

CASE NO.:
Appeal (civil) 9157 of 1995

PETITIONER:
STATE OF MAHARASHTRA

RESPONDENT:
MAHALAXMI STORES

DATE OF JUDGMENT: 20/11/2002

BENCH:
SYED SHAH MOHAMMED QUADRI & ARIJIT PASAYAT

JUDGMENT:
JUDGMENT

2002 Supp(4) SCR 292

The following Order of the Court was delivered :

This appeal arises from the judgement of a Division Bench of the High Court at Bombay passed in Sales Tax Reference No. i of 1995 dated 22nd February, 1995. the Maharashtra Sales Tax Tribunal referred the following question Under Section 61(1) of the Bombay Sales Tax Act, 1959 (for short, 'the Act') to the High Court:

"Whether on the facts and circumstances of the case and on a true and correct interpretation of the provision of Section 2(17) of the Bombay Sales Tax Act, was the Tribunal justified in holding that crushing of boulders resulting in metal of different sizes ordinarily Known as 'Gitti' does not amount to manufacture?"

The facts, insofar as they are relevant for our purpose are as follows:

The assessee purchases big sized stones-boulders from registered dealers and crushes them into small sizes, Known as 'Gitti'. It approached the Commissioner of Sales Tax for determination of the question whether converting bigger size boulders into 'gitti' would amount to manufacture. The Deputy Commissioner held that the process of conversion amounts to 'manufacture' within the meaning of Section 2(17) of the Act, Against the order of the Deputy Commissioner, the assessee went in appeal before the Maharashtra Sales Tax Tribunal. The contention of the assessee that converting boulders into 'gitti' does not involve any manufacturing process within the meaning of the Act, was accepted by the Tribunal, From that order, the afore-mentioned question was referred to the High Court at Bombay. Following the judgements of this Court in Deputy Commissioner of Sales Tax v, Pio Food Packers, (46 S.T.C. 63). Chowgule & Co. Pvt. ltd. and Anr. v. Union of India and Ors., (47 S.T.C, 124) and Sterling Foods v. Stale of Karnataka and Ors., (63 S.T.C. 239), the High Court held that the conversion of boulders into, ' gitti did not amount to manufacture'. It is this view of the High Court that is assailed in this appeal by the Revenue.

Section 2(17) of the Act defines the term 'manufacture' and it reads thus:

"Manufacture with al! the grammatical variations and cognate expressions means producing, making, extracting, alternating ornamenting, finishing or otherwise processing, treating or adapting any goods but does not include such manufacture or manufacturing processes as may be prescribed."

From a perusal of the definition, extracted above, it is clear that the processes of producing, making, extracting, alternating ornamenting, finishing or otherwise processing, treating or adapting of any goods fall within the meaning of the term 'manufacture'.. But it may be pointed out that every type of variation of the goods or finishing of goods would not

amount to manufacture unless it results in emergence of new commercial commodity, In the instant case, the very nature of the activity does not result in manufacture because no new commercial commodity comes into existence.

This Court in Commissioner of Sales Tax, Uttar Pradesh v. Lal Kunwa Stone Crusher (P.) Ltd., [2000] 3 SCC 525, on an identical question, expressed the view that when stone boulders were crushed into stone chips, gitti and stone ballast, the process could not be termed as 'manufacture'. That case arose under the Uttar Pradesh Sales Tax Act, 1948 (for short, 'the Act'), The definition of 'manufacture' in Section 2(e-1) of the U.P. Act appears to be similar to the definition under consideration.

In view of the judgement of this Court in Lal Kunwa Stone Crusher (P.) Ltd (supra), with which we are in respectful agreement, we find no illegality in the impugned judgment of the High Court. In the view that we have taken, the judgment of the High Court of Madhya Pradesh in Kher Stone Crusher v, General Manager, District Industries Centre, Jabalpur and Am., (79 S.T.C. 149) cannot be treated as good law.

The Civil appeal is, therefore, dismissed, No costs.