Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam

Vs

M/s. Coco Fibres

Civil Appeal No. 4014 (NT) of 1985

(Kuldip Singh, K. Ramaswamy JJ)

04.12.1990

JUDGMENT

K. RAMASWAMY, J. -

1. This appeal by special leave is against the judgment of the Division Bench of the Kerala High Court dated October 17, 1984 made in T.R.C. No. 73 of 1984. The respondent is a registered dealer under the Kerala General Sales Tax Act, (for short 'the Act'). For the assessment year 1975-76 the respondent filed a return on taxable turnover of Rs 39,376.32 as against the turnover of Rs 58,130 excluding a sum of Rs 72,787.87, the value of coconut husks purchased by the assessee and converted into the coconut fibre. The respondent claimed that there is no manufacturing process involved in making fibre from coconut husk and, therefore, the purchase value is not exigible to tax under the Act. This was negatived by the Sales Tax Officer who assessed the purchased turnover on coconut husk at 4 per cent under Section 5-A of the Act, which was confirmed by the appellate authority. On revision, the Sales Tax Appellate Tribunal by order dated July 26, 1983 relying upon the decision of the Kerala High Court in Dy. CST v. Pio Food Packers [(1978) 41 STC 364 (Ker HC)] allowed the revision holding that no manufacturing process was involved in converting the husk into the fibre, therefore, the turnover was not includible to assessment. This was confirmed by the High Court. Thus this appeal.

2. The short question that arises for decision is whether coconut fibre is a separate entity from the husk in the commercial parlance. Admittedly, the coconut husk was purchased by the respondent. The process involved in making the coconut fibre from the coconut husk is as follows :

> The green husks are soaked in saltish sea water for days together. After decomposition, it is again subjected to beating process either by mechanical or manual device and then the fibre is extracted. The fibre is used for making ropes, matting, etc.

3. The question, therefore, is whether any manufacturing process is involved in converting the husk into the fibre, and whether the fibre is different from the husk as a commercial commodity. The word 'manufacture' has not been defined under the Act, and therefore, we have to look into the meaning known in the commercial parlance. In Black's Law Dictionary, (5th edn.), the word 'manufacture' has been defined as, "the process or operation of making goods or any material produced by hand, by machinery or by other agency; anything made from the raw materials by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine." Thus by process of manufacture something is produced and brought into the existence

which is different from that, out of which it is made in the sense that the things produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured any necessarily lose its identity or may become transformed into the basic or essential properties. The Constitution Bench of this Court in Ujagar Prints v. Union of India [(1989) 3 SCC 488 : 1989 SCC (Tax) 469] held thus : (SCC p. 511, para 42)

> "The prevalent and generally accepted test to ascertain that there is 'manufacture' is whether the change or the series of changes brought about by the application or processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognised as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be borderline cases where either conclusion with equal justification be reached. Insistence on any sharp or intrinsic distinction between 'processing' and 'manufacturer', we are afraid, results in an oversimplification of both and tends to blur their inter-dependence in cases such as the present one."

4. In State of Bihar v. Chrestien Mica Industries Ltd. [(1956) 7 STC 626 (Pat HC)] the Patna High Court was to consider the question whether the process of making 'mica' tantamounts to manufacture of goods within the meaning of Section 2(g) of the Bihar Sales Tax Act. It held that to manufacture must mean to bring into being something in a form in which it was capable of being sold or supplied in the course of business. The essential point to remember is that something is brought into existence which is different from that of the original, existing in the sense that the thing produced is by itself a commercial commodity and is capable as such of being sold or supplied. It is not necessary that the stuff or the material or the original article must lose its character or entity or it should become transformed in basic and essential properties. In CST v. Harbilas Rai & Sons [(1968) 21 STC 17 (SC)] this Court held at page 20 that 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 test laid down by this Court is that the article which comes into being must be a commercially different article from the one from which it is made or manufactured.

5. Therefore, the article that emerged, as a result of the process of manufacture, must be a distinct and new article recognised or known as such in the commercial parlance for sale or supply. In view of the admitted position that green husk is soaked into saltish sea water for days together and after decomposition, on being subjected to beating either by manual or mechanical process, fibre is produced in the process, which is a distinct commodity known in the commercial parlance. No one in the market would sell or supply husk when fibre is asked for. The ratio in Pio Food Packers case [(1978) 41 STC 364 (Ker HC)] has no application to the facts of this case for the reason that sliced pineapple, despite the process involved in packing it in the containers for being made available in the market, remains the same as pineapple; there is no 'consumption' of commodity, nor any process of 'manufacture' of 'other goods'. Therefore, the preparation of sliced pineapple would not attract the purchase tax under Section 5-A. Accordingly, we hold that the coconut fibre is commercially a different identifiable commodity known as such in the commercial parlance. The value of sale or purchase of coconut husk would attract purchase tax under Section 5-A of the Act.

6. The appeal is accordingly allowed. Since the respondent is not represented, there is no order as to costs.

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