

Messrs. Sidhu Ram Atam Parkash, Gohana v. The State of
Haryana (P. C. Pandit, J.)

(24) For the reasons given above, these petitions are accepted to this extent that the petitioners are entitled to payment of the full amount of the jagirs with effect from Kharif 1967 to Kharif 1968 and thereafter and that the Respondents have no right to withhold the payment of the jagir money to the petitioners and they are directed to pay the amount of jagirs to them. There will be no order as to costs.

Mahajan. C.J.—I agree.

K.S.K.

GENERAL SALES TAX REFERENCE

Before P. C. Pandit and R. N. Mittal, JJ.

MESSRS. SIDHU RAM ATAM PARKASH, GOHANA—*Appellant.*

versus

THE STATE OF HARYANA—*Respondent.*

General Sales Tax Reference No. 1 of 1973.

May 9, 1974.

Punjab General Sales Tax Act (No. 46 of 1948)—Section 4(2)—Felling of trees and converting them into planks, rafters etc.—Whether involves process of ‘manufacture’—Forest Contractor engaged in such business—Whether a ‘manufacturer’.

Held, that the word ‘manufacture’ means bringing into existence a new substance and does not mean merely to produce some change in a substance. ‘Manufacture’ implies a change, but every change is not ‘manufacture’. Something more is necessary and there should be transformation. A new and different article, having a distinctive name, character or use, must emerge. When trees are felled, made into logs either by manual labour or mechanical process, and then converted into planks, rafters and fire-wood, new substance does not come into being and the process is not covered by the definition of the word ‘manufacture’, and a forest contractor engaged in such business is not a ‘manufacturer’.

General Sales Tax Reference under Section 22(1) of the Punjab General Sales Tax Act, 1948 made by the Sales Tax Tribunal Haryana,—vide his order dated July 19, 1972, to this Court for opinion on the following question of law arising out of his order dated

December 16, 1971 passed in S.T.A. Nos. 112, 113 of 1971-72 regarding assessment of year 1969-70:—1970-71:—

“Whether on facts and in the circumstances of the case, the petitioner who is a forest contractor and whose business is to cut the standing trees is a manufacturer ?”

Roop Chand, Advocate, for the Respondent.

M. S. Liberhan, Advocate, for the Applicant.

JUDGMENT

PANDIT, J.—The following question of law has been referred to us under section 22(1) of the Punjab General Sales Tax Act, 1948, hereinafter called the Act, by the Sales-tax Tribunal, Haryana, for our opinion:—

“Whether on facts and in the circumstances of the case, the petitioner who is a forest contractor and whose business is to cut the standing trees is a manufacturer?”

(2) Messrs Sidhu Ram Atam Parkash, a partnership firm of Gohana in Rohtak District, got a contract from the Forest Department for cutting trees. This contract was operated for only four months in 1969-70 and the whole financial year of 1970-71. During the year in question, i.e., 1969, the firm got a contract for Rs. 68,000, while they actually sold goods worth Rs. 1,10,000 after cutting the trees. The Assessing Authority was of the view that since this firm, after felling the trees, cut them into logs and then converted them into rafters, planks and firewood; etc.; the entire process by which the goods were thus produced fell within the definition of ‘manufacture’ and the firm was not covered by the definition of the ‘general dealer’ for whom the taxable quantum was Rs. 40,000. The firm was held to be a ‘manufacturing’ dealer and it could get exemption for sales upto Rs. 10,000 only. It was assessed to sales-tax of Rs. 436.34 as such and a penalty of Rs. 200 was also imposed for not applying for a registration certificate under section 11(6) of the Act for the year 1969-70. Similarly, the firm was assessed to sales-tax of Rs. 6,438 for the year 1970-71 and a penalty of Rs. 3,000 was also imposed.

(3) This order of the Assessing Authority was confirmed on appeal by the Deputy Excise and Taxation Commissioner, but the penalty for 1970-71 was, however, reduced to Rs. 2,000.

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(4) The firm then went in further appeal before the Sales-tax Tribunal, who reduced the penalty to Rs. 100 for the year 1969-70 and Rs. 500 for 1970-71. Thereafter, the firm applied for referring certain questions of law to this Court for opinion and out of them only the above-mentioned question has been so referred.

(5) It is the common case of the parties that the trees were felled by the petitioner-firm, made into logs and then converted into planks, rafters and firewood. Does all this involve a manufacturing process and can such a firm, which engages in a business of this kind, be called a 'manufacturing' dealer? The taxable quantum for a dealer, who himself manufactures goods, is Rs. 10,000 and for a general dealer it is Rs. 40,000.

(6) In order to decide this question, we have to find out what the word 'manufacture' means. Several dictionary meanings of this word had been quoted before us, but for us it is enough to say that this expression has been explained by the Supreme Court in *Union of India and another v. Delhi Cloth and General Mills Co. Ltd. and others* (1). There it was held:

"According to the learned counsel "manufacture" is complete as soon as by the application of one or more processes, the raw material undergoes some change. To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Volume 26, from an American Judgment. The passage runs thus:—

"Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be

(1) A.I.R. 1963 S.C. 791.

transformation; a new and different article must emerge having a distinctive name, character or use.”

(7) From the above, it is clear that ‘manufacture’ means bringing into existence a new substance and does not mean merely to produce some change in a substance. ‘Manufacture’ implies a change, but every change is not ‘manufacture’. Something more is necessary and there should be transformation. A new and different article, having a distinctive name, character or use must emerge.

(8) Applying the above definition to the instant case, the question is when the logs are converted into planks and rafters, does it mean that a manufacturing process has been gone into? In other words, has a new substance or article come into existence or merely some change in a substance has occurred? As we look at the matter, when a log, either by manual labour or mechanical process, is converted into a plank or a rafter, a new substance does not come into being and this process is not covered by the definition of the word ‘manufacture’ as given by the Supreme Court.

(9) The view we have taken finds some support from a Bench decision of the Madhya Pradesh High Court in *Mohan Lal Vishram v. Commissioner of Sales Tax, Madhya Pradesh, Indore*, (2), where it was held that by felling standing timber trees, cutting them and converting some of them into *ballis*, a dealer did not alter their character as timber.

(10) Counsel for the Department, however, referred to a Single Bench decision of the Calcutta High Court in *Shaw Brothers and Company v. The State of West Bengal* (3), where the learned Judge observed that the sawing of planks from timber or sizing the same amounted to ‘manufacture’ and the person carrying on such a business was a ‘manufacturer’. The learned Judge went on to hold that when planks were sawed out of logs, what was produced was a different thing from logs, capable of being put to different uses and, therefore, when planks were made from logs and damaged wood, a new kind of commodity was manufactured, because planks made out of timber was not timber in its nascent state.

(2) 24 Sales Tax cases 101.

(3) 14 Sales Tax cases 878.

The State of Punjab, etc. v. Surjit Singh. (Koshal, J.)

(11) In another case (*Bachha Tiwari and another v. Divisional Forest Officer, West Midnapore Division and others*), (4), the same learned Judge, who decided *Shaw Brother's case*, held that chopping of their timber into firewood was a manufacturing process and, therefore, firewood was a manufactured article.

(12) The view of the learned Judge in the later case was dissented from by a Division Bench of this Court in *M/s. Pyare Lal Khushwant Rai v. The State of Punjab* (5).

(13) With respect to the learned Judge, we are unable to agree with the view expressed by him in the earlier ruling, namely, *Shaw Brother's case*.

(14) No other authority dealing with this point was cited before us.

(15) We would, therefore, answer the question in the negative, i.e., in favour of the assessee. In the circumstances of this case, however, we will leave the parties to bear their own costs.

MITTAL, J.—I agree.

B.S.G.

REVISIONAL CIVIL

Before A. D. Koshal, J.

THE STATE OF PUNJAB AND OTHERS,—*Petitioners.*

versus

SURJIT SINGH,—*Respondent.*

C.R. No. 132 of 1974.

31st May, 1974.

Evidence Act (I of 1872)—Section 123—Character rolls and confidential reports of Public servants—Whether documents relating to the “affairs of State”—Such documents—Whether privileged under section 123.

(4) 14 Sales Tax cases 1067.

(5) 1974 Revenue Law Reporter 34.