

## **Member, Board Of Revenue, West Bengal vs Phelps & Co. (P) Ltd. on 9 September, 1971**

**Equivalent citations:** (1972)4SCC121, [1972]29STC101(SC), 1972(4)UJ141(SC)

**Author:** A.N. Grover

**Bench:** A.N. Grover

### **JUDGMENT**

1. This appeal by special leave arises from a judgment of the High Court of Calcutta in a reference made to it under Section 21(3) of the Bengal Finance (Sales Tax) Act, 1941 (Act VI of 1941). That was a reference made by the Board of Revenue, West Bengal in pursuance of the directions given by the High Court. After stating a case, the Board referred 3 questions to the High Court at the instance of the assessee company. The assessee informed the High Court that it did not want any answer to third question. The High Court answered questions Nos. (i) and (ii) in favour of the assessee company. Aggrieved by that order the Board of Revenue has come up in appeal to this Court.

The material facts are these :

2. Messrs. Phelps & Co. (Private) Ltd. the assessee is a company incorporated under the Indian Companies Act, 1913 having its Registered Office in New Delhi. It is carrying on business, amongst other places, at Calcutta. It was registered as a dealer under the Bengal Finance (Sales Tax) Act, 1941 and was carrying on the business of tailors, drapers, out-fitters and industrial 'gloves' manufacturers.

3. In respect of the assessment for the 4 quarters ending on the 31st March, 1957 the said dealer in its claim for exemption under Section 5(2)(a)(ii) of the Act, included the following transactions :

(1) Sales to Messrs. The Indian Iron and Steel Co. Ltd. for Rs. 51,554-8-0.

(2) Sales to Messrs, Indian andard Wagon Co. Ltd. for Rs. 20,150-1-0.

(3) Sales to Messrs. The Hoogly Docking & Engineering Co. Ltd, for Rs. 546-2-0.

The Commercial Tax Officer, Esplanade Charge, who assessed the dealer found that the above transactions related to the sales of different types of 'hand gloves' which the purchasing dealers purchased for the purpose of the same being used by their workers while being engaged in work in the factories. He by his order, dated 4th December, 1957 observed that the purchase of hand gloves could not be called as being required for the purpose of manufacture of goods, for sale, and, accordingly, disallowed the dealer's claim for exemption of Rs. 72,250-110. That order was affirmed by the Assistant Commissioner of Commercial Taxes in appeal as well as by the Board of Revenue.

Thereafter the assessee company filed a petition Under Section 21(1) of the Act asking the Board of Revenue to refer certain questions of law to the High Court. The Board refused to refer those questions. Dissatisfied by the order of the Board, the dealer moved the High Court of Calcutta under Section 21(2) of the Act for direction to the Board to state a case. The High Court accepted that petition and directed the Board to state to case and submit the questions that the assessee company wanted it to submit to the High Court. The Board accordingly State a case and submitted the following three questions:

(i) Whether 'gloves' put on by the purchasing Companies workmen engaged in hot jobs or in handling corrosive sub-stance in the course of manufacture can be stated to have used in the manufacture of goods for sales as understood by the provisions of Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941."

(ii) Whether the item 'mill stores' appearing in the certificate of registration of the Indian Iron & Steel Company Ltd., covers 'gloves'. "

(iii) "Whether a selling dealer claiming exemption under Section 6(2), (a)(ii) of the Bengal Finance (Sales Tax) Act, 1941 read with Rule 27A of the Bengal Sales Tax Rules, 1941 is required to ascertain after receipt of a declaration in Statutory form No. XXIV from a purchasing registered dealer if the tatter's certificate of registration covers the goods purchased ?

4. As mentioned earlier the assessee company did not want the High Court to answer No. (iii). Hence it is not necessary for us to go into that question.

5. The only point that we have got to decide is whether the assessee company is entitled to the exemption asked for by it. Section 5(2) to the extent relevant for our present purposes reads:

5. (2) In this Act the expression 'taxable turnover' means in the case of a dealer who is liable to pay tax under Section 4, that part of his gross turnover during any period which remains after deducting there from

(a) his turnover during that period on

(i) x x x

(ii) sales to a registered dealer of goods of the class or classes specified in the certificate of registration of such dealer as being intended for resale by him, or for use by him in the manufacture of goods for sale or for use by him in the execution of any contract.

6. We have now to find out what exactly is the meaning of the expression "for use by him in the manufacture of goods for sale." Identical words are used in Section 8(b) of the Central Sales Tax Act 1959. This court was called upon to find out the scope of

that expression in J.K. Cotton Spinning & Weaving Mills Co Ltd. v. Sales Tax Officer, Kanpur and Anr. . Dealing with that expression this Court observed:

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."

In the present case the assessee company has sold the goods in question to certain manufacturers who were manufacturing iron steel materials. It is also clear from question No. (1) that those gloves were to be used by workmen who were engaged in hot jobs or in handling corrosive substances in the course of manufacture. That being so it cannot be denied that those gloves had to be used in the course of manufacture.

7. Mr. B Sen, learned Counsel for the Board of Revenue contended that Section 5(2)(i)(ii) takes in only such goods which are actually used in the manufacture and not those goods which are used in the course of manufacture. It is not necessary for us to examine that contention in view of the decision of this Court to which we have already made reference. We are bound by the ratio of that decision.

8. For the reasons already mentioned we hold that High Court decision is correct.

9. In the result this appeal fails and the same is dismissed with costs.