

SUPREME COURT OF INDIA

Commissioner Of Sales Tax

Vs.

Rewa Coal Fields Ltd.

(S Bharucha, B Kirpal, S R Babu, S S Quadri, M Shah)

22.04.1999

JUDGMENT

Shah, JJ.

1. By the order dated 9th April, 1997 this appeal was directed to be placed before a larger Bench . This was because the respondent contended that the point at issue was concluded by the principles laid down in Tata Engineering Locomotive Co. Ltd. v. State of Bihar and Anr. . The aforesaid was a case under the Bihar Finance Act, 1981 and the question, according to the Division Bench which made the order of reference, was whether the law laid down by this Court in J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer 1965 (16) STC 563 and Indian Cooper Corporation Ltd. v. Commissioner of Commercial Taxes 1965 (16) STC 259 would apply in full force to this appeal under the M.P. General Sales Tax Act, 1958.

2. We must state, at the outset, that learned Counsel for the respondent has not, even after being reminded of the order of reference, relied upon the judgment in Tata Engineering Locomotive Co. Ltd. v. State of Bihar 1995 (96) STC 211 and, therefore, the order of reference to a larger Bench has become redundant. However, since we have heard the matter, it is appropriate that we decide it.

3. What we are concerned with is the definition of "raw material" in Section 2(1) of the M.P. General Sales Tax Act ("the Act"). It reads thus:

(1) "raw material" means an article used as an ingredient in any manufactured goods or an article consumed in the process of manufacture and includes fuel and lubricants required for the process of manufacture;

To analyse the definition, "raw material" covers (1) an article used as an ingredient in manufactured goods, (2) an article consumed in the process of manufacture, and (3) fuel and lubricants required for the process of manufacture.

4. The respondent-assessee operates a coal mine, which is a manufacturing activity for the purposes of the said Act. It sought registration for the purposes of Section 8 of the Act, which deals with the set off or refund of tax in respect of tax paid goods in certain circumstances, of the following on the ground that they were raw material consumed in the course of manufacture, covered by the aforequoted definition: timber, kerosene oil, drilling bits, hewing implements of all kinds, dry cells, torches, cement and lime and electrical bulbs. The Sales Tax Officer and the Commissioner of Sales Tax declined to register these

as raw materials. The Commissioner found that the timber was used in the mine to prop up its walls. It was only a supporting device and it was not consumed but remained within the mine. It could not, therefore, be treated as a raw material, and it was of no consequence that it was not salvaged by the respondent after the mine was closed. Kerosene oil was required for lanterns for illumination purposes and not as a fuel to power any machine. Hence, it could not be treated as a raw material. Drilling bits were neither instantaneously consumed nor did they form part of the finished goods in any manner. Hewing implements were used to cut down-large pieces of the mine walls and surface and their life was perhaps the longest out of the list. Dry cells, torches and cells and electrical bulbs were used only for illuminating the inside of the mine. Cement and lime was used to seal leakages and plaster holes in the mines. It was more in the nature of a building material. The High Court took the contrary view. It said the Commissioner had interpreted the definition of raw material too narrowly. We cannot agree, given that the definition requires that the raw material should be (1) consumed (2) in the process of manufacture.

5. Learned Counsel for the assessee referred to various judgments, Anwarkhan Mahboob Co. v. The State of Bombay (now Maharashtra) and Ors. . Indian Copper Corporation Ltd. v. Commissioner of Commercial Taxes, Bihar and Ors. 1965 (16) STC 259 (SC), Union of India and Anr. v. V.M Salgaoncar and Bros. (P) Ltd. 1998 (4) SCC 263 and Collector of Central Excise, New Delhi v. Ballarpur Industries Ltd. 1989 (4) SCC 566, none of which is apposite to the precise definition with which we are concerned. It seems to us clear that, drilling bits apart, none of the articles aforementioned can qualify to be articles "consumed in the process of manufacture" or, to put it in a different way, consumed in the mining of the coal. They may be used for purposes incidental to the mining, but are not integral thereto.

6. So far as drilling bits are concerned, they are used to bore holes in the walls of the mine; the holes are stuffed with explosives and the detonation thereof yields the coal. Their utility is quickly exhausted. It can, therefore, be said that they are consumed in the mining of the coal. To that extent alone can the assessee succeed.

7. Accordingly, the appeal is allowed, except to the extent that it covers drilling bits. No order as to costs.