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COMMISSIONER OF SALES TAX, U.P.

v.

M/S. LAL KUNWA STONE CRUSHER (P) LTD. ETC.

MARCH 14, 2000

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[S. RAJENDRA BABU AND S.N. PHUKAN, JJ.]

SALES TAX :

U.P. Sales Tax Act, 1948 : Section 2(e-1).

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Sales Tax—Commercial goods—Processing of—No change in identity of goods—Series of sales—Levy of tax—Permissibility of—Stone boulders—Sales tax paid at the time of purchase—Crushing of boulders into stone chips, gitti and dust—Held such goods continue to be stone—They were not commercially different goods for the purpose of sales tax—Notification dated 7.9.1981—

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Applicability of.

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The respondent-company was purchasing stone boulders and crushing them into stone chips, gitti and dust for further sale. Its claim that as at the time of purchase of boulders sales tax has been paid and hence goods emerging out of boulders were not liable to tax again was rejected by the assessing authority. On appeal the Assistant Commissioner of sales tax accepted the claim of respondent holding that the trader had neither manufactured gitti nor has sold it having crushed boulders into small stones and dust. On second appeal, the Tribunal, by majority, upheld the view taken by the Assistant Commissioner. It held that the goods continue to be stone and they are not commercially different goods to be identified differently for the purposes of sales tax. The Revision Petition preferred by Revenue before the Allahabad High Court was dismissed. Hence this appeal.

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Dismissing the appeal, this Court

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HELD : 1. The view taken by the majority of the Tribunal and affirmed by the High Court is correct. The purpose of sales tax is to levy tax on sale of goods and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sales tax. Where commercial goods, without change of their identity as

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such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type. [278-G-H; 279-A-B]

2. In the present case, the goods that are brought into taxation are enumerated in Entry 40 of the Notification dated September 7, 1981. Stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different. 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, yet it cannot be presumed that Entry 40 of the Notification is intended to describe the same as not stone at all. In fact the term 'stone' is wide enough to include the various forms such as gitti, kankar, stone ballast. [278-F-G; 279-D-E]

State of Tamil Nadu v. Pyare Lal Malhotra, [1978] 2 SCC 552, relied on.

Reliance Rocks Builders & Suppliers v. State of Karnataka, (1983) 49 STC 110, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5654 of 1998 Etc.

From the Judgment and Order dated 7.11.97 of the Allahabad High Court in S.T.R. No. 656 of 1993.

Ms. Niti Dikshit, Pradeep Misra, Kavin Gulati, (Adarsh Kumar Goel) Additional Advocate General and S.N. Bhatt for the Appellant.

Dhruv Agrawal and Praveen Kumar for the Respondents.

The Judgment of the Court was delivered by

RAJENDRA BABU, J. We are concerned in this case with the notification dated 7.9.81 bringing to sales tax the following items at the point of sale to the consumer :

"Ramraj, geru, surkhi, sand, lime, bajri, marble-chips, moram, gitti, kankar, stone-ballast; stone and articles of stone except of glazed stone."

A The respondent is a dealer engaged in purchasing of stone boulders and crushing them into stone chips, gitti and dust for the purpose of further sale. The contention put forth by the dealer is that at the time of purchase of boulders, sales tax has been paid and hence goods emerging out of the same as small stones, dust, etc. are not liable to be taxed again. The process adopted by him in conversion of boulders to the aforesaid goods may be
B manufacture, still tax cannot be imposed as what has been produced by him is physically and chemically not different from the original goods. The assessing authority rejected the contention of the dealer. On appeal, the Assistant Commissioner of Sales Tax noticed that the trader had neither
C manufactured gitti nor has sold it having crushed boulders into small stones and dust. He is of the view that tax was not attracted on both transactions. On second appeal, the Tribunal, by majority, upheld the view of the Assistant Commissioner of Sales Tax. The Department carried the matter further in revision to the High Court and the High Court in a very cryptic order dismissed the petition. The Department is in appeal before us.

D The question raised before us is whether gitti, stone chips and dust continue to be stone or on crushing stone boulders into gitti, stone chips and dust, different commercial goods emerge so as to attract tax on their sale. On behalf of the Department, it was contended that the process adopted by the dealer would amount to manufacture as per the definition of 'manufacture' under Section 2(e-1) of the U.P. Sales Tax Act, 1948. Under the said
E provision, 'manufacture' has been defined to mean producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adopting any goods. Thus it was submitted that the definition used for the purpose of manufacture in the Act makes it very clear
F that every activity in relation to goods not only altering the same but also processing of the same has also been included.

Here in the present case, the goods that are brought into taxation are enumerated in Entry 40 of the notification dated September 7, 1981 to which we have adverted to earlier. Each one of the items enumerates various goods,
G which could be brought to tax. The purpose of sales tax is to levy tax on sale of goods of each variety and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately, taxable goods for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing,
H they may remain commercially the same goods which cannot be taxed again,

in a series of sales, so long as they retain their identity as goods of a particular type. We are fortified in this view by the decision in *State of Tamil Nadu v. Pyare Lal Malhotra*, [1978] 2 SCC 552. What is to be seen in the present case is whether stone gitti, chips, etc. continue to be identifiable with the stone boulders, which have been bought by the dealer. A

The view taken by the Tribunal as affirmed by the High Court is that the goods continue to be stone and they are not commercially different goods to be identified differently for the purposes of sales tax. The decision relied on by minority view in the Tribunal in *Reliance Rocks Builders & Suppliers v. State of Karnataka*, (1983) 49 STC 110, turned on the concept of consumption of goods for the purpose of bringing into existence new goods. In that case the Court was not concerned with an entry of the nature with which we are concerned in the present case. Where the dealer had brought into existence new commercial goods by consuming the builders to bring out small pieces of stone, it was held that such activity attracted purchase tax. In the present case, however, stone, as such, and gitti and articles of stones are all of similar nature though by size they may be different. 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, yet it cannot be presumed that Entry 40 of the notification is intended to describe the same as not stone at all. In fact the term 'stone' is wide enough to include the various forms such as gitti, kankar, stone ballast. In that view of the matter, we think that the view taken by the majority of the Tribunal and affirmed by the High Court stands to reason. We are, therefore, not inclined to interfere with the same. B
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In the result, the appeal and the special leave petition are dismissed. In the circumstances of the case, there shall be no orders as to costs. F

T.N.A.

Appeal and Petition dismissed.