

RAJASTHAN STATE ELECTRICITY BOARD
v.
ASSOCIATED STONE INDUSTRIES AND ANR.

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MAY 8, 2000

[SYED SHAH MOHAMMED QUADRI AND SHIVARAJ V. PATIL, JJ.]

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Rajasthan Electricity (Duty) Act, 1962—Section 3(3)—1962 Notification exempted energy consumed in any industry in manufacture, production, processing or repair of goods including mining activity—Notifications issued in 1963 and 1965 withdrew exemption given to mines—Respondents consumed electricity for pumping water out of mines to facilitate mining activity—Notice issued for payment of electricity duty after withdrawal of exemption—Trial Court dismissed injunction suit filed by respondent which was later allowed by District Judge—High Court confirmed order of injunction—On appeal Held, Mining activity is distinguished from a manufacturing activity and the exemption was consciously removed by the legislature—Excavation of stores from a mine and then cutting and polishing them into slabs does not amount to manufacture of goods—When no new product comes into existence there is no process of manufacture—Energy consumed for pumping out water cannot be accepted as energy consumed in an industry in the manufacture, processing, or repair of goods so as to claim exemption or reduced duty under the 1963 and 1965 Notifications.

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Words and Phrases—“Manufacture”—Meaning of.

A Notification was issued in 1962 exempting from duty the energy consumed in any industry in the manufacture, production, processing or repair of goods, which also included mining activities. However, the two subsequent Notifications issued in 1963 and 1965 withdrew the exemption given to mines by the earlier notification.

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The respondents excavate stones and convert them into slabs by cutting and polishing. Electricity was being consumed for pumping out water from the mines in order to facilitate the mining activities. Electricity duty was levied under Section 3(3) of the Rajasthan Electricity (Duty) Act, 1962 as the exemption given to mines was withdrawn. Trial Court dismissed the injunction suit filed by the respondents but was later on allowed by the District Judge. High Court confirmed the said order. Hence this

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A appeal.

B Appellant contended that consumption of energy for pumping out water from the mine cannot be construed as energy consumed for manufacture, production, processing or repair of goods, that excavating stones and then cutting and polishing them into slabs did not amount to manufacture; and that the last two notifications had clearly withdrawn the exemption in respect of mines.

Respondents contended that excavation of stones and then cutting and polishing them into slabs amounted to manufacture.

C Allowing the appeal, the Court

D HELD : 1. In the 1962 Notification tax was expressly exempted for the energy consumed by or in respect of mines which was subsequently omitted by the Notifications issued in 1963 and 1965. Electrical energy was being consumed for pumping out water from mines for making them ready for mining activity namely, excavating stones and thereafter cutting and polishing them into slabs. Mining activity is distinguished from a manufacturing activity and removal of this exemption in respect of mines was done consciously so as to bring the mining activity within the purview of Section 3 of the Rajasthan Electricity (Duty) Act. [1185-B-E]

E 2.1. The exemption given by the 1962 Notification was specifically taken away. It was never pleaded that electricity was being used for pumping out water from the mines which formed part of manufacturing process. Excavation of stones from a mine and thereafter cutting them and polishing them into slabs does not amount to manufacture of goods.

F The word “manufacture” generally and in the ordinary parlance in the absence of its definition in the Act should be understood to mean bringing into existence a new and different article having distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of manufacture. The

G cutting and polishing of stones into slabs is not a process for manufacture for obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued. [1186-C-F]

H 2.2. The word “manufacture” is not defined in the Act under which the three Notifications were issued. The words “manufacture” used in the

Notifications under Section 3(3) of the Act, a taxing statute should be understood in its commercial sense, in the absence of the definition of it in the statute itself. The definitions of "manufacture" given in other enactments such as Factories Act, Industrial Dispute Act or the Excise Act cannot be applied while interpreting the expression "manufacture" in relation to the provisions of the Act. [1185-F]

Union of India v. Delhi Cloth and General Mills Co. Ltd. & Ors., (1977) ELT (J. 199) and *Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan*, [1991] 4 SCC 473, relied on.

3. If any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried with aid of power. Pumping out of water, excavation of stones and cutting and polishing them into slabs cannot be said to be integrally connected with manufacturing of goods. The energy consumed for pumping out water from a mine cannot be accepted as the energy consumed by a consumer in any industry in the manufacture, processing or repair of goods so as to claim exemption or reduced rate of duty by virtue of the Notifications issued in 1963 and 1965. [1188-B-C; E-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1568 of 1991.

From the Judgment Order dated 14.8.86 of the Rajasthan High Court in S.B.C.S.A. No. 258 of 1976.

Pradeep Aggarwal, A. Misra, Ms. Anjali Doshi, A.P. Dhamija, Ms. Madhurima Tatia and Sushil Kr. Jain for the Appellant.

Pramod Dayal, K.K. Jain, Rakesh C. Agrawal and Ajay K. Jain for the Respondents.

The Judgment of the Court was delivered by

SHIVARAJ V. PATIL, J. In the light of the contentions raised and submissions made before us, the only question that arises for consideration and decision in this appeal is whether pumping out water from a mine comes within the meaning of manufacture, production, processing or repair of goods so as to claim exemption from duty under Notifications issued under sub-

A section 3 of Section 3 of the Rajasthan Electricity (Duty) - Act. 1962 (for short the 'Act')?

2. This appeal is by the Rajasthan State Electricity Board. Jaipur, the Defendant in the suit.

B 3. In short and substance, the facts which are considered relevant and necessary for disposal of this appeal are the following.

C 4. The Plaintiff-Respondent No. 1 is a registered public limited company. It is engaged in excavating stones from the collieries and thereafter converting them into slabs by cutting and polishing. The Rajasthan State Government levied electricity duty under the provisions of the Act. A Notification dated 26.3.1962 was issued by the State under Section 3(3) of the Act granting exemption from tax on the energy consumed by a consumer in any industry in the manufacture, production, processing or repair of goods and by or in respect of any mine as defined in the Indian Mines Act, 1923.

D 5. Subsequently a notification was issued on 2.3.1963 superseding the aforesaid Notification dated 23.3.1962, remitting the electricity duty on the energy consumed in electro-chemical industry and in electric furnaces of electro-thermo industries and reducing such duty on the energy consumed in other industries in the manufacture, production, processing or repair of goods, from 3 naya paise per unit to 1 naya paise per unit. Further one more Notification was issued on 1.11.1965 superseding the earlier two Notifications mentioned above and fixing duty at 5 paise per unit as the rate at which electricity duty shall be computed. However, by clause (c) of the said notification, the State of Rajasthan reduced the duty on the energy consumed in industries other than those mentioned in clause (a) of the Notification in the manufacture, production, processing or repair of goods to 1 paise per unit. The same was later on enhanced to 2 paise by Notification dated 5.3.1979.

F 6. The Defendant issued three notices dated 30.6.1972, 21.12.1973 and 30.11.1974 asking the Plaintiff to pay electricity duty at the full rate of 0.05 per unit holding that the Plaintiff was not entitled either for exemption of electricity duty or to a reduced rate of duty. Hence the Plaintiff filed the suit for injunction restraining the defendant from realising the electricity duty as per the demands made in the said notices. The trial court dismissed the suit. The Plaintiff filed the appeal in the court of the District Judge at Kota. The learned District Judge allowed the appeal reversing the judgment, and decree

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of the trial court and passed the decree in favour of the Plaintiff. The Defendant filed the second appeal in the High Court of Judicature for Rajasthan at Jaipur Bench, Jaipur. The learned Single Judge of the High Court dismissed the appeal confirming the judgment and decree passed in favour of the Plaintiff. Hence the Defendant has filed this appeal challenging the validity and correctness of the said judgment and decree passed by the High Court.

7. Shri Pradeep Aggarwal learned counsel for the defendant No. 1 - appellant urged that (1) consumption of energy for pumping out water from the mine cannot be construed as energy consumed by industry in the manufacture, production, processing or repair of the goods: further excavating stones from a mine and thereafter cutting and polishing them into slabs did not amount to any manufacture. (2) The subsequent two notifications dated 2.3.1963 and 1.11.1965 have clearly removed exemption in relation to any mine.. In support of his submissions, he relied on the decision of this Court in *Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan*, [1991] 4 SCC 473.

8. Per contra, the learned counsel for the plaintiff made submissions supporting the impugned judgment and decree. He argued that excavation of stones thereafter cutting and polishing them into slabs amounted to manufacture.

9. We have considered the submissions made by the learned counsel for the parties. The 3 Notifications to the extent they are relevant are extracted hereunder:-

Notification dated 26.3.1962

“In pursuance of sub-clause 3 of clause 3 of the Rajasthan Electricity (Duty) Bill, 1962, read with the declaration inserted therein under section 3 of the Rajasthan Provisional Collection of Taxes Act, 1958 (Rajasthan Act 23 of 1958), the State Government being of the opinion that it is inexpedient in public interest to do so, hereby exempts from tax the energy consumed -

- (1) by a consumer in any industry in the manufacture, production, processing or repair of goods; and
- (2) by or in respect of any mine as defined in the Indian Mines Act, 1923 (Central Act of 1923),”

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Notification dated 2.3.1963

“In exercise of the powers conferred by sub-section (3) of section 3 of the Rajasthan Electricity (Duty) Act, 1962 (Rajasthan) Act 12 of 1962) and in supersession of Excise and Taxation Department Notification No. F.9(2) E&T/62/1 dated the 26th March, 1962, the State Government being of the opinion that it is expedient in public interest to do so, hereby remits the electricity duty on the energy consumed in electro chemical industries and in electric furnaces of electro-thermal industries and reduces such duty on the energy consumed in other industries in the manufacture, production, processing or repair of goods, from three naya paise per unit to one paisa per unit.”

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Notification dated 1.11.1965

“In exercise of the powers conferred by section 3 of the Rajasthan Electricity (Duty) Act, 1962 (Rajasthan Act 12 of 1962) and in supersession of Government Notification No. F.9(2)/E&T/62-II dated the 26th March, 1962 and No. F.(6)FD/RT/63 dated the 2nd March, 1963, the State Government being of the opinion that it is expedient in public interest to do so, hereby fixes, with immediate effect, five paise per unit as the rate at which the electricity duty shall be computed and subject to the conditions laid down in the third proviso to the said section -

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(a) remits, with immediate effect, the electricity duty on the energy consumed (i) in electrochemical industries, and (ii) in electro furnaces of electro thermal industries.

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(b) remits with effect on and from the 1st November, 1964, the electricity duty on energy consumed by or in respect of any municipal Board or Council or Panchayat or Panchayat Samiti or other authority for the purpose of or in respect of public street lighting; and

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(c) reduces with immediate effect such duty on the energy consumed in industries, other than those mentioned in (a) above, in the manufacture, production, processing or repair of good to (two paise per unit)”.

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10. There is no dispute that the controversy related to claim for exemption or reduced rate of duty in relation to consumption energy for pumping out water from the mines. In the Notification dated 26.3.1962 the tax was exempted expressly for the energy consumed by or in respect of mines as defined in the Indian Mines Act, 1923. The two subsequent Notifications of 2.3.1963 and 1.11.1965 have omitted provision of exemption in respect of mines. It is not the case of the Plaintiff that electrical energy was consumed in any industry in the manufacture, production, processing or repair of goods. The specific case of the Plaintiff is that the electrical energy was consumed for pumping out water from mines to make mines ready for mining activity namely, excavating stones and thereafter cutting and polishing them into slabs. The 1963 Notification superseded the 1962 Notification and 1965 Notification superseded both 1962 and 1963 Notifications. As already noticed above, 1963 and 1965 Notifications have not made any provision for exemption of duty on the electricity consumed by or in respect of mines. It is the case of the Plaintiff that the electricity was used for the purpose of pumping out water from the mines to facilitate mining activity, namely excavating of stones. It must be also kept in mind that a mining activity is distinguished from a manufacturing activity. It appears this removal of exemption in the said Notifications in respect of mines was done consciously so as to bring the mining activity within the purview of Section 3 of the Act. Hence we consider it unnecessary to deal with the notification of 1962 in relation to the claim for exemption by or in respect of a mine.

11. The word "manufacture" is not defined in the Act under which aforementioned three Notifications were issued. The word "manufacture" used in the Notifications under Section 3(3) of the Act, a taxing statute should be understood in its commercial sense, in the absence of the definition of it in the statute itself. The definitions of "manufacture" given in other enactments such as Factories Act, Industrial Dispute Act or the Excise Act cannot be applied while interpreting the expression "manufacture" in relation to the provisions of the Act.

12. The learned Judge in the judgment under appeal has stated thus : "it is also admitted that the electricity was utilised for pumping out water from the mines. It cannot be disputed that the Plaintiff could not have worked his mines unless the water had been pumped out from the mines and, therefore, pumping out the water from the mines was incidental with the excavation of stones on the mines"

A Further having referred to various decisions dealing with “manufacturing” and “manufacturing process” has stated thus-

B “In my opinion, the pumping out of water from mines was necessary and essential for carrying of the work of excavation of stones from the mines and, therefore, it should be held to be a part of the manufacturing process of the whole industries and business carried out by the plaintiff.”

C 13. In the Notification dated 26.3.1962 the State had exempted from duty the energy consumed in any industry in the manufacture, production, processing or repair of goods and also by or in respect of any mine as defined in the Indian Mines Act, 1923. As can be seen from subsequent two Notifications of 2.3.1963 and 1.11.1965 the exemption given to the mines in the Notification dated 26.3.1962 was withdrawn. The intention appears to be clear that the exemption available to mines specifically, was taken away. It appears the Plaintiff did not plead specifically that the electricity was being used for pumping out water from the mines which formed part of the manufacturing process. This apart excavation of stones from mines and thereafter cutting them and polishing them into slabs did not amount to manufacture of goods. The word “manufacture” generally and in the ordinary parlance in the absence of its definition in the Act should be understood to mean bringing to existence a new and different article having distinctive name, character or use after undergoing some transformation. When no new product as such comes into existence, there is no process of manufacture. The cutting and polishing stones into slabs is not a process of manufacture for obvious and simple reason that no new and distinct commercial product came into existence as the end product still remained stone and thus its original identity continued.

F 14. This Court in *Union of India & Ors. v. Delhi Cloth and General Mills Co. Ltd. & Ors.*, (1977) E.L.T. (J.199) as to the meaning of “manufacture” in para 14 has stated thus:-

G “The word “manufacture” used as a very is generally understood to mean as “bringing into existence a new substance” and does not mean merely “to produce some change in a substance”, however minor in consequence the change may be. This distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases. Vol. 26, from an American Judgment. The passage runs thus:

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“Manufacture implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and transformation: a new and different article must emerge having a distinctive name, character or use.”

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Para 17 of the same judgment reads thus:-

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“These definitions make it clear that to become “goods” an article must be something which can ordinarily come to the market to be brought and sold.”

15. In the case of *Collector of Central Excise, Jaipur v. Rajasthan State Chemical Works, Deedwana, Rajasthan*, [1991] 4 SCC 473 this Court was considering “process” connected with the manufacture; for manufacturing common salt brine pumped into salt pans by using diesel pump and for manufacturing lime, coke, and limestones lifted to the platform at the head kiln by aid of power. It was held that pumping of brine and lifting of raw-material constituted processes in or in relation to the manufacture. Para 16 of the judgment reads thus:-

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“The expression “in the manufacture of goods” would normally encompass the entire process carried on by the dealer of converting raw materials into finished goods. Where any particular process is so integrally connected with the ultimate production of goods that but for that process manufacture or processing of goods would be commercially inexpedient, goods required in that process would, in our judgment, fall within the expression “in the manufacture of goods.”

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This Court in the same judgment in para 21 has stated thus:-

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“A process is a manufacturing process when it brings out a complete transformation for the whole components so as to produce a commercially different article or a commodity. But, that process itself may consist of several processes which may or may not bring about any change at every intermediate stage. But the activities or the operations may be so integrally connected that the final result is the production of a commercially different article. Therefore, any activity or operation which is the essential requirement and is so related to the further operations for the end result would also be a process in or in relation to manufacture to attract the relevant clause in the exemption

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A notification. In our view, the word 'process' in the context in which it appears in the aforesaid notification includes an operation or activity in relation to manufacture."

B 16. In conclusion, it is said that if any operation in the course of manufacture is so integrally connected with the further operations which result in the emergence of manufactured goods and such operation is carried on with the aid of power, the process in or in relation to the manufacture must be deemed to be one carried with the aid of power. Pumping out of water, excavation of stones and cutting and polishing them into slabs cannot be said to be integrally connected in the manufacturing of goods.

C 17. Keeping in view what is stated above, we find it difficult to accept the view of the learned Judge that the energy consumed for pumping out of water from the mines should be held to be a part of the manufacturing process of the whole industry and the business carried out by the Plaintiff. It is also not possible to accept that excavation of stones and thereafter cutting and polishing them into slabs resulted in any manufacture of goods. On the basis of evidence, the trial court found that there are two separate electric meters; one for pumping out water whenever required, the other for the workshop to which the stones excavated are carried. The trial court also concluded that the electricity consumed for pumping out water was not consumed in the manufacturing business of the Plaintiff.

F 18. In the light of what is stated above, we are of the considered opinion that the energy consumed for pumping out water from a mine cannot be accepted as the energy consumed by a consumer in any industry in the manufacture, production, processing or repair of goods so as to claim exemption or reduced rate of duty by the plaintiff by virtue of the aforementioned two notifications dated 2.3.1963 and 1.11.1965. In the view, we have taken, the appeal is entitled to succeed. Hence it is allowed, the judgment and decree under appeal are set aside and the suit of the plaintiff is dismissed. Parties to bear their own costs, in the facts and circumstances of the case.

G A.Q. Appeal allowed.