

BOMBAY HIGH COURT

Commissioner of Sales Tax

Vs

Radha Dyeing

(D Madon and S.V Manohar, J.)

07.03.1981

JUDGMENT

Madon, J.

1. In each of these above five references under section 61(1) of the Bombay Sales Tax Act, 1959, the following question has been submitted to this Court for its determination :

"Whether on a true and proper interpretation of section 41(2) of the Bombay Sales Tax Act, 1959, read with the notifications issued thereunder, the Tribunal was justified in law in coming to the conclusion that a precise quantification of the tax is not possible thereunder and, therefore, that provision was unenforceable ?"

2. The facts which have given rise to these references are that the respondents are a registered dealer and have also been certified by the Commissioner of Sales Tax for the purposes of entry 39 to Notification No. STA. 1059-(iii)-G-1 dated 28th December, 1959, issued under section 41(1) of the said Act as registered dealers who manufacture cotton fabrics of the type mentioned in the said entry. The respondents, however, did not themselves manufacture in its ordinary sense, that is, did not make cloth themselves. The respondents' business consists of buying grey cloth in the market and then dyeing and printing it and thereafter selling it in the market. They also do job-work of dyeing and printing cloth made by others for sale. For the purpose of carrying out their above activity of dyeing and printing cloth the respondents purchased during the various assessment periods, to which these references relate, machinery as also its component parts and accessories and dyes and chemicals and in respect thereof paid tax at a lower rate as provided in the said entry 39 by giving to their vendors declarations in form T to the said entry in which they inter alia declared that the said purchased goods were required for use by them in the manufacture of cotton fabrics for sale.

3. In the course of assessment proceedings, the Assistant Commissioner of Sales Tax held that

the sales of the machinery, its component parts and dyes and chemicals to the respondents were not taxable at the lower rate mentioned in the said entry 39 because the respondents' activity of dyeing and printing cloth did not constitute manufacture within the meaning of the said expression as used in the said entry 39. The Assistant Commissioner accordingly assessed the respondents under section 41(2) and (3) of the said Act to pay the balance of tax which would otherwise have been payable had the respondents not given declarations in form T. The Tribunal in deciding the matter held that the said section 41(2) was unenforceable. It did not consider the real question which arose for its decision in the second appeals from which the present references arise, namely, whether the respondents were manufacturers within the meaning of the said entry 39. Clause (17) of section 2 of the said Act defines the term "manufacture". The said definition is as follows :

"'Manufacture', with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed."

4. It is obvious that dyeing and printing would be a process carried out on cloth and would result in a new marketable commodity coming into existence (see *Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co*¹. and *Hiralal Jitmal v. Commissioner of Sales Tax*²It is not disputed before us by Mr. Jetly, the learned counsel for the applicant, that dyeing and printing cloth would be manufacture within the meaning of clause (17) of section 2. What is, however, contended is that though dyeing and printing cloth may be manufacture within the meaning of the said clause (17), the artificial definition of the term "manufacture" given in that clause would not apply to the expression "manufactures" in the said entry 39.

5. In view of the provisions of section 20 of the Bombay General Clauses Act, 1904, this argument merely requires to be stated in order to be rejected. Under the said section 20, where, by any Bombay Act or Maharashtra Act, a power to issue inter alia any notification, order, scheme, rule, bye-law or form, is conferred, then an expression used in the notification, order, scheme, rule, bye-law or form is, unless there is anything repugnant in the subject or context, to have the same respective meanings as in the Act conferring the power. The notification in which the said entry 39 occurs was made in the exercise of power conferred in that behalf by section 41(1) of the said Act. The expression "manufacture" is defined in the Bombay Sales Tax Act and not only the term "manufacture" in the said notification but all cognate expressions must, therefore, bear the same meaning as defined in the said section 2 of the said Act.

6. In this view of the matter the respondents had not committed any breach of the declaration forms given by them. Further, in Sales Tax Reference No. 52 of 1978 - *Commissioner of Sales*

*Tax v. Jasmine Mills Pvt. Ltd*³. - decided on 2nd March, 1981, this Court has held that manufacture for sale could be goods of the purchasing dealer himself or on behalf of some other person who gets his goods manufactured by the purchasing dealer for the purpose of sale.

7. In the result, the question which the Tribunal decided did not actually arise for its determination in any of the above references and accordingly for us to answer the said question in any of these references would be academic. We, therefore, decline to answer the question referred to us in these references and direct these references to be returned to the Tribunal.

8. The applicant will pay to the respondents the costs of these five references fixed in all at Rs. 300.

9. Reference declined to be answered.

Cases Referred.

1([1975] 35 S.T.C 493)

2([1957] 8 S.T.C. 325)

3([1981] 47 S.T.C 357)

