

**Kumar Paints and Mill Stores Vs. Commissioner of Trade Tax**

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**SooperKanoon Citation :** [sooperkanoon.com/489199](http://sooperkanoon.com/489199)

**Court :** Allahabad

**Decided On :** Oct-20-2003

**Reported in :** [2004]136STC161(All)

**Judge :** Rajes Kumar, J.

**Acts :** [Uttar Pradesh Trade Tax Act, 1948](#) - Sections 2

**Appeal No. :** Trade Tax Revision No. 711 of 2002

**Appellant :** Kumar Paints and Mill Stores

**Respondent :** Commissioner of Trade Tax

**Advocate for Def. :** Standing Counsel

**Advocate for Pet/Ap. :** Bharat Ji Agrawal, Sr. Adv. and ;Piyush Agrawal, Adv.

**Disposition :** Revision dismissed

**Judgement :**

**Rajes Kumar, J.**

1. The present revision is directed against the order of Tribunal dated October 11, 2002 relating to assessment year 1999-2000.

2. The present revision has been admitted to decide two questions of law referred as below :

'1. Whether the order of the Trade Tax Tribunal dated October 11, 2002 is vitiated in law on account of non-consideration of the written arguments and the decisions delivered by this honourable Court as also by the honourable Supreme Court ?

2. Whether under Notification No. 2375 dated November 23, 1998 'paint and varnishes' are taxable at single point, hence what was sold by the applicant was paint only on which the tax was already paid and therefore merely because some colour was added in the said paint it will not cease to be paint and cannot be subject to tax again in view of the aforesaid Notification No. 2375 dated November 23, 1998 ?'

3. The case of the applicant is, that the applicant had established a computerised machine named as 'colour world' manufactured by Asian Paints India Limited with a view to provide various shades of colour as per the choice of the customers. The applicant submitted, that it purchased white paint within the State of U.P. on payment of tax and on the desire of the customers mixed stainers purchased within the State of U.P. According to the applicant, by the process of staining, colour was given to the white paint and therefore, the material which was purchased within the State of U.P. was white paint and after staining or tinting by stainers it remained paint and no independent distinct commercial commodity came into existence. He submitted that the process of tinting/staining is not the manufacturing process as defined under Section 2(e-1) of the U.P. Sales Tax Act and since the white paint was U.P. purchased (tax paid), hence, coloured paint is not liable to tax. The applicant claimed exemption on the turnover of coloured paint before the assessing authority.

4. The assessing authority rejected the claim of the applicant on the ground that the material used was not the white paint but was the base material for paint out of which, the paint was made by mixing the colour and by undergoing the process in an automatic machine. According to the assessing authority after the process of mixing of colour a coloured paint was manufactured which was different commercial commodity and hence the process of mixing/tinting/staining amounts

to manufacture as defined under Section 2(e-1) of the Act. For coming to the aforesaid conclusion, the assessing authority referred the following facts :

(i) On July 27, 2001 dealer in its statement stated that there are only eight kind of base from which in machine by tinting and mixing 1200 colours paints are prepared.

(ii) At the time of survey dated August 14, 2001 the proprietor of the firm was present and it was found that in the box of base material there is mention of 'not to be sold without tinting and further base material for paints, final product after addition of colourant'.

(iii) Pigment is one of the important components of paint and due to the pigment, paint gets two important characteristics (a) protective, (b) decorative. Pigment provides a specific decorative colour to the paint and also protect from ultra violet rays.

(iv) The process brings various changes on the base material, namely, (a) in the colour of base material, (b) density, (c) appearance for commercial use.

5. On the consideration of the aforesaid factors, the assessing authority held :

(a) That the base material used was a semi-manufactured goods and was not a white paint. It could not be used as a paint. It held that white paint and base material are two different commodities.

(b) With mixing the colourant in a base material, it acquires the characteristic of the paint. The materials which are being used are in the form of pigment and without mixing the pigment, it cannot be used as a paint.

(c) The process of mixing/tinting in an automatic machine brings a new commercial commodity, i.e., coloured paint from the base material, which was semi-manufactured furnished goods and was not white paint and hence the process of tinting and mixing was manufacture as defined under Section 2(e-1) of the Act.

6. Being aggrieved by the assessment order, applicant filed appeal before the Deputy Commissioner (Appeals), Trade Tax. Deputy Commissioner (Appeals) remanded back the case to assessing authority. Deputy Commissioner (Appeals) has held that the applicant has purchased base material and after staining or mixing in the colour world computerised machine manufactured the desired paint and it is established that the base material could not be used as such because it is clearly mentioned in the packing material that it could be sold only after tinting and the final product is obtained only after the mixing of colourant. Deputy Commissioner accordingly treated the process of mixing/staining/tinting as manufacturing. However, Deputy Commissioner (Appeals) remanded back the case to find out that how much material was sold as such in the same form and how much material was used in the manufacturing of coloured paint and accordingly fixed the turnover. Applicant filed second appeal before the Tribunal, which was rejected : Tribunal has observed as follows :

'The first is whether the process of tinting amounts to manufacture or not and whether the base material without process is a paint or not. In this connection the learned counsel for the appellant has vehemently argued by several case laws that manufacture should be established. In this connection the masterpiece judgment before us is Ashirwad Ispat Udyog v. State Level Committee as reported in [1999] 112 STC 207 (SC) ; STI 1998 (SC) 129 ; AIR 1999 SC 11 in which Lordships considered this point of manufacture in detail and laid down the process of manufacture, producing, collecting, extracting, preparing, making any goods. It is the argument of the appellant that there is a base material and upon the level of it has been mentioned that it is not in itself sufficient to produce anything. It requires the help of the other material, when the third thing is to be manufactured with the help of machine. When there is admission of the learned counsel that it is a base material and something is to be added to make it to be a paint with the help of machine by some specific process. So, that process or mixing of material with the base material, that amounts to manufacture, in view of the judgment of the honourable Supreme Court as cited above.'

7. Heard Sri Bharat Ji Agrawal, learned Senior Advocate assisted by Sri Piyush Agrawal, learned counsel for the applicant and Sri B.K. Pandey, learned Standing

Counsel.

Section 2(e-1) reads as follows :

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

8. The first contention of learned counsel for the applicant is that Tribunal has not considered the written submission and various decisions of this Court and of honourable Supreme Court. He further submitted that Tribunal has wrongly referred that there is admission of learned counsel that it is base material and something is to be added to make it to be a paint with the help of machine by some specific process. In this connection, affidavit of Sri Roop Kishore Agarwal, Advocate, who had argued the appeal before Tribunal is filed. In para 5 of the affidavit, the admission mentioned in the order of Tribunal has been denied. In para 6, it has been stated that he specifically argued that base material which is nothing but a complete white paint ready for use some colour added according to the choice of the customers, according to his need. Hence it does not amount to manufacture. In the counter-affidavit, it has been stated that Tribunal considered both written argument as well as oral argument made by learned counsel and decided the appeal. At this stage, it is relevant to refer a few part of the written submission.

'That the assessing authority when surveyed the business premises of the appellant on August 14, 2001 noted the following three sentences on the packing of the white paint meant for tinting--

1. Not to be sold without tinting.
2. Base material for paints.
3. Final product after addition of colourant.

The appellant has submitted and explained that the 3 above sentences noticed on packing of the plain paint are the instructions to the traders, not to make sale of the plain paint without tinting. The idea behind the language used on the packing is to avoid adulteration in the open market which is clear from the fact that in case the plain paint is as such sold, the colours which may be mixed with the plain paint in the open market, the quality of coloured paint may be different and the result will not be according to the standard maintained by the appellant-company. The shades of colour may also not to be the satisfaction of the customer. If these fact should have been considered by the assessing authority in true and correct sense of the language used, there was nothing to work out three stages of the paint actually sold by the trader, i.e., base paint + colours = final paint. The working of the ID assessing authority is result of misunderstanding and misinterpretation.

That the only issue raised and created by the assessing authority is about use of 'Colour World Computerised Machine' by the appellant for different shades of the paints. The tinting of colours in white paint has been treated manufacture and the sales of appellant were made taxable. The assessing authority determined such taxable sales at Rs. 110,00,000 and came to conclusion that tinting has resulted in:

- (a) Increase in protectiveness of the paints.
- (b) Addition in decorative value of the paints.
- (c) Change in viscosity.
- (d) Change in transparency.
- (e) Change in commercial use.

According to appellant, tinting system is well-known international commercial practice where retail paint and hardware dealers insert measured quantity of universal stainers to the white paint to obtain a wide range of shade of the same paint. It also helps in reducing inventory at the dealers end. Actually there is no change in protectiveness of the paints and nothing is added in the decorative appearance of paint. The paint remains paints before or after tinting. Viscosity is

same as paint is always open and never transparent. Commercial use of white paint and colour paint is same. Thus the approach of assessing officer is wrong. The ID first appellate authority has wrongly confirmed the view of the assessing officer by holding that the definition of manufacture as given under the U.P. Trade Tax Act, covers this activity.'

9. In my view contention of learned counsel for the applicant that Tribunal has not considered the submission of the applicant as raised in the written submission has no force. It has not been disputed in the written arguments that on the packing of the base material, it was mentioned that 'not to be sold without tinting' and 'base material for paints', 'final product after addition of colourant'. In the written argument, it was tried to explain that three above sentences mentioned on the packing were the instruction to the traders not to make sale of the plain paint without tinting and the idea behind the language used on the packing was to avoid adulteration in the open market, which was clear from the fact that in case, plain paint is as such sold, the colour which may be mixed with the plain paint in the open market, the quality of the coloured paint may be different and the result will not be according to the standard maintained by the appellant-company. Further it was submitted that tinting system was well-known in international commercial practice where retail paint and hardware dealer insert measured quantity of universal stainers to obtain a wide range of shade of the same paint.

10. Explanation given in the written submission why on the packing of base material the words 'not to be sold without tinting' and 'base material for paints', 'final product after addition of colourant' may not have been referred and considered as stated in the written submission but the fact that the instructions mentioned on the packing of the base material, which is not disputed, have been considered and on this basis it was held that the base material was the semi-manufactured product and was not in the form of paint. Though Tribunal has referred as admission of the learned counsel that it is base material and something is to be added to make it to be paint with the help of the machine by some specific process may be disputed but the fact which has also not been disputed, that in the base material something was added in the form of stainer to make a coloured paint, as per desired shade of the customer. Therefore, even if the fact stated in

the order of Tribunal may not be taken as the admission on the part of learned counsel, who argued but the same is born out from the record itself and therefore, it does not make any difference in arriving to a conclusion whether the process of staining amounts to manufacture or not. The fundamental question for consideration is whether base material was the paint having all characteristic of being paint in its final form or it acquires character of paint after adding stainers, colour, colourant in an automatic machine. If the base material in which the colour is mixed was a paint as a final product having all characteristic of the paint then mere mixing/tinting/staining by a colour may not amount to manufacture because the paint remained as a paint but if the fact is that the base material did not have a characteristic of a paint and it required further processing or addition to acquire the character of paint then the whole process amounts to manufacture of a final product, namely, the paint which is entirely different commercial commodity than the base material. The sentences mentioned in the packing of the base material, namely, 'not to be sold without tinting' and 'base material for paints', 'final product after addition of colourant' show that the base material was not a final product in the form of paint. If it would be a final product in the form of paint, there would be no instructions for it being not sold without tinting. It is seen that in the market white paint as a final product are available in paint shop. Those paint can be used directly as white paint or out of that by staining a desired colour paint can be prepared. In such white paint there is no instruction that it is not to be sold without staining. In my view, to make the base material marketable as a final product tinting was one of the important processes, without which the base material could not acquire the characteristic of paint. Further mentioning the words, namely, 'base material for paints' and 'final product after addition of colourant' further fortifies the view that the base material used for tinting was a raw material for paint, out of which, by adding colourant, paint was to be manufactured. In this view of the matter, I do not agree with the submission of the learned counsel for the applicant that base material was paint and by tinting only the paint of different shades, as desired was manufactured.

11. In my view, the findings of Tribunal and the authorities below in this respect are finding of fact and in my opinion, it cannot be said to be erroneous. Once the argument of learned counsel for the applicant is not accepted, namely, that base

material was paint, the other submission of learned counsel for the applicant automatically stand forceless. Once it is found that base material was not paint, it did not have a characteristic of paint and was a base material for paint not to be sold as such without tinting, the final product obtained after adding colourant by the process of tinting/mixing and staining in a colour world automatic computerised machine is different commercial commodity known in a market world as a coloured paint. Therefore, the process for producing the coloured paint amounts to manufacture as defined under Section 2(e-1) of the Act.

12. It may also be useful to refer a few decision of the apex Court on the point.

13. In the case of B.P. Oil Mills Ltd. v. Sales Tax Tribunal reported in [1998] 111 STC 188 (SC) ; 1998 UPTC 1020. The dealer was engaged by first treating the oil with alkali to remove the acid contents, then bleaching it with absorbent cotton or activated carbon and lastly deodorising it with steam. The claim of the dealer was that sale of refined oil was not liable to tax because they had already paid tax on the crude oil. Honourable Supreme Court on consideration of definition of 'manufacture' defined under Section 2(e-1) of the Act held as follows :

'The word 'processing' has, however, not been defined under the Act but it has been the subject-matter of interpretation by this Court in various cases including that of Chowgule & Co. Pvt. Ltd. v. Union of India [1981] 47 STC 124 (SC) ; 1981 UPTC 702 (SC) ; (1981) 1 SCC 653. Taking a cue from the definition of the word 'process' in Webster Dictionary, this Court observed therein that where any commodity is subjected to a process or treatment with a view to its development or preparation for the market it would amount to processing. The nature and extent of processing may vary from case to case ; in one case the processing may be slight and in another it may be extensive ; but in each process suffered, the commodity would experience a change. This Court further observed that whatever be the means employed for carrying out the processing operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes processing. Viewed in the context of the above meaning given to the word 'processing' by this Court there cannot be any manner of doubt that the nature and extent of the process to which the crude oil is subjected to

make it refined oil brings the latter within the meaning of the expression 'goods manufactured' in Section 3(3)(b)(iii) of the Act so as to make the appellant liable to pay tax on its sale.'

14. In the case of *Ashirwad Ispat Udyog v. State Level Committee* reported in [1999] 112 STC 207 (SC) ; STI 1998 SC 129. Cutting iron scrap by mechanical process into pieces for utilisation in rolling mills and foundaries has been held manufacture, under the wide definition of 'manufacture' under Section 2(j) of the M.P. General Sales Tax Act, 1958.

15. Learned counsel for the applicant referred the few decisions which are to be mentioned hereinbelow :

1. In the case of *Divisional Deputy Commissioner of Sales Tax v. Bherhaghat Mineral Industries* reported in [2000] 120 STC 205 (SC), crushing dolomite lumps into chips and powder has been held by the honourable Supreme Court as not a process of manufacture because it does not bring about a new commercial commodity.

2. In the case of *Commissioner of Sales Tax, U.P. v. Lal Kunwa Stone Crusher (P.) Ltd.* reported in [2000] 118 STC 287 (SC) dealer was engaged in purchasing stone boulders and crushing them into stone chips, gitti and dust for the purpose of further sale, claimed that at the time of purchase of boulders, sales tax has been paid and hence the sales of small stones, dust, etc., were not liable to tax again. The Tribunal and the High Court held that the goods continued to be stone and they were not commercially different goods to be identified differently for the purpose of sales tax. Honourable Supreme Court affirmed the decision of the High Court that the stone as such and gitti and articles of stone are all of similar nature though by size they may be different. Apex Court further held that even if gitti, kankar, stone-ballast, etc., may all be looked upon as separate in commercial character from stone boulders offered for sale in the market, it could not be presumed that entry 40 of the notification was intended to describe the same as not stone at all. The term 'stone' is wide enough to include the various forms such as gitti, kankar, stone-ballast. Respondent was therefore, not liable to tax on the stone chips, gitti, etc.

3. In the case of Gujarat Steel Tubes Ltd. v. State of Kerala reported in [1989] 74 STC 176, honourable Supreme Court held that purpose of galvanized iron pipes is merely to make it weather-proof. It remains a steel tube. By being put through the process of galvanising it is made rust-proof. The limited purpose of galvanisation does not bring a new commodity into existence. Neither its structure nor functions is altered.

4. In the case of Deputy Commissioner, Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. Pio Food Packers reported in [1980] 46 STC 63 (SC) ; (1980) ELT 343 (SO), it was held as follows :

'The manufacture is the end-result of one or more processes through which the original commodity is made to pass. Although the nature and extent of processing may vary from one case to another yet, it is only when the change, or a series of changes, take the commodity to the point where commercially it is recognised as a new and distinct article that a manufacture can be said to have taken place.

Although a degree of processing is involved in preparing pineapple slices from the original pineapple yet the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it or adding sugar to preserve it and cannot be said to be 'manufacture'. The fact that the pineapple slices have a higher price than the original fruit, is occasioned only because of the labour put into making fruit more readily consumable and because of the can employed to contain it.

If there is no essential difference in identity between the original commodity and the processed commodity, it cannot be said that the one commodity has been consumed in the manufacture of another even though it may have undergone a degree of processing.'

5. In the case of Sterling Foods v. State of Karnataka reported in [1986] 63 STC 239 (SC) ; (1986) 26 ELT 3 (SC), honourable Supreme Court has held that when raw shrimps, prawns and lobsters are subjected to the process of cutting of heads and tails, peeling, deveining, cleaning and freezing, they do not cease to be shrimps, prawns and lobsters and become another distinct commodity. They are in

common parlance known as shrimps, prawns and lobsters.

16. Sum and substance of all the cases cited by the learned counsel for the applicant is that if the process do not bring a different commodity into existence and the commodity remains the same then such process do not amount to manufacture. In the present case, all the three authorities found that base material which was used for staining/mixing/tinting was not the finished product in the form of paint and by the process of tinting after mixing colour in a colour world computerised automatic machine a new commercial commodity is manufactured in the form of coloured paint having all the characteristic of paint which was not in existence in the base material. These findings are finding of fact based on material and I do not find any reason to differ and same is accordingly upheld. Learned counsel for the applicant has not placed any scientific analytical report or any other evidence to prove that the base material had all the characteristic of paint. The explanation given in the written submission explaining why in the packing of base material, the words 'not to be sold without tinting' and 'base material for paints', 'final product after addition of colourant' were used are not convincing to establish that base material was final product in the form of paint having all the characteristic of paint.

17. In the result, I do not find any merit in the revision of the applicant. It is accordingly, dismissed.