
(2010) 05 GAU CK 0020
In the Gauhati High Court
Case No : Writ Appeal No. 176 of 2007

Deepak Kumar Poddar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 18-05-2010

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 17(4), 2(22), 9(4)

Citation : (2010) 6 GLR 835 : (2010) 31 VST 8

Hon'ble Judges : R.S. Garg, C.J.; Ranjan Gogoi, J

Bench : Division Bench

Advocate : A.K. Saraf, D. Baruah, N. Hawelia, M.L. Gope, S. Chetia and A. Goyal, for the Appellant; K.N. Choudhury, Additional Advocate-General and R. Dubey, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—Aggrieved by the rejection of his writ petition, the appellant who is the sole proprietor of M/s. Tirupati Food Products, has instituted the present proceedings.

2. The brief facts that will be required to be noticed for the purposes of the present adjudication may be stated at the outset:

The petitioner claims to be engaged in the business of manufacture and sale of packaged pure mustard oil in a registered small-scale industrial unit located at Pancharatna Road, Goalpara in the State of Assam. The aforesaid unit of the petitioner which went into commercial production in the year 2003, it is stated, was set up pursuant to the Assam Industries (Sales Tax Concession) Scheme, 1997 which was framed in exercise of powers u/s 9(4) of the Assam General Sales Tax Act, 1993 (hereinafter referred to as, "the Act"). It is the pleaded case of the petitioner that in the Industrial Policy Resolution announced by the Government of Assam in the year 1997, amongst others, individual industrial units established after April 1, 1997 were promised sales tax exemption on the

sale of finished products as well as on the purchase of raw materials. Such exemption was to be granted for a period of seven years from the date of commencement of commercial production.

3. As exemption from sales tax is regulated by the provisions of Section 9(4) of the Act which contemplates the framing of appropriate schemes by the State Government, the Assam Industries (Sales Tax Concession) Scheme, 1997 was accordingly framed. Section 9(4) of the Act and Clause (III) of the Scheme, which are in the following terms, will be required to be specifically noticed and, therefore, the said provisions are being reproduced herein-below:

9. (4) The State Government may, from time to time by notification in the Official Gazette, frame one or more schemes for the grant of relief to any class of industries within the State or within any specified part of the State on or after such date as may be specified in such scheme and producing such goods as may be specified therein by way of full or partial exemption of any tax payable under this Act on the raw materials or other input purchased by them within the State or on the manufactured goods sold by them within the State or in the course of inter-State trade or commerce for such period or periods as may be specified or by way of deferment of the tax payable by them under this Act for such period as may be specified and subject to such other restrictions and conditions as may be provided in such scheme or schemes

Clause III

The scheme shall apply to the industrial units situated in Assam, which are considered eligible for sales tax exemption on purchase of raw materials within the State of Assam and also on the sales of the finished products, manufactured in such eligible units in the State of Assam and in the course of inter-State trade and commerce, with reference to the "1997 Incentive Scheme" formulated in pursuant to the "Industrial Policy of Assam, 1997".

4. According to the petitioner, being eligible, the Directorate of Industries, Government of Assam, granted an eligibility certificate to the petitioner on February 12, 2004 certifying the petitioner's unit to be eligible for sales tax exemption on the finished products manufactured in the said unit as well as on the raw materials used. In the said eligibility certificate, which was valid from May 18, 2003 to May 17, 2010, it was specifically mentioned that the raw materials on which the petitioner would be entitled to exemption are "mustard seeds" and "raw mustard oil" and the finished product as mustard oil. However, the District Level Committee in a meeting held on April 9, 2004 took the decision that the process of filtration of raw mustard oil and, thereafter, packing the filtered mustard oil in plastic pouches, which was being undertaken in the unit of the petitioner, does not amount to manufacture/processing as there is no physical change of the basic raw material. The committee, therefore, resolved that the raw mustard oil and the mustard oil packed in pouches in the petitioner's unit as finished product from the said raw material, i.e., raw mustard

oil, will not be eligible for sales tax exemption. In the said meeting the committee also resolved that the exemption earlier granted on mustard seeds and mustard oil produced by the oil expeller installed in the petitioner's unit from mustard seeds would continue to enjoy the exemption as before.

5. Pursuant to the said decision of the District Level Committee, the eligibility certificate of the petitioner was amended and raw mustard oil which was earlier declared to be eligible for exemption of tax as a raw material stood deleted. It appears that, thereafter, the jurisdictional Superintendent of Taxes by a notice dated July 9, 2004 took note of the aforesaid developments and informed the petitioner that in view of the change of its entitlement for exemption from payment of sales tax, the petitioner is required to submit return and, thereafter, pay the requisite taxes. It also appears that an authorization certificate contemplated by the provisions of the Sales Tax Concession Scheme was issued to the petitioner by the Superintendent of Taxes on July 9, 2004 wherein mustard seeds alone was mentioned as the raw material on which exemption from payment of sales tax would be permissible. In the meantime, the assessing officer of the petitioner proceeded to complete the assessment of the petitioner for the period 2003-04 under the provisions of Section 17(4) of the Act and a notice of demand was issued for a sum of Rs. 5,79,285 inclusive of interest. Aggrieved by the aforesaid actions, the writ petition out of which this appeal has arisen was instituted by the appellant/writ petitioner contending that raw mustard oil and the mustard oil obtained therefrom were both entitled to exemption from payment of sales tax. The assessment of the petitioner as well as the consequential notice of demand was also assailed in the writ petition filed.

6. The learned single judge hearing the writ petition took note of the provisions contained in Section 9(4) of the Sales Tax Act which empowered the State Government to grant exemption from payment of tax under the Act both in respect of raw materials or other inputs as well as on the finished products/manufactured goods. On a consideration of the provisions of Section 9(4) of the Act, the learned single judge took the view that relief by way of exemption was contemplated "to industries producing such goods as may be specified in a notification to be issued". As according to the learned single judge exemption was to be given to units engaged in production of the specified goods in order to be entitled for exemption on the raw materials used as well as the finished products, the process undertaken must be one of production which implies a change of the basic raw material or inputs to such other form that the finished product may partake. On an appreciation of the manufacturing process deployed in the petitioner's unit, as described in paragraph 14 of the writ petition, the learned single judge came to the conclusion that the process deployed was one of filtration and though there is some consequential improvement on the raw material, i.e., raw mustard oil, the end-product, i.e., mustard oil is not substantially different from the raw material/input used. In view of the above conclusion, the learned single judge thought it proper to conclude that the petitioner's unit does not satisfy the requirements spelt out by Section 9(4) of

the Act and, therefore, the exemption notification, i.e., the Concession Scheme issued under the said provisions of the Act can have no application to the petitioner so as to entitle the petitioner to the benefits therein. Aggrieved, this appeal has been filed.

7. We have heard Dr. A.K. Saraf, learned senior counsel for the appellant and Mr. K.N. Choudhury, learned Additional Advocate-General, Assam appearing for the respondents.

8. Dr. Saraf, learned senior counsel for the appellant/writ petitioner, has submitted that u/s 9(4) of the Act exemption is to be granted on purchase of raw materials and also on the sale of the manufactured/ finished goods by an eligible unit. Referring to the Sales Tax Concession Scheme, Dr. Saraf has pointed out that the said Scheme contemplates grant of similar exemption to an eligible unit. Naturally, the Concession Scheme has to conform to the provisions of Section 9(4) of the Act which basic requirement is adequately met in the present case. The exemption under the Act and the Scheme being on raw materials and manufactured goods, Dr. Saraf has laid emphasis on the definition of "manufacture" contained in Section 2(22) of the Act which is in the following terms:

2. (22) "manufacture" with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, blending, finishing or otherwise processing, treating or adapting any goods; but does not include a works contract or such manufactures or manufacturing processes as may be prescribed.

9. Dr. Saraf has submitted that the above definition is in the widest possible terms and includes finished goods which may not strictly undergo a process of manufacture if the dictionary meaning of the word is to be taken into account. On the said basis the learned Counsel has submitted that the normal incidence of a manufacturing process, i.e., creation of a new product distinguishable from the input used is not a necessary pre-condition to attract the definition of "manufacture" contained in Section 2(22) of the Act. An article may be understood to have been manufactured from a particular input even if there is a fair semblance of similarity between the input and the end-product. Dr. Saraf has relied upon a decision of the apex court in *Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others*, as well as another decision of the apex court in *Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow*, wherein a similar wide definition of the expression "manufacture" had been considered by the apex court to mean that no new product is required to come into existence so as to attract the wide definition of "manufacture". In fact, it is pointed out by Dr. Saraf, that in *Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow*, the apex court had taken such a view while considering the definition of "manufacture" contained in Section 2(e) of the U. P. Trade Tax Act, 1948 which is in pari materia with the definition contained in Section 2(22) of the Act. Referring to the process deployed in the appellant's unit, as stated in paragraph 13 of the

writ petition, Dr. Saraf has submitted that the filtration process undertaken transforms raw mustard oil to pure mustard oil. In this regard, the learned Counsel has submitted that the learned single judge has also recorded the finding that raw mustard oil undergoes a process of improvement on account of the filtration. This, according to the learned Counsel, would be sufficient to bring the end-product, i.e., pure mustard oil within the four corners of the definition of "manufacture" in Section 2(22) of the Act so as to make the appellant entitled to the benefit of exemption under the Sales Tax Concession Scheme, 1997.

10. On the other hand, Mr. K.N. Choudhury, learned Additional Advocate-General, Assam, has contended that the judgments of the apex court relied upon on behalf of the appellant/writ petitioner have to be understood in the context of the facts of those cases and not as laying down any law of general application. Mr. Choudhury has also submitted that a consideration of the process deployed in the unit of the petitioner would go to show that raw mustard oil only undergoes a process of filtration before the filtered oil is packed in pouches for sale by the petitioner. The end-product, i.e., mustard oil, according to Mr. Choudhury, is no different from the input, i.e., raw mustard oil. In such a situation, the end-product, according to Mr. Choudhury, cannot be understood to have undergone a process of manufacture even in terms of the wide definition contained in Section 2(22) of the Act.

11. To support the above stand taken, Mr. Choudhury has relied on a judgment of the apex court in *State of Maharashtra v. Shiv Datt & Sons* reported in (1992) 84 STC 497 : (1993) Supp. 1 SCC 222 to contend that the apex court while interpreting the word "manufacture" defined in Section 2(17) of the Bombay Sales Tax Act, 1959 (which definition is in the same terms as appearing in Section 2(22) of the Assam Act) took the view that though the definition of "manufacture" in Section 2(17) of the Bombay Act is in wide terms, the same should not lead to a wide interpretation so as to render the provisions practically meaningless. In this regard, Mr. Choudhury has relied on the following observation contained in the judgment in *State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc.*,

10. ...It is true that under the section it is not necessary that there should be "manufacture" in the sense that a new commodity has been brought into existence as would have been required if that word is interpreted in its literal sense. But, at the same time, the section should be so interpreted to mean only such of the various processes referred to in the definition and applied to the goods as are of such a character as to have an impact on the nature of the goods....

12. Mr. Choudhury has also relied on the decision of the apex court in *M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others*, In the said case the assessee who was engaged in "processing" various oils in the crude form (linseed, castor, mustard) into refined oil disputed his liability to pay tax on the ground that the process deployed does not amount to "manufacture" so as to make the end-

product, i.e., refined oil exigible to tax under the U. P. Trade Tax Act. The apex court in interpreting the definition of the word "manufacture", which is in the same terms as in the Assam Act, took the view that some change in the end-product, as compared to the input, must occur in order to make the definition of "manufacture" applicable to the end-product. In the facts before it the apex court held that the process involved amounted to manufacture as the crude oil had undergone some changes, in the course of the processing thereof that was undertaken.

13. Another decision of the apex court in *State of Maharashtra Vs. Mahalaxmi Stores*, has also been brought to our notice by the learned Additional Advocate-General wherein the apex court while once again interpreting the word "manufacture" as contained in Section 2(17) of the Bombay Sales Tax Act, took the view that to attract the said definition a new commercial commodity must come into existence. The aforesaid view contained in para 5 of the judgment may be conveniently extracted below (at page 81 of 129 STC):

5. From a perusal of the definition, extracted above, it is clear that the processes of producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting of any goods fall within the meaning of the term "manufacture". But it may be pointed out that every type of variation of the goods or finishing of goods would not amount to manufacture unless it results in emergence of new commercial commodity. In the instant case, the very nature of the activity does not result in manufacture because no new commercial commodity comes into existence.

14. Mr. Choudhury has also tried to take assistance from another judgment of the apex court in *Punjab Aromatics Vs. State of Kerala*, wherein the apex court took the view that if the final product can be restored to the stage of the original input by another separate process the test of consumption/use of the input in the manufacture of the final product will not be satisfied so as to attract Section 5A of the Kerala General Sales Tax Act, 1963. Mr. Choudhury has tried to relate the aforesaid judgment to the facts of the present case by contending that if the impurities in the raw mustard oil, which are filtered to produce mustard oil, are to be added to the mustard oil the product would once again assume the character of raw mustard oil.

15. We have carefully considered the facts of the case as revealed by the materials on record and the submissions advanced by the learned Counsel for the parties. We have also read and considered the judgments of the apex court which have been cited before us by the learned Counsel for both the parties.

16. There can be no manner of doubt that the word "manufacture" has been defined in Section 2(22) of the Act in very wide terms. The said definition read in juxtaposition with the dictionary meaning of the word would indicate that what is beyond the normally understood meaning of "manufacture" has been included in the definition contained in Section 2(22) of the Act. Ordinarily and according to

the dictionary meaning, a raw material or an input on which further human effort is expended will give rise to a process of manufacture if by that process a distinct or different commodity comes into existence. However, it is always open to the Legislature to prefer to ignore the literal/dictionary meaning of the word and introduce a deeming provision by which the word can have a wider meaning. The definition of "manufacture" in Section 2(22) of the Act comprehends within its sweep an article which could be the result of a production process or the making, extracting, altering, ornamenting, blending, finishing, processing, treating or adapting of goods. The deployment of any of the means included in the definition may give rise to a new commodity distinguishable from the input used. It may also bring about another article which, though not an entirely different commodity, may have some new features but at the same time retaining some features of the original input. The decisions of the apex court relied upon by the learned Counsel for the parties to which a detailed reference has been made earlier indicate that while interpreting the *pari materia* definition of the word "manufacture" as contained in the Assam Act, the unanimity of the views seems to be that though no new article need to come into existence to attract the wider definition of "manufacture", some changes in the end-product in comparison to the basic input must emerge. The extent of such change may vary from case to case. The decision of the apex court in *Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others*, and *Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow*, in the ultimate analysis, does not lay down any proposition of law fundamentally different from what has been laid down in *State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc.*, and *M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others*, , inasmuch as, the end-product considered in *Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others*, and *Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow*, had undergone some changes compared to the basic material from which the end-product had emerged. The decision in *State of Maharashtra Vs. Mahalaxmi Stores*, which insists on emergence of a new commercial commodity so as to attract the same definition as contained in the Assam Act (the apex court was considering the definition of "manufacture" in the Bombay Sales Tax Act, 1959 which is same as in the Assam Act) though, can be understood as striking a somewhat discordant note, can be explained as a decision earlier in point of time to the one rendered in *Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow*, and also of a Bench numerically smaller than the one which had rendered the decision in *State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc.*, and *M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others*, The decision of the apex court in *Punjab Aromatics Vs. State of Kerala*, may not strictly apply to the present case as in the said case u/s 5A of the Kerala General Sales Tax Act, 1963 which was under consideration, the liability to tax was contingent on consumption of the inputs in the manufacture of other goods for sale or otherwise. It is in the above context that the test of "irreversibility" of the end-product was applied by the apex court.

17. From the above discussions it would be clear that the true purport and

meaning of the wide definition of "manufacture" as contained in the Assam Act is that the expression "manufacture" with all its connotations under the definition would require the final product to be noticeably different from the basic input though both, i.e., the input and the final product may have some similar features. Production of a new commodity or a distinctly different commodity having a separate identity is the requirement of the dictionary meaning of the word "manufacture" which can have no application in the teeth of the exercise of legislative exercise resulting in the enactment of Section 2(22) of the Act. The aforesaid ratio of the law, if applied to the facts of the present case, cannot bring the activity carried out in the petitioner's unit within the meaning of the definition of "manufacture" contained in Section 2(22) of the Act. The end-product "mustard oil", is fundamentally the same as the raw material/input used, i.e., raw mustard oil, inasmuch as, it is only the impurities in the raw mustard oil which is removed by a process of filtration.

18. The above discussion will, however, not conclude the matter. Section 9(4) of the Assam Act contemplates "grant of relief to any class of industries...producing such goods as may be specified therein by way of full or partial exemption of any tax...on the raw materials or other input...or on the manufactured goods sold...."

19. A careful scrutiny of the provisions of Section 9(4) of the Assam Act would indicate that the said section is in two parts. By the first part the identity of the industries entitled to grant of relief by way of exemption is contemplated and the second part deals with the goods in respect of which the benefit of exemption will be applicable. The first part clearly identifies industries "producing goods" to be entitled to grant of relief u/s 9(4) of the Act whereas the second part states that exemption will be both on raw materials and manufactured goods. The emphasis in Section 9(4), therefore, is on production of goods in an industry. The above view also would be consistent with the purpose for which exemptions from payment of revenue are normally granted, i.e., to encourage industries with a view to greater productivity and employment. If Section 9(4) of the Act is understood in the above manner, it would appear that only one specie of manufactured goods, i.e., those "produced" has been contemplated for grant of exemption u/s 9(4). The learned single judge, therefore, was right in laying emphasis on the words "producing such goods": as appearing in Section 9(4) of the Act and in examining the claim of the appellant/writ petitioner from the said perspective.

20. The word "production" has not been defined in the Assam Act. The court will, therefore, have to understand the meaning of the said word by reference to its everyday/common use and by its dictionary meaning. There can be no dispute that production denotes bringing something into life or existence by human effort. Such human effort, naturally, has to be on something already existing, though it is not impossible to visualize production of goods also from non-existent goods, i.e., mining of minerals. If something already exists what would come to life or existence, therefore, logically, has to be something different, i.e.,

something new. The position has been succinctly explained by the apex court in Commissioner of Income Tax, Orissa and Others Vs. N.C. Budharaja and Company and Others, by observing that "The word "production" has a wider connotation than the word "manufacture". While every manufacture can be characterized as production, every production need not amount to manufacture. The word "production" or "produce", when used in juxtaposition with the word "manufacture" takes in bringing into existence new goods by a process which may or may not amount to manufacture. It also takes in all the by-products, intermediate products and residual products which emerge in the course of manufacture of goods.". Filtration of raw mustard oil into mustard oil undertaken by the petitioner, therefore, cannot be understood to amount to production of goods in view of the above.

The learned single judge also held the writ petition to be suffering from 21 inordinate delay. The appellant/writ petitioner has offered explanations in this regard. Irrespective of such explanations we do not think that it would be proper on our part to non-suit the petitioner on the aforesaid ground, particularly in a situation where the contentions advanced by him on the merits of the controversy have been exhaustively considered and dealt with by us in the present order. We, therefore, do not agree that delay should constitute an additional ground for dismissal of the writ petition. However, in view of our findings on the merits of the claims made by the appellant/ petitioner, we are of the view that this writ appeal has to be dismissed. We, therefore, order accordingly and affirm the order passed by the learned single judge.

1. Decision of the single judge: See (2008) 18 VST 356.