
(2006) 10 AHC CK 0079
In the Allahabad High Court

Vinod Kumar Gupta

APPELLANT

Vs

Commissioner of Trade Tax

RESPONDENT

Date of Decision : 19-10-2006

Acts Referred:

Uttar Pradesh Trade Tax Act, 1948 — Section 11

Citation : (2006) 10 AHC CK 0079

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 22nd September, 1999 for the assessment year 1991-92.

2. Applicant was registered dealer and was carrying on the business of timber. The applicant had a saw machine. It was claimed by the applicant that he had purchased timber in round logs within the State of U.P. from the Forest Department on payment of the tax and after the purchases, some of the timber were sold as such and some were sold in small pieces in the form of timber chiran. It was claimed by the applicant that the timber so sold either in the round logs or in cut pieces, being timber was not liable to tax. Assessing authority passed the ex-parte assessment order. Against the said order, applicant filed appeal before the first appellate authority, which was allowed and case was remanded back to the assessing authority to pass assessment order afresh after giving the opportunity of hearing to the applicant. Assessing authority had given the opportunity of hearing to the applicant but the same was not availed and the applicant did not appear before the assessing authority. Books of account etc. could not be produced before the assessing authority and thus, assessing authority vide order dated 31.01.1997 again passed ex-parte assessment order estimating the taxable turn over at Rs. 10,49,535/- of timber product. Applicant filed appeal before the Deputy Commissioner (Appeals), Trade Tax, Bareilly,

which was allowed in part vide order dated 20.08.1997. First appellate authority held that some of the timber were sold as such in the same form in which they were purchased and some of the timber were sold in cut pieces of desired size. Appellate authority has allowed the exemption on the turn over of timber sold in the same form in which they were purchased and has estimated the turn over of cut pieces timber of desired size at Rs. 4.50 lacs treating it as timber product. Against the order of the first appellate authority applicant as well as Commissioner of Trade Tax filed appeals before the Tribunal. Tribunal by the impugned order, rejected both the appeals.

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the timber sold in cut pieces of desired size was also timber and not timber product. He submitted that by cutting round timber into cut pieces, no new commercial commodity came into existence and it remained timber and thus, not liable to tax. In support of his contention he relied upon the following decisions:

1. Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. PIO Food Packer reported in 46 STC 63.

2. Sterling Foods v. The State of Karnataka and Anr. reported in 63 STC 239.

3. Hansraj And Sons v. State of Jammu And Kashmir and Ors. reported in 128 STC 203.

4. CST v. Lal Kunwa Stone Crusher (P) Ltd. reported in 118 STC 287.

5. CST v. Packing Aids, Agra reported in 1980 UPTC 901.

6. Sapna Papers Products (Pvt.) Ltd., Kanpur Nagar v. CTT reported in 2006 UPTC, 619.

5. Learned Standing Counsel submitted that the conversion of round logs of timber into small pieces of desired size amounts to manufacturing and the small pieces obtained as a result of cutting are timber product and the timber product is considered to be separate item and has been excluded from the timber and is liable to tax, even though the tax has already been paid on timber.

6. Having heard learned Counsel for the parties, I have perused the order of Tribunal and the authorities below.

7. It is useful to refer the relevant notifications relating to timber and timber product.

Notification No. ST-II-5784/X-10(I)-80-U.P. Act 15/48-Order-81, dated 07.09.1981

of	goods	Point	of	tax	Rate	Sl. No.	Description
						75	Wood and

timber of all kinds Sale by Forest 14% and of all trees, of whatever Department, The species including bailables and U.P. Forest bamboos, whether growing or Corporation or cut or sawn but excluding their by private owners products and firewood. of forest or by importer.

Notification No. ST-II-5785/X-10(I)-80-U.P. Act XV/48-Order-81, dated 07.09.1981

of goods	Point	of tax	Rate	Sl. No.	Description of tax
-----					39
bamboos, timber or M or 1 6% wood except those included in any other item of this list or notification issued under the Act.					

8. Admittedly, the applicant had purchased timber logs in round shape on which tax had been paid. The question is whether timber of desired size obtained as a result of cutting is timber product or remains timber in different sizes and shape ?

9. If cut pieces of desired size obtained as a result of cutting of log is not a timber product and remains as timber, it may not be liable to tax again but if it is timber product, it is liable to tax being excluded from the timber under the notification itself. Timber product has not been defined under the Act or Rules made thereunder. According to Chamber's 20th Century Dictionary it means a thing produced; a product; a result; a work; off spring; a quantity by multiplying.

10. In the case of CST v. S/S Agrawal Wooden Products reported in 1989 UPTC 557, Learned Single Judge of this Court held that small pieces of timber of various sizes between 1/2 " x 2" held as a timber product. Learned Single Judge held as follows:

In the present case all that the assessee was doing was to make small pieces of timber of various sizes between 1/2" x 2". The Tribunal on a consideration of the said Notification dated 30.05.1975 has on the facts of this case taken the view that the wooden batton in question is a timber product This necessitates us to consider as to what is the meaning of the word "product" as occurring in the said notification. Admittedly the word "product" has not been defined under the Act or the rules made thereunder. According to the Chamber's Twentieth Century dictionary, it means a thing produced; a result; a work; offspring; a quantity got by multiplying. These meanings suggest a direct connection between the things and its product The thing must be productive before it can have a product In other words, something which naturally and directly grows out of another thing can alone be called a product of that other thing. Therefore, a product of timber must relate to the productivity from timber i.e., something produced out of timber. The cut sizes of wooden batton in question are, therefore, according to the said dictionary meaning products of timber. There is yet another reason to come to the same conclusion and it is this that the wooden batton in question is

a thing which is produced by an action, operation or work by cutting the timber into certain specified sizes. Therefore, when wooden baton is produced out of wood by some action," operation or work, the commodity in question become a timber product In this view of the matter, in my opinion Tribunal is not in error in taking the view that the commodity in dispute is a timber product.

11. In the case of CST v. Packing Aids, Agra (Supra) dispute was about the taxability of baton and shook. Though this Court has not finally adjudicated the issue but has observed as follows:

If the assessee is only making planks, that would come in the category of timber because the planks could be sawn timber or wood and would be covered by Entry 97 aforesaid but if the assessee is further joining the planks with nail, that would have to be treated as timber products.

12. In the case of CST v. B.M. Wood Works: No. 1 reported in 32 STC 66, the question involved was whether the boxes made of cheer wood are timber product. Division Bench of this Court held that the word "product in the notification was intended to be used in its full comprehensive meaning namely, thing produced by any action, operation or work, and not in the narrow and restricted meaning of something produced by nature or a natural process. Sawn timber has been placed specifically in cut of timber under entry 97 but the joining of plank by nails certainly be a timber product by action or operation and would have to be treated as timber product and not a timber.

13. In the case of CTT v. Murlidhar And Sons, Aligarh reported in (2006) 3 V LJ 38, learned Single Judge of this Court following the ratio of this Court in the case of CST v. Packing Aids, Agra (Supra) has upheld the order of Tribunal holding the plank used for making wooden goods as a timber.

14. This Court in the case of Ashok Kumar and Company, Varanasi v. Commissioner of Trade Tax (supra) held as follows.

Further, if items purchased as iron steel scrap from the railways are cut to smaller sizes for facility of transport etc., the activity would not amount to manufacture. It is anomalous to say that the dealer was manufacturing scrap out of scrap. As held by the Hon"ble Supreme Court in State of Tamil Nadu v. P.L. Malhotra 1976 UPTC 282 where commercial goods without change of their identity as such goods are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type. Iron and steel including scrap is subjected to single point tax and the definition of "manufacture" as quoted above cannot be so extended that cutting the scrap of rails into smaller pieces may be treated as manufacturing scrap.

15. In the case of CST v. National Industries Corporation process of repacking of grease in small container has been held not amounting to manufacture within the

definition of Section 2 (e-1) of the Act. This Court held that in the process of packing of grease the commodity has not been subjected to any manual, mechanical, chemical, electrical or any other like operation which may be called any art of process for producing preparing for making any article. The constituent and identity of the commodity has remained the same and it has not been put to any process or manufacture whatsoever.

16. In the case of *Sterling Foods v. The State of Karnataka and Anr.* reported in 63 STC 239 dealer was involved in purchasing of shrimps, prawns and lobsters and have exported them after processing them by cutting head and tails, peeling, deveining, cleaning and freezing them. Apex Court held that by the reasons of aforesaid process identity of the goods remained same and the commodity subjected to the processing retained its original character and identity. Shrimps, prawns and lobsters are held commercially the same commodity as raw shrimps, prawns and lobsters.

17. In the case of *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers* reported in 46 STC 63, pineapple was processed into pineapple slices for being sold in sealed cans. Apex Court held that although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it and in the circumstances of the case held process does not amount to manufacture.

18. In the case of *State of Maharashtra v. Shive Dutt & Sons* reported in 84 STC 497, dealer was involved in immersing plates in electrolyte and charging the batteries for substantial period before resale. Apex Court considered the definition of the manufacture u/s 2(17) of Bombay Sales Tax Rules, which is a kin to the definition of the manufacture under U.P. Trade Tax Act. Apex Court held as follows:

The mere fact that the words used in the definition of "manufacture" are very wide should not lead us to so widely interpret them as to render the provision practically meaningless and so as to treat the goods sold as different merely because some slight additions or changes are made in the goods which are purchased before they are sold. It is true that under the section it is not necessary that there should be "manufacture" in the sense that a new commodity has been brought into existence as would have been required if that words is interpreted in its literal sense. But, at the same time, the section should be so interpreted to mean only such of the various processes referred to in the definition and applied to the goods as are of such a character as to have an impact on the nature of the goods.

In other words, though the words used by the statute, namely, "processed or altered in any manner after such purchase" were very wide, the court read down the scope of this expression and considered that, for the purposes of the

definition, there should be some alteration in the nature or character of the goods. In our opinion, the interpretation of Section 2(17) calls for a like limitation on the words used by the statute. As we have already pointed out, that if a very wide interpretation is given, it may lead to impractical consequences.

19. In the case of Krishna Chander Dutta (Spice) Pvt. Ltd. v. Commercial Tax Officer and Ors. reported in 93 STC 180, dealer was involved in converting whole turmeric and pepper into pepper powder and turmeric powder. Apex Court held that both whole turmeric and pepper and powdered turmeric and pepper are the same commodity.

20. In the case of CST v. Lal Kunwa Stone Crusher (P.) Ltd. reported in 118 STC 287, Apex Court held that stone boulders and gitti are same commodity though by size they may be different. Apex Court laid down the following principle:

The purpose of sales tax is to levy tax on sale of goods of each variety and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sale tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which cannot be taxed again, in a series of sale, so long as they retain their identity as goods of a particular type.

21. In the case of Hansraj And Sons v. State of Jammu And Kashmir and Ors. reported in 128 STC 203, process of dry fruits has been held not amounting to manufacture.

22. In the case of State of Maharashtra v. Mahalaxmi Stores reported in 2002 STI (SC) 97, Apex Court held that crushing of boulders into small sizes, known as a gitti does not amount to manufacture within the definition of Section 2(17) of Bombay Sales Tax Act. Apex Court held as follows:

The contention of the assessee that converting boulders into gitti does not include any manufacturing process within the meaning of the Act, was accepted by the Tribunal. From the order, the aforementioned was referred to the High Court or Bombay. Following the judgment of Deputy Commissioner of Sales Tax v. Pio Food Packers reported in 1981 UTC 667 (SC), Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers reported in 46 STC 63, Chowgule & Co. Pvt Ltd. and Anr. v. Union of India and Ors. reported in 1981 UPTC 702, M/s Sterling Foods v. State of Karnataka and Anr. reported in 1986 UPTC 1236, 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.

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, making, extracting, alternating, ornamenting, finishing or otherwise

processing, treating or adapting any goods but does not include such manufacture or manufacturing processes as may be prescribed.

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 instance case, the very nature of the activity does not result in manufacture because no new commercial commodity comes into existence.

23. In the case of Sapna Papers Products (Pvt.) Ltd., Kanpur Nagar v. CTT (Supra) the dispute was whether the cutting of paper into desired size papers by the process of cutting, results into new commercial commodity and the process of cutting amount to manufacturing. This Court held as follows:

Perusal of the definition of Section 2 (e-1) of the Act shows that the process of cutting is not being included within the definition of manufacture. Thus the process of cutting cannot be said to be a process of manufacturing. As stated above, by the process of cutting from big size and converting big size paper into small size of paper no new commodity comes into being. Paper remains paper. After cutting, paper does not loose its identity of paper, it does not undergo any physical chemical or any kind of change. The constituent and identity remains the same. Thus process of cutting and conversion of big size of paper into small size of paper does not come under any of the process mentioned in the definition of manufacture u/s 2 (e-1) of the Act.

In the case of Ashinvad Ispat Udyog and Ors. v. State Level Committee and Ors. (supra), the case before Apex Court was that the dealer purchased iron and steel scrap in the shape of defective angles, flats, channels, tubes and coils and cut down it for the purpose of rolling mill and forging part, gear and pinion manufacturers, with the help of shearing machines and glass cutting. On a consideration of the definition of manufacture u/s 2 (j) of the Madhya Pradesh Sales Tax Act. The Apex Court held that manufacture has been defined as including a process or manner of producing, collecting, extracting, preparing or making any goods. There can be no doubt whatsoever that "collecting" goods does not result in the production of a new article. The Apex Court held that when the Legislature creates such definition with this object this Court do not derive powers to restrict the definition of manufacture for grant of benefits to new industrial units. In view of its discussion, the Board of Revenue held that, inspite of the fact that the raw materials more or less retained, their identity and no new product came into existence, the process and manner of the appellants' activity would amount to a process of "manufacture" within the meaning of that word in the said Act.

24. In the case of Mukesh Kumar Aggarwal and Co. Vs. State of Madhya Pradesh

and Others, question before the Apex Court was whether the stacks of "eucalyptus-wood" in heaps after the bailies and poles are separated, can be called "Imarathi-Lakdi" or "timber". Apex Court held that it is not timber. Apex Court held as follows:

We think, it would be somewhat of a strain on the popular meaning of the expression "Timber" with the sense, size and utility implicit in the idea, to call these wood-heaps "Timber" meant or fit for building purposes. Persons conversant with the subject matter will not call these wood-heaps "Timber" whatever else the gods might, otherwise, be. It would appear that at one stage the forest-department itself opined that the "goods" were not timber; but only "fire-wood". We must, however, add that no tests of general validity applicable to or governing all cases can at all be laid down. The point to note and emphasis is that all parts or portions of even a timber-tree need not necessarily be "Timber". Some parts are timber, some parts merely "fire-wood" and yet others merely "wood". Having regard to the nature and description of the wood in the present case, we think, the "wood-heaps" are not susceptible to be or admit of being called "Timber" with all the concomitants and associations of that idea. Perhaps, different considerations might apply if, say, the pieces of eucalyptus-wood are of a longer-length or of a higher girth. Differences of degree can bring about differences of kind.

25. Having regard to the principle laid down above by the Apex Court and by this Court, in my opinion, timber of desired size obtained as a result of cutting does not cease to be timber. It is a sawn timber which is included under the Entry "Timber of all kinds". Timber of cut sizes is used in the manufacturing of timber product namely, furniture etc. Unless the timber of a big size or of a smaller size are given a desired shape by any process, or either by joining the two fixing by nails or otherwise resulting into commodity which is commercially known as timber product, in my opinion, it remains timber. Since the tax has already been paid on the timber of big size while making the purchases, in my opinion, no further tax was leviable on the timber of cut sizes, sold by the applicant.

26. In the result, revision is allowed. Order of the Tribunal is set aside and the Tribunal is directed to pass the appropriate order u/s 11 (8) of the Act.