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UPREME **COURT OF INDIA**

Messrs Sonebhadra Fuels

Vs

Commissioner, Trade Tax, Uttar Pradesh, Lucknow

Appeal (Civil) 1790 of 2005 (With C.A. Nos. 1791/2005, 1792/2005 and 1793/2005)

(Ashok Bhan and Markandeya Katju, JJ)

01.08.2006

JUDGMENT

MARKANDEY KATJU, J.

Civil Appeal No. 1790 of 2005 has been filed against the judgment and order dated 25.6.2004 of the learned Single Judge of the Allahabad High Court in Trade Tax Revision No. 1261 of 2004 M/s. Sonebhadra Fuels, Ravinagar, vs. Commissioner, Trade Tax, U.P., Lucknow.

Heard learned counsel for the parties.

The appellant is carrying on business in coal and also manufactures 'coal briquettes', popularly known as 'coal tikli'.

The assessee applied for exemption/rebate of sales tax claiming that the coal briquettes are the same commodity as coal which had already been subjected to tax. However, his claim was rejected by the Assessing Authority vide Assessment Order dated 31.3.1999. Aggrieved, he filed an appeal which was dismissed by the Appellate Authority vide order dated 19.7.2001. His further appeal to the Tribunal was referred to a larger Bench of five members which decided against the assessee vide its

order dated 16.3.2004.

The short argument submitted by Shri Rakesh Dwivedi, learned senior counsel for the appellant, was that coal briquettes are as same as coal and hence no liability of tax can be fastened on the sale of coal briquettes.

Learned counsel for the appellant submitted that Notification No. ST-II-5782 dated 7.9.1980, issued under Section 3-A of the UP Trade Tax Act provided that coal included coke in all its forms, but excluded charcoal. The same meaning was given to the word 'coal' in the subsequent Notification No. ST-II-3685 dated 31.7.1986. In both the Notifications, the rate of tax was @ 4%. A similar meaning has been given in Notification No. ST-TIF-II-2372 dated 23.3.1998. Coal is a declared commodity under Section 14 of the Central Sales Tax Act, 1956 and the entry given in clause (i-a) reads "coal including coke in all its forms, but excluding charcoal". Learned counsel submitted that under Section 15 of the Central Sales Tax Act, tax cannot be imposed on declared goods at more than one stage. As the coal-dust has already been subjected to tax, he submitted that 'coal tiklies' are not taxable.

In reply, learned counsel for the respondent submitted that coal briquettes is a different commercial commodity from coke or coal, and since coal tiklies are made from coal dust by processing or manufacturing in which the coal dust loses its original form, quality etc, it amounts to 'manufacture'.

The definition of 'manufacture' in Section 2(e-1) of the U.P. Trade Tax Act is as under:

"Manufacture means producing, making, mining, collecting, extracting, altering, ornamenting, furnishing or otherwise processing, treating or adapting any goods, but does not include such manufactures or manufacturing process as may be prescribed."

The above definition is very wide as held by this Court in M/s. B.P. Oil Mills Ltd. vs. Sales Tax Tribunal and others - The definition of 'manufacture' in Section 2(e-1) of the Act includes 'processing, treating or adapting any goods'. Thus, the meaning of 'manufacture' in the UP Trade Tax Act is wider than that in the Central Excise Act, 1944. A dealer will be liable to pay tax on sale of any goods he makes by processing, treating, or adapting the goods he purchased by complying with the requirements of clause (ii) of Section 3(b) of the UP Trade Tax Act.

In M/s. B.P. Oil Mills (supra), this Court referred to a large number of earlier rulings on this point and it is not necessary for us to refer to all of them here. We may, however, refer to the decision in Chowgule & Co. Pvt. Ltd. vs. Union of India 1981 AIR(SC) 1014 where this Court observed that where any commodity is subjected to a process or treatment with a view to its development or preparation for the market it would amount to processing. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but in each process suffered the commodity would experience a change. The Court further observed that whatever be the means employed for carrying out the processing operation, it is the effect of the

operation on the commodity that is material for the purpose of determining whether the operation constitutes processing.

In B.P. Oil Mills (supra), the Supreme Court observed that refining crude oil amounts to a 'manufacture'.

A Constitution Bench in Devi Das Gopal Krishnan etc. vs. State of Punjab & others, while considering the case of extracting the oil from oil- seeds, held that the edible oils produced were different from the oil seeds, and hence the edible oil produced is taxable though tax has already been paid on the oil seeds. This Court referred to the dictionary meaning of the 'manufacture' as 'to transform or fashion raw material into a changed form for use' and held that oil is produced out of the seeds. The process certainly transforms the raw materials into different articles for use, and therefore is taxable as a new commercial commodity. This Court further explained that in a case where the scrap iron ingots undergo a vital change in the process of manufacture and are converted into different commodities, i.e. rolled steel sections, during the process the scrap iron loses its identity and becomes a new marketable commodity and, therefore, the process is certainly one of manufacture.

In Ashirwad Ispat Udyog & others vs. State Level Committee & others, 1, this Court considered the scope of the definition of the term 'manufacture' under the provisions of Section 2(j) of the Madhya Pradesh General Sales Tax Act, 1958, which is in para-materia with Section 2(e-1) of the Act, and held that manufacture is not confined to a new marketable commodity but also includes old articles made saleable. The Court held as under:

"Decisions construing the meaning of the word 'manufacture' as used in other statutes do not apply unless the definition of that word in the particular statute under consideration is similar to that construed in the decisions. The plain construction of the special definition of the word in a particular Act must prevail. In the special definition given in Section 2(j) of the said Act 'manufacture' has been defined as including a process or manner of producing, 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. There is, therefore, inherent evidence in the definition itself that the narrow meaning of the word 'manufacture' was not intended to be applied in the said Act. Again the definition speaks of 'the process of lopping of branches (of trees), cutting the trunks'. The lopping of branches and the cutting of trunks of threes also, self evidently, does not produce a new article. The clear words of the definition therefore, must be given due weight and cannot be overlooked merely because in other contexts the word 'manufacture' has been judicially held to refer to the process of manufacture of new articles."

In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam vs. M/s. Coco Fibres, , this Court considered the provisions of the Kerala General Sales Tax Act, 1984 wherein the term 'manufacturing process' was considered and held that conversion of coconut husk into a coconut fibre was a manufacturing process. This Court held that by the process of manufacture, something is produced and brought into existence which is different from that out of which it is made, in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied. The material from which the thing or product is manufactured, may necessarily

lose its identity or may become transformed into the basic or essential properties. The article that would emerge as a result of the process of manufacture must be a distinct and new article recognized or known as such in the commercial parlance for sale or supply.

In M/s. Saraswati Sugar Mills vs. Haryana State Board & others, , this Court explained the distinction between manufacture and processing observing that the construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the Statute in which it is occurring and to the fitness of the matter to the Statute. This Court held that if a matter is processed, the product may not lose its original character. For example, the vegetables may be processed which even after processing, retain its character as vegetable while in manufacturing, something is necessarily to be brought into existence which is different from that which originally existed in the sense that the thing produced is a commercially different article. Thus, a Statute is required to be interpreted strictly and the definition clause must be examined in a correct perspective giving the meaning of each word contained therein. The Court held as under:

"Manufacture implies a change but every change is not manufacture, and yet every change of an article is the result of treatment, labour and manipulation. The essential point thus is that in manufacturing, something is brought into existence which is different from that which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing, it is not necessary to produce a commercially different article. Processing essentially effectuates a change in the form, contour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something. (Vide Corn Products Refining Co. vs. Federal Trade Commission, (1944) CCA 7)."

In Union of India & another vs. Delhi Cloth & General Mills Co. Ltd., , this Court explained the word 'manufacture' used as a verb which is generally understood to mean bringing into existence of a new substance and does not mean merely to bring some change in a substance, however, minor in consequence the change may be. In a manufacture, there must be transformation and a different article must emerge having a distinctive name, character or use.

A similar view has been reiterated in Rajasthan State Electlricity Board vs. Associated Stone Industries & another.

In State of Maharashtra & another vs. Mahalaxmi Stores, 2, this Court held that processing or variation of the goods or finishing of goods would not amount to manufacture unless it results in emergence of a new commercial commodity.

In Aspinwall & Co. Ltd vs. Commissioner of Income Tax, Ernakulam, this Court considered the meaning of the word 'manufacture' as it occurred in Section 32-A(1) & (2)(iii) in Income Tax Act and held that the word must be understood in common parlance and it may mean production of articles for use from raw or prepared materials by giving such materials new forms, qualities or combination whether by hand labour or machines. If the change made in the article results in a new

and different article, then it would amount to a manufacturing activity. In the said case, the assessee after plucking or receiving the raw coffee berries made it undergo nine processes to give it the shape of coffee beans. The net product was absolutely different and separate from the input. The change made in the article resulted in a new and different article which was recognized in the trade as a new and distinct commodity.

Similar views have been reiterated in Ujagar Prints & others vs. Union of India & others, ; Decorative Laminates (India) Pvt. Ltd. vs. Collector of Central Excise, 0; and Gramophone Co. India Ltd. vs. Collector of Customs,

In Laminated Packings (P) Ltd. vs. Collector of Central Excise, , this Court held that lamination amounts to manufacture as it is made out of the laminated kraft paper by a manufacturing process of lamination using polyethylene etc. and, therefore, an entirely different good comes into existence.

We may mention that, as noted above, decisions construing the word 'manufacture' in other statutes are not necessarily applicable when interpreting Section 2(e-1) of the UP Trade Tax Act. As stated above, the definition of 'manufacture' in Section 2(e-1) of the UP Trade Tax Act is very wide, which includes processing, treating or adapting any goods. Hence, in our opinion, the expression 'manufacture' covers within its sweep not only such activities which bring into existence a new commercial commodity different from the articles on which that activity was carried on, but also such activities which do not necessarily result in bringing into existence an article different from the articles on which such activity was carried on. For example, the activity of ornamenting of goods does not result in manufacturing any goods which are commercially different from the goods which had been subjected to ornamentation, but yet it will amount to manufacture within the meaning of Section 2(e-1) of the UP Trade Tax Act since an artificial meaning of 'manufacture is given in Section 2(e-1). Hence, whether the commercial identity of the goods subjected to the processing, treating or adapting changes or not, is not very material.

The method of making coal briquettes is as follows:

"The raw material for coal briquettes is coal ground to generally, below 2 mm. size. The crushed coal is mixed with suitable binders and pressed in briquetting press out of which regular shape required, briquettes may be carbonized in suitable carboniser. The size of coal (30-100mm) required for manufacturing Special Smokeless Fuel (SSF) is coal briquettes. No hinder is required to be used for production of SSF)."

In our opinion, the process mentioned above is clearly processing, treating or adapting the coal. Hence, in our opinion, it is a 'manufacture'.

Learned counsel for the appellant Shri Rakesh Dwivedi submitted that coal briquettes are produced merely by using a binding material such as clay or molasses along with the coal, and hence he submitted that the identity does not change. We regret, we cannot agree with his submission. Firstly,

we do not agree that the coal briquettes are the same commercial commodity as coal. In our opinion, coal is a raw material for making coal briquettes. The method of manufacturing coal briquettes has been stated above, and this certainly is a processing, treating or adapting the coal. The appellant manufactures coal briquettes by compiling the hard coke breeze mechanically with the help of cinders which is usually 5% of the total hard coke breeze. In the compilation of the hard coke breeze, 95% of the hard coke breeze, which is known as coal-dust or breeze coke is taken which is compiled with the help of clay and molasses. Hence, in our opinion, coal briquettes is a different commercial commodity from coal. Moreover, even if it is not a different commercial commodity, the process of making coal briquettes will amount to a 'manufacture' as it is processing, treating or adapting coal. In our opinion, by the processing of coal to make coal briquette, the coal dust loses its identity. Coal briquettes and coal dust are two different commodities in substance as well as in characteristics. The coal briquettes are altogether in different shape, form and moisture as well as characteristics, as compared to coal dust.

A finding of fact has been given by the Tribunal that 'coal dust' and 'coal briquettes' are entirely different commercial commodities and we cannot interfere with this finding of fact. The appeal is accordingly dismissed. No costs.

Civil Appeal No. 1791-1793/2005

In view of the decision in Civil Appeal No. 1790/2005, these appeals are accordingly dismissed. No costs.