M/S. J. K. COTTON SPINNING & WEAVING MILLS CO. LTD.

v.

SALES TAX OFFICER, KANPUR AND ANOTHER.

October 28, 1964

(K. SUBBA RAO, J. C. SHAH AND S. M. SIKRI JJ.)

Sales Tax—Company manufacturing textile goods and tiles—Goods "intended for use in manufacture or processing of goods for sale"—Drawing material, photographic goods, electricals, certain building materials whether such goods—Central Sales Tax Act, 1965, s. 8(3)(b) read with Rule 13 framed under s. 13 of the Act.

The assessee, a limited company carrying on the business of manufacturing textile goods, tiles and other commodities, at Kanpur, applied for registration under s. 7 of the Central Sales Tax Act, 1956, and requested that certain goods be specified in its certificate of registration for the purpose of getting benefit under s. 8(1) of the Act. According to s. 8(3)(b) of the Act read with r. 13 framed under the Act the assessee could get the aforesaid benefit in respect of goods which were "intended for use in the manufacture or processing of goods for sale". The Sales Tax Officer at first accepted the assessee's claim in respect of all the goods as requested by the assessee but later on directed that certain goods, namely, "drawing material, photographic material, building materials including lime and cement (except cement used in manufacture of tiles for re-sale), electricals, iron and steel, and coal", be deleted from the assessee's certificate of registration. Against this order the assessee filed a petition under Art. 226 of the Constitution. The High Court, dismissing the petition, held that drawing materials, photographic materials, colour, chemicals, electricals machinery and building materials such as cement and lime were not comprehended in the expression "in the manufacture or processing of goods for sale" within the meaning of s. 8(3)(b) read with r. 13. The assessee appealed to this Court.

HELD : It was not open to the High Court to expand the scope of the petition challenging the correctness of the order of the Sales Tax Officer, and to deal with matters which were never in issue or to decide that other categories of goods (colour, chemicals, machinery etc.), which the Sales Tax Officer had not ordered to be deleted, did not fall within the terms of s. 8(3)(b) read with r. 13. [903 E]

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 impossible or commercially inexpedient, goods required in that process would fall within the expression "in the manufacture of goods". For goods to answer that description, it is not necessary that they must of necessity be goods which are used as "ingredient or commodity in the creation of goods", or which are "directly and actually needed for turning out or making of the goods." [905 F-G]

Applying the above test, drawing and photographic materials used for the making of designs for cloth to be manufactured by the company, and electrical equipment necessary for the production of goods *e.g.*, humidifiers, exhaust fans etc., are which qualify for special treatment under s. 8(1). But electrical equipment which is not directly connected with the process

A of manufacture such as fans, coolers, air-conditioning units, and building material including lime and cement not required in the manufacture of tiles for sale, would not fall under that category. [907 F-G; 908 A-B]

Indian Copper Corporation Ltd. v. *Commissioner of Commercial Taxes, Bihar and Others* relied on.

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 857 of 1964.

Appeal by special leave from the judgment and order dated April 27, 1964, of the Allahabad High Court in Civil Misc. Writ Petition No. 2367 of 1962.

C

Sri Narain Andley and *Rameshwar Nath,* for the appellant.

O. P. Rana, for the respondents.

The Judgment of the Court was delivered by

D **Shah J.** Messrs J. K. Cotton Spinning and Weaving Mills Company Ltd. is a public limited Company having its registered office at Kanpur. The Company manufactures for sale cotton textiles, tiles and other commodities. The Company applied on June 21, 1957, requesting the Sales Tax Officer, Sector II, Kanpur, to register it as a dealer under s. 7(1) of the Central E Sales Tax Act, 1956, and prayed that the following goods which it ordinarily purchased in the course of inter-State trade may be specified in the certificate :

> "Cotton staple fibre, yarn, wastes, coal, petrol, machinery, electricals, spares, hardwares, dyes and F colours, chemicals, auxiliaries, oils, lubricants, tallows, starches, woollen clothings, gums, clays, salt, beltings, bobbins, shuttles, wooden accessories and other mill stores for manufacturing cloth, yarn, tiles and paints etc."

G The Sales Tax Officer granted the certificate as prayed. The certificate of registration was later modified and the following additional categories of goods were specified :

> "Industrial gases, drawing instruments, photographic H materials, packing materials including wood, paper, straw and card-boards etc. and building materials including iron, steel, cement, lime, fire bricks and refractories."

Thereafter by notice dated July 19, 1961, the Sales Tax Officer cancelled the specification in respect of coal and called upon the Company to show cause why the certificate of registration be not amended so as to exclude therefrom "drawing instruments, photographic materials, building materials including iron, steel, cement and lime and certain goods covered under the term electricals". The Company showed cause against the notice and contended that all the articles specified in the certificate were required in the manufacture and processing of goods for sale. By order dated August 9, 1962 the Sales Tax Officer directed that from the registration certificate the following items be deleted;

> "Drawing material, photographic material, building material including lime and cement (except cement used in manufacture of tiles for re-sale), electricals, iron and steel and coal",

and called upon the Company to surrender the certificate of registration within three days for making the proposed amendments.

The Company then applied to the High Court of Judicature at Allahabad for a writ of *certiorari* calling for the record of the case and quashing the order dated August 9, 1962. At the trial, counsel for the Company did not press the petition in respect of iron, steel and coal. Counsel for the Company submitted that the remaining items were covered by s. 8(3)(b) of the Central Sales Tax Act read with Rule 13 framed under s. 13 of the Act, and on that account the order passed by the Sales Tax Officer was illegal and that in any event the items in question having been included in the certificate of registration after due enquiry as required by the statute, the Sales Tax Officer acted without jurisdiction in seeking to make the amendments. The High Court negatived the contention of the Company that the Sales Tax Officer had no jurisdiction to revise the certificate of registration issued after due enquiry, and rejected the petition holding that drawing instruments, photographic materials, colours, chemicals, electricals, machinery and building materials such as cement, lime are not comprehended in the expression "in the manufacture or processing of goods for sale" within the meaning of s. 8(3)(b) read with Rule 13. Against the order dismissing the petition, the Company has appealed to this Court.

Counsel for the Company has very properly not sought to raise the contention that the Sales Tax Officer had no jurisdiction to modify the certificate of registration, merely because the certificate

A as originally granted was issued after due enquiry. Under s. 7(4) of the Act a certificate of registration granted under s. 7(1) may be cancelled by the authority granting it, *inter alia,* for any sufficient reason. If on account of some error, the certificate specifies articles which did not fall within the terms of s. 8(3)(b) read with Rule 13, the error would manifestly be "sufficient B reason" within the meaning of s. 7(4) authorising the cancellation of the certificate *qua* the items which were erroneously included.

In the first instance, it must be pointed out that the High Court has, in rejecting the petition, dealt with certain matters which C were never in issue between the Company and the Sales Tax Officer. By the order of the Sales Tax Officer "machinery", and "colours and chemicals" were not deleted from the certificate, and the exclusion of "building materials, cement and lime" was expressly restricted so that it was not to operate in respect of D cement used in manufacture of tiles for sale. The Sales Tax Officer had rejected the claim of the Company only in respect of drawing instruments, photographic materials, building materials including lime and cement (except cement used in manufacture of tiles for re-sale), electricals, iron, steel and coal, and it was not open to the High Court to expand the scope of the petition chal- E lenging the correctness of the order of the Sales Tax Officer, and to deal with matters which were never in issue or to decide that other categories of goods which the Sales Tax Officer had not ordered to be deleted did not fall within the terms of s. 8(3)(b) read with Rule 13.

F Section 6 of the Act which is the charging section imposes liability upon every dealer with effect from the date as may be specified by the Central Government to pay tax under the Act on all sales effected by him in the course of inter-State trade or commerce during any year on and from the date so notified. Section 7 sets up the machinery for registration of dealers and s. 8 pres- G cribed the rates of tax on sales in the course of inter-State trade or commerce. Sub-section (1) of s. 8, as it stood at the material time, provided for the rates of tax to be paid on the turnover by a dealer selling in the course of inter-State trade or commerce to registered dealer goods of the description mentioned in sub-s. (3). Sub-section (2) prescribed the rate of tax payable by any dealer H in any case not falling within sub-s. (1) in respect of the sale by him of any goods in the course of inter-State trade or commerce. Sub-section (3) enacted :

"The goods referred to in clause (b) of sub-section (1)— A

(a) in the case of declared goods are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him;

(b) in the case of goods other than declared goods B are goods of the class or classes specified in the certificate of registration of registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of C electricity or any other form of power;"

Section 13 conferred power upon the Central Government, to make rules on several matters including enumeration of goods or class of goods used in the manufacture or processing of goods for D sale or in mining or in the generation or distribution of electricity or any other form of power. In exercise of this power, Rule 13 was framed by the Central Government, which as amended read at the material time, as follows :

"The goods referred to in clause (b) of sub-section E (3) of section 8 which a registered dealer may purchase, shall be goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electri- F city or any other form of power."

The High Court confirmed the exclusion of drawing and photographic materials on the ground that those materials are required merely in the preparation of designs which though necessary for turning out textile goods cannot be said to be goods G intended for use *in the manufacture of goods*. In the view of the High Court, designing is a process distinct from the process of manufacture *i.e.* of making or fabricating raw materials by hand, art or machinery, and work into forms convenient for use. But without a design of the goods sought to be manufactured in a factory which is geared to production of goods of uniform pattern, H it would be impossible to attempt manufacture of goods on a commercial scale. The production itself has to be of a set pattern,

A and deviation from the design prepared would be impermissible. That without the use of drawing and photographic materials, designing of patterns would, if not impossible, be very difficult, is conceded. But the High Court was apparently of the view, and that view is supported by counsel for the Sales Tax Officer, that goods intended for use in the manufacture of goods or processing
B of goods for sale must of necessity be goods which are used as "ingredient or commodity in the creation of goods", or which are "directly and actually needed for turning out or making of the goods".

Section 8(3)(b) authorises the Sales Tax Officer to specify,
C subject to any rules made by the Central Government, goods intended for use by the dealer in the manufacture or processing of goods for sale or in mining, or in the generation or distribution of electricity or any other form of power. By Rule 13 the Central Government has prescribed the goods referred to in s. 8(3)(b): such goods must be intended for use *in the manufacture* or pro-
D cessing of goods for sale or in mining or generation or distribution of power, and the intended use of the goods must be as specified in Rule 13. It is true that under Rule 13, read with s. 8(3)(b) mere intention to use the goods in the manufacture or processing of goods for sale, will not be a sufficient ground for specification:
E the intention must be to use the goods as raw materials as processing materials, as machinery, as plant, as equipment, as tools, as stores, as spare parts, as accessories, as fuel or as lubricants. A bare survey of the diverse uses to which the goods may be intended to be put in the manufacture or processing of goods, clearly shows that the restricted interpretation placed by the High Court
F is not warranted. 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
G required in that process would, in our judgment, fall within the expression "in the manufacture of goods". For instance, in the case of a cotton textile manufacturing concern, raw cotton undergoes various processes before cloth is finally turned out. Cotton is cleaned, carded, spun into yarn, then cloth is woven, put on rolls, dyed, calendered and pressed. All these processes would be
H regarded as integrated processes and included "in the manufacture" of cloth. It would be difficult to regard goods used only in the process of weaving cloth and not goods used in the anterior

processes as goods used in the manufacture of cloth. To read the expression "in the manufacture" of cloth in that restricted sense, would raise many anomalies. Raw cotton and machinery for weaving cotton and even vehicles for transporting raw and finished goods would qualify under Rule 13, but not spinning machinery, without which the business cannot be carried on. In our judgment, Rule 13 does not justify the importation of restrictions which are not clearly expressed nor imperatively intended. Goods used as equipment, as tools, as stores, as spare parts, or as accessories in the manufacture or processing of goods, in mining, and in the generation and distribution of power need not, to qualify for special treatment under s. 8(1), be ingredients or commodities used in the processes, nor must they be directly and actually needed for "turning out or the creation of goods."

In our judgment if a process or activity is so integrally related to the ultimate manufacture of goods so that without that process or activity manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity as specified in Rule 13 will qualify for special treatment. This is not to say that every category of goods "in connection with" manufacture of or "in relation to" manufacture, or which facilitates the conduct of the business of manufacture will be included within Rule 13. Attention in this connection may be invited to a judgment of this Court in which it was held that vehicles used by a Company (which mined ore and turned out copper in carrying on activities as a miner and as a manufacturer) fell within Rule 13, even if the vehicles were used merely for removing ore from the mine to the factory, and finished goods from the factory to the place of storage. Spare parts and accessories required for the effective operation of those vehicles were also held to fall within Rule 13. See *Indian Copper Corporation Ltd* v. *Commissioner of Commercial Taxes, Bihar and Ors*(1).

The High Court has rightly pointed out that unless designs are prepared it would be "impossible for the workmen" to turn out goods for sale. If the process of designing is so intimately connected with the process of manufacture of cloth, we see no reason to regard the process of designing as not being a part of the process of manufacture within the meaning of Rule 13 read with s. 8(3)(b). The process of designing may be distinct from the actual process of turning out finished goods. But there is no warrant for limiting the meaning of the expression "in the manu-

(1) C.A. No. 1021 of 1963 decided on Oct. 19, 1964.

A facture of goods" to the process of production of goods only. The expression "in the manufacture" takes in within its compass, all processes which are directly related to the actual production. Goods intended as equipment for use in the manufacture of goods for sale are expressly made admissible for specification. Drawing and photographic materials falling within the description of goods
B intended for use as "equipment" in the process of designing which is directly related to the actual production of goods and without which commercial production would be inexpedient must be regarded as goods intended for use "in the manufacture of goods".

Building materials including lime and cement not required in
C the manufacture of tiles for sale cannot, however, be regarded within the meaning of Rule 13, as raw materials in the manufacture or processing of goods or even as "plant". It is true that buildings must be constructed for housing the factory in which machinery is installed. Whether a building is a "plant" within the meaning of Rule 13, is a difficult question on which no opinion
D need be expressed. But to qualify for specification under s. 8 (3)(b) goods must be intended for use of the nature mentioned in Rule 13, in the manufacture of goods. Building materials used as raw materials for construction of "plant" cannot be said to be *used as plant* in the manufacture of goods. The Legislature has contemplated that the goods to qualify under s. 8(3)(b) must
E be intended for use as raw materials or as plant, or as equipment in the manufacture or processing of goods, and it cannot be said that building materials fall within this description. The High Court was, therefore, right in rejecting the claim of the Company in that behalf.

F The expression "electricals" is somewhat vague. But in a factory manufacturing cotton and other textiles, certain electrical equipment in the present stage of development would be commercially necessary. For instance, without electric lighting it would be very difficult to carry on the business. Again electrical humidifiers, exhaust fans and similar electrical equipment would in the
G modern conditions of technological development normally be regarded as equipment necessary to effectually carry on the manufacturing process. We are not prepared to agree with the High Court that in order that "electrical equipment" should fall within the terms of Rule 13, it must be an ingredient of the finished goods to be prepared, or "it must be a commodity which is used in the
H creation of goods". If, having regard to normal conditions prevalent in the industry, production of the finished goods would be difficult without the use of electrical equipment, the equipment

would be regarded as intended for *use in the manufacture of goods* for sale and such a test, in our judgment, is satisfied by the expression "electricals". This would of course not include electrical equipment not directly connected with the process of manufacture. Office equipment such as fans, coolers, air-conditioning units, would not be admissible to special rates under s. 8(1). A B

We therefore set aside the order passed by the High Court and direct that the order passed by the Sales Tax Officer be modified by deleting from paragraph-4 of the order the words "drawing materials, photographic materials and electricals". The rest of the order of the Sales Tax Officer will stand.

The Company has substantially succeeded. The appeal must therefore be allowed with costs. C

Appeal allowed.