

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5677-5678/2011

COMMISSIONER OF TRADE TAX, U.P.

APPELLANT(S)

VERSUS

M/S MISHRA TEA BLENDING AND PACKING  
INDUSTRIES, UP

RESPONDENT(S)

O R D E R

The appellant (Revenue) herein is aggrieved by the orders passed in Trade Tax Revision Nos. 1351/2004 and 2989/2004 dated 22.05.2009 and 26.05.2009 respectively by the High Court. The Revenue, represented by the Commissioner of Trade Tax, Uttar Pradesh had filed revision petitions before the High Court wherein the following questions of law were considered and answered against the Revenue:

“(i) Whether on the facts and in the circumstances of the case, the Tribunal is legally justified to hold that blending and packing of tea is not manufacturing?

(ii) Whether the order of the Tribunal is correct in view of the decision of Hon’ble Supreme Court in the case of Chogala and Co. Pvt. Ltd. Vs Union of India 1981 U.P.T.C. 702?”

Hence, these appeals.

The case of the respondent-assessee was that it was engaged in blending and packing of tea and thereafter offering the same for sale. The same did not involve any process or manufacture within the meaning of Section 2(e)(1) of the U. P. Trade Tax Act, 1948

(hereinafter referred to as the "Act" for the sake of brevity). Therefore, blending of tea which was sold by the respondent-assessee as a retailer did not come within the scope and ambit of the said definition inasmuch as the tea sold by the respondent-assessee was not a new product altogether. Therefore, there was no manufacturing process as such and neither was any other process involved and consequently, the product tea sold by the assessee did not come within the definition of 'manufacture'. Hence, the High Court answered Question No.1 in favour of the assessee and held that the assessee was actually selling tea made from blending of tea which did not result in manufacture of a new commercial commodity as the tea which was sold remained tea as such.

Learned Additional Advocate General appearing for the State of Uttar Pradesh submitted that the approach of the High Court in the instant case was erroneous inasmuch as the High Court lost sight of the fact that the process of blending of two different teas results in a different commodity altogether. That what was actually done by the respondent-assessee was to mix or blend two different flavours of tea which would result in a third commodity and therefore, what was engaged in by the assessee was a process of blending which is a process within the meaning of the expression 'manufacture' as defined under the Act.

In this regard, learned Additional Advocate General brought to our notice the judgments of this Court in Chowgule & Co. Private Limited and Anr. vs. Union of India and Others (1981) 1 SCC 653 ("Chowgule & Co."); State of Maharashtra vs. M/s Shiv Datt and Sons and Others [1993 Suppl (1) SCC 222] ("M/s Shiv Datt"); B.P. Oils

Mills Ltd. vs. Sales Tax Tribunal and Others (1998) 6 SCC 577 (“B.P. Oils Mills Ltd.”); Commissioner of Sales Tax, U.P. vs. Lal Kunwa Stone Crusher (P) Ltd. (2000) 3 SCC 525 (“Lal Kunwa Stone Crusher”); and Sonebhadra Fuels vs. Commissioner, Trade Tax, U.P., Lucknow (2006) 7 SCC 322 (“Sonebhadra Fuels”). It was contended that the judgment of this Court in *Chowgule & Co. Private Limited* has not been noticed by another three Judge Bench of this Court in M/s Shiv Datt and Sons. Placing reliance on *Chowgule & Co. Private Limited*, it was contended that the assessee was liable to a higher rate of tax as there was a process involved in the blending of different kinds of tea offered for sale and hence, the impugned order(s) may be set aside and the order(s) of the the Assessing Authority may be restored.

*Per contra*, learned senior counsel, Sri Dhruv Agarwal, appearing for the respondent-assessee at the outset submitted that these cases have to be considered from the point of view of a retailer and/or a wholesaler of tea and not from the point of view of a manufacturer or a processor as such. All that the assessee does is to buy tea in bulk and thereafter to sell the same by name ‘Anmol and Kasturi’. The said names have not acquired brand names as is commercially understood but they are simply names under which the tea is sold by the assessee. Even if different types of teas are mixed and sold, that does not involve any process and much less a manufacturing process.

Learned senior counsel submitted that the impugned orders would not call for any interference as the judgments cited by the learned senior counsel and learned Additional Advocate General

appearing for the State of U.P. would not apply to the case at hand, firstly, because each of those judgments turns on its own facts and secondly, the peculiar facts of these cases would not require an application of the aforesaid judgments as such. Learned senior counsel appearing for the respondent-assessee contended that there is no merit in these appeals and the same may be dismissed.

Having heard learned senior counsel for the respective parties at the outset, we extract the definition of 'manufacture' as it appears in Section 2(e-1) of the Act:

"2.(e-1) 'manufacture' means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods; but does not include such manufacture or manufacturing processes as may be prescribed;"

A reading of the said definition would indicate that the expression 'manufacture' is defined to mean certain procedures or processes. The definition is an exhaustive definition and not an expansive one. The procedures are in the nature of producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting; but the definition does not include such manufacture or manufacturing processes as may be prescribed. On a reading of the said definition of 'manufacture' we note that it does not use the expression 'includes'. This clearly indicates that the intention of the Legislature is to give a strict or a restricted meaning to the expression 'manufacture' and not an expansive meaning. That is exactly what has been held by a three Judge Bench of this Court in

the case of M/s Shiv Datt and Sons wherein, the question was, whether, the process where the plates of the battery are immersed in a solution of sulfuric acid and distilled water and connected together by a direct current and then connected to the two terminals of as source of supply and thereafter the plates are dried in the ordinary way, the electrolyte which is formed is thrown out and the plates assembled in the battery manufactured by the manufacturers are dried and sold would amount to a manufacturing process within the meaning of the definition. In the said case, this Court was considering the definition as was found in Section 2(17) of the Bombay Sales Tax Act, 1959, and Rules made thereafter, which reads thereunder:

“‘manufacture’ with all its grammatical variations and cognate expressions, means, producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating, or adapting any goods; but does not include such manufacturer or manufacturing processes as may be prescribed.”

The said definition is *in pari materia* with the definition of manufacture which is under consideration. This Court also referred to a judgment of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. v. State of Bombay (1959) 10 STC 500 (BOM HC) (“*Nilgiri Ceylon Tea Supplying Co.*”) wherein the very process of the assessee therein purchasing in bulk different brands of tea and without the application of any mechanical or chemical process mixing up the brands of tea so purchased and selling it as a tea mixture, came up for consideration on a reference before the Bombay

High Court wherein it was observed as under:

"3..In our view, the quantities of tea purchased by the assesseees cannot, since the date of the purchases, be regarded as 'purchased within the meaning of proviso to clause (a) of Section 8 of the Act. There is not even application of mechanical force so as to subject the commodity to a process, manufacture, development, or preparation. The commodity has remained in the same condition,. It is true that in the preparation of the tea mixture which is marketed, there may be some skill involved. But that, in our judgment, cannot be regarded as processing within the meaning of the proviso...

4..It cannot however be said that in the preparation of tea mixture there is any alteration in the goods. Undoubtedly by mixing up the different varieties of tea purchased by the assesseees there resulted a mixture in which the individoulity of the components was obscured, but that in our judgment, is not alteration within the meaning of the Act. The alteration contemplated by the legislature is some alteration in the nature or character of the goods."

Applying the aforesaid dicta, this Court noted that the blending and packing of tea did not involve a process within the meaning of the expression 'manufacture.' It was accordingly held that the words used by the statute namely "processed or altered in any manner after such purchase" were very wide, and there was need to read down the scope of the expression and therefore, the purpose of the definition that there should be some alteration in the nature or character of the goods had to be construed accordingly. It was also categorically held that if the expression "process and

manufacture" is given too wide a definition than what is necessary it may result in an absurd or an impractical consequence. The said conclusion was recorded in paragraph 10 of the judgment.

"10. But, on careful consideration, we are of the opinion that the terms of Section 2(17) should not be given such a wide interpretation. If such a wide interpretation is given there may be very absurd results flowing as a consequence thereof. For instance, the definition includes the word 'ornamenting'. If a dealer purchases certain goods and merely adds some decorative material thereto, according to the State's interpretation, there will be a 'manufacture'. For instance, if a car is purchased and some lights or some special gadgets are added thereto, the interpretation will result in rendering the resale of the same car the resale of a different commodity. Again, if a piece of furniture is sold in a dismantled condition and the distributor puts the parts together and sells it, the definition, if construed as widely as interpreted by the State, can be said to amount to manufacture and render the furniture sold a different item of goods from the furniture purchased. This clearly is not the intention of the legislature. The purpose of Section 8 is that, where substantially the goods purchased are resold, there should be a deduction of the turnover on which purchase tax has already been paid. This provision should be interpreted in a practical and workable manner. The mere fact that the words used in the definition of manufacture are very wide should not lead us to so widely interpret them as to render the provision practically meaningless and so as to treat the goods sold as different merely because some slight additions or changes are made in the goods which are purchased before they are sold. It is true that under the section it is not necessary that there should be 'manufacturer' in the sense that a new commodity has been

brought into existence as would have been required if that word is interpreted in its literal sense. But, at the same time, the section should be so interpreted to mean only such of the various processes referred to in the definition and applied to the goods as are of such a character as to have an impact on the nature of the goods. This is indeed made clear by the closing words of the definition which refer to 'manufacture or manufacturing processes'."

As far as the judgment of this Court in *Chowgule & Co. Private Limited* is concerned it is necessary to point out that in the said case the facts were that there was an agreement for sale of a particular type of ore. In order to sell the contracted produce, namely the contracted ore, it was necessary to mix different quantities of ore by a process in order to bring about the product which was contracted for. It was in those circumstances that this Court held that a commercially different and distinct commodity was agreed to be sold which required processing of different types of ores in a particular quantity. Hence, in that context, this Court held that the judgment in *Nilgiri Ceylon Tea Supplying Co. v. State of Bombay* did not lay down the correct law.

However, we wish to state that the nature of the product that was contracted for in *Chowgule & Co. Private Limited* namely, a particular combination of ore, was the pertinent point which actually distinguished the case from the facts in *Nilgiri Ceylon Tea Supplying Co. v. State of Bombay* from *Chowgule & Co. Private Limited*.

Since another three-Judge Bench of this Court has considered



the ramifications of the order of reference of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co., although without reference to *Chowgule & Co. Private Limited*(supra), we find that the judgment of this Court in *Chowgule & Co. Private Limited* (supra) as well as M/s Shiv Datt and Sons proceed on different sets of facts and therefore, in that context, the perception of respective three judge Benches on the order of reference made by the Bombay High Court is distinct as it is with reference to the particular factual matrix under consideration.

We find that having regard to what has been opined by the three-Judge Bench of this Court in M/s Shiv Datt and Sons vis a vis the order on reference made by the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. and bearing in mind similar facts of the present case with that of Nilgiri Ceylon Tea Supplying Co. (supra), the observations of this Court in M/s Shiv Datt and Sons would squarely apply to the present case. The observations of this Court in *Chowgule & Co. Private Limited* with reference to order of reference in Nilgiri Ceylon Tea Supplying Co. must be construed in the distinct factual matrix and different goods involved. The order of the Bombay High Court was not applicable to the facts of the case in *Chowgule & Co. Private Limited* as in the former the case concerned blending of tea which is also the subject matter of this case; whereas the goods involved in *Chowgule & Co. Private Limited* was a particular kind of ore contraction which required a mixing up of several type of ores in particular quantities and in a particular manner and a procedure which involved a process and hence the same was covered within the

definition of manufacture. However, in the instant case, mere mixing of different types of tea only for the purpose of marketing as tea and not a particular type of tea does not involve any process/manufacture within the meaning of the definition. Therefore, judgment and observations in *Shiv Datt and Sons* are squarely applicable to the present case.

In the circumstances, we find that the High Court rightly answered the questions of law raised before it in favour of the respondent-assessee and consequently, sustained the orders of the Commissioner appeals and Tribunal which had rightly set aside the order of the Assessing officer.

We do not find any merit in these appeals.

Hence, the appeals are dismissed.

Pending application(s), if any, shall stand disposed of.

.....J.  
( B.V. NAGARATHNA )

.....J.  
( UJJAL BHUYAN )

NEW DELHI;  
NOVEMBER 30, 2023

S U P R E M E C O U R T O F I N D I A  
RECORD OF PROCEEDINGSCIVIL APPEAL NOS. 5677-5678/2011

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Date : 30-11-2023 These appeals were called on for hearing today.

CORAM :

HON'BLE MRS. JUSTICE B.V. NAGARATHNA  
HON'BLE MR. JUSTICE UJJAL BHUYANFor Appellant(s) Mr. R. K. Raizada, Sr. Adv.  
Mr. Bhakti Vardhan Singh, AOR  
Mr. Ankit Khatri, Adv.For Respondent(s) Mr. Dhruv Agrawal, Sr. Adv.  
Mr. Nishit Agrawal, AOR  
Ms. Upasna Agrawal, Adv.  
Ms. Kanishka Mittal, Adv.  
Ms. Vanya Agrawal, Adv.UPON hearing the counsel the Court made the following  
O R D E R

The appeals are dismissed in terms of the signed order.

Pending application(s), if any, shall stand disposed of.

(RADHA SHARMA)  
COURT MASTER (SH)(MALEKAR NAGARAJ)  
COURT MASTER (NSH)

(Signed order is placed on the file)