packed in crates at the point where they are manufactured so as to carry them to the site without disturbing the precision prescribed therefore by the customer, it would not be possible for us to answer the question referred to us. Theoretically, it may be possible to urge that the machinery can be manufactured without the crates, but if the machinery are not packed in the crates immediately after they being manufactured so as to carry them safely without disturbing the precision

prescribed by the customer, it would not be commercially expedient for the manufacturer to carry out his manufacturing activity in the larger sense of the term as is explained by the Supreme Court in J.K. Cotton Spinning and Weaving Mills Co. Ltd. Vs. Sales Tax Officer, Kanpur and Another, . It is this test which is to be applied and unless the facts are gathered, placed and correlated so as to justify the conclusion that the activity of putting machinery in the crates so as to transport them to the site without disturbing their precision it would not be possible to answer the question which has been referred to us. In the circumstances, therefore, we decline to answer the question and leave it to the Tribunal to adjust its judgment accordingly u/s 69(4) of the Gujarat Sales Tax Act, 1969, after applying the test in view of the evidence that may be placed by the rival parties.

5. The result is that we decline to answer the question referred to us with no order as to costs.