

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO. 5586 OF 2008
[Arising out of SLP(C) No. 13500/2006]

M/S. M.J. TIMBER MERCHANT & COMM. AGENT ... APPELLANT(S)

:VERSUS:

STATE OF U.P. AND ORS. ... RESPONDENT(S)

ORDER

Leave granted.

Appellant herein is before us aggrieved by and dissatisfied with the judgment and order dated 6.10.2004 passed by the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 1419 of 2004, whereby and whereunder a Division Bench of the said Court dismissed the writ application filed by the appellant on the premise that the matter was covered by a decision of that Court in Bharat Timber vs. State of U.P. and Ors., (2004 U.P.T.C. 613).

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It is now conceded at the Bar that the said decision of the High Court has since been reversed by this Court in Jhunjunwala and Ors. vs. State of U.P. and Ors., [(2006) 8 SCC 196] opining:

“7. The Commissioner's circular dated 13-12-2000 which was impugned before the High Court reads as follows:

'... with regard to the above the tax payability has been prescribed at the manufacturers and importers points, after promulgation of Section 2(ee) of the Trade Tax Act such traders' purchases or sells from unregistered traders, fall within the category of manufacturers. Thus all the produce purchased from the farmers, timbers, ballis, bamboos, which are being grown, cut or sawing, but their produce does not include burning woods have been purchased and sold to other traders fall within the category of manufacturer under Section 2(ee) of the Uttar Pradesh Tax Act. Keeping in view this provision after 1-12-1998 the payability of tax is made out on the registered dealer who purchases the above produce from the unregistered traders'.

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8. The High Court appears to have completely lost sight of challenge before it and went on to decide issues which are really not relevant. It took note of para 3(c)(iii) of the counter-affidavit filed by the respondent before the High Court which reads as

follows:

'Many of the big dealers, sell after showing the purchase from such alleged manufacturer-dealer who are not liable to pay tax under the Act and do not pay tax because of manufacturer-dealer liable to pay tax, only if, its sales exceed Rs 1 lakh in any assessment year. To prevent the evasion of tax and in the interest of revenue, these dealers have been brought by bringing in amended Section 2(ee) so as to include such within the definition of manufacturer'.

9. According to the High Court, the object of enacting amendment to Section 2(ee) was to prevent evasion of tax. Even if the aforesaid

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object is in any way relevant for the purpose of the present dispute, the object appears to be to levy tax on manufacturer-dealer and/or manufacturer-dealer who did not pay tax as his turnover did not exceed Rs 1 lakh in any assessment year.

10. It was, therefore, necessary to be established that the seller was a manufacturer-dealer. The Commissioner's circular could not have

created a liability by drawing inference that the purchases from farmers who have grown, cut or sawn timbers, ballis, bamboos will bring them within the umbrella of expression 'manufacturer'. The view that tax liability has been prescribed at the manufacturers and importers points and, therefore, after the amendment traders who purchase the timber from unregistered dealers fall within the category of manufacturer is indefensible. There is no logic for such a conclusion, where the statutory definition does not say so. It needs no emphasis that the circular cannot create tax liability. That is precisely what has been done which the

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High Court has failed to notice. Therefore, to that extent the circular cannot be of any assistance for levying tax. The crucial words in the definition of 'manufacturer' is the sale of goods 'after their manufacture'. As noted above, the expression 'manufacture' cannot cover types of transactions referred to in the Commissioner's circular. Whether an activity amounts to manufacture has to be factually determined. There cannot be a direction to treat a particular type of transaction to be a manufacturing activity without examining the factual scenario. There cannot be a generalisation in such matters.”

We have been taken through the writ petition filed by the appellant, from a perusal whereof it appears that the validity of the said circular letter only was in question before the High Court and not Section 2(ee) of the U.P. Trade Tax Act, 1948 as such.

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Mr. Krishnan Venugopal, learned counsel appearing on behalf of the respondents, however, submits that the definition of “manufacturer” as contained in Section 2(ee) of the Act must be held to have wide application as has been held by this Court in *Kumar Motors, Bareilly vs. Commissioner of Sales Tax, U.P., Lucknow*, [(2007) 4 SCC 140] wherein another decision of this Court in *Sonebhadra Fuels vs. Commissioner, Trade Tax*, [(2006) 7 SCC 322] has been referred to.

When questioned, Mr. Jain, learned counsel for the appellant submits that although the order of assessment passed against the assessee as for the financial year 2000-2001 has not been questioned in the High Court but there was no necessity therefor as the appellant was asked to deposit the amount of security pursuant to the

circular issued by the Commissioner of Trade Tax. We do not find any such averment in the writ petition. We, therefore, do not intend to make any observation as regards the correctness of the said statement or otherwise.

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We, therefore, deem it fit and proper to set aside the impugned judgment and remit the matter to the High Court for consideration thereof afresh on merit. The appeal is disposed of with the aforementioned direction.

Before parting with the case, however, we must place on record that Mr. Krishnan Venugopal, learned counsel for the respondents submitted before us that the order of assessment passed by the respondents has attained finality. It would be open to the respondents to raise the said contention before the High Court.

.....J.
(S.B. SINHA)

.....J.
(CYRIAC JOSEPH)

NEW DELHI,
SEPTEMBER 8, 2008.