Supreme Court of India
Assistant Commissioner ... vs Nandanam Construction Company on 21 September, 1999
Author: S Babu
Bench: S.P.Bharucha, B.N.Kirpal, S.Rajendra Babu, S.S.M.Quadri, M.B.Shah

```
                CASE NO.:
Appeal (civil)  2064 of 1984

PETITIONER:
ASSISTANT COMMISSIONER (INTELLIGENCE)

RESPONDENT:
NANDANAM CONSTRUCTION COMPANY

DATE OF JUDGMENT: 21/09/1999

BENCH:
S.P.BHARUCHA & B.N.KIRPAL & S.RAJENDRA BABU & S.S.M.QUADRI & M.B.SHAH

JUDGMENT:
```

JUDGMENT DELIVERED BY:

S.RAJENDRA BABU, J.

RAJENDRA BABU, J.

The respondents are engaged in building of flats and houses for which purpose they buy materials such as sand, bricks and granite from persons other than registered dealers. These items have not suffered any sales tax. The Assistant Commissioner of Commercial Taxes, Enforcement, called upon the respondents by a notice dated January 19, 1982 to appear before him with their accounts relating to purchase of raw materials effected by them commencing from April 1, 1977. The respondents sent a reply to him stating that they do not trade in any goods; that they construct and sell flats; that they are not registered dealers; that said purchases do not attract tax under Section 6-A of the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter referred to as the Act). Not being satisfied with the reply filed by the respondents, the Assistant Commissioner of Commercial Taxes issued a notice on March 22, 1982 under Section 28 of the Act calling upon the respondents to produce books of accounts and purchase bills and to file the details relating to the purchase of raw materials effected by them for the period commencing from April 1, 1977. Aggrieved by the said notice the respondents filed writ petitions under Article 226 of the Constitution of India questioning the jurisdiction of the appellants to assess them under the Act.

Several contentions had been raised before the High Court such as discrimination between registered and unregistered dealers and that the respondents are not dealers and that in order to attract Section 6-A a dealer must have purchased goods from unregistered dealers and consumed such goods in the manufacture of other goods for sale or disposed of such goods either within or outside the State. The first two contentions stood rejected and that part of the order is not challenged before us. Therefore, we have to confine ourselves to the question whether the

respondents who purchased goods from persons other than registered dealers fall within the scope of Section 6-A of the Act. Section 6-A of the Act reads as follows :- 6-A. Levy of tax on turnover relating to purchase of certain goods: Every dealers, who in the course of business-- (i) purchases any goods (the sale of purchase of which is liable to tax under this Act) from a registered dealer in circumstances in which no tax is payable under section 5 or under section 6, as the case may be, or (ii) purchases any goods (the sale or purchase of which is liable to tax under this Act) from a person other than a registered dealer, and

(a) either consumes such goods in the manufacture of other goods for sale or otherwise, or (b) disposes of such goods in any manner other than by way of sale in the State, or (c) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-state trade or commerce, shall pay tax on the turnover relating to purchase aforesaid at the same rate at which but for the existence of the aforementioned circumstances, the tax would have been leviable on such goods under section 5 or section 6.

The respondents contention is that the goods such as sand and bricks purchased by them are not consumed in the manufacture of other goods for sale inasmuch as they deal in the construction of flats which are in the nature of immovable property. The respondents are also not manufacturing any other goods for sale or any other purposes. Thus, they contend that Section 6-A of the Act is not attracted. The contention put forth on behalf of the appellants is that even goods consumed for building purposes otherwise than in the manufacture of other goods are also covered by clause (ii)(a) of Section 6-A. The High Court found that there is a conflict between the decisions in Ganesh Prasad Dixit v. Commissioner of Sales Tax, Madhya Pradesh, 1969 (3) SCR 490, and Deputy Commissioner, Sales Tax (Law) Board of Revenue (taxes), Ernakulam v. Pio Food Packers, 1980 (3) SCR 1271. The High Court is of the view that the said two decisions having been rendered by identical composition of Bench of three Judges, the latter decision was binding upon them and held that in order to attract the provisions of Section 6-A(ii)(a) of the Act there must be consumption of the original goods for the purpose of manufacture of other goods for sale or for purposes other than sale and in the absence of such consumption the respondents were not liable to tax. The matter is brought up before this Court by way of appeal by special leave.

The matter is set down before us as a Bench of three Judges referred the matter to larger bench in view of the conflict between two decisions of this Court.

The appellants contend that Section 6-A(ii)(a) of the Act is attracted to consumption of original goods in the manufacture of the other goods for sale or consumption of original goods otherwise and placed reliance upon the decision in Ganesh Prasad Dixit (supra). The learned counsel also referred to the decision in Hotel Balaji & Ors. v. State of Andhra Pradesh & Ors., 1992 Supp. (2) SCR 182, to contend that the object of the provision under Section 6-A of the Act is to levy purchase tax on the purchase of raw material used by a consumer be that a manufacturer or otherwise. He also sought to place reliance on the amendment made in the enactment in 1985 as clarificatory and covering the present case also.

The learned counsel for the respondents submitted that the view taken in Pio Food Packers (supra) which has been followed in Deputy Commissioner of Sales Tax (Law), Board of Revenue(Taxes), Ernakulam v. M/s Thomas Stephen & Co. Ltd., 1988 (2) SCC 264, must be accepted and at any rate if two views are possible, the assessee should get the benefit of doubt and tax ought not be imposed. The subsequent amendment to the enactment would make the position clear and, therefore, the expression otherwise cannot be read as in any other manner.

Construing identical provisions in Madhya Pradesh Sales Tax Act, this Court in the decision in Ganesh Prasad Dixit (supra) stated as follows :-

Mr. Chagla, for the appellants urged that the expression or otherwise is intended to denote a conjunctive introducing a specific alternative to the words for sale immediately preceding. The clause in which it occurs means, says Mr. Chagla, that by section 7 the price paid for buying goods consumed in the manufacture of other goods, intended to be sold or otherwise disposed of, alone is taxable. We do not think that that is a reasonable interpretation of the expression either consumes such goods in the manufacture of other goods for sale or otherwise. It is intended by the Legislature that consumption of goods renders the price paid for their purchase taxable, if the goods are used in the manufacture of other goods for sale or if the goods are consumed otherwise.

Subsequently this Court in Pio Food Packers (supra) considered identical words in Kerala General Sales Tax Act in another manner as follows :-

Learned counsel for the Revenue contends that even if no manufacturing process is involved, the case still falls within section 5A(1)(a) of the Kerala General Sales Tax Act, because the statutory provision speaks not only of goods consumed in the manufacture of other goods for sale but also goods consumed otherwise. There is a fallacy in the submission. The clause, truly read, speaks of goods consumed in the manufacture of other goods for sale or goods consumed in the manufacture of other goods for purposes other than sale.

We are concerned in this case only with clause (a) of sub-section (ii) of Section 6-A, that is, either consumption of such goods in the manufacture of other goods for sale or otherwise. Clause (ii) of Section 6-A of the Act postulates levy of tax on purchase of goods from a person other than a registered dealer for consumption or disposal or despatch of goods outside the State. So the scheme of clause (ii) of Section 6-A of the Act is that when the goods cease to exist in the original form or cease to be available in the State for sale or purchase, the purchasing dealer of such goods is liable to tax if the seller is not or cannot be taxed. To our mind, it appears that the object of Section 6-A(ii)(a) of the Act is to levy purchase tax on goods consumed either for the purpose of manufacture of other goods for sale or consumed otherwise. If the view in Pio Food Packers (supra) is accepted the result would be that the expression otherwise will qualify the expression sale and not the expression manufacture, which appears to us to be erroneous on a plain construction of the provision. The intention of the legislature, it appears to us, is to bring to purchase tax in either event of consumption of goods in the manufacture of goods for sale or consumption of goods in any other manner. Once the goods are utilised in the construction of buildings the goods cease to exist or cease to be available in that form for sale or purchase so as to attract the tax and, therefore, the correct

meaning to be attributed to the said provision would be that tax will be attracted when such goods are consumed in the manufacture of other goods or are consumed otherwise. Therefore, while agreeing with the view in Ganesh Prasad Dixit (supra) on this aspect, we overrule to this extent the view expressed in Pio Food Packers (supra). Consequently, we set aside the impugned order made by the High Court and dismiss the writ petitions. It is now up to the department to proceed with the assessment after giving due opportunity to the respondents to file their objections. Considering the nature and circumstances of the case, there shall be no order as to costs.