(2011) 05 GAU CK 0059

In the Gauhati High Court

Case No : WP (G) No. 4604 of 2004

A.R.N.V. Chemicals Pvt. Ltd. APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 05-05-2011

Acts Referred:
Assam General Sales Tax Act, 1993 — Section 2(22)

Citation : (2013) 57 VST 415

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : M. Hazarika, Ms. Ajitseria and Ms. Modhi, for the Appellant;

Final Decision : Allowed

Judgement

Hrishikesh Roy, J.—Heard Ms. M. Hazarika, learned senior advocate appearing for the petitioner. Mr. R. Dubey, learned counsel represents the Revenue. The petitioner is a registered dealer under the Assam General Sales Tax Act, 1993 (hereinafter referred to as ''''the AGST Act"). They make bulk purchase of loose detergent powder from one M/s. PLB Chemicals and during this transaction the seller pays tax under the AGST Act at the point of first sale. The purchased powder is then packed by the petitioner in unit containers and is offered for second sale to the customers.

2. The dealer challenges the order dated September 24, 2003 (annexure N) passed by the Joint Commissioner of Taxes, Assam, who held that packing of the detergent powder amounts to "manufacture" as defined under clause (22) of section 2 of the AGST Act and on the basis of this conclusion, the revisional authority has upheld the levy of sales tax on the packaged detergent powder.

3. Arguing for the petitioners, Ms. M. Hazarika contends that no new product is produced by the petitioner when they package the bulk detergent powder into saleable packets. She accordingly contends that the view taken by the Joint Commissioner in the impugned order is unsustainable.

4. The impugned order is also assailed by contending that for previous assessment years, the same revisional authority, i.e., the Joint Commissioner of Taxes on an earlier occasion by his order dated October 15, 1996 (annexure E) has declared that the process undertaken by the petitioner is not "manufacture" and therefore the product put to resale, can''t be subjected to sales tax under the AGST Act.

5. In order to test the legality of the two contradictory views taken by the revisional authority, one has to bear in mind that tax under the Assam Finance (Sales Tax) Act, 1956, is leviable only on the sale of taxable goods which have been manufactured, made or processed by the dealer in Assam. Therefore the answer to the question hinges on the fact as to whether the activity of the dealer is "manufacture" under the AGST Act.

6. A reading of the word "manufacture" in sub-clause (22) of section 2 of the AGST Act shows the definition to be of much wider amplitude than what is commonly understood as manufacture. The Division Bench of this court while examining the process of conversion of "raw mustard oil" to "refined mustered oil" in the case of Deepak Kumar Poddar Vs. State of Assam and Others, in (Writ Appeal No. 176 of 2007) has the occasion to examine the scope of the definition of "manufacture" given in sub-section (22) of section 2 of the AGST Act. Upon analysing the provision, the court held that "manufacture" with all its connotations would require the final product to be noticeably different from the basic input although the input and the final product may have similar features. Proceeding on that basis, the court declared that the end-product, i.e., mustard oil is fundamentally no different from the raw material/input used, i.e., raw mustard oil and accordingly the process in that case was held to be outside the purview of "manufacture".

7. The above decision of the Division Bench in Deepak Kumar Poddar Vs. State of Assam and Others, has been produced in all fairness for consideration of the court, by Mr. R. Dubey, the learned counsel for the Revenue. Applying the ratio, what is necessary to be examined here is whether through the packaging process, something other than detergent powder come into existence. The process of packing/re-packing of detergent powder does not convert the original product into anything other than detergent powder and in such circumstances it has to be declared that the said process doesn''t come within the ambit of "manufacture" as defined in section 2(22) of the AGST Act.

8. Therefore I find that the basis on which the revisional authority has proceeded while giving the impugned decision, is inconsistent with the ratio laid down by this court in Deepak Kumar Poddar Vs. State of Assam and Others, where the Division Bench was examining the purport of the term "manufacture" under the AGST Act. Consequently the view taken by the revisional authority on September 24, 2003 in the impugned order is found to be erroneous and the same is set aside and quashed. The writ petition stands allowed with the above declaration without any order on cost.

