(2000) 02 SC CK 0134

In the Supreme Court Of India

Case No : Civil Appeals Nos. 7237-38 Of 1997

Britannia Industries Ltd. APPELLANT

Vs

T.N. Pollution Control Board and Another RESPONDENT

Date of Decision : 15-02-2000

Acts Referred:

Water (Prevention and Control of Pollution) Cess Act, 1977

Citation : AIR 2000 SC 2689 : (2000) AIRSCW 2863 : (2000) 102 CompCas 134 : (2000) 3 GLT 14 : (2000) 9 JT 17 : (2000) 5 SCALE 577 : (2000) 7 SCC 93 : (2000) 2 SCR 310 Supp : (2000) 5 Supreme 545 : (2000) 2 UJ 1423 : (2000) 3 UPLBEC 2191

Hon'ble Judges : S. P. Bharucha, J;S. N. Phukan, J;Ruma Pal, J

Bench : Full Bench

Final Decision : Allowed

Judgement

S.P.BHARUCHA, J.-The appellant challenges the correctness of an order of a Division Bench of the High Court at Madras dismissing a writ petition filed by it. The appellant manufactures biscuits, bread and cake. It uses as ingredients for the purpose wheat flour, milk powder, sugar and vanaspati. It was assessed to cess under the Water (Prevention and Control of Pollution) Cess Act, 1977 on the basis that it was a specified industry that fell under the scope of Entry 15 of Schedule I thereof. Entry 15, at the relevant time, read, "Processing of animal or vegetable products industry". Since the appellant''s appeal was not decided for about three years, it filed a writ petition. The writ petition directed the respondents to dispose of the appeal. Accordingly, the appeal was heard and dismissed, the Appellate Committee taking the view that wheat flour, sugar and hydrogenated vegetable oils were vegetable products and milk powder was an animal product, and these were further processed by the appellant for the manufacture of biscuits and bread. The appellant impugned the correctness of the order of the Appellate Committee by a writ petition filed in the High Court. The High Court took the view that wheat, sugar and hydrogenated vegetable oil were agricultural products, while milk powder was an animal product. By mixing and processing these, biscuits were manufactured. The word "process" denoted a continuous and regular action or succession of actions taking place or carried on in a definite manner and leading to the accomplishment of a result. The appellant, since it used milk powder and agricultural products and processed them, fell within the scope of the said Entry 15.

2. We think, in the first place, that the said Entry 15 needs to be analysed. "Processing of animal or vegetable products industry" must mean, in our view, an industry that processes animal/vegetable products. The question, therefore, is whether the appellant (a) processes, and (b) processes animal or vegetable products.

3. This Court was concerned with the said Act in the case of Saraswati Sugar Mills v. Haryana State Board. It noted:

"The essential point thus is that in manufacture something is brought into existence which is different from that which originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. Processing essentially effectuates a change in form, contour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something."

This Court also said that the said Act was a fiscal enactment. In the context in which the word "vegetable" was used in the said Entry 15, a vegetable product meant a product of or made of or out of vegetables. Vegetables, as understood in common parlance, were not products of manufacture. Sugarcane was not, therefore, a vegetable, though it might be an agricultural product. The word "vegetable", in the context, did not attract a botanical meaning.

4. In our view, wheat flour, which the appellant uses as an ingredient in the manufacture of biscuits, bread and cake, is not, therefore, a "vegetable product". Wheat is not in common parlance understood to be a vegetable. Milk powder can be said to be the result of processing of an animal product, namely, milk, but it cannot be said to be an animal product.

5. Further, the manufacture of biscuits, bread and cake by the appellant using wheat flour and milk powder is not the processing of wheat flour or milk powder. It is the utilisation thereof as ingredients in the manufacture of biscuits, bread and cake, altogether different products.

6. Our attention was drawn by learned counsel for the respondents to the judgment of this Court in CCE v. Rajasthan State Chemical Works which judgment was also relied upon by the High Court in the judgment under appeal. It is difficult to see how this judgment is of any assistance in the case at hand, particularly when we have the judgment in Saraswati Sugar Mills that deals squarely with the said Act. In any event, this judgment also notes:

"WHENEVER a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. But it is only when the change or a series of changes take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Manufacture thus involves series of processes."

This judgment, therefore, itself would lead to the conclusion that when the appellant produces as a result of a series of processes biscuits, bread and cake, using, inter alia, wheat flour and milk powder, it manufactures the same and that its industry does not process animal or vegetable products.

7. The civil appeals are, therefore, allowed. The order under appeal is set aside. There shall be no order as to costs.

