A COMMISSIONER OF TRADE TAX

v.

M/S. KUMAR PAINTS AND MILL STORES
THROUGH ITS PROPRIETOR

B (Civil Appeal No. 5937 of 2011)

MARCH 02, 2023

[S. RAVINDRA BHAT AND DIPANKAR DATTA, JJ.]

U.P. Trade Tax Act, 1948 – s. 2(e)(i) – Mixing of base paint with different colours, result into a new product or not – High Court held that mixture of the base paint with different colours- did not result in a 'new' product and therefore did not result from the process of 'manufacture' as defined under section 2(e)(i) of the 1948 Act – Revenue contended that the sale of paints which had undergone mixing amounted to 'manufacture', thereby resulting in a new product, which was afresh incidence of taxation – Held: In the instant case, the findings based on the expert's evidence are that the base paint was mixed with colouring as an additive – Both of these had suffered tax - The resultant article i.e., the paint of a different shade, did not result in a new commercial product – New product was nothing else but 'paint', and not a different article – High Court did not commit any error.

Dismissing the appeal, the Court

HELD: 1. In *Mahalaxmi Stores*, this court relied on previous decisions such as Commissioner of *Sales Tax Vs. Pio Food Packers* (1980) Suppl. SCC 174, and *Chowgule and Company(P) Limited Vs. Union of India* to state that the manufacturing process can vary, and that the process of producing every type of variation, or finishing of goods, would not amount to 'manufacture' as contained in the statute unless it resulted in the emergence of a new commercial commodity. [Para 7]

2. In *Sonhbadra*, this court while deciding the facts of the case before it cited a large number of decisions rendered in the context of what was meant by 'manufacture.' This court specifically noticed in *Union of India V. Delhi Cloth* and *General Mills* that

'manufacture' meant bringing into existence a 'new' substance and did not mean merely to bring about some change in the substance. In *Mahalaxmi Stores*, it was held that processing or variation/finishing of goods would not per se amount to manufacture unless it resulted in the emergence of a new commercial commodity. The decision in *Aspinwall & Co. Ltd. V. Commissioner of Income Tax, Ernakulam* follows the same principle. The court held that manufacture must be understood in common parlance and means production of articles for use from raw or prepared materials by giving them forms, qualities or combination. Importantly however, it was held that if the change made in the article resulted in a 'new' and 'different' article, it would amount to 'manufacturing'. The tipping point, or the determinative test, therefore is that the result of the process (amounting to 'manufacture') must be the emergence of a commercially recognizable new commodity, and not mere variation of an existing one. [Para 8][942-A-E]

State of Maharashtra v. Mahalaxmi Stores **(2003) 1 SCC 70 : [2002] 4 Suppl. SCR 292;** *Sonebhadra Fuels v. Commissioner Trade Tax, U.P., Lucknow* **(2006) 7 SCC 322 : [2006] 4 Suppl. SCR 213;** *Commissioner of Sales Tax v. Pio Food Packers* **(1980) Suppl. SCC 174 : [1980] SCR 1271;** *Chowgule and Company(P) Limited v. Union of India* **(1981) 1 SCC 653 : [1981] 2 SCR 271;** *Union of India v. Delhi Cloth and General Mills* **(1963) Suppl. 1 SCR 586;** *Aspinwall & Co. Ltd. v. Commissioner of Income Tax, Ernakulam* **(2001) 7 SCC 525 : [2001] 2 Suppl. SCR 559 – referred to.**

Case Law Reference

[2002] 4 Suppl. SCR 292	**referred to**	**Para 4**
[2006] 4 Suppl. SCR 213	**referred to**	**Para 4**
[1980] SCR 1271	**referred to**	**Para 7**
[1981] 2 SCR 271	**referred to**	**Para 7**
[1963] Suppl. 1 SCR 586	**referred to**	**Para 8**
[2001] 2 Suppl. SCR 559	**referred to**	**Para 8**

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5937 of 2011.

From the Judgment and Order dated 18.05.2009 of the High Court of Judicature at Allahabad in TTR No. 711 of 2002.

With

B

Civil Appeal Nos. 5938 and 5939 of 2011

R K Raizada, Sr. Adv., Bhakti Vardhan Singh, Adv. for the Appellant.

Ms. Charanya Lakshmikumaran, Ms. Apeksha Mehta, Ms. Neha C Choudhary, Ms. Falguni Gupta, M. P. Devanath, Ashwani Kumar, Ms. Iti Sharma, Puneet Sharma, Anshay Dhatwalia, Advs. for the Respondent.

The Judgment of the Court was delivered by

D **S. RAVINDRA BHAT, J.**

1. The question which is urged in all these appeals is the correctness of the view of the High Court that the process which the product in the present case underwent – i.e., mixture of the base paint with different colours – did not result in a 'new' product, and therefore did not result from the process of 'manufacture' as defined under Section 2(e)(i) of E the U.P. Trade Tax Act, 1948 ("Act").

2. The facts in all these cases are that the assessees are dealers in *inter alia* paints. The Revenue contended that the sale of paints which had undergone mixing (through a computerised process with the aid of a DTS machine) amounted to 'manufacture', thereby resulting in a new F product, which was a fresh incidence of taxation. The assessee on the other hand contended that mixing *per se* did not amount to 'manufacture', and that on an application of the established principles, no new recognizable product or article had emerged from the process. It is a matter of record that both the base paint and the colourant are taxed G separately.

3. The High Court on a previous occasion had accepted the assessees' contentions and held that the process did not amount to 'manufacture'. Upon the Revenue's appeal in some cases, this Court had remitted the matter for fresh consideration after taking into account H expert opinion. The process was observed, and a report dated 20.01.2004

was issued by the Harcourt Butler Technical University, Kanpur. The said report pertinently stated as follows: -

> *"The base paint used in "point of Sale" tinting systems itself, therefore, is a paint irrespective of colourant being added to get a desired shade or colour. It is in the form of paint and possession the basic ingredients and characteristics. The tinting does not bring new or different product into existence. The base paint can also be used as paint."*

4. In the impugned order, the High Court after noticing a judgment of this court in *State of Maharashtra Vs. Mahalaxmi Stores* (2003) 1 SCC 70, held that the process involved in the present case did not amount to 'manufacture'. The High Court also distinguished the ruling in *Sonebhadra Fuels Vs. Commissioner Trade Tax, U.P., Lucknow* (2006) 7 SCC 322. Therefore, the High Court allowed the revisions filed before it.

5. The Revenue urged that the findings in the impugned order are erroneous, and relied upon *Sonebhadra Fuels* (supra) to argue that the High Court was bound by this Court's decision since it was directly on an interpretation of the expression 'manufacture' in the same enactment. In *Sonebhadra Fuels*, the court had considered whether coal briquettes fell with the generic description of 'coal'. This court held that the process involved mixing crushed coal with suitable binders pressed in briquetting press, from which regular shaped briquettes were suitably carbonised. This process was held to amount to 'manufacture'.

6. The definition of '*manufacture*' under the Act is as follows: -

> *"2 (e-1). 'manufacture' means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed."*

7. In *Mahalaxmi Stores* (supra), this court relied on previous decisions such as *Commissioner of Sales Tax Vs. Pio Food Packers* (1980) Suppl. SCC 174, and *Chowgule and Company(P) Limited Vs. Union of India* (1981) 1 SCC 653 to state that the manufacturing process can vary, and that the process of producing every type of variation, or finishing of goods, would not amount to 'manufacture' as contained in

A the statute unless it resulted in the emergence of a new commercial commodity.

8. In *Sonhbadra*, this court while deciding the facts of the case before it cited a large number of decisions rendered in the context of what was meant by 'manufacture.' This court specifically noticed in B Union *of India V. Delhi Cloth and General Mills* (1963) Suppl. 1 SCR 586 that 'manufacture' meant bringing into existence a 'new' substance and did not mean merely to bring about some change in the substance. In *Mahalaxmi Stores,* it was held that processing or variation/finishing of goods would not *per se* amount to manufacture unless it resulted in the emergence of a new commercial commodity. The decision in C *Aspinwall & Co. Ltd. V. Commissioner of Income Tax*, *Ernakulam* (2001) 7 SCC 525 follows the same principle. The court held that manufacture must be understood in common parlance and means production of articles for use from raw or prepared materials by giving them forms, qualities or combination. Importantly however, it was held D that if the change made in the article resulted in a 'new' and 'different' article, it would amount to 'manufacturing'. The tipping point, or the determinative test, therefore is that the result of the process (amounting to 'manufacture') must be the emergence of a commercially recognizable new commodity, and not mere variation of an existing one.

E 9. In the present case, the findings based on the expert's evidence are that the base paint was mixed with colouring as an additive. Both of these had suffered tax. The resultant article i.e., the paint of a different shade, did not result in a new commercial product. In common parlance, the new product was nothing else but 'paint', and not a different article.

F 10. In these circumstances, in the opinion of this Court, the High Court did not fall into error. The appeals therefore fail, and are hence dismissed. Pending application(s), if any, shall stand disposed of. There shall be no order as to costs.

Ankit Gyan Appeals dismissed.
(Assisted by : Shloka Sah and Mahendra Yadav, LCRAs)