

Commissioner of Sales Tax, U.P., Lucknow

v.

Harbilas Rai and Sons

(Supreme Court Of India)

HON'BLE JUSTICE J. C. SHAH HON'BLE JUSTICE S. M. SIKRI HON'BLE  
JUSTICE VAIDYNATHIER RAMASWAMI

Civil Appeal No. 1229 Of 1966 | 03-05-1967

SIKRI, J.

1. This appeal by special leave is directed against the judgment of the High Court of Judicature at Allahabad in Miscellaneous Case No. 146 of 1958, in a reference made to it under section 11 of the U.P. Sales Tax Act, 1948 (U.P. Act 15 of 1948), hereinafter referred to as the Act, by the Judge (Revisions), Sales Tax, U.P. Three questions were referred to the High Court but we are only concerned with the third question which reads :

"Whether, in the circumstances and on the facts of the case, the sales made by the assessee were assessable to tax under section 2(h), Explanation II(ii) ?"

2. The facts stated in the statement of the case are as follows : The respondents, hereinafter referred to as the assesseees, were dealers in pig bristles at Kanpur. They were assessed to sales tax for the year 1948-49. The assesseees sold pig bristles at London and contended that the sales made at London were not taxable as the bristles were not manufactured goods within Explanation II(ii) to section 2(h). It is further stated in the statement of the case :

"Pig bristles are plucked by 'Kanjars' from pigs and they bring them for sale to the assesseees. The assesseees then get them boiled and washed with soap and other chemicals. They are then sorted out according to their sizes colours and are then tied in separate bundles of different sizes. It is in that form that they are despatched to foreign countries for sale ..... In the application made by the department it is also said that the assesseees also do some cutting of the bristles. This fact is denied by the assesseees. It is pointed out (to me) that both the roots and the tops of bristles are the most valuable parts and they have got a sort of tuft at the top. The roots also are rather hard. In fact, the bristles are not cut from the bodies of the pigs, ..... It is possible that if in sorting the sizes just a few ends project beyond others, they may be clipped a little only for uniformity of size. There is no actual cutting of either end." Relevant portion of section 2(h) of the Act reads as follows :

"(h) 'Sale' means, within its grammatical variations and cognate expressions, any transfer of property in goods for cash or deferred payment or other valuable consideration and includes forward contracts but does not include a mortgage, hypothecation, charge or pledge;

Explanation I .....

Explanation II. - Notwithstanding anything in the Indian Sale of Goods Act, 1930, or any other law for the time being in force, the sale of any goods -

(i) which are actually in Uttar Pradesh at the time when in respect thereof, the contract of sale as defined in section 4 of that Act is made,

(ii) or which are produced or manufactured in Uttar Pradesh, by the producer or manufacturer thereof, shall wherever the delivery or contract of sale is made, be deemed for the purposes of this Act to have taken place in Uttar Pradesh."

3. The High Court, after setting out the facts, held that the assesseees were not manufacturers. Desai, C.J., observed :

"All that it does to the bristles bought from Kanjars does not amount to manufacturing. It does not result in the production of a commercially different article; what is bought by it from Kanjars is bristles and what it exports for sale is also bristles. It is not possible to say that the assessee manufactures pig bristles out of pig bristles; cleaning and arranging into different groups of different sizes and different colours does not convert them into something essentially or commercially different."

4. We agree with the observations of the learned Chief Justice. The learned counsel for the appellant relied on *G. R. Kulkarni v. The State* ([1957] 8 S.T.C. 294) and *Hiralal Jitmal v. Commissioner of Sales Tax* ([1957] 8 S.T.C. 325) in support of his submission that the bristles were manufactured goods within the meaning of section 2(h), Explanation II(ii). But, in our opinion, the first case is distinguishable. In that case the High Court of Madhya Pradesh held that the breaking of boulders into metal (gitti) was "manufacture" within the meaning of section 2(i)(a) of the Madhya Pradesh Sales Tax Act, 1947. The High Court observed in that case that "the essence of manufacture is the changing of one object into another for the purposes of making it marketable." The High Court further observed that "the man who manufactures metal is manufacturing a new article which has got a different price and that price includes labour which goes into its manufacture". The facts in the present case are different as no new articles were produced by the assessees; the articles which they produced are known as bristles both in the form in which these are bought from Kanjars and the form in which these are sold at London. In the second case, it was held that "a person who is engaged in the work of printing and dyeing textiles purchased by him and in the business of selling or supplying the printed and dyed material is a manufacturer within the meaning of the definition given in section 2(k) of the Madhya Bharat Sales Tax Act, 1950." There are some observations which do assist the appellant, for the High Court observed :

"In common parlance 'to manufacture goods' means 'to bring goods into being'. 'To manufacture goods for sale' would, therefore, mean to bring into being something in a form in which it is capable of being sold or supplied in the course of business. In my opinion, to constitute 'manufacture' for the purposes of the Act, it is not necessary that there must be a transformation in the materials and that the transformation must have progressed so far that the

manufactured article becomes commercially known as another and different article from the raw materials. All that is necessary is that the material should have been changed or modified by man's art, or industry so as to make it capable of being sold in an acceptable form to satisfy some want, or desire, or fancy or taste of man."

5. In our view, the word "manufacture" has various shades of meaning, and in the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture. The decision of the Madhya Pradesh High Court might perhaps be justified on the ground that a printed or dyed cloth is commercially a different article from the cloth which is purchased and printed or dyed. In a recent case, *Devi Dass Gopal Krishnan v. The State of Punjab* (Civil Appeals Nos. 526, 527 and 529 of 1964; judgment delivered on April 10, 1967; 20 S.T.C. 430), this Court considered the meaning of "manufacture" in section 2(ff) of the Punjab General Sales Tax Act, 1948. Subba Rao, C.J., observed : "On the other hand, the dictionary meaning of 'manufacture' is 'transform or fashion raw materials into a changed form for use.' When oil is produced out of the seeds the process certainly transforms raw material into different article for use. We cannot, therefore, accept this contention.

6. Now coming to Civil Appeals Nos. 39 to 43 of 1965, the first additional point raised is that when iron scrap is converted into rolled steel it does not involve the process of manufacture. It is contended that the said conversion does not involve any process of manufacture, but the scrap is made into a better marketable commodity. Before the High Court this contention was not pressed. The apart, it is clear that scrap iron ingots undergo a vital change in the process of manufacture and are converted into a different commodity, viz., rolled steel sections. During the process the scrap iron loses its identity and becomes a new marketable commodity. The process is certainly one of manufacture."

7. In the result the appeal fails and is dismissed with costs.

8. Appeal dismissed.

