(2007) 03 AHC CK 0247

In the Allahabad High Court

DCM Shriram Industries Ltd. Unit : Daurala Sugar Works (Distillery Unit) APPELLANT

Vs

The Central Pollution Control Board and Others RESPONDENT

Date of Decision : 28-03-2007

Acts Referred:
Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 16, 17, 2, 3, 6

Citation : (2007) 5 ADJ 439 : (2007) 3 AWC 2895

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Rajes Kumar, J.—In Writ Petition No. 1 of 1998, the petitioner seeks the following reliefs:

(a) Issue a suitable writ, order or direction in the nature of certiorari quashing the appellate order dated 8.10.1997 (Annexure No. 1 to the writ petition).

(b) Issue a suitable writ, order or direction in the nature of mandamus restraining the respondents from taking any coercive or punitive action against the petitioner in pursuance of the appellate order dated 8.10.1997.

(c) Issue a suitable writ, order or direction in the nature of Mandamus directing the respondents to refund to the petitioner a sum of Rs. 15,05,722.55 deposited by the petitioner under protest.

In Writ Petition No. 1159 of 1999, the petitioner seeks the following reliefs:

(1) a suitable writ, order or direction in the nature of certiorari quashing the appellate order dated 01.11.1999.

(2) a suitable writ, order or direction in the nature of mandamus restraining the respondents from taking any coercive or punitive action against the petitioner in pursuance of the order dated 01.11.1998.

(3) a suitable writ, order or direction in the nature of mandamus directing the respondents to refund to the petitioner a sum of Rs. 3,00,000.00 deposited by the petitioner under protest.

2. Both the above petitioners are Distilleries and were involved in the manufacturing of Industrial Alcohol and Potable Liquors i.e. Indian made Foreign Liquor and Country Liquor. The Cess Officer u/s 6 of the Water (Prevention & Control of Pollution) Cess Act, 1977 (hereinafter referred to as the "Cess Act") passed assessment orders and demanded cess at Rs. 15,05,722.55 for the period 26.1.1992 to 31.10.1996 in the case of the petitioner in Writ Petition No. 1 of 1998 and a sum of Rs. 1,02,069.45 for the period 1.12.1992 to 31.3.1993 and Rs. 7,61,440.86 for the period 1.1.1994 to 31.7.1998 in the case of the petitioner in Writ Petition No. 1159 of 1999. The demands raised by the Cess Officer were confirmed in Appeals by the respondent No. 3. The levy had been confirmed on the ground that Molasses is an agricultural product and Alcohol etc. was being manufactured by the processing of Molasses. It has been held that the petitioner unit engaged in the manufacturing of alcohol from molasses falls under the Industry involved in the processing of agricultural products, notified at Serial No. 14 of Schedule I. The claim of the petitioner was that its industry does not fall within the ambit of Serial No. 14 of Schedule I.

3. Heard Sri S. D. Singh appearing on behalf of the petitioner in Writ Petition No. 1 of 1998 and Sri Vivek Chaudhary appearing on behalf of the petitioner in Writ Petition No. 1159 of 1999 and Sri H. N. Tripathi appearing on behalf of the respondents.

4. Sri S. D. Singh, learned Counsel for the petitioner submitted that Molasses is not an agricultural product. It is held to be bye product obtained in the process of manufacturing of Sugar from the Sugar Cane, by the Apex Court in the case of Saraswati Sugar Mills v. Haryana State Board (supra) and by this Court in the case of Shankar Industries v. U.P. Krishi Utpadan Mandi Samiti and Anr. reported in (para-10). He submitted that though, the decision in the case of Shankar Industries v. U. P. Krishi Utpadan Mandi Samiti and Anr. (Supra) has been over ruled by the Apex Court in the case of Krishi Utpadan Mandi Samiti and Anr. v. Shankar Industries and Ors. reported in 1993 Suppl. 3 SCC 361 , but para 10 of the Full Bench decision on which, he is placing reliance, has not been over ruled. He also placed reliance in the cases of Britannia Industries Ltd. vs. T. N. Pollution Control Board, (2000) 9 SCC 68 and Kesarwani Zarda Bhandar v. State reported in 2003 (7) UPLBEC 2254. He submitted that Molasses completely looses the agricultural character, therefore, it is not an agricultural product. He submitted that the petitioner Industry is involved in the manufacturing of Alcohol from Molasses by the distillation process. He submitted that the processing and manufacturing are two different and Manufacturing of agricultural product is not covered in Schedule and only those Industries involved in the processing of agricultural product is covered. He submitted that in a fiscal matter rule of strict interpretation is to be applied and plain meaning of the word processing of

agricultural product is to be adopted.

5. Sri Vivek Chaudhary, learned Counsel for the petitioner submitted that the Industry involved in the processing of all the agricultural products and their wastes have been added with effect from 2.1.1992 as a result of decision of Apex Court in the case of M/s. Saraswati Sugar Mills Vs. Haryana State Board and others, He submitted that the aforesaid amendments have been made by the Central Government in exercise of power u/s 16(1). u/s 16(1), power is, only to add and not to extend the meaning of the Industry. According to him, by means of amendment, Vegetable Product Industries has been extended by including Industry involving processing of all agricultural products and their wastes. Thus, the amendment is inconsistent to the power u/s 16(1). He further submitted that Section 3 is the charging section and the amendment is contrary to Section 3.'' He relied upon the para 4 of the Britannia case referred hereinabove.

6. Sri H.N. Tripathi, learned Counsel for the respondents, submitted that in exercise of power u/s 16, a separate rule has been framed providing rebate. He submitted that Distillery is covered as an Industry in Schedule of Rule 6 of the Water (Prevention & Control of Pollution) Cess Act, 1977. According to him, inclusion of Distillery Industry under the entry, processing of agricultural product at Serial 16 of the Schedule shows the intent of legislature that the Distillery Industry is covered within the ambit of Industry mentioned in Serialno.14 of the Schedule 1.

7. Sri S.D. Singh, learned Counsel for the petitioner further submitted that the rule has been made in exercise of delegated power Thus, the levy should be considered within the ambit of the Act and not the rule. He submitted that only those product is covered as an agricultural product which is obtained directly and relatable to the item, like Ice-cream, Curd and Khoya is milk product being obtained from the milk and is not an animal product. He submitted that from the Sugar Cane, Sugar Juice is produced and thereafter, from such Juice, Sugar and molasses are manufactured, thus, Molasses is not an agricultural product being not directly manufactured from the Sugar Cane. He further submitted that in serial No. 14, Industry involved in processing of an agricultural product is included, and not the Industry involved in processing of bye product.

8. Heard learned Counsel for both the parties and given my anxious consideration to the submissions made by the learned Counsel for the parties and perused the order of Tribunal and the authorities below.

9. Section 3(1) of the Act is the charging Section. u/s 3(1), cess is payable by every person carrying any specified Industry''. Section 2(c) of the Act defines the term ''specified Industry'' in Schedule 1 to the Act.

10. Originally there were 15 entries in Schedule 1 which are as follows:

1. Ferrous metallurgical industry.

2. Non ferrous metallurgical industry.

3. Mining industry.

4. One processing industry.

5. Petroleum industry.

6. Petro Chemical industry.

7. Chemical industry.

8. Ceramic industry.

9. Cement industry.

10. Textile industry.

11. Paper industry.

12. Fertilizer industry.

13. Coal (including coke) industry.

14. Power (Thermal and Diesel) generating industry.

15. Processing of animal or vegetable products industry.

11. Prior to 1992, cess was demanded from the petitioner under the Act. It was challenged in Writ Petition No. 494 of 1980. The said matter and the other similar matters from all over the country were transferred to the Hon''ble Supreme Court vide TC 91 of 1989. They were decided together by the judgment reported in the case of Saraswati Sugar Mills v. Haryana State Board (supra). The Apex Court held that the Sugar Cane is not a vegetable product, therefore, do not come within the entry 15 of Schedule 1 of the Cess Act. It has been further held that "The Cess Act is a fiscal statute enactment. In the context, in which the word "Vegetable" is used in the entry 15 ''vegetable product'' means product of or made of or out of vegetable. ''Vegetables'' as understood in common parlance are not products of manufacture, unless we say that agriculture is an industry for certain purposes and vegetables are products of that industry. In order to bring an industry within any of the entries of Schedule I, it has to be seen what is the end product produced by that industry. Sugar Cane is not a vegetable though it may be an agricultural product."

12. Thereafter, Central Government vide Notification No. GSR 14 (E) dated 02.01.1992 in exercise of the power u/s 16 of the Act, amended the entry No. 15 of Schedule 1. The amended entry 15 reads as follows:

15- Processing of animal or vegetable products industry (including processing of milk, meat, hides and skins, all agricultural products and their waste).

13. According to the learned Counsel for the opp. Party by the aforesaid amendment in the entry 15 now the industries involved in processing of all agricultural product is included in the Schedule industry. Appellate Authority held

that the industry involved in the processing of molasses producing. Alcohol is covered under the entry 15 of Schedule 1. According to the Appellate Authority, Molasses is an agricultural product obtained from the Sugar Cane and by means of distillation, same is being processed.

14. The question for consideration is that (a) Whether Molasses is an agricultural product (b) Process of distillation by which from Molasses, Alcohol is produced falls within the ambit of processing or manufacturing (c) whether it is covered under the entry 15.

15. It is useful to refer the definitions of ''Product'' as defined under the various Dictionary:

--------------------- --- Collins Advanced Product is something that is produced Learners and sold in large quantities, often as a Dictionary result of a manufacturing process. --------------------- --- The concise Oxford A thing or substance produced by Dictionary natural process or manufacture. --------------------- --- Oxford English The quantity obtained by multiplying Dictionary. two or more quantities together. A thing produced by nature or a natural process. --------------------- --- Words and Phrases The word ''Product'' imports an article Permanent Edition which is made of something, and which, when made, has characteristics which are apparent to the senses. --------------------- --- A New English A thing produced or brought forth. The Dictionary on quantity obtained by multiplying two or Historical more quantities together. Principles --------------------- ---

16. It is useful to refer the definitions of ''Agriculture'' as defined under the various Dictionary:

----------------------------- -------------------------------------- The World Book Encyclopedia. Agriculture is the world''s most important industry. It provides us with almost all our food. It also supplies materials for two other basic human needs- clothing and shelter. In addition, agriculture provides materials used in making many industrial products, such as paints and medicines. About half the world''s workers are employed in agriculture- far more than in any other industry. ----------------------------- -------------------------------------- Encyclopedia Americana, Agriculture often includes animal husbandry, which is closely associated with plant raising. On the other hand, ''agriculture'' can be used in a limited technical sense to refer only to raising field crops, in this usage it is differentiated from horticulture (gardening) and arboriculture (orcharding). The present article deals with plant cultivation of all kinds- field, garden and orchard- from the viewpoint of the history of human culture. ----------------------------- -------------------------------------- The Shorter Oxford English The science and art of Dictionary cultivating the soil, including the gathering in of the crops and the rearing of live stock; farming." ------------------------------ --------------------------------------- Halsbury''s Law of England. Agriculture includes horticulture, fruit growing, seed growing, dairy farming and livestock breeding and keeping, the use of land as grazing land, meadow land, osier land, market gardens and nursery grounds and the use of land for woodlands where that use is ancillary to the farming of the land for other agricultural purposes. ------------------------------ ---------------------------------------

17. Cess Act is a fiscal statute. It is to be interpreted strictly and natural meaning of each word has to be given. The word agricultural product is to be construed in common parlance. Reliance are placed on the decisions in the cases of Saraswati Sugar Mills v. Haryana State Board (supra), State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc.,

18. In the case of Saraswati Sugar Mills v. Haryana State Board (supra), Sugar Cane has been held as an agricultural produce.

19. In the case of Krishi Utpadan Mandi Samiti and Anr. v. Shankar Industries and Ors. reported in 1993 Suppl. 3 SCC 361, the Apex Court held that Sugar Cane is an agricultural produce out of which, juice is extracted. Thus, there is no manner of doubt that the Sugar Cane is an agricultural produce.

20. Admittedly, Molasses is obtained from the Sugar Cane. Molasses is held as bye product obtained in the process of manufacture of Sugar from Sugar Cane. Bye product is normally considered as a product which is not intended to be manufactured, but is being obtained in the process of manufacturing of another product which is intended to be manufactured. From the sugar cane, Sugar is normally intended to be manufactured and in the process of manufacturing of Sugar, Molasses is obtained, thus, the main product is Sugar and Molasses is bye product. It may be a bye product, but it is a product. Since it is obtained from the Sugar Cane, thus, it is a Sugar Cane product. Sugar Cane has been held as an agricultural produce, therefore, both Sugar and Molasses are the agricultural products. Learned Counsel for the petitioner submitted that from the Sugar Cane, by process of crushing of Sugar Cane, firstly, juice is being manufactured and, thereafter, from Sugar Cane juice, Sugar and Molasses are being manufactured thus, the Molasses is a product of Sugar Cane juice and not of sugar cane and therefore is not an agricultural product. In support of his contention, he has given an example of Milk powder, which is held to be milk product and not the animal product as held in the case of Britannia Industries Ltd. v. T. N. Pollution Control Board and Anr. (Supra).

21. Argument of learned Counsel for the petitioner may be acceptable in a case where, from Sugar Cane firstly sugar juice is being produced as a product and thereafter, from the Sugar Cane juice Molasses is being manufactured, but the argument of learned Counsel for the petitioner cannot be accepted in case where in a continuous process industry from Sugar Cane, Sugar and Molasses are being

manufactured directly and an intermediary product in the form of Sugar Cane juice is being not obtained or manufactured. In the Sugar Industry, raw material is the Sugar Cane and not the Sugar Cane juice and final product are Sugar and Molasses, therefore, for Sugar Industry, it is the Sugar Cane from which, Sugar and Molasses are being produced. Thus, in my view, Molasses is a of Sugar Cane and since the Sugar Cane is agriculture produce [thus, Molasses is an agricultural product.

22. No doubt, the word "processing" and "manufacturing" are two different concepts. Every processing may not amount to manufacturing, but in every manufacturing there is processing. In the case of Saraswati Sugar Mills v. Haryana State Board(supra), the Apex Court observed as follows:

The essential point thus is that in the manufacture something is brought into existence which is different from that 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. (Vide Corn Products Refining Co. v. Federal Trade Commission 1944 CCA 8 144 F 2nd 211.

The use of the word processing is also significant. Processing of vegetable products industry are normally understood in the sense they relate processing of vegetables which even after processing retain its character as vegetable.

23. In view of principle laid down by the Apex Court in the case of Saraswati Sugar Mills v. Haryana State Board referred hereinabove, the question for consideration is whether the manufacturing of Alcohol from Molasses is a mere processing simplicitor or manufacturing. Undoubtedly, Alcohol does not retain any character of Molasses. By a process of distillation, a new commercial commodity in the form of Alcohol comes into being which does not have any character of Molasses. Thus, the process of conversion of Molasses to Alcohol cannot be said to be a processing simplicitor, but it is a process of manufacturing.

24. In the case of Commissioner of C. Ex., Bolpur Vs. Steel Authority of India Ltd., the Apex Court held that Molasses is a heavy dark coloured viscous liquid product obtained in the final stage of manufacturing of Sugar by Vacuum pan from Sugar Cane or Gur, and once the natural Alcohol are obtained, they are considered different from the Molasses.

25. For the manufacturing it is necessary that a new commodity should comes into being which is different from the original but for the processing simplicitor it is not necessary that a new commercial commodity comes into being. In some of the case processing may result into manufacturing on account of the complete change of the original material and the commencement of a new commercial

commodity but in some cases processing may not result to manufacturing. Processing is essential for manufacturing. In the case of the manufacturing of alcohol from molasses undoubtedly processing is involved. Due to the commencement of a new commercial commodity in the form of alcohol the processing results into manufacturing but it can not be said that no processing is involved in the producing alcohol from molasses.

26. Learned Counsel for both the parties agreed that the Entry 15 of Schedule I has been amended after the decision of the Apex Court in the case of Saraswati Sugar Mills v. Haryana State Board (supra) in which industries involved in the manufacturing of alcohol from molasses has been held not covered within the Entry "processing of animal or vegetable product industry. Apex Court held that sugar cane is not a vegetable product and accordingly, held that industry involved in the manufacturing of alcohol from the molasses do not fall within the Entry 15 of Schedule I. In Entry 15 industry involved in the processing of all agriculture product appears to have been included with the view to cover Industries manufacturing alcohol from molasses by the processing of distillation. In exercise of power conferred u/s 17 of The Water (Prevention And Control of Pollution) Cess Act, 1977 Central Government made rule namely, The Water (Prevention And Control of Pollution) Cess Rules, 1978, which came into force w.e.f. 24.07.1978. In serial No. 7 of the Schedule processing of animal or vegetable products industry including processing of milk, meat, hide and skin, all agricultural products and their waste is mentioned. In the aforesaid Schedule categories of industry are mentioned. In Column 3 of Schedule from A to I "distillery" is mentioned. This shows the intent of the Legislature to include distillery within the ambit of the industry involved in the processing of milk, meat, hides and skin, all agricultural products and their waste.

27. I do not agree with the submission of learned Counsel for the petitioner that u/s 16 of the Act, power can be exercised to add only and in the entry 15, industry involved in the processing of agricultural products are added by way of extending the meaning of "vegetable product industry". Perusal of entry reveals that the industries involved in processing of milk, meat, hides and skins, all agricultural products and their wastes" have been included in the entry 15 as a result of addition and not by way of extending the meaning of word vegetable product industry.

28. For the reasons stated above, it is held that the petitioner''s industry engaged in the processing of molasses falls under the Entry 15 of Schedule-I of Notification No. GSR 14 (E) dated 02.01.1992, namely, processing of animal or vegetable product industry (including processing of milk, meat, hides and skins, all agricultural products and their waste).

29. In the result, both the writ petitions fail and are accordingly, dismissed. There shall be no order as to costs.

