(1995) 02 BOM CK 0034

In the Bombay High Court

Case No : Sales Tax Reference No. 42 of 1990 in Reference Application No. 86 of 1989

Technova Graphic Systems Private Limited APPELLANT

Vs

Commissioner of Sales Tax, Maharashtra State, Bombay RESPONDENT

Date of Decision : 02-02-1995

Acts Referred:
Bombay Sales Tax Act, 1959 — Section 2(17), 52(1), 61(1)

Citation : (1995) 2 MhLj 213

Hon'ble Judges : D.K. Trivedi, J;B.P. Saraf, J

Bench : Division Bench

Advocate : P.V. Surte, for the Appellant; M.V. Siodia, for the Respondent

Judgement

DR. B.P. Saraf, J.—By this reference u/s 61(1) of the Bombay Sales Tax Act, 1959, the Maharashtra Sales Tax Tribunal has referred the following question of law to this Court for opinion at the instance of the assessee :

"Whether, the Tribunal was justified in holding that lacquering of polyester film amounts to manufacture within the meaning of section 2(17) of the Bombay Sales Tax Act, 1959 and it results into a different commercial commodity ?"

2. The assessee, M/s. Technova Graphic Systems, carries on the business of buying polyester films and selling the same after subjecting it to the process of lacquering. On November 26, 1987, the assessee made an application u/s 52(1)(b) of the Bombay Sales Tax Act, 1959 ("the Act") to the Deputy Commissioner of Sales Tax (Admn.) seeking determination of the question whether subjecting the polyester film to the chemical process of lacquering amounts to manufacture within the meaning of section 2(17) of the Act. The contention of the assessee before the Deputy Commissioner was that the process of lacquering did not amount to manufacture. The Deputy Commissioner (Admn.) however did not accept this contention of the assessee and held that the said process amounted to manufacture as, according to him, lacquered polyester film was a different commercial commodity than polyester film. Aggrieved by the above order of the

Deputy Commissioner, the assessee appealed to the Maharashtra Sales Tax Tribunal ("the Tribunal"). The case of the assessee before the Tribunal was that despite the process of lacquering, polyester film remained polyester film and no new commercial commodity emerged as a result thereof. Hence, the process of lacquering could not be held to be "manufacture". The contention of the Revenue, on the other hand, was that the definition of "manufacture" contained in section 2(17) of the Act was wide enough to embrace within its scope and ambit the process of lacquering. According to the Revenue, on being subjected to the process of lacquering, the nature and character of polyester film underwent a change, and a new commodity known as lacquered polyester film emerged as a result thereof. In support of this contention, reliance was placed on the decision of this Court in Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co. [1975] 35 STC 493. The Tribunal accepted the contention of the Revenue and held that the process of lacquering amounted to "manufacture" within the meaning of section 2(17) of the Act. Hence this reference at the instance of the assessee.

3. We have carefully perused the order of the Tribunal and considered the rival submissions of the counsel for the parties. So far as the interpretation of the definition of "manufacture" contained in section 2(17) of the Act is concerned, it is now well-settled by the decision of the Supreme Court in State of Maharashtra v. Shiv Datt & Sons [1992] 84 STC 497 that only such of the processes referred to in the definition of "manufacture" given in section 2(17) of the Act and applied to the goods as are of such a character as to have an impact on the nature of the goods would amount to "manufacture". In the above decision, the Supreme Court made it clear that though the words used in the definition of "manufacture" were wide enough, limitation has to be put on the said words so that manufacture can be said to take place only when there is some alternation in the nature or character of the goods as a result of the process applied to the same. It was observed that if the definition of "manufacture" is given such wide interpretation as is sought to be given by the Revenue, absurd results may flow therefrom. For instance, the definition includes ornamenting. If a dealer purchases certain goods and merely adds some decorative material thereto, according to the States'' interpretation, there will be a manufacture. Similarly, if a car is purchased and some latest or some special gadgets are added thereto, the interpretation will result in the resale of a different commodity. This clearly is not the intention of the Legislature. This provision has, therefore, to be interpreted in a practical and a workable manner. For the purpose of the definition of "manufacture", there should be some alternation in the nature or character of the goods.

4. The question as to when the manufacture can be said to take place also came to be considered by the Supreme Court in a catena of cases including Deputy Commissioner of Sales Tax v. Pio Food Packers [1980] 46 STC 63, Chowgule & Co. Pvt. Ltd. v. Union of India [1981] 47 STC 124 and Sterling Foods v. State of Karnataka [1986] 63 STC 239. As a result thereof, it is now well-settled that

though manufacture implies a change, every change is not manufacture. It is only when the change or a series of changes take a commodity to a point where commercially it can no longer be regarded as the original commodity but instead recognised as a distinct article that manufacture can be said to take place. Where the commodity retains a continuing substantial identity through the processing stage, no manufacture can be said to have taken place. The principle that has to be applied in all such cases is whether a commercially different and distinct article has come into existence as a result of the processing of the original commodity. In other words, whether the article produced is regarded in the trade by those who deal in it as distinct in identity from the commodity involved in processing.

5. We may now consider the facts of the present case in the light of the tests set out above. The assessee purchased polyester films and subjected the same to a process which can be described as below :

"Polyester film is coated by using chemicals to impart certain properties depending on the application envisaged. The polyester film is placed on the coating machine and the same is passed through a tank containing chemicals. A levelling device, viz., 2 rollers remove the excess chemical and smoothen the coating. The film is thereafter passed through a heating chamber where it dries up."

The polyester film subjected to the above process, which is called "process of lacquering", is described as "lacquered polyester film". The question that arises for consideration is whether as a result of the process of lacquering polyester film ceases to be polyester film and can be regarded as a different and distinct commercial commodity.

6. According to the assessee, despite the above chemical process applied to the polyester film purchased by it, polyester film did not lose its original character and quality. No new commercial commodity emerged as a result of the said process. In support of this contention, our attention was drawn to the affidavit filed by one Dr. S. P. Potnis, who is Professor of Polymer Technology, Head of Plastics and Paints Division, Department of Chemical Technology, University of Bombay, wherein, he has stated that :

"Lacquer is a term used for denoting coatings which dry only by evaporation of the solvents giving a continuous film on the surface without any type of chemical change occurring in the film. Because of this these are also known as non-convertible coatings.

As the drying is only a physical process the lacquers are soluble in the original solvents and can be removed very readily by the same solvents from the surface on which they are coated.

Lacquering is a process of coating/covering a surface with a lacquer and does not involve any chemical process as the drying is only by evaporation of the solvents.

Polyester film is absolutely insoluble in any commonly used lacquer solvents and as such remains totally unaffected and maintains its original characteristics after lacquering/coating with any coating solution.

Polyester film is also unaffected by photosensitive chemicals used for preparation of duplicating or tracing papers and this is the major reason why polyester film is chosen for such application."

Dr. Potnis also examined the uncoated polyester films and the lacquered polyester films and recorded the following findings :

"...... the coating is only a physical one which can be readily removed by means of solvent leaving behind original polyester film.

..... the coating given on the polyester film has not changed any characteristics of original polyester film ...."

Dr. Potnis also took the uncoated polyester film and the polyester film from which the coating had been removed by use of solvents and checked their melting points, mechanical properties and infra-red, etc., and found the following results :

"CHARACTERISTICS OF POLYESTER FILM

He summed his findings in the followings words :

"The results of the tests and particularly infra-red spectra of the coated and the film from which coating is removed confirm beyond doubt that the polyester film has not undergone any chemical change during the process of lacquering/coating with solution containing some photosensitive chemicals and the process is only physical coating given to polyester film which retains all its original characteristics.

The products under question are in no way different than a polyester film coated with adhesive in pressure sensitive tape or polyester film covered with coat of metallic aluminium and protected with a lacquer in case of metalised polyester film.

On the basis of the results of examination conducted by me and my experience and knowledge in the field, I confirm that the products in question ...... are nothing but polyester films coated with lacquer containing some photosensitive chemicals which has deposited a film after drying up the solvents in purely physical way without any chemical reaction whatsoever."

7. From the above discussion, it is clear that the polyester film did not lose its original character despite the process of lacquering. In fact, the Tribunal has also recorded a categorical finding to the very same effect but held the lacquered polyester film to be different and distinct from the original polyester film only in view of the definition of "manufacture" in section 2(17) of the Act which is couched in very wide terms and the decision of this Court in Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co. [1975] 35 STC 493. We have

already dealt with the interpretation of section 2(17) of the Act as given by the Supreme Court in State of Maharashtra v. Shiv Datt & Sons [1992] 84 STC 497. So far as the decision of this Court in Dunken Coffee Manufacturing Co. [1975] 35 STC 493 is concerned, it has to be read in the light of the decision of the Supreme Court in Shiv Datt & Sons [1992] 84 STC 497. Referring to the above decision, the Supreme Court itself has observed that the said decision dealt with a different set of facts. We find that the Tribunal failed to appreciate the import of that judgment correctly. The said judgment cannot be construed to be of universal application. In any event, it has now to be read in the light of the decision of the Supreme Court in Shiv Datt''s case [1992] 84 STC 497.

8. Considering the nature of the process undertaken by the assessee on the polyester film in the instant case and the effect thereof on the nature, use, and description of the commodity in the trade, we are of the clear opinion that the lacquering of polyester films does not amount to "manufacture" within the meaning of section 2(17) of the Bombay Sales Tax Act, 1959. There is no essential difference in identity between polyester film and the lacquered polyester film. Polyester film remains polyester film despite application of the process of lacquering.

9. The question referred to us is, therefore, answered in the negative and in favour of the assessee.

10. In the facts and circumstances of the case, we make no order as to costs.

11. Reference answered in the negative.

