

(1981) 12 GUJ CK 0004
In the Gujarat High Court
Case No : Sales Tax Reference No. 9 of 1979

The State of Gujarat

APPELLANT

Vs

Minu Chemical Pvt. Ltd.

RESPONDENT

Date of Decision : 18-12-1981

Acts Referred:

Gujarat Sales Tax Act, 1969 — Section 49(2)

Citation : (1982) 50 STC 339

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

Bench : Division Bench

Advocate : A.J. Patel, Assistant Government Pleader, instructed by H.V. Chhatrapati of Bhaishanker Kanga and Girdharlal, for the Appellant;

Judgement

Desai, J.—The Gujarat Sales Tax Tribunal (hereinafter referred to as "the Tribunal") has referred the following question of law for the opinion of this Court :

"Whether, on the facts and in the circumstances of this case, the Tribunal was right in law in holding that the disputed items are of "machinery" in the case of a chemical plant which is a new industry and thus allowing set-off thereon under rule 42-A of the Gujarat Sales Tax Rules, 1970 ?"

2. The question requires to be answered against the background of facts, as found by the Tribunal, which are set out hereunder.

3. The assessee is a dealer registered under the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act"). The assessee carries on the business of manufacturing and selling chemicals and is a "certified manufacturer" who has established a "new industry" within the meaning of entry 53(1) of the Government notification dated 11th November, 1970, issued in exercise of the power conferred by sub-section (2) of section 49 of the Act. During the accounting period from 29th January, 1973, to 30th June, 1973, the assessee purchased the following articles :

(1) Deoxidised copper ethyl acetate purification unit with copper kettle and

packed column No. 1;

(2) Copper deoxidised condenser horizontal type 10 M.Z. No. 1;

(3) Resident tank flat bottom and conical top No. 1;

(4) Aluminium ethyl acetate tank of 10 M. capacity No. 1; and

(5) Benzene horizontal underground tank capacity 2560 M. X 500 M. long with accessories No. 1.

4. In the course of proceedings for the assessee's assessment to sales tax, the assessee claimed set-off in respect of the amount of tax paid by it on the purchases of the above articles under rule 42-A of the Gujarat Sales Tax Rules, 1970 (hereinafter referred to as "the Rules") on the ground that those articles were "machinery" used by it in manufacture of goods for sale. The Sales Tax Officer rejected the claim for set-off on the ground that the articles in question were not "machinery" but "parts of machinery" and that no set-off was, therefore, admissible. The assessee carried the matter in appeal to the Assistant Commissioner of Sales Tax (Appeals) but the appeal was unsuccessful. The matter was carried in second appeal to the Tribunal where the assessee succeeded. The Tribunal held that in view of the special concession given to "new industry" and having regard to the fact that the normal practice is to instal the plant by purchasing various articles that go into its formation from different persons, the articles in question were in the nature of machinery and that, therefore, the claim for set-off was admissible. At the instance of the State, however, the Tribunal has stated a case in respect of the question set out above.

5. In order to appreciate the controversy between the parties, it is necessary to reproduce the material part of rule 42-A of the Rules, which reads as under :

"42-A. Drawback, set-off or refund of tax for goods purchased by a certified manufacturer establishing a new industry. - In assessing the tax payable by a certified manufacturer (hereinafter referred to as the "assessee") who establishes a "new industry" the Commissioner shall, subject to the general conditions of rule 47 and further conditions specified below, grant him a drawback, set-off or refund of the whole or any part of the tax in respect of the purchases of raw materials, processing materials and machinery or packing materials used by him in manufacture of goods for sale."

6. We are not reproducing the whole of rule 42-A because there is no controversy between the parties with regard to the satisfaction of the conditions laid down in the other parts of the said rule. Even as regards the conditions laid down in the extracted portion of rule 42-A, there is not controversy between the parties, save and except on one issue, namely, whether the articles in question constitute "machinery" within the meaning of the said rule.

7. The Tribunal has described the role played and functions discharged by the articles in question in the process of manufacture undertaken by the assessee in

the following words :

"The items in dispute are residue tank, in which polymerised material is depolymerised by the help of caustic soda; conversion unit in which unconverted ethyl sulphuric acid and the mixed items are boiled and refluxed for 4 to 6 hours; the condenser in which the vapour is converted into liquid; the pure ethyl acetate tank in which ethyl acetate with water is collected and water portion being heavier and remaining at the bottom is removed and from the upper layer pure ethyl acetate is obtained; the benzene tank wherein benzene coming from tanker load is collected. This tank is provided with cooling cell. From this tank benzene is continuously transferred to the overhead tank. These items are certain types of tanks are units wherein certain chemical processes are carried out and/or chemicals are taken to certain other tanks for further processing activity. It is true that taken by themselves these tanks or units have no mechanical contrivance. However, these form a part of a bigger machinery which may be called a processing unit. Even though these tanks or units are not machineries by themselves, nevertheless without these tanks or unit, the machinery would be incomplete and cannot function

What we hold is that these items go into the making of a big processing unit which can be called machinery and that adopting the meanings of machinery given in certain dictionaries referred to above, even though these may be termed as integral parts of machinery, they can be regarded as machinery."

8. On the findings recorded by the Tribunal, it is clear that the articles purchased by the assessee, though they themselves are not a completed machine, form an integral part of the plant or machinery which produces the end-product.

9. The only submission made on behalf of the State at the hearing of the reference was that the word "machinery" in rule 42-A means a machine which is complete in itself and that an integral part of machinery which is separately purchased and fitted into the machinery cannot properly be called "machinery". We are afraid it is too late in the day for the State to advance this argument. The question is no longer *res integra* and it is concluded by decided cases.

10. Before making a reference to the decided cases, however, it may be profitable to extract the meaning of the word "machinery" from Webster's New Twentieth Century Dictionary of the English Language (unabridged), Second Edition, at page 1080 :

"Machinery :

1. the component parts of a complex machine.
2. machines collectively.
3. any combination of persons or things, the harmonious workings of which result in a desired end; as the machinery of government.
4."

11. It is abundantly clear, therefore, that the word "machinery", as understood in English usage, include "the component parts of a complex machine".

12. The leading decision on the point is in *Corporation of Calcutta v. Cossipore Municipality* AIR 1922 PC 27. The question there was whether a steel tank with the supporting structure for storage of water was machinery within the meaning of the third proviso to section 101 of the Bengal Municipal Act, 1884. At page 29, the Judicial Committee observed that it was not an easy task to define the meaning of the word "machinery" in the absence of the definition of the said term. At page 31 are the following pertinent observations as to the meaning of the said word in its ordinary sense :

"A completed machine or a number of completed machines may, of course, according to the ordinary use of language, be properly described as "machinery", so may those parts or members of a machine which when assembled, as it is styled, form a complete machine so also may some such of those parts, which when assembled with the other necessary parts, would form a complete machine be styled "machinery" but none of these conditions exists in the present case."

13. Their Lordships concurred with Lord Davey's observation that there was great danger in attempting to give a definition of the word "machinery" which would be applicable in all cases. It might be impossible to succeed in such an attempt. Then followed the following pertinent observations :

"If their Lordships were obliged to run the hazard of the attempt, they would be inclined to say that the word "machinery" when used in ordinary language, *prima facie*, means some mechanical contrivances which by themselves or in combination with one or more other mechanical contrivances, by the combined movement and interdependent operation of their respective parts, generate power, or evoke, modify, apply or direct natural forces with the object in each case of effecting so definite and specific a result

But their Lordships think that, however skilful definitions of "machinery" may be framed, the determination in any given case of what is or is not "machinery" must, to a large extent, depend upon the special facts of that case."

14. Applying the test evolved as aforesaid, the Judicial Committee in that case came to the conclusion that the supporting structure of the tank, which merely served to give the tank elevation so that the water which was allowed to escape from it may have a fall, and the tank itself which was no more than a receptacle into which water was poured and remained stationary and escaped through hold or holes in its side into pipes only by the force of gravity which was not a force that was generated, modified, directed or applied to the tank, cannot properly be called "machinery".

15. In *Ambica Wood Works Vs. The State of Gujarat*, the question was whether screen print block tables of wood which were sold to different textile mills for use in the process of screen printing were covered within the meaning of the

expression "machinery used in the manufacture of goods, and spare parts and accessories thereof" used in entry 15 of Schedule C to the Bombay Sales Tax Act, 1959. The court consisting of my learned brother and myself there held, speaking through my learned brother, as under :

"It is no doubt true that mere assembly of articles or things would not amount to a machinery. Some solid structure with no moving parts cannot be termed as machinery. It would be machinery only if such structure, complete in itself, has moving parts in relation with others when they move interdependently by application of force - mechanical or manual - with an avowed object to produce a given product. In other words, in order to be a machinery, the following four factors must exist, namely : (1) a complete and integrated collection of several objects or articles; (2) these objects or articles should interact in unison upon or with each other; (3) this interaction is prompted by application of force which may be manual or motive power; and (4) the movement should be with a view to do some specific activity or to obtain specific or definite result."

16. In *State of Gujarat v. Sukan Industries* [1979] 43 STC 344 Guj the question was whether the domestic flour mill manufactured and sold by the assessee without electric motor could be called "machinery" used in the manufacture of goods within the meaning of entry 16(1) of Schedule II, Part A, of the Act. In that case, the same Bench, speaking through myself, made the following observations after considering the decision of the Privy Council in the *Corporation of Calcutta's* case AIR 1922 PC 27 :

"We cannot venture to undertake the exercise, which even the Judicial Committee has not thought it fit to embark upon, to precisely define the term "machinery" in such a manner as to be applicable to all cases irrespective of the facts and circumstances of each case. For the purposes of this case, we will only emphasise some of the aspects which have been brought into sharp focus by the meaning assigned to the said term in the decision of the Judicial Committee. An article to be machinery in its ordinary sense must be : (i) a completed machine or a number of completed machines, or (ii) parts or members of a machine which, when they are assembled, form a complete machine, or (iii) some such of those parts which, when they are so assembled with the other necessary parts, would form a complete machine. The emphasis obviously is on an article or on a number of articles which is or are a complete whole or on the different parts or members of such articles which, when assembled, will form a complete machine. Any contrivance, in order to be properly styled as machinery must, by itself or in combination with one or more other mechanical contrivances, by the combines movement and interdependent operation of the respective parts, generate power or evoke, modify, apply or direct natural forces with the end in view of producing a definite and specific result."

17. The court in that case also made a reference to its earlier decision in *Ambica Wood Works Vs. The State of Gujarat*, to emphasise that an article in order that it could be properly styled as machinery should be a complete and integrated

collection of several objects or articles which must interact in unison upon or with each other by application of force with the end in view of doing some specific activity or producing some specific result.

18. The meaning assigned to the word "machinery" in the dictionary as well as in the judicial decisions cited above makes it clear that an article to be machinery must either be a completed machine or a number of completed machines, or parts or members of a machine which, when they are assembled, form a complete machine. In the instant case, therefore, the articles, in question, which are found to be parts of the plant which consists of a processing unit, cannot but be treated as machinery. The Tribunal was, therefore, right in arriving at the decision that it reached.

19. In view of the foregoing discussion, the question referred for our opinion is answered in the affirmative, that is, against the revenue and in favour of the assessee. There will be no order as to the costs of the reference.

20. Reference answered in the affirmative.