(2007) 08 AHC CK 0003

In the Allahabad High Court

Ashoka Foods and De-Hydred Sansthan APPELLANT

Vs

State of U.P. RESPONDENT

Date of Decision : 17-08-2007

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2007) 08 AHC CK 0003

Hon'ble Judges : Vikram Nath, J;R.K. Agrawal, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Agrawal, J.—By means of the present writ petition filed under Article 226 of the Constitution of India, the petitioner, M/s Ashoka Food & Dehydred Sansthan, seeks the following reliefs:

(i) issue a writ, order or direction in the nature of certiorari for quashing the impugned notices dated 1.9,2003 issued by the respondent No. 2 (Annexure- 3);

(ii) issue another writ, order or direction which this Hon''ble Court may deem just and proper under the circumstances of the case in favour of the petitioner;

(iii) award the cost of petition to petitioner.

2. Briefly stated, the facts giving rise to the present petition are as follows:

According to the petitioner, it is a registered society under the provisions of the Societies Registration Act, 1860. It is also registered with the U.P. Khadi & Gramoudyog Board and under the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act"). It is engaged in the business of sale of foodgrains, pulses, masala, edible spices etc. For the assessment years 1997-98 to 2000-01, the Assessing Authority had granted exemption to the petitioner on sales made by it to the extent of Rs. 50,00,000/-. Subsequently, the Deputy Commissioner (Assessment) 7, Trade Tax, Kanpur, respondent No. 2, who had now become the Assessing Authority of the petitioner, issued notices dated 1.9.2003 in respect of the aforementioned assessment years, calling upon the petitioner to show cause as to why re-assessment proceedings u/s 21 of the Act be not initiated as in terms of the notification dated 27.2.1997, exemption on a turnover of Rs. 50,00,000/- had been granted for processing, packing and marketing of goods mentioned at serial No. 38 of the said notification whereas the petitioner is doing the work of manufacturing. The notices dated 1.9.2003 are under challenge in the present writ petition on the ground that the Assessing Authority had accepted the books of account and the disclosed turnover and had granted exemption on a turnover of Rs. 50,00,000/- after clue examination of the relevant records and the proceedings u/s 21 of the Act are clearly on a change of opinion. Further, mixing of various Masala powder does not form any new condiment and, therefore, the view taken by the respondent No. 2 in issuing the notices is contrary to law. The petitioner is not engaged in manufacturing of spices but is engaged only in processing and the product obtained as a result of mixing of various spices remained spices/condiment and no new commodity has come into existence.

3. In the counter affidavit filed by Poonam Gupta, Deputy Commissioner (Assessment) 7, Trade Tax, Kanpur, respondent No. 2, it has been stated that only the existence of belief for reopening the assessment u/s 21 of the Act can be challenged and not its sufficiency. From a reading of the notices in question, it clearly establishes that the reasons for belief existed and, therefore, the proceedings are valid in the eyes of law. It has further been stated that the activities carried on by the petitioner is not simply processing of spices but results into manufacture and, therefore, no exemption is available under the notification dates 27.2.1997. The proceeding have been justified on the ground that reasons to belief has been formed on relevant material and is in accordance with law.

4. In the rejoinder affidavit and the supplementary affidavit filed, on behalf of the petitioner, the plea taken in the writ petition have been reiterated. It has been stated that the product which comes out of mixing of various spices, remains spices and cannot be said to be anew product. Thus, the proceedings are wholly illegal and without jurisdiction.

5. We have heard Sri Ashok Kumar, learned Counsel for the petitioner, and Sri B.K. Pandey, learned Standing Counsel, appearing for the respondents.

6. Sri Ashok Kumar, learned Counsel, submitted that the petitioner had been granted registration by the U.P. Khadi & Gramoudyog Board for the products, namely, foodgrains, pulses and spices. The notification dated 27.2.1997 issued by the State Government exempts the turnover upto Rs. 50,00,000/- in respect of the aforesaid products. The petitioner is not engaged in manufacture of any spices. It simply process them by mixing or grinding which do not result in any new commodity. The activities undertaken by the petitioner do not amount to manufacture but is covered by the term processing under the notification dated 27.2.1097. In support of his aforesaid pleas, he has relied upon the following

decisions:

(i) Deputy Commercial Tax Officer and Anr. v. Mvelmurugan STI 2000 Supreme Court 175,

(ii) The Commissioner, Sales Tax v. Ashok Grah Udyog Kendra (P) Ltd. 2004 NTN (25) 702 (Allahabad).

7. Sri B.K.Pandey, learned Standing Counsel, on the other hand, submitted that the petitioner is engaged in manufacture of various spices by mixing and grinding which results into an entirely new commodity and, therefore, it is not entitled for exemption under the notification dated 27.2.1097. Me relied upon a decision of the Apex Court in the case of A.P. Products Vs. State of Andhra Pradesh and Others,

8. We have given our anxious consideration to the various pleas raised by the learned Counsel for the parties. It is not in dispute that the petitioner has been registered with the U.P. Khadi & Gramoudyog Hoard and has been given a certificate for the products of foodgrains, pulses and spices. The petitioner apart from being engaged in the activities of trading various spices, such as Ajwain, Kalauji, Jeera, Raee, is also engaged in purchase of naturally grown spice; and after grinding the same, mixes with other spices and sells them. Such spices which are being sold by the petitioner, are Garam Masala, Chat Masala, Sabji Masala, Meat Mnsala etc. The question is whether these spices which the petitioner obtain as a result of mixing and grinding of various spices in different proportion, can be said to be a process of manufacture or simply processing. Under the notificatio.i dated 27.2.1997 issued by the State Government, at serial No. 38 exemption upto the turnover of Rs. 50.00,000/- has been, granted on processing, packing and marketing of foodgrains, pulses, spices and Chaunk.

9. In the case of A.P. Products (supra), the Apex Court after considering various decisions on the issue as to what is proceeding and what is manufacturing, has held that the ingredients which an used in preparation of masala after grinding and mixing, lose their own identity and character and a new product separately known to the commerical world comes into existence. Since separate commercial commodities emerges into existence, they become separaely taxable goods or entities for the purpose of sales tax.

10. In the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. PIO Food Packers 1980 Su (1) SCC 174, the Apex Court has held as under:

Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary. There must be transformation; a new and different article must emerge, having a distinctive name, character or use.

11. Applying the test laid down by the Apex Court in the'' aforesaid case, we find that as a result of the process undertaken by the petitioner, a new and different

article has emerged, which is entirely different from the natural grown spices. Thus, the petitioner is a manufacturer of such spices, namely. Garam Masala, Chat Masala, Sabji Masala, Meat Masala etc. and it cannot be said that the activities undertaken by the petitioner amounts to simply processing of spices.

12. In the case of M. Velmurugan (supra), the Apex Court has found that the assessee has merely mixed the ingredients for the facility of the consumers and such mixture of ingredients did not bring into existence any new commodity. This case does not apply to the facts of the present case as the petitioner not only mixes various spices but also uses the process of grinding them and making an entirely new commercial commodity, for example, Garam Masala, Chat Masala, Sabji Masala, Meat Masala etc. It is not for the facility of the customers.

13. In the ease of Ashok Crah Udyog Kendra (supra), this Court has held that grinding spices and condiment and mixing them would not amount to manufacture as no new commodity in common parlance has come into existence. This view cannot be said to be a good law as it is contrary to the view taken in the latest decision of the Apex Court in the case of A.P. Products (supra).

14. So far as the plea that the proceeding u/s 21 of the Act has been initiated on a mere change of opinion, we find from the assessment order that there is no discussion as to whether the exemption is admissible on a manufacture of goods or only on processing of goods under the notification dated 27.2.1997. The impugned notices have set out in detail the reasons for initiating the proceeding, which cannot be said to be irrelevant. In our considered opinion, the respondent No. 2 is wholly within his jurisdiction to initiate the proceeding u/s 21 of the Act by issuance of the impugned notices and the same are in accordance with law.

15. No other point has been pressed.

16. In view of the foregoing discussions, we do not find any merit in this petition, which is hereby dismissed with costs.

