

**(1957) 01 MP CK 0016**

**Madhya Pradesh High Court (Indore Bench)**

**Case No:** C. Ref. No. 45 of 1955

Hiralal Jitmal

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

**Date of Decision:** Jan. 24, 1957

**Acts Referred:**

- Madhya Bharat Sales Tax Act, 1950 - Section 13(1)

**Citation:** (1957) JLJ 340

**Hon'ble Judges:** S.M. Samvatsar, J; P.V. Dixit, J

**Bench:** Division Bench

**Advocate:** R.G. Waghmare, for the Appellant; K.A. Chitale, for the Respondent

### **Judgement**

@JUDGMENTTAG-ORDER

P.V. Dixit, J.

This is a reference u/s 13 (1) of the Madhya Bharat Sales Tax Act, 1950 by the Sales Tax Commissioner. The assessee is a printer and dyer of textile cloth purchased by him and carried on the business of selling the printed and dyed textiles in various forms. In the assessment year 1950-51 the Sales Tax Officer levied on him a tax of Rs. 1486-12-6 in respect of sale transaction of printed and dyed cloth sold by him. Before the Sales Tax Officer it was contended on behalf of the assessee that he was not a manufacturer; that the cloth purchased by him had been manufactured by textile mills and that on that cloth sales tax had already been levied; and further that the notification issued u/s 5 of the Act did not levy any sales-tax at the point of processing. This contention was rejected by the assessing authority. The assessee then preferred an appeal before the appellate Judge, This was rejected. He then took the matter in revision to the Commissioner of Sales Tax. The learned Commissioner rejected the revision-petition. He has now, at the instance of the assessee, stated this case on the following questions of law for the opinion of this Court:--

- (1) Whether the assessee is not a manufacturer but a mere processor and as such not liable to pay sales-tax on the sale of such goods ?
- (2) Whether the fact that the sales-tax having been recovered on the sale of cloth by the manufacturing mills or by the importer will prevent recovery of the sales tax on the sales of dyed and printed goods u/s 5 (1) of the Sales Tax Act ?

- (3) Whether by printing and coloring of cloth by a dealer a new marketable commodity comes into existence so as to attract the Madhya Bharat Sales Tax Act ?

The relevant provisions of the Act are section 3 (1) (b) and the provisions containing the definitions of the expressions "dealer", "manufactory" and "goods". u/s 3 (1) (b) as it stood at the material time and before it was amended by the Madhya Bharat Amendment Act No. 11 of 1955, every dealer who was a manufacturer or processor and whose turnover in the previous year in respect of sales or supplies of goods exceeded Rs. 5,000 was liable to pay tax on his taxable turnover in respect of sales and supplies of goods effected in Madhya Bharat from the 1st day of May, 1950. Section 2(k) defines "manufacturer" as a dealer who from materials produces goods by manual or animal labour or by machinery, "Dealer" has been defined in section 2(f) as "any person or association of persons carrying on the business of selling or supplying of goods,....."

"Goods" as defined in section 2(g), mean all kinds of movable property other than certain things enumerated in the section.

2. Mr. Waghmare, learned counsel for the petitioner, argued that the assessee was not a manufacturer but only a processor; that "manufacture" meant the transforming or fashioning of raw materials into a changed form of altogether a new character, so that the manufactured article was a new and different article from the materials used; that when the applicant printed and dyed textiles, he engaged himself in the business of processing and not manufacturing. It was pointed out that the use of two different words, namely, "manufacturer" and "processor" in section 3 (1) (b) showed that a manufacturer was a person different from a processor and that this conclusion was further reinforced by the amendment made by Act No. 11 of 1955, which deleted the words "or processor" from section 3 (1) (b) and added the words and also includes a processor in the definition of "manufacturer" given in section 2 (k). It was submitted that as the notification issued u/s 5 did not levy any sales-tax on a processor, the assessee was not liable to pay any sale-tax on sale transactions of printed and dyed textiles sold by him. Reliance was placed on The State of Madhya Pradesh vs. Wasudeo (1955) 6 S.T.C. 30, and The State of Bihar vs. Chrestien Mica Industries Ltd. (1956) 7 S.T.C. 626. Mr. Chitale, on the other hand, contended that the word "manufacture" as used in section 2 (k) meant that something was brought into existence for sale and which was capable of being sold or supplied in the course of business and that when the assessee printed and dyed textiles purchased by him, he produced something which was in itself

capable of being sold as such.

3. For the purposes of this reference it may be taken that the use of the words "manufacturer" and "processor" in section 3 (1) (b) implies that the Act intends to draw a distinction between a manufacturer and a processor. It is, however, not necessary to consider whether the assessee is a processor, for, no notification u/s 5 of the Act was ever issued levying any sales-tax on a processor. The real question to be considered is, therefore, whether the assessee is a manufacturer.

4. Now the word "manufacturer" has been defined differently in various dictionaries. According to the Oxford Dictionary, "to manufacture" is to work up (material) into form suitable for use; to make or fabricate from material; to produce by labour (now especially on a large scale). The Century Dictionary defines "manufacture" as the production of articles for use from raw or prepared materials, by giving these materials new forms, qualities, properties or combinations, whether by hand labour or by machinery. Some lexicographers define "manufacture" as "whatever is made by human labour either directly or the instrumentality of machinery. It has also been defined to mean "the process of making anything by art, or reducing materials into a form fit for use by the hand or by machinery". These definitions have been cited in many decisions under the Sales Tax Acts of various States. But in those cases the Courts have not adhered to them as decisive and have looked to the provisions of the particular Act to ascertain what the expression "manufacture" means in the context in which it has been used in that Act. Reading the provisions of section 3 (1) (b) with the definitions of "manufacturer", "dealer" and "goods" given in the Act, it is plain that the Act contemplates the levy of sales tax on the sale transactions of those goods which the manufacturer himself produces for the purpose of selling them in the course of the business, for selling or supplying in which he is engaged. In common parlance "to manufacture goods" means "to bring goods into being". "To manufacture goods for sale" would, therefore, mean to bring into being something in a form in which it is capable of being sold or supplied in the course of business. In my opinion, to constitute, "manufacture" for the purposes of the Act it is not necessary that there must be a transformation in the materials and that the transformation must have progressed so far that the manufactured article becomes commercially known as another and different article from the raw materials. All that is necessary is that the material should have been changed or modified by man's art or industry so as to make it capable of being sold in an acceptable form to satisfy some want or desire, or fancy or taste of man. I am supported in this view by the decision of Das J. (as he then was) in North Bengal Stores Ltd. vs. Board of Revenue, Bengal 1 S.T.C. 157. That was a case where with reference to the provisions of the Bengal Finance (Sales Tax) Act, 1941 (the material provisions of which were substantially the same as those under consideration here) it was held by Das J. that "to manufacture or produce goods for sale" within the meaning of the Bengal Finance (Sales Tax) Act, which is concerned with "dealers", that is persons engaged in the business of selling or supplying

goods, must mean to bring into being a commercial article for sale in the business in which the dealer is engaged, that is, an article which by itself has a commercial value and which can be the subject-matter of a sale for a price in course of the business of selling or supplying in which he is engaged. He observed--

The essence of manufacturing, I apprehend, is that something is produced or brought into existence which is different from that out of which it is made, in the sense that the thing produced is by itself commercial commodity which is capable as such of being sold or supplied, It does not mean that the materials with which the thing is manufactured must necessarily lose their identity or become transformed in their basic or essential properties.

The decisions in The State of Madhya Pradesh vs. Wosudeo (1955) 6 S.T.C. 30-1954 N.L.J. 175 and The State of Bihar vs. Chrestien Mica Industries Ltd, (1956) 7 S.T.C. 626 do not take any different view, On a consideration of the relevant sections of the Act and the meaning of the word "Manufacture", I have no doubt that the assessee who is engaged in the work of printing and dyeing textiles purchased by him and in the business of selling or supplying the printed and dyed material, is a manufacturer within the meaning of the definition given in section 2 (k). In my opinion, the sales tax authorities were right in holding the assessee liable to pay sales-tax on sale transactions of cloth printed and dyed by him and sold by him. I would therefore, answer the first two questions in the negative and the third question in the affirmative.

5. In the circumstances of the case, there will be no order for costs,

Samvatsar J.

6. I agree.