SUPREME COURT OF INDIA

The Additional Commissioner of Commercial Taxes, Bangalore

Vs.

Ayili Stone Industries

C.A.No.1983-2039 of 2016

(Dipak Misra and Shiva Kirti Singh,JJ.,)

18.10.2016

JUDGMENT

Dipak Misra,J.,

1. These appeals, by special leave, assail the common judgment and order passed by the High Court of Karnataka in STA No. 574-575/2011 and other connected matters preferred under Section 24(1) of the Karnataka Sales Tax Act, 1957 (for brevity, "the Act"), on 4th December, 2012 whereby it has overturned the order dated 25.02.2011 passed by the Additional Commissioner of Commercial Taxes, Zone-I, Bangalore in a batch of suo motu revisions under Section 12-A(1) of the Act whereby the revisional authority has opined that there had been an erroneous order in the appeal causing loss to the State exchequer and accordingly issued notices to the concerned assesses requiring them to participate in the revision petitions and file written objections and put forth their stand availing the opportunity of being heard. As the factual score in all the cases has the colour of similitude barring the numerical figures and the arithmetical computations, we shall advert to the facts in the appeal where "Ayili Stone Industries" is the respondent-assessee.

2. The respondent-assessee is a dealer under the Act as well as the Central Sales Tax Act, 1956 (for short, 'CST Act5) and is engaged in the business of manufacturing and trading in granite stone. The assessing authority finalised the assessment for certain assessment years allowing exemption on polished granite stone on the basis that polished granite stones were produced from out of the tax suffered from rough granite blocks. Thereafter, the assessing authority reopened the assessment. While passing the order of reassessment, the Assessing Officer opined certain amount had been allowed exemption as second sale mentioning in the order of assessment that the granite stones sold within the State were polished out of unpolished granite blocks locally purchased on demand of sales tax. The said authority referred to Entry No. 17(1) of Part S of second schedule appended to the Act which relates to granite stones, namely, (a) polished, (b) unpolished and (c) chips. The Assessing Authority observed that the polished and unpolished granite stones are under separate entries in the said schedule and such being the case, treating of sale of polished granite sold within the State which are obtained out of unpolished granite stones as sales inasmuch as they are suffered

sales tax was not correct and, therefore, the exemption had been granted erroneously. Being aggrieved by the aforesaid order, the assessee preferred an appeal before the appellate authority. After referring to the decision in *M/s. Vishwakarma Granites v. Commissioner of Commercial Taxes*[1], it opined that the orders passed under Section 12A of the Act deserves to be set aside and accordingly allowed the appeals.

3. The revisional authority referred to the decision in Vishwakarma Granites (supra) wherein the High Court had considered the judgments rendered in *Poonam Stone Processing Industries v. Deputy Commissioner of Commercial Taxes*[2], *GulbargcF, Foredge Granite Pvt. Ltd. v. State of Karnataka*[3]. , *State of Karnataka v. Goa Granites*[4] , *Chowgale and Company Pvt. Ltd. v. Union of India*[5] and came to hold as follows:-

> "8. In view of the clear dictum laid down by the Division Bench of this Court in the case of Foredge Granite Pvt. Ltd., this Court deems fit to hold that the activity of cutting and polishing of rough granite block will not amount to manufacturing activity and that the polished granite stones could be imposed Sales Tax for the second time prior to 1-4-2002 i.e., prior to amendment to Section 6B of KST Act. Thus, the circular in so far as it relates to clause-3(a) is concerned, as extracted above is just and proper. However, the impugned Circular in so far as it relates clause-3(b) is concerned, is not proper inasmuch as the same is opposed to the dictum laid down by the Division Bench of this Court in the case of M/s. Foredge Granite's case cited supra.
>
> 9. The Commissioner has referred to Part-S entry No. 17 of II schedule to the Karnataka Sales Tax at 1957 to hold that the polished and unpolished granite stones are separate commodities. But he has failed to appreciate the fact that merely because entry No.17, para-5 to II Schedule refers to polished and unpolished granites under two separate heads, it cannot be said that the polished and unpolished granites are two separate commodities, as has been held by the Division Bench of this Court in the case of M/s. Foredge Granite Pvt. Ltd. As the granite block is already taxed at the time of its first sale and the subsequent sale of cut and polished granite stones derived from the original granite block cannot be treated as the first sale and that therefore, tax could not be levied on the polished granite stones u/s. 5-A and 5-B of the Act prior to amendment of Section 6B of KST Act.
>
> 10. It is not disputed that the assessment orders in these matters are prior to 01.04.2002, on which date, Section 6-B of the Act is amended and the provision relating to levy of re-sale tax is submitted. Thus, the provision of Section 6-B of the Act as introduced by Act No.5 of 2002 with effect from 01.04.2002 is not applicable to the matters on hand, inasmuch as, the transactions involved in the cases on hand are much prior to the said amendment."

4. After noting the said decision, the revisional authority opined, the question as to whether there is manufacturing activity involved in obtaining granite tiles out of raw granite or rough granite stone is not a relevant issue in the case at hand. Thereafter, he concluded thus:-

"The issue is whether granite tile obtained out of raw granite stone results in separate and distinct commercial product from raw granite stones which is liable to tax as first dealer. As rough granite and granite tiles are separate and distinct as well as different commercial products, granite tiles obtained out of rough granite stones are liable to tax as first dealer."

5. The said authority produced a passage from the judgment in Goa Granites (supra) which we shall refer to at a later stage. It has also reproduced passages from Foredge Granite (supra) and formed an opinion which is to the following effect:-

"The aforesaid discussions clearly establish that the appeal order is erroneous causing loss of revenue to the state exchequer. It is also clear that granite tiles cannot be classified under entry 17(1) of para S of second schedule to KST Act 1957 as observed by the learned re-assessing authority. This entry covers granite stones in the form of polished granite stones, unpolished granite stones and granite chips (Entry 17(i), (ii) and (iii)/part S/second schedule and it does not covers granite tiles all. There is separate entry in case of tiles located at entry 8 in part T of second schedule to KST Act 1957. At entry 8(iv), the granite tiles are covered. After classifying certain tiles under which granite tiles do not appear as per entry 8(i),(ii) & (iii) of part T of second schedule to KST Act 1957, all other tiles are classified as under.

"(iv) Other tiles not covered by items (i), (ii) and (iii) above

1-4-88 to 31-3-96	Fifteen percent.
1-4-96 to 31-3-98	Twelve percent
1-4-98 to 31-3-01	Ten percent
1-4-01 to 31-03-02	Twelve percent
1-4-02 to 31-5-03	Fifteen percent
From 1-6-2003	(Sixteen percent)

The granite tiles are covered under the aforesaid entry in entry 8(iv) of part T of second schedule to KST Act 1957. Thus, the rough granite stone and granite tiles obtained out of rough granite stone or block are distinct and separate commercial products and are also separately classified in the respective entries explained above".

6. The High Court in appeal posed the question that arose for consideration in the following terms:-

"Whether the rough granite purchased by a dealer and the sale, the same after cutting and polishing into granite tiles, whether such a process amount to manufacture and that the said product constitute a different commodity to attract Sales Tax U/s.5 of the Sales Tax Act?"

7. As the impugned order would show, the High Court after passing the question referred to the authority in *Aman Marble Industries Pvt. Ltd. v. CCE, Jaipur*[6] reproduced paragraph 4 of the said judgment and thereafter referred to a passage from Foredge Granite (supra) and opined that cutting the granite blocks into small sizes and polishing them does not amount to manufacturing process to attract sales tax under Section 5 of the Act. However, the High Court observed whether the transactions attract tax under Section 6B can be looked into and considered by the Assessing Officer after giving opportunity to the parties, and consequently allowed the appeals.

8. We have heard Mr. Basava Prabhu S. Patil, learned senior counsel for the appellants and Mr. Bhargava V. Desai, learned counsel for the respondents.

9. The factual matrix as noticeable is that the assessing authority has allowed the exemption on sale of polished granite stones on the foundation that the same is produced from out of granite slabs that had suffered tax as rough granite blocks. After the assessment, the concerned authority referred to Entry 17(i) of Part S of the Second Schedule, which is as follows:-

> "Entry No.17(i) of Part "S" of the second Schedule, appended to the K.S.T. Act, 1957, which relates to granite stones reads as under
>
> Sl. No. 17(i)
>
> 17(i) Granite stones
>
> (a) Polished
>
> (b) Unpolished
>
> (c) Chips"

10. After reference to the said Entry, the assessing authority expressed the view that polished and unpolished granite stones have separate entries in the said schedule and, therefore, treating of said sale of polished granite stone within the State which is obtained out of unpolished granite stone as sales suffered would not be correct. The appellate authority, as noted earlier, has founded its opinion on the principle stated in Vishwakarma Granites (supra). In Vishwakarma Granites (supra), the challenge was to the circular No. 19/03-04 (KSA.CR.128/2000-01) dated 11.11.2003 issued by the Commissioner of Commercial Taxes in Karnataka Bangalore (hereinafter referred to 'Commissioner' for short) and consequent assessment orders and the orders levying penalty were called in question. The said circular was under Section 3-A(2) of the Act in pursuance of certain observations made in Poonam Stone Processing Industries (supra) which reads as follows:-

> "Cuddaph, Shahabad and marble are stones of special value in the market and the marketable quality of these stones is enhanced by polishing and cutting. But the

substance of the material is not altered. The article is made more presentable and attractive for the benefit of the users and it cannot be said that the activity is a manufacturing activity."

11. Thereafter, the Division Bench referred to various aspects of the circular. It was contended before the High Court that the activity of the assessee in cutting and polishing of granite stone will not come within the meaning of manufacturing activity and the circular had been issued on an erroneous notion. The High Court in Vishwakarma Granites (supra) has noted that in Poonam Stone Processing Industries (supra) the issue as to whether the act of cutting and polishing of granite stone amounts to manufacturing activity was not considered as the Division Bench had held that the said question was unnecessary to be decided in the writ appeal. It is worthy to note what has been stated in Poonam Stone Processing Industries (supra):-

"3. On the question whether the petitioner was engaged in a manufacturing activity or not, the Tribunal has considered the same in great detail in para 13 of its order. The Tribunal has taken into consideration the nature of the business carried on. It is stated therein that the petitioner purchases rough granite blocks and with the help of the machines run by electrical energy in his unit, cut the granite into required sizes and thickness and polishes the same to the requirement of the customers and sells the same. In support of his case, the learned counsel for the petitioner pointed out the objections filed by him before the Revisional Authority and also produced a brochure before us indicating the nature of the activities carried on by him. Neither a perusal of the objections filed by the petitioner nor the very attractive brochure produced before us would convince us to come to a different conclusion from the finding given by the Tribunal. The Tribunal has looked into the material and correct perspective. The stones are larger granite blocks purchased by the petitioner, even when cut to the sizes to the requirement of the customers including as regards its thickness or polishing it continues to be granite block. May be a smaller or thinner size, but it would continue to be a granite block however polished it may be. Even though it may be used as a building material, the granite block does not cease to be a granite block. Therefore, no manufacturing activity is involved. The finding recorded in this regard is perfectly in order.

5. Merely cutting a rough block of granite into different sizes to the requirement of the customers would not involve any manufacturing activity. In that view of the matter, we do not think the view taken by the Tribunal is wrong in any manner. In the view we have taken non-production of the valuation certificate in this case does not assumes any significance".

[underlining is ours]

12. The High Court in Vishwakarma Granites (supra) had referred to the authority in Goa Granites (supra). In Goa Granites' case the Division Bench of the High Court posed the following two questions which required determination by the High Court:-

> "I. Whether the Tribunal was right in holding that the polished tiles obtained out of rough granite blocks are to be reckoned as the same goods or commercially new commodities for allowing exemption under Section 5(3) of the CST Act, 1956?
>
> II. Whether the ratio of the decision of this Hon'ble Court in the case of Foredge Granite v. State of Karnataka in STRP.No.58/1991 rendered with reference to Entry 17 of Part 'S' of the Second Schedule to Karnataka Sales Tax Act, as it stood prior to 1.4.1991 was applicable to the facts of the case of the assesses?"

13. While discussing, the Court took note of the fact that what is sold or supplied by the dealer-assessee, registered both under the Act and CST Act, is rough granite block to an 100% export-oriented unit and it is also not in dispute that what is exported by the export-oriented unit is polished and thin slices of tiles made out of big rough granite blocks supplied by the assessee. The Division Bench referred to *Sterling Foods v. State of Karnataka*[7] wherein it has been held thus:-

> "The test which has to be applied for the purpose of determining, whether a commodity subjected to processing retains its original character and identity is as to whether the processed commodity is regarded in the trade by those who deal in it as distinct in identity from the original commodity or it is regarded, commercially and in the trade the same as the original commodity. It is necessary to point out that it is not every processing that brings about change in the character and identity of a commodity. The nature and extent of processing may vary from one case to another and indeed there may be several stages of processing and perhaps different kinds of processing at each stage, with each process suffered, the original commodity experiences change. But it is only when the change or a series of changes take the commodity to the point where commercially it can no longer be regarded as the original commodity, but instead is recognized as a new and distinct commodity that it can be said that a new commodity, distinct from the original has come into being. The test is, whether in the eyes of those dealing in the commodity or in commercial parlance the processed commodity is regarded as distinct in character and identity from the original commodity."

14. While proceeding with the analysis, the Division Bench posed a question which we think it apt to reproduce:-

> "In other words, whether the rough granite blocks, which were sold were the very goods, which were exported? To be further precise, the controversy in this revision petition is about the identity of the goods purchased and identity of the goods sold."

15. Thereafter, the Court has referred to *Delhi Cloth and General Mills Ltd., vs. State of Rajasthan*[8], wherein the Court has stated, that "it was fairly well settled that the words or expressions must be construed in the sense in which they are understood in the trade, by the dealer and consumer. It is they who are concerned with it and it is the sense in which they

understand it that constitutes the definitive index of the legislative intention when the statute was enacted". Thereafter, the Division Bench observed:-

> "The question for consideration is, whether this polished tiles obtained out of rough granite blocks would amount to export of "those goods", which had been sold by the assessee? It is the specific case of the assessee before all the authorities under the Act that what is sold in only rough granite blocks to an industrial unit, which is an 100% export oriented unit. It is also its case that the export unit by using heavy machinery, cut these rough granite blocks in to thin pieces and thereafter, they have been polished and exported not as granite blocks but as polished tiles. Under these circumstances, they are of the view that they are entitled to get exemption from payment of tax under the Act, since the commodity supplied and the commodity exported are one and the same, except for the diminishing size. In aid of their assertion, they had placed reliance on the observations made by this Court in the case of M/s Foredge Granite Pvt. Ltd. vs. The State of Karnataka and Another (STRP.No.58/1991). At the outset, we should notice in this case, firstly, that sub-section (3) of Sec. 5 of the CST Act did not fall for consideration of this Court. The issue that was raised in the said decision was, mere cutting a rough block of granite into different sizes to the requirement of the customer would involve any manufacturing activity? The facts which were noticed by the Court in that case was, that the petitioner had purchased rough granite blocks and with the help of the machines run by electrical energy in its unit, cuts the granites into required sizes and thickness and polishes the same to the requirement of the customers and sells the same. The case of the assessee before the assessing authority was that the business activity of the petitioner is a manufacturing activity and therefore, would be entitled to the benefit of the notification dated 15/16.10.1981, which provided for exemption from payment of tax under the KST Act, 1956, in respect of goods manufactured and sold by new industrial unit. The assessing authority had allowed the claim of the dealer and had granted exemption from payment of sale tax, treating the business activity of the petitioner as a manufacturing activity and therefore, entitled to certain incentives and concession flowing from the notification. This order of the assessing authority was revised by the revisional authority by invoking the provisions of Section 21(2) of KST Act and the order so passed was confirmed by the Karnataka Appellate Tribunal, by rejecting the appeal filed by the assessee. It is the correctness or otherwise of this order was called in question by the assessee before this Court in Revision Petition 58/1991."

> And again:-

> "On these set of facts, this Court has stated that the stones are large granite blocks purchased by the petitioner and even when cut into the sizes to the requirement of the customers including as regards its thickness or polishing, it continues to be a granite block. May be a smaller or thinner size, but it would continue to be granite block however polished it may be. Even though it may be used as a building material, the granite block does not cease to be a granite block and therefore, no manufacturing activity is involved. The conclusion the Court has reached is, mere cutting a rough

block of granite into different sizes to the requirement of the customers would not involve any manufacturing activity."

16. The Division Bench distinguished the finding recorded in Foredge Granite (supra) as the question that arose before it pertained to whether the export of polished granite tiles obtained out of rough granite blocks would amount to export of "those goods" which had been sold and supplied. The Court again referred to the principles stated in Sterling Foods (supra), applied the said test and proceeded to opine:-

> "If this test is applied, neither in common parlance nor in commercial parlance, sliced, thin, polished tiles cannot be regarded as the rough granite blocks. When rough granite blocks are subjected to process of cutting, slicing into required size and polished and exported as tiles, the rough granite blocks ceased to be granite blocks and become a distinct and different commercial commodity from the original commodity. In the trade circle, they are not considered as one and the same commodity. If the purchaser goes to the market to buy the polished tiles, he will not be given the rough granite blocks. Converse of this is also an indication that they do not retain their identity as rough granite blocks when they are cut/sliced, polished as tiles and therefore, for the purpose of Section 5(3) of the CST Act, it cannot be said that the goods sold or supplied were those goods, which were exported. The granite stones are extracted from the quarry and they are cut into small and large blocks. If they are cut or sawn to very specific dimension and sold either as smaller blocks or cut sizes of granite blocks to the exporter and if that exporter exports those small cut sizes of granite blocks, it can definitely be said, that what is sold and what is exported are one and the same commodity. But in the present case, the facts noticed by the fact finding authorities is that, the exporter before exporting the cut sizes of granite blocks, cuts them into slices to the actual size of tiles, polishes or effects honing process, which is similar to polishing and the end result is a tile that has a stain or patina finish or polish finish. If it was a case of mere cutting or sawing to a specific dimension and beveled edges are polished, it could be a case of export of the same goods and therefore, eligible for tax exemption under Sec. 5(3) of the Act. In our view, the 'tiles' are not simply cut or sawn of a granite blocks. They undergo further processing of cutting into thin slices, and process of polishing and emerge as 'tiles' and ready to be sold as 'tiles' and in commercial parlance, they are treated as different commodity altogether. Even if we have to adopt a value added test, then also, in our view, there is substantial transformation of the original commodity into different commercial commodity. Therefore, what is sold and what is exported is not "those goods" or the "same goods", which is eligible for exemption under Sec. 5(3) of the Act. While considering the issues involved in this revision petition, we are not considering whether any manufacturing activity is involved while rough granite blocks are cut/sliced into thin pieces as tiles and polished or honed."

17. Eventually, the Division Bench held:-

> "Chemical composition of them may continue to remain as stones when they were supplied and cut into thin sizes, polished and sold as tiles, but in common parlance or in commercial parlance or in trade circles or in value added percentage test, in our view, they are not understood as one and the same commodity. The rough granites are processed to an extent that they no more remain as granites but as tiles ready to be used in building construction and other activities. By this process, there is value addition to the goods. There would be price variation between the rough granite block and cut and polished tiles. Even in the trade circles, when a customer asks for polished tiles of required size, the dealer shall not supply him with rough granites. The converse of this transaction is also an indicative factor how the trade circles understands the difference between rough granite blocks and polished granite tiles. Therefore, in our view, for the purpose of Sec. 5(3) of the CST Act, 1956, it cannot be said that what is supplied or sold are those goods which are exported. Accordingly, the assesses is not eligible to claim exemption from payment of tax under the Act, on the ground that the sale of granite blocks to an 100% exported unit is a sale in the course of export or deemed sale to be in the course of export."

18. The decision in Foredge Granite (supra) was distinguished by observing that:-

> "We further add that the Apex Court in the case of Sterling Foods v. The State of Karnataka(1986) 63 STC 239 has observed that "the character or identity of the commodity has to be determined not on the basis of a distinction made by the State Legislature for the purpose of exigibility to state sales tax, because even where the commodity is the same in the eyes of the persons dealing in it, the State Legislature may make a classification determining liability to sales tax. This question for the purpose of the Central Sales Tax Act, has to be determined on the basis of what is commonly known or recognized in commercial parlance". Therefore, in our view, for deciding the issue raised in this revision petition, reference to Entry 17 of Part 'S' of Second Schedule to the KST Act is wholly irrelevant."

19. In Vishwakarma Granites (supra) the High Court distinguished the Division Bench decision by opining that it was not specifically dealing with the issue of manufacture and further it was adverting to the exigibility of tax under Section 5(3) of the CST Act. The Court distinguished the two concepts, namely, the "manufacture" and the recognized test of "common parlance".

20. Now, we may look at what has been held in Aman Marble (supra). The two-Judge Bench was dealing with the issue whether the cutting of marble blocks into marble slabs amounts to manufacture for the purpose of the Central Excise Act. In that context, the Court referred to the authority in *Raja.sthan SEB v. Associated Stone Industries*[9] and reproduced a passage from the same which is as follows: -

> "This apart, excavation of stones from a mine and thereafter cutting them and polishing them into slabs did not amount to manufacture of goods. The word 'manufacture' generally and in the ordinary parlance in the absence of its definition in

> the Act should be understood to mean bringing to existence a new and different article having a distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of manufacture. Cutting and polishing stones into slabs is not a process of manufacture for the obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued." and this position was further reiterated as follows: (SCC pp. 147-48, para 16) "It is also not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in any manufacture of goods."

21. At this juncture, it becomes imperative on our part to analyze what has been stated in Associated Stone Industries (supra). In the said case, the issue that arose for consideration was whether pumping out water from a mine comes within the meaning of manufacture, production, processing or repair of goods as to claim exemption from duty under notification issued under Section 3 of Rajasthan Electricity (Duty) Act, 1962. The Court referred to the authorities in *Union of India v. Delhi Cloth and General Mills Co. Ltd.*[10], *CCE v. Rajasthan State Chemical Works*[11], wherein it has been held that pumping of brine and lifting of raw material constituted processes in or in relation to the manufacture. In the said case, the Court adverted to the facts in Rajasthan State Chemical Works (supra) and ultimately concluded thus:-

> "In conclusion, it is said that if any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried on with the aid of power. Pumping out water, excavation of stones and cutting and polishing them into slabs cannot be said to be integrally connected in the manufacturing of goods".

22. At this stage, we think it appropriate to refer to comparatively a recent pronouncement in *ITO, Udaipur v. Arihant Tiles & Marbles Pvt. Ltd*[12]. In the said case, the assessee was engaged in the business of manufacture/production of polished slabs and tiles which the assessee exported (partly). The question that arose for consideration is whether conversion of marble blocks by sawing into slabs and tiles and polishing amounts to "manufacture or production of article or thing" so as to make the respondent assessee(s) entitled to the benefit of Section 80-IA of the Income Tax Act, 1961, as it stood at the material time. Thus, manufacture or production was required to be understood within Section 80-IA of the Income Tax Act, 1961. The Court analysed the various steps that is undertaken to reproduce the details of step-wise activity undertaken by the assessee. The Court reproduced the same:-

> "(i) Marble blocks excavated/extracted by the mine owners being in raw uneven shapes have to be properly sorted out and marked;
>
> (ii) Such blocks are then processed on single blade/wire saw machines using advanced technology to square them by separating waster material;

(iii) Squared up blocks are sawed for making slabs by using the gang saw machine or single/multi-block cutter machine;

(iv) The sawn slabs are further reinforced by way of filling cracks by epoxy resins and fibre netting;

(v) The slabs are polished on polishing machine; the slabs are further edge cut into required dimensions/tiles as per market requirement in prefect angles by edge cutting machine and
multi-disc cutter machines;

(vi) Polished slabs and tiles are buffed by shiner."

23. Thereafter, the three-Judge Bench analysed the distinction/difference between production and manufacture. We need not advert to the same. The Court, however, referred to the authority in Associated Stone Industries (supra). Analysing the same, the Court observed:-

"12. The basic controversy which arose for determination in Rajasthan SEB case was whether the activity of pumping out water from the mines came within the meaning of the words "manufacture",

"production", "processing or repair of goods". While disposing of the matter, this Court, vide paras 1 and 10, stated that the specific case of the company was that the electrical energy was consumed for pumping out water from mines to make mines ready for mining activity. This aspect is very important. It needs to be highlighted that the case of the company was that pumping out water from mines to make the mines ready for mining activity came within the ambit of the term "manufacture". This argument was rejected by this Court, after examining various judgments of this Court on the connotation of the word "manufacture"."

24. After so analysing, the Court observed the said decision had no application to the facts of the case, for only activity which came up for consideration in Rajasthan SEB case was the activity of pumping out water from a mine in order to make the mine functional. The Court opined that the controversy it was dealing with, the said activity was not required to be considered. Thereafter, the three-Judge Bench adverted to the principle stated in Aman Marble (supra). The Court distinguished the same by holding that the word "production" was not under consideration before the Court in the said case and thereafter noted that in the said case it had been held that cutting of marble blocks into slabs did not amount to manufacture. Explaining the dictum in the said case, the Court observed:-

"In our view, the judgment of this Court in Aman Marble Industries (P) Ltd. also has no application to the facts of the present case. One of the most important reasons for saying so is that in all such cases, particularly under the excise law, the Court has to go by the facts of each case. In each case one has to examine the nature of the activity

undertaken by an assessee. Mere extraction of stones may not constitute manufacture. Similarly, after extraction, if marble blocks are cut into slabs per se will not amount to the activity of manufacture."

25. Thereafter, the Court proceeded to deal with the process undertaken by the assessee and in that context stated:-

> In the present case, we are not concerned only with cutting of marble blocks into slabs. In the present case we are also concerned with the activity of polishing and ultimate conversion of blocks into polished slabs and tiles. What we find from the process indicated hereinabove is that there are various stages through which the blocks have to go through before they become polished slabs and tiles. In the circumstances, we are of the view that on the facts of the cases in hand, there is certainly an activity which will come in the category of "manufacture" or "production" under Section 80-IA of the Income Tax Act."

26. The Court referred to the decision *in CIT v. N.C. Budharaja & Co*[13]. and ruled thus:-

> "25. Applying the above tests laid down by this Court in Budharaja case to the facts of the present cases, we are of the view that blocks converted into polished slabs and tiles after undergoing the process indicated above certainly results in emergence of a new and distinct commodity. The original block does not remain the marble block, it becomes a slab or tile. In the circumstances, not only is there manufacture but also an activity which is something beyond manufacture and which brings a new product into existence and therefore, on the facts of these cases, we are of the view that the High Court was right in coming to the conclusion that the activity undertaken by the respondent assessees did constitute manufacture or production in terms of Section 80-IA of the Income Tax Act, 1961.
>
> 26. Before concluding, we would like to make one observation. If the contention of the Department is to be accepted, namely, that the activity undertaken by the respondents herein is not manufacture, then, it would have serious revenue consequences. As stated above, each of the respondents is paying excise duty, some of the respondents are job-workers and the activity undertaken by them has been recognised by various government authorities as manufacture. To say that the activity will not amount to manufacture or production under Section 80-IA will have disastrous consequences, particularly in view of the fact that the assessees in all the cases would plead that they were not liable to pay excise duty, sales tax, etc. because the activity did not constitute manufacture."

27. We have reproduced in extenso from the aforesaid authority, though the exposition of law arose under a different enactment. The three-Judge Bench has explained the principle stated in Rajasthan SEB's case as well as in Aman Marble (supra). In the case at hand, though the High Court in the impugned order posed the question correctly and placed reliance on Aman Marble (supra), yet it has not correctly applied the principle in the correct

perspective. In Aman Marble (supra) the Court has held that it was not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in a manufacture of goods. The decision in Foredge Granite (supra) had been restricted to the concept of polished granite block. The revisional authority, as we perceive, has applied the test of separate and distinct commercial product that comes into existence from granite stones and for the said purpose, it has relied on the pronouncement in Goa Granites (supra). We have copiously referred to Goa Granites (supra). It has drawn a distinction between the slabs and tiles. Entry 17(i) of Part S of the Act deals with polished granites, unpolished granites and chips. The tiles come under Entry 8 in part T of the second schedule to the Act. At Entry 8(iv), the tiles are covered. It is noticeable that in Entry 8, certain tiles have been classified under Entry 8(i) (ii) and (iii) of Part T. Under Entry 8(iv) further tiles are classified. It is as under:-

> "(iv) Other tiles not covered by items 1-4-88 to 31-3-96 Fifteen percent (i), (ii) and (iii) above
>
> | | |
> |---|---|
> | 1-4-96 to 31-3-98 | Twelve percent |
> | 1-4-98 to 31-3-01 | Ten percent |
> | 1-4-01 to 31-03-02 | Twelve percent |
> | 1-4-02 to 31-5-03 | Fifteen percent |
> | From 1-6-2003 | (Sixteen percent)" |

28. There is a distinction between polished granite stone or slabs and tiles. If a polished granite stone is used in a building for any purpose, it will come under Entry 17(i) of Part S of the second schedule, but if it is a tile, which comes into existence by different process, a new and distinct commodity emerges and it has a different commercial identity in the market. The process involved is extremely relevant. That aspect has not been gone into. The Assessing Officer while framing the assessment order has referred to Entry 17(i) of Part S but without any elaboration on Entry 8. Entry 8 carves out tiles as a different commodity. It uses the words "other titles". A granite tile would come within the said Entry if involvement of certain activities is established. To elaborate, if a polished granite which is a slab and used on the floor, it cannot be called a tile for the purpose of coming within the ambit and sweep of Entry 8. Some other process has to be undertaken. If tiles are manufactured or produced after undertaking some other activities, the position would be different. A finding has to be arrived at by carrying out due enquiry and for that purpose appropriate exercise has to be undertaken. In the absence of that, a final conclusion cannot be reached.

29. In view of the aforesaid, we allow the appeals, set aside the orders passed by the High Court and all the authorities and remit the matter to the Assessing Officer to re-adjudicate the matter keeping in view the observations made hereinabove. There shall be no order as to costs.

Judgment Referred.

[1]*W.P. No. 13803/05 decided on 21st June, 2006 by Karnataka H.C.*
[2]*STC Vol. 94 page 0182*
[3]*STRP No. 58/1991 decided on 12.12.1994*
[4]*(2006) 60 Kar.L.J. 110*
[5]*AIR 1981 SC 1014*
[6]*(2005) 1 SCC 0279*
[7]*(1986) 63 STC 0239*
[8]*(1980) 46 STC 0256*
[9]*(2000) 6 SCC 0141*
[10]*AIR 1963 SC 0791*
[11]*(1991) 4 SCC 0473*
[12]*(2010) 2 SCC 0699*