G.R. Kulkarni Vs. the State

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Court : Madhya Pradesh

Decided On : Jan-16-1957

Reported in : AIR1957MP45; [1957]8STC294(MP)

Judge : Hidayatullah, C.J. and ;Chaturvedi, J.

Acts : Madhya Pradesh Sales Tax Act, 1947 - Sections 2; Madhya Pradesh Sales Tax (Amendment)Act, 1953; Sale of Goods Act, 1930 - Sections 2(7); Constitution of India - Article 365(12)

Appeal No. : Misc. Civil Case No. 105 of 1956

Appellant : G.R. Kulkarni

Respondent : The State

Advocate for Def. : H.L. Khaskalam, Addl. Govt. Adv.

Advocate for Pet/Ap. : K.K. Dube, Adv.

Judgement :

1. This is a reference under Section 23 (1) of the Madhya Pradesh Sales-tax Act by the Board of Revenue. The following questions have been referred for the opinion of this Court:

'(1) Whether the quarrying and breaking of boulders into stone is manufacture within the meaning of Section 2 (i) (a) of the Act?

(2) Whether on the facts of the case the transactions are taxable sales within the meaning of Section 2 (a) of the Act?'

2. For the purposes of answering these Questions a few facts have to be narrated. The assessee is one G. R. Kulkarni. He is a railway contractor, who takes on contracts the digging and preparing of gitti (metal) and collecting it at the railway sidings according to his contracts and who sells this metal for constructions of roads and as ballast etc. The short question, therefore, is whether the breaking of boulders into metal (gitti) is a process of manufacture.

3. We may mention that the case arose before the passing of Act 20 of 1953, which introduced a section defining 'manufacture'. That definition says that manufacture includes any process or manner of producing, preparing or making any goods. In our opinion, even without this definition the word 'manufacture' in relation to other parts of this Act would bear the identical meaning.

The definition does nothing more than clear the ground, so that no dispute may hereafter exist. Now, the gist of the matter in this case is that according to the definition of 'taxable quantum' the present assessee would be liable to pay a tax on a turnover of Rs. 5,000/- if he was himself manufacturing or producing any goods for the purposes of sale: (See the definition of 'taxable quantum' in Section 2 (i) (a) of the Sales-tax Act.)

The contention of the assessee is that he was neither manufacturing nor producing any goods for the purposes of sale. He contends that breaking boulders into gitti is not a manufacturing process and that gittis are not 'produced' within the meaning given to it by the definition. He relies upon -- 'North Bengal Stores, Ltd. v. Board of Revenue, Bengal', 1950-1 STC 157 (A); and -- 'State of Bihar v. Chrestian Mica Industries Ltd., 1956-7 STC 626: (AIR 1957 Pat 184 (B). On the other side reference is made to --'State of Madhya Pradesh v. Wasudeo', 1955-6 STC 30 (C),

4. It is obvious enough that the process of manufacture from one article to another changes and there are no many different processes in existence that to take the analogy of any single manufacturing process is likely to cause confusion. It is

better therefore to apply one's mind to the exact process employed by which one article is shaped into another and to see whether the purposes of the Act are satisfied.

Now, in the present case the act of quarrying results in the accumulation or extraction of a large heap of big stones. Those stones may well be marketable, and if they are sold the process would be not one of manufacture but one of quarrying. After that stage is reached and the person who has won the stones attempts to break them, may be by manual labour, into sizeable stones for sale as gitti, he is shaping the stone into an object of a different size.

Now, the word 'manufacture' has not various shades of meaning. There may be manufacture of a complicated object like the super-constellation, or there might be manufacture of a simple object like a toy kite. In the Calcutta case which is reported in 1950-1 STC 157 (A), a mixture compounded by an apothecary from medicines was said to be 'manufactured' by him. The essence of manufacture is the changing of one object into another for the purposes of making it marketable.

The stones which are won in the process of quarrying may be sold without fashioning them into something else. If they are so sold they would not be manufactured but merely delivered from the quarry-head. When they are broken into metal or gitti there is some process, manual though it may be, for the purpose of shaping the stones into another marketable commodity.

5. Now it cannot be denied that the metal which the assessee produces is 'goods' within the meaning of the Indian Sale of Goods Act or the Constitution. Once we reach the conclusion that what he produces is 'goods' and that some process of manufacture enters into it, in our opinion, the definition (i) in Section 2 is fully met.

In 1955-6 STC 30 (C), there is a reference to the fashioning of timber into logs for the purposes of sale, and Bhutt J., who decided the case, held that it is a manufacturing process. It is contended that on a parity of reasoning the chopping of wood into fuel would be a manufacturing process.

Perhaps, that is an extreme example, and we are not called upon to pronounce upon it; but the making of metal for the purposes of ballast and road is a well known trade and occupation and is a very fruitful source of income to one who shapes larger stones into smaller ones of a pre-determined size. It is well known that metal has to be within a particular size. Each piece cannot be smaller than a designated size nor above another designated size.

The size therefore determines the skill necessary to fashion the stone. In -- 'Kent v. Astley', (1869) 5 QB 19 (D), Cockburn, C. J., dealing with the case of preparing slates after quarrying said that it was a manufacturing process. There also the slate blocks which were won were merely split into sheets with the use of a hammer and chisel or wedges. The entire process was manual.

We do not see any distinction between the fashioning of slate from a block and the fashioning of a graded size metal from a big block or boulder of stone. The essential condition is the same, viz., that there is an expenditure of some skill in fashioning an object of a different size and shape, ready for a commercial deal.

In the present case, the man who manufactures metal is manufacturing a new article which has got a different price and that price includes the labour which goes into its manufacture.

6. We are satisfied, therefore, that the process indulged in to shape stones into metal is a manufacturing process and therefore the assessee was within definition (i) of Section 2 of the Act. We only pause to say that the position has now been cleared by the introduction of the definition of the word 'manufacture'. But, as we have already stated above, the definition does no more than bring out the essential meaning of the word 'manufacture' as used in the Act.

7. That there are 'sales' is quite clear from the discussion in paragraph 2 of the order of the President dated 26-3-1955. We see no reason to differ nor anything to add to what the learned President has observed.

8. Our answers to both the questions are thus in the affirmative. A copy of this opinion shall be sent to the tribunal concerned as provided in the Act. In the

circumstances of the case there shall be no order about costs.