SUPREME COURT OF INDIA

Messrs Kumar Motors, Bareilly

Vs

Commissioner of Sales Tax, Uttar Pradesh, Lucknow

(S.B.Sinha and Markandeya Katju,JJ.)

02.02.2007

JUDGMENT

S.B.Sinha, J.

1. Leave granted.

2. Appellant herein deals in manufacture and sale of Auto Rickshaw. For the said purpose, it purchases body of Auto Rickshaw from M/s. Apollo Builders, a sister concern of M/s. Scooters India Ltd. and chassis thereof from M/s. Scooters India Ltd.

3. The question which arises for consideration in this appeal is as to whether mounting of the body of the Auto Rickshaw on the Chassis thereof would amount to 'manufacture' within the meaning of Section 2 (e-1) of the U.P. Sales Tax Act, 1948 ('the Act', for short).

4. It is not in dispute that the appellant had purchased 'Vikram three wheeler Chassis' upon issuing III-A form from M/s. Scooters India Ltd. It did not pay any purchase tax in respect of the purchases made from M/s. Appolo Builders. Appellant was held to be liable to pay purchase tax on the premise that upon mounting the body of Auto Rickshaw on the chassis and sale having not been made on the same condition and form, purchase tax was leviable.

5. The contention of the appellant is that having regard to the provisions contained in Section 3-AAAA of the Act, no purchase tax is payable as the condition remained the same. In any event having regard to the Entry 43 B and having regard to the fact both chassis and body of three wheelers came within the purview of 'auto rickshaw', which find place in the same entry, no tax was payable. Reliance, in this behalf, has been placed on the decision of Commercial Taxes Officer, Anti Evasion-I vs. Rajesh Motors & Anr. Â 1997 Indlaw RTT 14; the decision of a Rajasthan Taxation Tribunal as also the decision of Dy. Commisioner of Salex Tax(Law), *Board of Revenue (Taxes), Ernakulam vs. M/s. Pio Food Packers*[1] and M/s. Sterling Foods, a Partnership firm represented by its partner Sh. *Amesh Dalpatram v. State of Karnataka & Anr*[2].

6. The Act was enacted to provide for levy on the tax of purchase of goods in the State of U.P. 'Manufacture' has been defined in section 2(e-1) of the Act to mean :

"(e-1) 'Manufacture' means producing, making, mining, collecting, extracting, altering, ornamenting, finishing, or otherwise processing, treating or adapting any goods; but does not include such manufacture or manufacturing processes as may be prescribed."

7. Section 3-AAAA provides for liability to pay tax on goods under certain circumstances. It reads as under:-

"1. Subject to the provisions of section 3, every dealer who purchases any goods liable to tax under this Act:-

(a) from any registered dealer in circumstances in which no tax is payable by such registered dealer, shall be liable to pay tax on the purchase price of such goods at the same rate at which, but for such circumstances, tax would have been payable on the sale of such goods;

(b) from any person other than a registered dealer whether or not Tax is payable by such person, shall be liable to pay tax on the purchase price of such goods at the same rate at which tax is payable on the sale of such goods:

Provided that no tax shall be leviable on the purchase price of such goods in the circumstances mentioned in clauses (a) and (b) if"

(i) Such goods purchased from a registered dealer have already been subjected to tax or may be subjected to tax under this Act;

(ii) tax has already been paid in respect of such goods purchased from any person other than a registered dealer;

(iii) the purchasing dealer resells such goods within the State or in the course of inter-State trade or commerce or exports out of the territory of India, in the same form and condition in which he had purchased them;

(iv) such goods are liable to be exempted under Section 4-A of this Act."

8. It has been noticed herein before that in regard to the purchases made from M/s. Scooters India Ltd. Form IIIA has been utilized. Similar purchases of Auto Rickshaw body were made from Appolo Builders against issuance of Form III-A prescribed in terms of Rule 12-A of the U.P. Sales Tax Rules, 1948, which, inter-alia, provides for the following condition :

"2. I further certify that out said form has purchased for sale in the same condition----(description of goods) against Bill/Cash memo No----,

dated...from M/s.....Place .....Date....."

Entry at serial No. 43(1) contained in the Notification dated 7.9.1981 reads as under:

"43(1) Motor vehicles including motor cars, motor taxi cabs, motor cycles, motor cycle combinations, motor scooters, mopeds, motorists, motor omnibuses, motor vans, motor lorries, motor trucks, jeeps, station wagons and chassis of motor vehicles and bodies or tankers or motor caravans built or meant for mounting on chassis of motor vehicles, but excluding tractors whether on wheels or on tracts."

9. The entry states which goods would come within the purview of the the 'Motor Vehicle' for the levy of the tax. It does not say even if tax had not been paid, despite changes in the form, no tax would be payable. In our opinion, the goods in terms of the aforementioned condition contained in Form III-A should, thus, have been made for in the same condition. It is not in dispute that the appellant sold Auto Rickshaw after the body was mounted on the chassis with the help of nuts and bolts. The question which arises for consideration is as to whether the end product sold by the appellant is a different commercial commodity which came into existence only upon undertaking the 'manufacturing process' as is defined under Section 2(e-i) of the Act. The meaning of 'manufacture' in terms of the statutory provision is of wide amplitude. It takes within its sweep not only a new product but also alterations made in an existing product.

10. 'Auto Rickshaw' in ordinary commercial parlance cannot be said to be its body or chassis. It has a definite connotation. The contention that once those nuts and bolts are removed the chassis and the body would be restored to their original position, in our considered opinion, is of not of much significance.

11. The Court is required to give a literal meaning to the expression used by the Legislature, while interpreting the provisions of a statute. In terms of Form III-A, a trader would be exempted from payment of purchase tax only in the event the terms and conditions thereof are satisfied. Necessary condition for obtaining such exemption is that the assessee must sell the commodity it purchased in the same form and condition. The requirement of law, thus, is that goods once sold to a registered dealer must be sold in the same form and condition in which he had purchased. We have no doubt in our mind that the sales made by the assessee of chassis with mounted body would be selling a product which is in different condition from the chassis or the body, and, thus, the same would be liable to purchase tax under sub-section (a) of Section 3-AAAA of the Act

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12 . The decision of the Rajasthan Taxation Tribunal in Rajesh Motors (supra) in our opinion does not lay down the correct law. In that case the Tribunal proceeded on a wrong premise that on removal of nuts and bolts fixed the chassis and body would get separated and the original position would be restored without their change in the structure, nature and identity. It was, in our opinion, not a relevant question. Tax is payable when the taxable event occurs.

13. In construing a taxing statute, vis-'-vis, the taxable event, no hypothesis ordinarily should

be raised. A commodity is identified by ordinary commercial parlance. Auto rickshaw is an auto rickshaw. It can be sold only as a combination of chassis and the body mounted thereupon, and not body or chassis separately. If it is so done, consequences may be different.

13. Furthermore, the definition of 'manufacture' under the Rajasthan Sales Tax Act, 1994 is different from the one under the U.P. Act, which is as under:

> "Manufacture" includes every processing of goods which bring into existence a commercially different and distinct commodity but shall not include such processing as may be notified by the State Government."

14. A bare comparison of the definitions of the said term under the Rajasthan Act and the U.P. Act categorically points out that the definition of 'manufacture' under the latter is wider. This has been so held in *Sonebhadra Fuels vs. Commissioner, Trade Tax, U.P. Lucknow* [3]] in the following terms :

> "We may mention that, as noted above, decisions construing the word "manufacture" in other statutes are not necessarily applicable when interpreting Section 2(e-I) of the U.P. Trade Tax Act. As stated above, the definition of "manufacture" in Section 2(e-I) of the U.P. 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-I) of the U.P. Trade Tax Act since an artificial meaning of "manufacture" is given in Section 2(e-I). Hence, whether the commercial identity of the goods subjected to the processing, treating or adapting changes or not, is not very material.

xxx...xxx.... Xxx...xxx

> 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 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 briquettes, 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."

15. We are, however, not oblivious of the fact that a Division Bench of this Court in *State of Karnataka v. Azad Coach Builders (P) Ltd. and Others*[4] , in view of the provisions of Section 5(3) of the Central Sales Tax Act, 1956 vis-'-vis the provisions of the Karnataka Sales Tax Act, 1957 had referred the question of interpretation of the words 'in relation to such exports' to a larger Bench, noticing the decisions of this Court in *Mohd. Serajuddin v. State of Orissa*[5], on the one hand and *Sterling Foods v. State of Karnataka*[6] and *Vijayalaxmi Cashew Co. v. C.T.O*[7]. on the other. We, however, are not concerned with such a question in this case.

16. We may also notice that the term "manufacture" has been considered in *Kores India Ltd., Chennai vs. Commissioner of Central Excise, Chennai*[8] by this Court stating ;

"At this juncture it is relevant to point out that the assessee had contended before the Collector that the inputs/raw materials used have suffered excise duty and if any duty is payable, they should be allowed MODVAT credit and the proportionate amount on account of such credit should be deducted from the proposed demand. This plea was turned out as required documentary evidence to show that entire quantity of inputs used have suffered tax was not produced. Before CEGAT it was accepted that there was possibility that manufacturers were operating under exemption available to SSI units and the goods would have discharged "nil" duty. It was also accepted that since the goods were received from the depots and not directly received from one factory, therefore, any duty (paying documents) were not available. It is to be noted that once the jumbo rolls are cut into smaller sizes, they completely lose their earlier identity and cannot be used for the same purpose as was done before cutting. In a hypothetical case, even if the smaller-sized ribbons are stitched together or fixed together in any manner, there is no possibility of its use as jumbo rolls. The factual findings recorded that the processing resulted in coming into existence of a commercial product having distinct name, character, and use are on terra firma"

17. In *O.K. Play (India) Ltd. Vs. Commissioner of Central Excise-II, New Delhi*[9] it has been held :

"Section 2(f) contains two clauses and instead of setting out the activities in respect of different tariff items, sub-clause (ii) simply states that any process, which is specified in section/chapter notes of the schedule to the Tariff Act, shall amount to

"manufacture". Under sub-clause (ii), the legislature intended to levy excise duty on activities that do not result in any new commodity. In other words, if a process is declared as amounting to "manufacture" in the section or chapter notes, it would come within the definition of "manufacture" under section 2(f) and such process would become liable to excise duty. The effect of this definition is that excise duty can be levied on activities which do not result in the production of a new commodity or where the raw material does not undergo such a transformation as to lose its original identity."

18. Appeal (Civil) 427 of 2007 (Arising Out of S.L.P.(C) No. 17280/2004) (The Decision Of This Court In M/S. Pio Food Packers (Supra), Is Not Applicable To The Facts Of This Case. Therein, This Court Was Concerned With The Provisions Of Kerala General Sales Tax Act. The Assessee Therein Used To Carry On Business Of Manufacturing and Selling Of Canned Fruit. Having Regard To The Factual Matrix Involved Therein It Was Held That There Was No Difference Between Pineapple Fruit and The Canned Pineapple Slices. M/S. Pio Food (Supra) Was Followed By This Court In M/S. Sterling Foods (Supra). Therein Again The Court Was Concerned With Selling Of Shrimps. It Was Held:, JJ)

"Here in the present case, it was not disputed on behalf of revenue that the purchases of raw shrimps, prawns and lobsters were made by the appellants for the purpose of fulfilling existing contracts for export and after making such purchases the appellants subjected raw shrimps, prawns and lobsters purchased by them to the process of cutting of heads and tails, peeling deveining, cleaning and freezing and exported such processed and frozen shrimps, prawns and lobsters in fulfillment of the contracts for export. The only argument raised on behalf of revenue was that the goods which were exported were not the same as the goods purchased by the appellants because raw shrimps, prawns and lobsters after processing ceased to be the same commodity and became a new distinct commodity. But, for reasons which we have already discussed, this argument cannot be sustained. The shrimps, prawns and lobsters purchased by the appellants did not lose their original character and identity when they were subjected to processing for the purpose of export. So far as commercial parlance or popular usage is concerned, they remained the same goods and hence the purchases of raw shrimps, prawns and lobsters by the appellants must be held to be purchases in the course of export and hence exempt from liability to tax under the Karnataka Sales Tax Act."

19. The said decision has no application to the facts of the present case.

20. The Tribunal also opined that by mounting auto rickshaw body on the chassis a new product comes into being. However, it had proceeded to hold that both chassis and auto rickshaw being under the same entry no tax would be payable. The Tribunal was not correct in that behalf as it failed to take into consideration the fact that if two articles were purchased by the assessee and the articles it sold were different commodities; purchase tax would be payable therefor as the terms and conditions laid down in Form 3-A had not been satisfied.

21. For the reasons aforementioned, we do not find any merit in this appeal. It is dismissed accordingly with costs. Counsel's fee assessed at Rs.10, 000/-.

Judgment Referred.

[1]*(1980) Supp. S.C.C. 174*
[2]*(2006) 7 SCC 0322*
[3] *(2006) 3 SCC 0338*
[4]*(1975) 2 SCC 0047*
[5]*(1986) 3 SCC 0469*
[6]*(1996) 1 SCC 0468*
[7]*(2005) 1 SCC 0385*