SUPREME COURT OF INDIA

Vishwanath Jhunjhunwala

Vs.

State of Uttar Pradesh

C.A.No.164 of 1997

(S. R. Babu and G.P.Mathur JJ.)

16.04.2004

JUDGMENT

S. Rajendra Babu, J.

1. At the outset, we make it clear that the learned counsel are not clear as to the amendments that have been effected to the Statutes in question. We are constrained to proceed upon the material placed before us and on the basis of the stand taken by them.

2. The appellant before us is a partnership firm registered as a dealer under the provisions of the *UP Sales Tax Act, 1948* (for short 'the Act') and the Central Sales Tax Act. The firm is engaged in refining of oil on its own account and also on job work basis. For this purpose the firm required steam coal in huge quantity to be used as fuel for manufacturing the refined oil. In order to bring coal by road from Central Coal Fields, Ranchi to Varanasi, where the appellant's factory is situate, the appellant required Form 31 as prescribed under the Act and requested the Assistant Commissioner (Assessment) I Trade Tax Varanasi, respondent No. 2 herein, to issue 1300 Forms 31, who instead of issuing Form 31 initiated proceedings under Section 15-A(1)(r) of the Act asking the appellant to show cause as to why penalty be not imposed as coal which was being imported by the appellant on Form 31 was being used on job work while it should be used for his own business. The appellant replied to the aforesaid show cause notice and an order was passed directing the appellant not to use the coal imported on Form 31 for job work.

3. The High Court held that Section 28-A sub- section (1) of the Act makes it clear that an importer who intends to bring, import or otherwise receive into the State from any place outside the State any goods liable to tax under the Act in such quantity or measure or of such value as provided under this provision in connection with his business, he shall obtain the prescribed declaration in Form 31 and if he intends to bring, import or receive such goods otherwise than in connection with business, he may, in the like manner, obtain the prescribed form of certificate, that is, Form 30. There was no dispute before the Court that transactions of sale and purchase of coal were subject to tax and the appellant was importing coal in excess of the limits mentioned under Section 28-A and, therefore, the appellant should have

obtained Form 31 if he intended to bring or import coal in connection with his business and if he intended to bring or import coal otherwise than in connection with his business, he may obtain Form 32.

4. The case set up before the Court by the respondents is that the coal imported by the appellant is not only in connection with his business but also for job work. Therefore, the High Court, after adverting to the definition of "business", held that the appellant is engaged in the business of manufacture and sale of refined oil and, in addition, the appellant also refined oil on job work basis; that the term "business" would not include job work, that is, an activity which is in the nature of mere service which does not involve the purchase or sale of goods; that, similarly, the coal intended to be imported by the appellant for being used on job work is not in connection with his business and hence Form No. 31 cannot be issued for the same.

5. It is against this order of the High Court that the appellant has come up in appeal.

6. The term "business" is defined under Section 2(aa) of the Act and reads as follows:-

> "business" in relation to business of buying or selling goods, includes :- (I) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern; and any transaction of buying, selling or supplying plant, machinery, raw materials, processing materials, packing materials, empties, consumable stores, waste or by- products, or any other goods of a similar nature or any unserviceable or obsolete or discarded machinery or any parts or accessories thereof or any waste or scrap or any of them (or any other transaction whatsoever) which is ancillary to or is connected with or is incidental to, or results from, such trade, commerce, manufacture, adventure or concern; but does not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods."

7. The High Court placed emphasis on the fact that the term "business" would 'not include any activity in the nature of mere service or profession which does not involve the purchase or sale of goods'. In the present case, admittedly coal is purchased and imported by the appellant from outside the State of Uttar Pradesh and, therefore, necessarily it involves purchase and sale of goods, if not, anything less. The concept of "business" as per the definition would not exclude 'processing materials' inasmuch as the appellant utilises the coal imported by him for processing of raw material and such activity is also included in the definition of "business".

8. In explaining the meaning of expression "business" this Court in Ganesh Prasad Dixit vs. Commissioner of Sales Tax, Madhya Pradesh, quoted the following observations made in The State of Andhra Pradesh vs. H. Abdul Bakshi and Bros., :- "A person to be a dealer must be engaged in the business of buying or selling or supplying goods. The expression

'business' though extensively used is a word of indefinite import. In taxing statutes it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit.

9. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit motive, and not for sport or pleasure. But to be a dealer a person need not follow the activity of buying, selling and supplying the same commodity. Mere buying for personal consumption, i.e. without a profit motive, will not make a person dealer within the meaning of the Act, but a person who consumes a commodity bought by him in the course of his trade, or use in manufacturing another commodity for sale, would be regarded as a dealer. The Legislature has not made sale of the very article bought by a person a condition for treating him as a dealer; the definition merely requires that the buying of the commodity mentioned in Rule 5(2) must be in the course of business, i.e. must be for sale or use with a view to make profit out of the integrated activity of buying and disposal. The commodity may itself be converted into another saleable commodity, or it may be used as an ingredient or in aid of a manufacturing process leading to the production of such saleable commodity.

> "When activities of the appellant would necessarily include job work done by him and he cannot do this job work except after purchase of coal, his activities even if stated to be one in the nature of mere service would involve purchase of coal and in that event it falls outside the exclusionary clause in the definition of "business".

10. In that view of the matter, the view taken by the High Court is not correct and is set aside and in turn the view taken by the Assistant Commissioner (Assessment) also stands set aside. The appeals are allowed.