

A

STATE OF MAHARASHTRA

v.

MAHALAXMI STORES

NOVEMBER, 20, 2002

B

[SYED SHAH MOHAMMED QUADRI AND ARIJIT PASAYAT, JJ.]

Bombay Sales Tax Act, 1959:

C

S.2(17)—‘Manufacture’—Stone boulders—Crushed into ‘gitti’—Assessee’s contention that converting boulders into gitti does not involve any manufacturing process accepted by Tribunal—On reference, High Court holding that conversion of boulders into ‘gitti’ did not amount to manufacture’—Held, there is no illegality in the judgment of the High Court.

D

Commissioner of Sales Tax, Uttar Pradesh v. Lal Kunwa Stone (P.) Ltd., [2000] 3 SCC 525, relied on.

Kher Stone Crusher v. General Manager, District Industries Centre, Jabalpur and Anr., (79, S.T.C. 149), overruled.

E

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. State of Karnataka and Ors., (63 S.T.C. 239), referred to.

F

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9157 of 1995.

From the Judgment and Order dated 22.2.1995 of the Mumbai High Court in S.T.R.C. No. 1 of 1995.

Arun Pednekar, S.S. Shinde and V.N. Raghupathy for the Appellant.

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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. 1 of 1995 dated 22nd February, 1995.

H

The Maharashtra Sales Tax Tribunal referred the following question **A**
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 **B**
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 **C**
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 **D**
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 **E**
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. State 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. **F**

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

"Manufacture with all the grammatical variations and cognate
expressions means producing, making, extracting, alternating **G**
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 **H**

A 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.

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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.

C

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 Anr.*, (79 S.T.C. 149) cannot be treated as good law.

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The Civil appeal is, therefore, dismissed.

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No costs.

R.P.

Appeal dismissed.