(2002) 11 SC CK 0087

In the Supreme Court Of India

Case No : C.A. No.-009157-009157 / 1995

State of Maharashtra APPELLANT

Vs

Mahalaxmi Stores RESPONDENT

Date of Decision : 20-11-2002

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 2(17), 61(1)
Uttar Pradesh Sales Tax Act, 1948 — Section 2

Citation : (2003) 1 ALLMR 749 : (2002) ECR 529 : (2003) 152 ELT 30 : (2002) 9 JT 633 : (2003) 1 SCC 70 : (2003) 129 STC 79 : (2003) 1 UJ 748

Hon'ble Judges : S. S. M. Quadri, J;Arijit Pasayat, J

Bench : Division Bench

Advocate : Arun Pednekar, S.S. Shinde and V.N. Raghupathy, for the Appellant;

Final Decision : Allowed

Judgement

1. This appeal arises from the judgment of a Division Bench of the High Court at Bombay passed in Sales Tax Reference No. 1 of 1995 dated 22nd February, 1995.

2. The Maharashtra Sales Tax Tribunal referred the following question u/s 61(1) of the Bombay Sales Tax Act, 1959 (for short, 'the Act') to the High Court:

"Whether on the facts and circumstances of the case and on a true and correct interpretation of the provision of Section 2(17) of the Bombay Sales Tax Act, was the Tribunal justified in holding that crushing of boulders resulting in metal of different sizes ordinarily known as 'Gitti' does not amount to manufacture?"

3. The facts, insofar as they are relevant for our purpose, are as follows:

4. The assessee purchases big sized stones - boulders - from registered dealers and crushes them into small sizes, known as 'Gitti'. It approached the Commissioner or Sales Tax for determination of the question whether converting bigger size boulders into 'gitti' would amount to manufacture. The Deputy Commissioner held that the process of conversion amounts to 'manufacture' within the meaning of Section 2(17) of the Act. Against the order of the Deputy

Commissioner, the assessee went in appeal before the Maharashtra Sales Tax Tribunal. The contention of the assessee that converting boulders into 'gitti' does not involve any manufacturing process within the meaning of the Act, was accepted by the tribunal. From that order, the afore-mentioned question was referred to the High Court at Bombay. Following the judgments of this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, , Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, and Sterling Foods v. State of Karnataka and Ors. 63 S.T.C. 239 the High Court held that the conversion of boulders into 'gitti' did not amount to 'manufacture'. It is this view of the High Court that is assailed in this appeal by the Revenue.

5. Section 2(17) of the Act defines the term 'manufacture' and it reads thus:

"Manufacture with all the grammatical variations and cognate expressions means producing, finishing or otherwise, alternating, ornamenting, finishing or otherwise processing, treating or adapting any goods but does not include such manufacture or manufacturing processes as may be prescribed."

6. From a perusal of the definition, extracted above, it is clear that the processes of producing, making, extracting alternating, ornamenting, finishing or otherwise processing, treating or adapting of any goods fall within the meaning of the term 'manufacture'. But it may be pointed out that every type of variation of the goods or finishing of goods would not amount to manufacture unless it results in emergence of new commercial commodity. In the instant case, the very nature of the activity does not result in manufacture because no new commercial commodity comes into existence.

7. This Court in Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., , on the identical question, expressed the view that when stone boulders were crushed into stone chips, gitti and stone ballast, the process could not be termed as 'manufacture'. That case arose under the Uttar Pradesh Sales Tax Act, 1948 (for short, 'the Act'). The definition of 'manufacture' in Section 2(e-1) of the U.P. Act appears to be similar to the definition under consideration.

8. In view of the judgment of this Court in Lal Kunwa Stone Crusher (P) Ltd. (supra), with which we are in respectful agreement, we find no illegality in the impugned judgment of the High Court. In the view that we have taken, the judgment of the High Court of Madhya Pradesh in Kher Stone Crusher v. General Manager, District Industries center, Jabalpur and Anr. (79 S.T.C. 149) cannot be treated as good law.

9. The civil appeal is, therefore, dismissed

10. No costs.

