

# **BOMBAY HIGH COURT**

Commissioner of Sales Tax

Vs

Burmah Shell Refineries Limited

(D Madon, C.J. M Kania, J.)

24.11.1977

## **JUDGMENT**

### **Madon, J.**

1. This is a reference under section 61(1) of the Bombay Sales Tax Act, 1959, made at the instance of the Commissioner of Sales Tax.

2. The respondents carry on the business of processing and refining crude oil for the purpose of manufacturing kerosene from it. The crude oil so processed and refined belongs to Burmah Shell Oil Storage and Distributing Company of India Limited (hereinafter for the sake of brevity referred to as "the marketing company"). The respondents after refining the crude oil into kerosene hand over the kerosene to the marketing company. For the purpose of refining crude oil the respondents require sulphuric acid. Accordingly, they entered into an agreement dated 9th June, 1955, with the Dharamsi Morarji Chemical Company Limited (hereinafter for the sake of brevity referred to as "the chemical company") under which the respondents agreed to purchase all their requirements of sulphuric acid from the chemical company upon certain terms and conditions set out in the said agreement. For the purpose of manufacturing and supplying the respondent's requirement of sulphuric acid the chemical company had erected a plant. The said agreement was to come into operation as soon as the chemical company was able to put on commission the required additional plant and was to remain in force for a period of ten years from the date of its coming into operation, unless terminated by notice as provided in the said agreement. By clause 5 of the said agreement, the respondents agreed that during the terms of the said agreement they would not manufacture sulphuric acid either for their own consumption or for sale and would not resell or barter in any manner directly or indirectly any sulphuric acid supplied by the chemical company but would use the same for their own exclusive consumption. By clause 6 of the said agreement the respondents further agreed not to purchase sulphuric acid required for their use except from the chemical company unless the chemical company failed or

was unable to supply the respondents' requirements. When crude oil is refined and made into kerosene, a by-product which inevitably results is acid sludge or spent acid. Under the said agreement it was, therefore, further agreed that the respondents would sell the chemical company spent acid, if available, at the rate of 9,000 tons per annum, and should the chemical company's requirement of acid sludge in any year exceed 9,000 tons the respondents would supply the same, if available, up to a maximum of 12,000 tons per annum. It was further provided by the said agreement that acid sludge to be supplied to the chemical company should be fresh and not deteriorated and, in any case, before the disintegration products formed in acid sludge had rendered it unsuitable for separation of the acid and oil and further refining thereof. Clause 13 of the said agreement provided that the chemical company would not manufacture acid sludge either for its own consumption or for sale, and clause 14 provided that the chemical company would not purchase acid sludge except from the respondents, unless the respondents failed or were unable to supply the chemical company's requirement of acid sludge. The other terms and conditions of the said agreement are not material for the purposes of this reference. By a subsequent agreement recorded in a letter dated 2nd November, 1955, from the chemical company to the respondents the said agreement dated 9th June, 1955, was varied and it was provided that the said agreement would come into operation from 1st January, 1956, and would remain in force for a period of ten years from that date, unless terminated earlier by notice as provided in the said agreement. There was also a further subsequent variation of the said agreement which is not material for our purpose.

3. In their assessments for the periods 1st April, 1954, to 10th July, 1956, 11th July, 1956, to 31st March, 1957, 1st April, 1957, to 31st March, 1958, 1st April, 1958, to 31st March, 1959, and 1st April, 1959, to 31st December, 1959, the respondents contended that they were not dealers and were not liable to be registered as such. The Sales Tax Officer negatived this contention. Against the order of the Sales Tax Officer the respondents went in appeal to the Assistant Commissioner of Sales Tax. These appeals were dismissed. Thereupon the respondents filed revision applications which were heard and decided by the Deputy Commissioner of Sales Tax. In their revision application in respect of the assessment period 1st April, 1954, to 10th July, 1956, the Deputy Commissioner of Sales Tax held the respondents to be dealers on the basis of purchases made by them. In view of this decision of the Deputy Commissioner of Sales Tax, the respondents did not contest in their revision applications in respect of the aforesaid subsequent periods that they were dealers and, accordingly, in respect of the said subsequent periods also the Deputy Commissioner of Sales Tax held the respondents to be dealers.

4. The respondents then got themselves registered as dealers under the Bombay Sales Tax Act, 1953. They are also registered as dealers under the Bombay Sales Tax Act, 1959 (hereinafter

referred to as "the said Act"). They have also applied for and obtained a recognition under section 25 of the said Act on the basis that the value of all taxable goods manufactured for sale by them exceeded Rs. 2,500. In respect of their assessment for the period 1st January, 1961, to 31st December, 1961, the respondents claimed a set-off in respect of the amounts collected from them by the chemical company to cover the sales tax it would have to pay on the sales of sulphuric acid made by the chemical company to the respondents. The amount of set-off so claimed by them was Rs. 15,107.72. The Sales Tax Officer, however, held that they were entitled to a set-off of so much of the amount of tax collected from the respondents by the chemical company as appertained to the sales of acid sludge by the respondents to the chemical company, inasmuch as the respondents had not sold any kerosene refined by them but had only sold acid sludge, and allowed to the respondents set-off in the sum of Rs. 1,101.40 only. The respondents thereupon filed an appeal to the Assistant Commissioner of Sales Tax. The Assistant Commissioner of Sales Tax issued a notice to the respondents to show cause why even the set-off of Rs. 1,101.40 allowed to them by the Sales Tax Officer should not be disallowed, and by his order passed on 29th March, 1969, dismissed the appeal filed by the respondents and further revised the order passed by the Sales Tax Officer and disallowed the set-off of Rs. 1,101.40 granted by the Sales Tax Officer. Against this order of the Assistant Commissioner of Sales Tax the respondents went in second appeal to the Tribunal. The Tribunal held that the respondents were entitled to the full set-off claimed by them. Being aggrieved by this decision of the Tribunal, the Commissioner of Sales Tax applied to the Tribunal to state a case to this High Court and refer to it for its determination the following two questions :

"(1) Whether, on the facts and in the circumstances of the case and in a true interpretation of the agreement dated 9th June, 1955, between the respondent-company and Dharamsi Morarji Chemical Company Limited, the Tribunal was correct in law in holding that the acid used by the respondent-company in refining the crude kerosene belonging to Burmah Shell Oil Storage and Distributing Company of India Limited was used in the manufacture of acid sludge and not in the manufacture of kerosene ?

(2) If the answer to the above question is in the affirmative, whether on a true and proper interpretation of rule 41 of the Bombay Sales Tax Rules, 1959, the respondent-company was entitled to the full set-off of Rs. 13,421.15 or only to the extent of Rs. 1,101.40 as held by the Sales Tax Officer ?"

5. At the hearing of the said application the respondents contended that the first question asked by the applicant to be referred to this High Court was not properly framed as it did not bring out the real question of law which would fall to be decided by this High Court. The Tribunal accepted the submission of the respondents and reframed question No. (1). The Tribunal

prepared a draft statement of the case, served it upon both sides and after hearing them stated this case to the High Court and referred to us the following two questions of law :

"(1) Whether, on the facts and in the circumstances of the case and on a true interpretation of the agreement dated 9th June, 1955, between the respondent-company and Dharamsi Morarji Chemical Company Limited, the Tribunal was correct in law in holding that the sulphuric acid purchased by the respondent-company for refining the crude kerosene belonging to Burmah Shell Oil Storage and Distributing Company of India Limited was used in the manufacture of taxable goods for sale ?

(2) If the answer to the above question is in the affirmative, whether on a true and proper interpretation of rule 41 of the Bombay Sales Tax Rules, 1959, the respondent-company was entitled to the full set-off of Rs. 13,421.15 or only to the extent of Rs. 1,101.40 as held by the Sales Tax Officer ?"

6. In order to appreciate the real controversy in this reference it is necessary to know the relevant provisions of the said Act and the Rules framed thereunder. Section 3 of the said Act provides that every dealer whose turnover either of all sales or of all purchases made during the year ending on 31st March, 1959, or during the year commencing on 1st April, 1959, or during any subsequent year commencing on the first day of April has exceeded or exceeds the relevant limit specified in sub-section (4) of section 3 shall, unit such liability ceases, be liable to pay tax under the said Act on his turnover of sales and on his turnover of purchases. We are concerned only with the relevant limit laid down for a manufacturer by the said sub-section (4). In the case of a dealer who is a manufacturer and the value of taxable goods sold or purchased by him during the year is not less than Rs. 2,500 and the value of any goods whether taxable or not manufactured by him during the year is not less than Rs. 2,500, the relevant limit is Rs. 10,000. Section 22 casts an obligation on every dealer who is liable to pay tax under section 3 to get himself registered as a dealer under the said Act. Under section 25 where during the previous or current year the value of all taxable goods manufactured by a registered dealer for sale by him exceeds Rs. 2,500, he may apply for recognition to the Commissioner of Sales Tax. Upon such application being made, the Commissioner of Sales Tax is to issue to the dealer a recognition in respect of any goods required by the dealer for use within the State in the manufacture of taxable goods for sale by him or in the packing of goods so manufactured, if the dealer satisfies such further requirements (including the furnishing of adequate security) as may be prescribed. Certain sections of the said Act exempt sales made by a dealer to another dealer for specific purposes. During the period with which we are concerned a sale to a recognised dealer who gave to his vendor a certificate in the prescribed form, namely, form 15, that the goods sold to him were goods of the class specified in his recognition and were "purchased by him for use by him

in the manufacture or packing of taxable goods for sale by him" were exempted from levy of sales tax and general sales tax, provided these were not goods described in Schedule B or in entries 1 to 11 and 15 of Schedule C or entries 1 to 4 of Schedule D or entries 1 and 2 of Schedule E to the said Act or specified in the notification issued under the said section 25. Thus, such a certificate could be given by a recognised dealer only when he purchases the said goods for use by him in the manufacture or packing of taxable goods which he is manufacturing for sale by him. If the goods purchased were intended by the manufacturer for use by him in the manufacture not of goods intended for sale by him but in the manufacture of goods belonging to others and to be sold by such others, such a certificate could not be granted. All the purchases of sulphuric acid made by the respondents from the chemical company during the assessment period in question were made by them without furnishing any such certificate to the chemical company. Accordingly, the sales were not entitled to be exempted from the turnover of sales of the chemical company, and the chemical company became liable to pay sales tax and general sales tax on the sales to the Government. In order to reimburse themselves in respect of this tax liability the chemical company recovered from the respondents the amount of sales tax and general sales tax which they had become liable to pay to the Government on its sales to the respondents. It was in respect of the amounts so paid by them to the chemical company, aggregating to Rs. 13,421.15, that the respondents' claim for set-off was made.

7. Section 42 of the said Act confers power upon the State Government to make rules providing for the grant of a drawback, set-off or refund of the whole or any part of the tax inter alia paid or levied or leviable under any earlier law in respect of any earlier sales or purchases of goods which were held in stock by the dealer at the commencement of the said Act or paid or levied or leviable in respect of any earlier sale or purchase of any goods under the said Act or any earlier law, and by such rules to prescribe the circumstances in which and the conditions subject to which such drawback, set-off or refund should be granted. In pursuance of this power conferred upon it, the State Government has made rules in this behalf. These rules are to be found in Chapter VII of the Bombay Sales Tax Rules, 1959. The rule with which we are concerned is rule 41. It contains several clauses. The clause with which we are concerned is clause (e). The material provisions of rule 41 during the relevant assessment period were as follows :

"41. Drawback, set-off, etc., of tax paid by a manufacturer. - In assessing the amount of tax payable in respect of any period by registered dealer, who manufactures taxable goods for sale (hereinafter in this rule referred to as the 'manufacturing dealer'), the Commissioner shall grant him a drawback, set-off or, as the case may be, a refund, of the aggregate of the following sums, that is to say : .....

(e) a sum recovered from the manufacturing dealer by another registered dealer by way of

sales tax or general sales tax or both, as the case may be, on the purchase by him, of goods from such registered dealer being goods specified in Schedule C to the Act other than in entries 1 to 11 (both inclusive) and 15 therein and in Schedule D other than in entries 1 to 4 (both inclusive) therein and in Schedule E other than in entries 1 and 2 therein, when the purchasing dealer did not hold a recognition, or when the dealer held a recognition but effected the purchase otherwise than against a certificate under section 12 of the Act, provided that such goods are used by him in manufacture of taxable goods for sale or in the packing of taxable goods manufactured by him for sale."

8. The whole controversy before us revolves round the correct interpretation to be placed upon the phrase "provided that such goods are used by him in the manufacture of taxable goods for sale" in the said clause (e). Mr. Jetly, learned counsel for the applicant, submitted that the said phrase meant that the goods purchased were used by the manufacturing dealer in the manufacture of taxable goods for sale by him and not for sale by others. In Mr. Jetly's submission, the real business of the respondents was to manufacture kerosene, it not being disputed that the processing and refining of crude oil into kerosene amounts to a manufacture within the meaning of the said term as defined by clause (17) of section 2 of the said Act. Mr. Jetly further submitted that acid sludge was merely a waste product which resulted in the process and compared to the sale price of kerosene its sale price was so disproportionate that it could not be said that the respondents were carrying on the business of manufacturing acid sludge for sale by them. Before we deal with this submission we may mention that the sales of acid sludge are liable to tax at the rates specified in the residuary entry, namely, entry 22 of Schedule E to the said Act. So far as sale of kerosene is concerned, for the period 1st January, 1960, to 31st March, 1961, it was tax-free. Sales of kerosene became liable to levy of tax at the rates specified in entry 14A of Schedule C with effect on and from 1st April, 1961.

9. In support of his submission that before a manufacturing dealer became entitled to any drawback, set-off or refund of any purchase tax paid by him or of any amount collected from him by way of tax by his vendor who sold raw materials to him the goods manufactured by the manufacturing dealer must be his own goods and intended to be sold by him and not by other, Mr. Jetly, learned counsel for the applicant, referred us to various sections of the said Act and the other sub-rules of the said rule 41 as also to some other rules in which this requirement is provided. Mr. Jetly submitted that even though such a condition was expressly not provided for in respect of the drawback, set-off or refund claimable under the said clause (e), such a requirement must be read into it by reason of the scheme of the said Act and the intention of the rule-making authority. In Mr. Jetly's submission not to give such an interpretation to the said clause (e) would lead to great discrimination between dealer and dealer and stultify the object of

the said Act. In particular, Mr. Jetly drew our attention to section 25 of the said Act which entitles a manufacturing dealer, who is a registered dealer, to get a recognition, provided "the value of all taxable goods manufactured ... for sale by him exceeds Rs. 2,500". Mr. Jetly also draw our attention to clause (b) of section 12 of the said Act under which a sale to a recognised dealer, who certifies in the prescribed form, namely, form 15, that the goods sold to him, not being the goods of the description contained in certain entries in the schedules to the said Act, were the goods of the class specified in his recognition and were "purchased by him for use by him in the manufacture or packing of taxable goods for sale by him". Emphasis was placed by Mr. Jetly also upon sub-section (1) of section 11 of the said Act, which was inserted in the said Act by Maharashtra Act 21 of 1962. When the said sub-section (1A) was inserted, clause (b) of section 12, above referred to, was deleted by the same amending Act. Under the said sub-section (1A), sales by a dealer selling taxable goods to a registered dealer who certified in the prescribed form, namely, form 15, that the goods were of the class specified in his recognition and that they were purchased by him for use by him within the State in the manufacture of taxable goods for sale by him or in the packing of the goods so manufactured were taxable not at the rates provided in the relevant entry but at the rate of one paise in the rupee. This rate was subsequently increased to two paise in the rupee in respect of certain goods and it is at present three paise in the rupee. The said sub-section (1A) was amended by Maharashtra Act 42 of 1971 and, for the words "for sale by him", the words "which will in fact be sold by him (and will not be given away as samples or otherwise)" were substituted. In Mr. Jetly's submission, what the legislature intended was that a sale to a recognised dealer should be exempt from tax or be subject to a lower rate of tax only if the raw materials purchased by the manufacturing dealer were used by him in the manufacture of goods for sale by him and not for or on behalf of others and the rule-making authority, therefore, could not have had the intention of granting a drawback, set-off or refund in cases where such raw materials went into the manufacture of goods which were to be sold by others.

10. We are unable to accept the above submission of Mr. Jetly, for, in our opinion, it runs counter to the plain language of clause (e) of rule 41, the scheme of the said Act and the intention of the legislature, which can be gathered therefrom. The said Act is an Act which levies tax on sales and purchases of goods. Under the scheme of the said Act, however, it is not every transaction of sale or purchase which is liable to be taxed. What is liable to be taxed under the said Act are sales made by a dealer, that is, a person who carries on the business of buying or selling goods within the State. Further, it is not every sale or purchase effected by a dealer which is liable to be taxed. Casual sales made by dealers are not liable to be taxed inasmuch as they are not made in the course of him business of buying or selling goods. It is, therefore, sales or purchases made by a dealer in the course of the business of buying or selling which constitutes him a dealer which are liable to be taxed. Even in cases of taxable transactions it is not as if the sale or purchase of every

single article, or in a transaction where there is a chain of sales, every single stage is taxed. While enacting the said Act, the legislature had in mind that though the tax was payable by the dealer, the incidence of tax and, consequently, the economic burden thereof must necessarily fall upon the ultimate consumer. The legislature also had to bear in mind the interest of trade and industry within the State. The said Act is a taxing statute and though the object of it is to collect revenue for the Government, in doing so, it was not, as it could not have been, the intention of the legislature to tax trade and industry within the State out of existence or to put them out of market in competition with the trade and industry outside the State. In a tax such as this having economic implications, the legislature has to bear in mind the economic consequences which would follow. There are goods which are of vital necessity to the populace. There are other goods which are important to inter-State trade or commerce. There are still other goods which are important to foreign trade and commerce and thus earn foreign exchange for the country. There is also the factor that each State desires to encourage growth of industries within the State so that the prosperity of the State would increase and employment would be found for a larger number. Bearing all these factors in mind a system has been devised under the said Act by which sales or purchases of certain goods are made exempt from levy of tax and certain transactions of sales or purchases, particularly those which form one or more links in a chain of transactions, are made exempt from taxation. This is done by the system of granting licences, authorisations, recognitions and permits. Under the said Act, a licensed dealer, an authorised dealer, a recognised dealer or a dealer holding a permit can in certain circumstances make purchases in respect of which no tax is leviable, provided he gives a certificate in the prescribed form setting out that purpose. We have already seen that, under the old clause (b) of section 12, the recognised dealer could give such a certificate in form 15 to enable him to purchase raw materials which he required for manufacturing goods which he himself sells, without that transaction being liable to be taxed, and now under clause (1A) of section 11, a recognised dealer can make purchases of raw materials for the same purpose against a similar certificate, attracting to that transactions a lower rate of tax. It is, however, not possible for the legislature to contemplate each and every contingency which may arise or the wide and varied factors which can feature in today's complex commercial world and, therefore, bearing in mind that there may be several other types of transactions which would attract tax but should, from the economic point of view, be not made taxable or should be taxed at a lower rate, that the legislature enacted sections 41 and 42. By section 41, the legislature conferred power upon the State Government if it thought it necessary "in the public interest" by notification in the official Gazette to exempt any specified class of sales or purchases from payment of the whole or any part of the tax payable under the said Act and to impose conditions subject to which this exemption could be availed of. By section 42, the legislature conferred upon the State Government the power to frame rules providing for grant of drawback, set-off or refund in such circumstances and subject to such conditions as the rules

might specify. The provisions for the grant of drawback, set-off or refund were necessary because in certain cases a registered dealer who may hold a licence or an authorisation or a recognition or a permit may make purchases from an unregistered dealer or he may make purchases, but the transactions may be of such a nature as not to be covered by the exemption sections. In such a case, if the purchases were made from an unregistered dealer, the purchasing dealer would have to pay purchase tax to the Government and, where purchases were made from a registered dealer, the selling dealer would have to pay sales tax or general sales tax to the Government and would, therefore, recover the amount thereof from the purchasing dealer. In order to ensure that the end-product was not taxed to such an extent as to make it uneconomical, the provision for grant of drawback, set-off or refund was made, so that if the goods purchased were utilised by the purchasing dealer for purposes specified in the drawback, set-off and refund rules, the purchasing dealer would be entitled in his assessment to get this relief, with the result that the price of the ultimate end-product would be kept at an economic or competitive level. It is with this view-point that the State Government framed rules which are to be found in Chapter VII of the Bombay Sales Tax Rules, 1959.

11. We have had occasion previously to deal with case under the said rule 41. We had repeatedly inquired into those matters, as we did in this, to be enlightened as to when, how and in what circumstances drawback under these rules could be granted or what it meant in the context of this particular piece of sales tax legislation. Neither the department nor any of the Advocates for the assessee have been at any time able to enlighten us on this point or the precise connotation of this expression in the said rules. Reading the said Chapter VII, we find that the words "drawback, set-off and refund" have been loosely used by the rule-making authority. A set-off would arise if the amount to be returned to the dealer in respect of the purchase tax paid by him or as representing the amount of tax collected from him by his vendor were to be adjusted and deducted from the tax payable by such dealer to the Government. It may, however, happen in some cases that the amount to be so returned by the Government may exceed the amount of tax payable by the dealer or it might be that none of the sales made by the purchasing dealer are liable to be taxed and, therefore, the entire amount has to be refunded to the dealer. In such an event, it would be logical to refer to the amount to be returned to the dealer which is in excess of the amount of tax payable by him, or where no tax is payable by him the full amount to be returned as a refund. The various clauses of rule 41 envisage different situations and prescribe different conditions to be fulfilled before a dealer becomes entitled to a drawback, set-off or refund. It is, therefore, not possible to import into one clause the conditions prescribed by another clause. For example, clause (a) deals with a sum payable by a manufacturing dealer under any earlier law as purchase tax on purchases made by him before 1st January, 1960. The relief granted by clause (a) cannot, however, be availed of unless a manufacturing dealer had in stock

on 1st January, 1960, certain goods which he had purchased before that date. It would be absurd to contend that this condition, though not expressly provided for in the other clauses of rule 41, must be imported into them, for that would render rule 41 into a meaningless farce. We consider it unnecessary to take up each clause and show how it operates in a different set of circumstances and how the conditions for the grant of relief thereunder are different from those prescribed in other clauses, even though Mr. Jetly has attempted to do so. The basic fallacy underlying Mr. Jetly's efforts has been that, according to him, because in some circumstances a manufacturing dealer can get exemption from payment of tax if he purchased raw materials against a certificate given by him that he needs these materials for the manufacture of goods which he is intending to sell, such condition must be imported into each and every rule, sub-rule or clause of a rule, relating to a manufacturing dealer even if there is no express provision in that behalf in it or even if the express language thereof runs counter to this interpretation. As an illustration of this type of argument we will refer to clause (cc) of the said rule 41 upon which the greatest emphasis was laid by Mr. Jetly. Under the said clause, a specified fraction of the purchase price is to be refunded to a manufacturing dealer in respect of goods purchased by him from a registered dealer on furnishing a certificate under section 12, provided the manufacturing dealer shows to the satisfaction of the Commissioner of Sales Tax that the goods were resold by the said registered dealer to him after purchasing them from another registered dealer and that the sales tax leviable under section 10 has been paid or has become payable on an earlier transaction in respect of the same goods and that the registered dealer has not separately recovered sales tax in respect of the said goods from the manufacturing dealer and that "the said goods have actually been used by the manufacturing dealer in the manufacture of taxable goods for sale", and further that the manufacturing dealer produced a certificate in form 31-A issued by the registered dealer stating, inter alia, that the sale is or will be included by him in his turnover of sales. Mr. Jetly laid particular emphasis upon the fact that in the said sub-rule (cc), while the words used were "used by the manufacturing dealer in the manufacture of taxable goods for sale" and not "used by the manufacturing dealer in the manufacture of taxable goods for sale by him", none the less relief under the said sub-rule could only be availed of by a manufacturing dealer who purchased goods for use in the manufacture of taxable goods for sale by him. To this extent, Mr. Jetly's submission is correct, but to the extent that Mr. Jetly sought to argue therefrom that the same restriction or condition has to be imported into the said clause (e), the submission is without foundation. This condition of use of the purchased goods in the manufacture of taxable goods for sale by the manufacturing dealer, though not expressly expressed in the said clause (cc), has been imported into it by reason of another condition prescribed therein, namely, the furnishing by the manufacturing dealer of a certificate under section 12. As we have seen, the certificate to be furnished under clause (b) of section 12 of the said Act required the manufacturing dealer purchasing goods, inter alia, to certify that the goods were being "purchased by him for use by

him in the manufacture or packing of taxable goods for sale by him". Since the furnishing of such a certificate is expressly made a condition for the obtaining of relief under the said clause (cc), it obviously follows that what the manufacturing dealer has to show to the satisfaction of the Commissioner of Sales Tax is that he has complied with the terms of the said certificate, and it was, therefore, not necessary for the rule-making authority to reproduce the words "by him" when it provided this further condition of producing proof to the satisfaction of the Commissioner of Sales Tax. Under clause (e), no such certificate is to be furnished by the manufacturing dealer to his seller. Clause (e) envisages a situation different from that envisaged by either the old clause (b) of section 12 or clause (1A) of section 11 or clause (cc) of rule 41. In express terms it applies to a case where a recognised dealer has effected a purchase "otherwise than against a certificate under section 12 of the Act". If the recognised dealer was in fact purchasing the raw materials for use by him in the manufacture of taxable goods for sale by him, he would certainly make the purchases against a certificate under section 12. It is also pertinent to note that clause (e) applies to a larger categories of goods than old clause (b) of section 12, because, under the said clause (b) of section 12, the certificate cannot be granted and a tax-free purchases cannot be made in respect of goods described in Schedule B, while under clause (e), the recognised dealer would be entitled to get relief by way of set-off or refund even in respect of such goods if the other conditions of the said clause (e) were satisfied.

12. Mr. Jetly, however, submitted that to grant the relief under clause (e) to a manufacturing dealer who did not himself sell the goods manufactured by him would be grossly discriminatory to a recognised dealer who purchased goods by furnishing a certificate under section 12. On the face of it, it could not be discriminatory so far as the goods described in Schedule B are concerned. Even apart from that, what would be discriminatory would be the interpretation sought to be placed on this clause by Mr. Jetly. Before a finished product can be put on the market, apart from the actual manufacture of the main parts or components several other processes may be required to be carried out. Not every manufacturing unit has the arrangements or facilities for carrying out all such processes itself. In most cases, therefore, manufacturing units get some of the processes carried out by other processors. If no such relief were available to the processor, the raw materials the processor would purchase for the purpose of carrying out the particular process would be liable to be taxed in the hands of his vendor if the vendor is a registered dealer or in the hands of the processor if the vendor is an unregistered dealer. In either event, the processor would increase its processing charges in order to recoup himself for the amount for which he would be thus out of pocket. This would increase the total cost of manufacture of goods. It is on the face of it obvious that the cost of manufacture of goods would thus increase in the case of goods manufactured by smaller manufacturing units and not in respect of goods manufactured by bigger manufacturing units, because bigger manufacturing

units may have the financial capacity to have their own processing plants to carry out each stage of manufacture and processing themselves, while from the nature of things this cannot be expected from smaller units. It would be illogical to assume that, in framing clause (e), the Government, which is the rule-making authority, wanted to put smaller units at a disadvantage compared to bigger manufacturing units. It is the policy of each State Government to encourage smaller manufacturing units and not bigger manufacturing units. In this connection it is pertinent to bear in mind the very wide ambit of the definition of "manufacture" given in clause (17) of section 2 of the said Act under which what would not be manufacture in the ordinary or popular sense would, however, be manufacture for the purposes of the Act. Thus, even altering, ornamenting, finishing or otherwise processing any goods or treating or adapting any goods would also be manufacture of those goods and not only the production or making of those goods which would constitute manufacture of goods in ordinary parlance. This is, of course, subject to the qualification which we have laid down in *Commissioner of Sales Tax v. Dunken Coffee Manufacturing Co.* ([1975] 35 S.T.C. 493.), that the activity must result in a different commercial article or commodity.

13. A closer study of the said Act and the Rules shows that wherever the legislature or the rule-making authority intended to provide that a particular exemption or relief is to be allowed to a manufacturing dealer who purchases raw materials for use in the manufacture of goods for sale by him only, the legislature has so provided just as it has provided in the case of exemption or relief in the case of resale of goods if such resale is to be by the purchaser himself. Similarly, it would be clear that under the Rules relief has been granted to different categories of dealers which reliefs are in addition to reliefs expressly specified in the said Act. In clause (e) of rule 41, when the rule-making authority did not insert the words "by him" in the expression "manufacture or packing of taxable goods for sale by him" occurring in clause (b) of section 12, what is intended was to grant an additional relief in the case of manufacturing dealers. Just as other rules grant relief in circumstances not provided for by the statute, similarly, clause (e) grants to a manufacturing dealer relief in those cases where he is unable to obtain the relief provided for by the exemption section in the said Act. If the intention of the legislature was to confine clause (e) only to those cases where the taxable goods were purchased by the manufacturing dealer for use in the manufacture of taxable goods for sale by him, there was nothing simpler for the rule-making authority than to use in that clause the expression "for sale by him". We have had occasion of *Empire Dyeing and Manufacturing Company Limited v. State of Maharashtra* ([1977] 40 S.T.C. 1 at 9.), to consider the effect of the omission of the words "by him" from such an expression. That was a case under the Central Sales Tax Act, 1956. Under section 8 of that Act, a lower rate of tax is attracted where the sale to a registered dealer is of goods specified in the certificate of registration of the registered dealer purchasing the goods "as being intended for

resale by him or subject to any rule made by the Central Government in this behalf, for us by him in the manufacture or processing of goods for sale", provided that dealer furnished to his vendor a declaration in the prescribed form to this effect. If it was sought to be contended that the condition of resale by the purchasing dealer also applied in the case of a manufacturer or processor of goods and, accordingly, the manufactured or processed goods should be the goods of the manufacturer or processor himself. We negatived this contention. It would be useful in the context of the arguments made before us to reproduce what we said in that judgment. We observed :

"Bearing in mind the object of providing a lower rate of tax we will now turn to the language of clause (b) of sub-section (3) of section 8 itself. So far as resale is concerned, the words used are 'intended for resale by him' that is, by the purchasing dealer himself. So far as manufacture or processing is concerned, the words used are 'for use by him in the manufacture or processing of goods for sale'. It is significant that the words 'by him' do not occur in this expression after the words 'for sale', as they do in the case goods intended for resale. In the first case, therefore, what is required is the resale of the goods purchased by the purchasing dealer himself and, in the second case, what is required is not the sale by the purchasing dealer himself but the use by the purchasing dealer himself of goods purchased in the manufacture or processing of goods, which manufactured or processed goods should be for sale, irrespective of whether such sale would be by the purchasing dealer himself or by others. Since the object was to keep the price of manufactured goods within reasonable limits, it would be illogical for the Parliament to have provided that a lower rate of tax would be attracted where the goods were manufactured or processed by the manufacturer or processor himself but not where the goods were got manufactured or processed by him in someone else's factory. Even apart from the intention of the Parliament, on a plain reading of the said clause (b) of sub-section (3) of section 8 itself, no other interpretation is possible, according to us. The omission of the words 'by him' after the words 'manufacture or processing of goods for sale' is significant, and all the more so, when we find the words 'by him' used after the words 'for resale' earlier in the same clause. So far as the principles of interpretation applicable to a taxing statute is concerned, we can do no better than to quote the by-now classic words of Rowlatt, J., in *Cape Brandy Syndicate v. Inland Revenue Commissioners* ([1921] 1 K.B. 64 at 71.) :

'..... in a taxing Act, one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language

used.' This passage has been cited with approval by almost every High Court in India and also by the Supreme Court; as, for instance, in *Baidyanath Ayurved Bhawan (Pvt.) Ltd., Jhansi v. Excise Commissioner, U.P.* The principle laid down by Rowlatt, J., has also been time and again approved and applied by the Supreme Court in different cases. To cite but only one, *Hansraj Gordhandas v. H. H. Dave, Assistant Collector of Central Excise and Customs, Surat ."*

14. It was next submitted by Mr. Jetly, learned counsel for the applicant, that clause (e) of rule 41 was an exemption clause and should be construed strictly and in favour of the department. We are unable to understand this submission. Assuming for the sake of argument that clause (e) of rule 41 is in the nature of an exemption clause, it does not follow that in the case of an exemption clause an artificial interpretation must be placed upon it and for that purpose the language strained and fanciful intentions attributed to the rule-making authority and imported into it in order to nullify what the clause was enacted to achieve. We can do no better than once again to quote from our judgment in *Empire Dyeing and Manufacturing Company Limited v. State of Maharashtra*<sup>1</sup> what we said there with reference to a similar argument advanced in that case. We said :

"It was, however, submitted on behalf of the respondents that the same principles as applied to the interpretation of an exemption clause should apply in the present case inasmuch as a concessional rate of tax was provided for by sub-section (1) of section 8 of the Central Act (that is, the Central Sales Tax Act, 1956) in respect of the sales of the description falling under the said clause (b) of sub-section (3) of section 8. We are unable to accept this submission. As pointed out earlier, there is no question of any concession or exemption being granted to a dealer by the said sub-section (1) of section. This is not a concession or exemption granted to a dealer. The purpose, we have pointed out earlier, is an economic one and is really in order to maintain the price structure. Even if, for the sake of argument, two interpretations were possible, the well-known canon of construction is that the benefit to the doubt must be given to the citizen and the construction beneficial to him should be adopted. When we say that a construction beneficial to a taxpayer should be adopted, what it really means is that when there are two interpretations open, one of which imposes a heavier burden of tax and the other a lower burden or no burden at all, the court in a case of doubt would prefer the interpretation which imposes a lower burden or does not impose any burden. The result of preferring such an interpretation would be, of course, to reduce the tax burden on the taxpayer. This canon of interpretation would be nullified if in every case where on one of the two interpretations a lower rate of tax or no liability to tax is attracted if such interpretation were rejected and the one less beneficial

adopted on the ground that the particular statutory provision in question is an exemption or concession clause."

15. For the reasons given above, we hold that the relief in clause (e) of rule 41 of the Bombay Sales Tax Rules, 1959, by way of drawback, set-off or refund, as the case may be, is available both to a recognised dealer who purchases goods of the description specified in that clause for use by him in the manufacture of goods for sale by him as also to one who purchases such goods for use by him in the manufacture of goods for sale by other.

16. Mr. Jetly, learned counsel for the applicant, next contended that clause (e) of rule 41 had no application to the respondents because they did not manufacture any goods for sale. So far as kerosene is concerned, Mr. Jetly submitted that it had been conceded by the respondents that they had not manufactured kerosene and that, therefore, the respondents were estopped from contending before us that they were manufacturing kerosene for sale. In support of this submission, Mr. Jetly relied upon the following passage in the judgment of Sales Tax Tribunal in the said second appeal filed by the respondents :

"It cannot be suggested that the appellant-company (that is, the respondents) was manufacturing kerosene which is a 'taxable goods' for sale. As stated earlier, kerosene at no point of time belonged to the appellant-company."

17. This is not to read the judgment of the Tribunal fairly or properly. What the Tribunal did by the passage quoted above was to reject the contention of the respondents that they were manufacturing kerosene for sale, because, according to the Tribunal, the goods manufactured for sale, in order to qualify for relief under clause (e) of rule 41, should be goods manufactured by the manufacturing dealer for sale by himself. We have now held that this is not a requirement by clause (e) of rule 41 and that, in giving this interpretation to the said clause (e), the Tribunal committed an error. This, therefore, cannot be construed or read as to constitute an admission on the part of the respondents that they were not manufacturing kerosene for sale. In fact, it has throughout been the contention of the respondents that they are manufacturers who manufacture both kerosene and acid sludge for sale. This contention has been dealt with at length by the Assistant Commissioner of Sales Tax in his appellate order. This contention was obviously canvassed before the Tribunal as is shown by the above-quoted passage from the judgment of the Tribunal and in the statement of the case submitted by the Tribunal, which statement was finalised by the Tribunal after hearing both sides on the draft statement prepared by it, the Tribunal has expressly stated that the contentions urged before the Assistant Commissioner of Sales Tax were all repeated before the Tribunal. It is also pertinent to note that question No. (1), which the department wanted to be submitted to this High Court as set out in the application for

reference made by it, referred only to the use of acid by the respondents "in the manufacture of acid sludge and not in the manufacture of kerosene", but at the instance of the respondents, as is shown by the order of reference, the Tribunal reframed that question as set out earlier so as to include in it the contention of the respondents that manufacture of kerosene by them was also a manufacture of taxable goods for sale. This the Tribunal did by using the words "used in the manufacture of taxable goods for sale" in question No. (1), as referred to us. In view of this, it is surprising that such an argument should have been advanced before us on behalf of the department.

18. So far as acid sludge is concerned, Mr. Jetly, learned counsel for the applicant, submitted that the Tribunal was in error in holding that the respondents manufactured acid sludge for sale. In Mr. Jetly's submission, the respondents did not manufacture acid sludge for sale, but acid sludge sold by them was merely a waste product which resulted in the process of refining kerosene, and, therefore, sale of such acid sludge by the respondent to the chemical company could not be said to constitute a manufacture of such acid sludge by the respondents for sale. Before we deal with this argument on the merits we are constrained to observe that we are as surprised by this argument being advanced as we were surprised at the argument of estoppel against the respondents advanced before us and which we have just dealt with. As mentioned, while relating the fact, the respondents were throughout contending that they were not dealers. That contention was negatived by the department. The respondents had to get themselves registered as dealers. They applied for a recognition on the basis of purchases made by them for use by them in the manufacture of acid sludge to be sold by them. Such recognition was granted to them by the Commissioner of Sales Tax. Throughout, as in the assessment period in question, the respondents have been taxed as dealers in acid sludge on their sales of acid sludge to the chemical company. Yet we find the department arguing before us that it is not the business of the respondents to manufacture acid sludge, which implies that the tax levied on the sales of acid sludge by the respondents to the chemical company was wrongly levied by the department. It is amazing how the sales tax department with such equanimity can argue wholly inconsistent and completely contradictory positions and adopted any one just as it suits its purpose with a view of deprive dealers of the relief under the said Act and the Rules to which they are legitimately entitled. The respondents purchase sulphuric acid for the purpose of refining kerosene. The inevitable result of this process is acid sludge. The usual and normal consequence of this process is acid sludge. If in the course of manufacture of a product another product also results, which the manufacturer sells, can it be said that he is not carrying on business in that subsidiary or by-product also ? The process of manufacture employed by the respondents results in two separate commercial commodities, namely, kerosene and acid sludge. Both are intended for sale. Kerosene is sold by the marketing company. Acid sludge is sold by the respondents themselves. The very agreement

entered into by the respondents with the chemical company for purchase of sulphuric acid shows that acid sludge which would result from the use of sulphuric acid by the respondents would be sold by the respondents to the chemical company. The respondents have further undertaken not to sell it to any other party during the continuance of the said agreement. They have thus entered into a firm business commitment for a period of ten years to sell acid sludge at the rates provided in the said agreement to the chemical company. The fact that compared to the price of sulphuric acid the price of acid sludge is disproportionately low is irrelevant. If in the manufacture of a particular article other by-products normally result, the sale of such by-products by the manufacturer also constitutes a subsidiary business by him and such sales by him are also effected with a view to earn more profit on the entire transaction. While we are on this point we may as well mention that, in the statement of the case submitted to us by the Tribunal, the total sale price of acid sludge during the relevant period has been mentioned by the Tribunal as being Rs. 68,108. According to Mr. Jetly, this is a mistake, and the correct amount of total sale price is Rs. 22,080. As mentioned earlier, the statement of the case was settled by the tribunal after hearing both sides on the draft statement of the case prepared by it. We are informed that this contention was also raised before the Tribunal. The Tribunal has mentioned in the statement of the case that the total sales of acid sludge amounted to Rs. 68,108. We are bound by this finding of fact in the Tribunal's statement of the case. Obviously, since the Tribunal was satisfied on the respondents pointed out to them that the correct amount was Rs. 68,108, the contention that this is a mistake does not seem to us to be correct or tenable.

19. We are fortified in the conclusion which we have reached with respect to acid sludge by the decision of the Supreme Court in *State of Gujarat v. Raipur Manufacturing Co. Ltd.* In that case, the assessee was carrying on the business of manufacturing cotton textiles. The two by-products or subsidiary products turned out in the course of manufacture of cloth by the assessee were kolsi (cinders) and waste caustic liquor. The assessee regularly sold kolsi and waste caustic liquor so turned out. The Supreme Court held that when a subsidiary product is turned out in the factory of an assessee regularly and continuously and was being sold from time to time, the intention to carry on the business in such product must be reasonably attributed to the assessee.

20. It was next contended by Mr. Jetly that during the first quarter of the assessment period, namely, 1st January, 1961, to 31st March, 1961, sales of kerosene were tax-free inasmuch as kerosene was included in Schedule A to the said Act and, therefore, the condition which would entitle the respondents to obtain relief under clause (e) of rule 41, namely, that the goods purchased should have been used by them in the manufacture of taxable goods for sale, was not complied with. In Mr. Jetly's submission all the products which were manufactured must be taxable before a manufacturing dealer can get the relief under the said clause (e) and if one of

such products was not table, full relief could not be granted to him but the amount collected from the manufacturing dealer by way of tax by his vendor must be apportioned in the manner in which the Sales Tax Officer has done. On the plain language of the said clause (e), we are unable to accept this submission. Had that been the intention of the rule-making authority, the rule would have so provided. There is no provision in rule 41 for any apportionment of the purchase tax paid or the amount collected from a dealer where a manufacturing process results simultaneously in the production of two commodities. It is not as if the materials purchased by the manufacturing dealer have been partly used in the manufacture of non-taxable goods for sale and the remaining part used in the manufacture of taxable goods for sale. There, obviously a manufacturing dealer could only claim drawback, set-off or refund in respect of the amount collected from him pertaining to the particular quantity of raw materials used by him in the manufacture of taxable goods for sale. Since here every single drop of sulphuric acid is utilised both the refining crude oil into kerosene and in the manufacture of acid sludge, there can be no question of any such apportionment, and if Mr. Jetly's contention were right, it would appear that the respondents would not be entitled to any set-off or refund at all. Such could not have been the consequences contemplated by the rule-making authority. Here we have a case where the taxable goods manufactured are of a lesser value compared to the price of raw materials purchased. There can also be a case where a particular process of manufacture results in simultaneous production of two or three commodities and one or two out of them of insignificant value are not liable to tax. To accept Mr. Jetly's submission would mean that even in a case where the greater part of goods manufactured for sale are taxable goods, even then set-off or refund should not be allowed to a dealer. It is bearing all these factors in mind that the rule-making authority has provided that the goods purchased must be used by the manufacturing dealer in the manufacture of taxable goods for sale and has not provided that they must be used in the manufacture of only taxable goods for sale. In our opinion, if the process of manufacture gives rise or leads to the production of one taxable article, which was manufactured for sale, the condition of the said clause (e) of rule 41 has been fulfilled even though the other articles manufactured in that process are not taxable. We are fortified in this conclusion which we have reached by the decision of the Supreme Court in *State of Gujarat v. Ananta Mills Ltd.* In that case, a textile mill purchased unginning cotton from unregistered dealers. Under rule 6 of the Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, sales of "unginned cotton : ginned or pressed cotton : cotton seeds" to a licensed dealer who furnished to the selling dealer a certificate that the goods sold to him were intended to be used by him in producing "cotton in pod : unginning or unpressed cotton" were not liable to general sales tax. Rule 12 of the said Rules provided that where a dealer who had purchased "any goods specified in clauses (i) or (ii) of rule 6" showed to the satisfaction of the Collector of Sales Tax that they had been used by him for the purpose specified in the said clause, the Collector of Sales Tax was to refund to such dealer the amount of

purchase tax paid by him in respect of such purchase. The textile mill purchased unginning cotton from unregistered dealers. Their vendors being unregistered, they could not furnish to them the required certificate under clause (ii) of the said rule 6. The cotton so purchased was ginned and pressed by the textile mill. The ginned cotton was used in the manufacture of cotton textiles, while the cotton seeds were sold by the mill. The sales tax authorities as also the Tribunal held that the textile mill was not entitled to any refund under the said rule 12. The Tribunal confirmed the decision of the sales tax authorities holding that it was not reasonable to suppose that the textile mill produced unginning cotton for the purpose of selling the cotton seeds. The Gujarat High Court held that the textile mill was entitled to the refund claimed by it. The Supreme Court dismissed the appeal filed by the State. The Supreme Court held that not to grant refund would be tantamount to not giving effect to the words "for sale". The Supreme Court further held that in order to qualify for refund, the purpose must be the purpose of producing any of the goods mentioned, namely, unginning cotton, ginned or pressed cotton or cotton seeds, for sale and the words "for sale" must be given effect to. Mr. Jetly sought to distinguish this case on the ground that in the said rule 12, the words used were "where a dealer who has purchased any goods specified in clause (i) or (ii) of rule 6" of the Bombay Sales Tax (Exemptions, Set-off and Composition) Rules, 1954, and that the use of the expression "any goods" made all the difference between clause (e) or rule 41 with which we are concerned and the said rule 12. We do not see any such distinction as sought to be pressed into service by Mr. Jetly. The said rule 12 uses the expression "any goods specified in clause (i) or clause (ii)" because there are three classes of goods specified in those clause, namely, cotton in pod, unginning cotton and unpressed cotton, and the relief granted by the said rule was made available in respect of purchase of any of these classes of goods.

21. Mr. Jetly lastly urged that it is possible that the marketing company could have despatched the kerosene refined by the respondents to its branches or dealers outside the State and it might have been sold in a State other than the State of Maharashtra and if so the respondents would not be entitled to the set-off or refund in respect of the full amount recovered from them by way of tax by their vendors, but such set-off or refund would be reduced by one per cent. under the provisions of the explanation to the said rule 41. There is no such question referred to us nor are there any facts on the record which would show that any part of the kerosene refined by the respondents for the marketing company was dealt with in the manner envisaged by the said explanation nor are there any facts to enable us to come to any conclusion whether in fact the said explanation is attracted to the present case. Mr. Jetly thereupon submitted that we should direct the Tribunal, when this case goes back to it for final orders after our judgment, to consider this question and determine it. Apart from the question whether we have any such power or not, we see no necessity to give any such direction to the Tribunal. It is open to the department to

take up this point before the Tribunal, as to which we express no opinion, the department may do so when the case goes back to the Tribunal for final orders.

22. So far as the questions referred to us by the Tribunal are concerned, we feel that question No. (1) is not happily worded. Mr. Kaka, learned counsel for the respondents pointed out to us that the said question is framed in the way it has been done because all the terms and conditions of the said agreement between the respondents and the chemical company have been carried out and implemented. None the less, we feel that the said question needs reframing and, accordingly, with the consent of both sides, we reframe question No. (1) as follows :

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that the sulphuric acid purchased by the respondent-company for refining crude kerosene belonging to Burmah Shell Oil Storage and Distributing Company of India Limited was used in the manufacture of taxable goods for sale ?"

23. For the reasons set out above, we answer question No. (1), as reframed by us, in the affirmative. So far as question No. (2) is concerned, the respondents are entitled to the full set-off of Rs. 13,421.15 and not only to tax extent of Rs. 1,101.40 as held by the Sales Tax Officer.

24. The applicant will pay to the respondents the costs of this reference which, taking into account the length of time which the hearing of this reference has taken, we fix at Rs. 500.

25. Reference answered accordingly.

Cases Referred.

1([1977] 40 S.T.C. 1 at 9-10.)