
(2007) 04 GAU CK 0006
In the Gauhati High Court

Deepak Kumar Poddar

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 05-04-2007

Acts Referred:

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

Citation : (2008) 18 VST 356

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Hrishikesh Roy, J.—Heard Dr. A.K. Saraf, learned Senior Counsel appearing for the petitioner assisted by A. Goyal. Also heard Mr. R. Dubey, learned Counsel for the respondents.

2. The petitioner has approached this Court challenging the decision dated April 9, 2004 of the District Level Committee, whereby it has been held that the petitioner unit, in respect of the process of filtration of raw mustard oil to make mustard oil, is not entitled to the benefit of sales tax exemption notified through notification dated September 20, 1997 issued by the Government of Assam in exercise of powers u/s 9(4) of the Assam General Sales Tax Act, 1993 (herein after referred to as, "the Act"). Consequent correction of the eligibility certificate granted to the petitioner as well as the assessment of tax against the petitioner vide order dated July 9, 2004 passed by the Superintendent of Taxes, Goalpara have also been challenged in the instant writ petition.

3. Dr. A.K. Saraf, the learned Senior Counsel has submitted that the petitioner unit was set up in order to obtain the benefit of sales tax exemption granted by the notification dated September 20, 1997. After the unit was set up, the petitioner unit was granted the eligibility certificate on February 12, 2004 making it eligible for sales tax exemption, inter alia, for manufacturing finished products, namely "mustard oil", from "raw mustard oil".

4. However, by the impugned decision, the authorities have taken a decision to restrict the benefit of sales tax exemption only on the manufacturing process carried out by the petitioner, whereby mustard oil is produced from mustard seeds. The authorities have also taken the decision to deny the benefit of sales tax exemption for the process whereby, "mustard oil" is produced from "raw mustard oil" through a process in the petitioner's unit wherein raw mustard oil is processed to remove the crushed mustard seeds from the mustard oil and thereafter, pure mustard oil is produced through such process, in the factory of the petitioner.

5. Dr. A.K. Saraf referred to the definition of "manufacture" given in Section 2(22) of the Act to contend that the definition of "manufacture" is a very wide definition and it also includes the process of purification carried out in the factory of petitioner. The learned Counsel further submitted that under the scheme of the sales tax exemption in the notification dated September 20, 1997, no definition of "manufacture" has been given and accordingly, the wide definition of "manufacture" given under the Act may be accepted for the purpose of deciding on the entitlement of the petitioner, to sales tax exemption.

6. In support of interpretation of the word "manufacture", the learned Counsel has relied upon the decision reported in M/s. B.P. Oil Mills Ltd. Vs. Sales Tax Tribunal and Others, , Ashirwad Ispat Udyog and Others Vs. State Level Committee and Others, , Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow,

7. The decision of this Court Megha Assam Coal Mines (India) Ltd. v. State of Assam reported in 2005 140 STC 339 has been also cited by the learned senior counsel.

8. Mr. Dubey, learned Counsel for the respondents, on the other hand, has argued that the definition of "manufacture" given u/s 2(22) of the Act cannot be considered to apply to the manufacture process in the petitioner's unit whereby pure "mustard oil" is produced from "raw mustard oil" by the process of filtration. Accordingly, it is contended that the eligibility certificate initially granted to the petitioner for sales tax exemption has been rightly corrected and the petitioner has also been rightly fastened with the liability for payment of sales tax as there is no physical change in the basic raw material, since the petitioner is selling mustard oil after filtration of mustard oil.

9. In the B.P. Oil Mills case 1998 111 STC 188, the Supreme Court held that definition of "manufacture" given in Section 2(e1) of the U.P. Trade Tax Act, 1948 includes processing and accordingly in the facts of the case held that the nature and extent of processing to which crude oil is subjected to make it refined oil, bring the latter within the meaning of the expression "goods manufactured" as mentioned in Section 3(3)(b)(iii) of the said Act.

10. In the case of Ashirwad Ispat Udyog 1999 112 STC 207, the Supreme Court held that a process, whereby iron rods and steel scrap of considerable bulk are

cut by mechanical process into pieces for utilisation in rolling mills and foundries, would fall within the wide definition of "manufacture" u/s 2(j) of the M.P. General Sales Tax Act, 1958.

11. The Supreme Court in *Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow*, has held that expression "manufacture" in the U.P. Trade Tax Act, 1948 is wider in scope than in Central Excise Act, 1944 and the said expression would also cover such activities, which do not bring into existence a different article. Accordingly the Supreme Court held that coal briquettes or "coal tikli" made out of coal are a different commodity from coal while interpreting the provisions of the U.P. Trade Tax Act, 1948.

12. In *Megha Assam Coal Mines (India) Ltd.* 2005 140 STC 339 this Court was examining whether washed clean coal through a process of removing ash content from 25 per cent to 5 per cent, become a different product from raw coal, within meaning of definition of "manufacture", given in Section 2(22) of the Assam General Sales Tax Act, 1993.

13. From the above decisions cited by the learned Counsel for the petitioner, it can be inferred that in order to decide on the eligibility of the petitioner's unit for sales tax exemption, one has to examine the issue on the basis of the purport and meaning of the notification dated September 20, 1997 granting the said exemption. As the beneficial notification has been issued in exercise of powers u/s 9(4) of the Act, it would be also appropriate to look at the provisions of Section 9(4) of the Act. From the decisions cited one can see that, in each of those cases, the court examined the issue in light of the relevant statutory enactments. Thus it would not be appropriate to straightaway apply the interpretation given by the courts, in the context of specific definitions contained in other statutes, to the case in hand.

14. The beneficial notification dated September 20, 1997 containing the "scheme" granting sales tax exemption does not provide the meaning of "manufacture". But as the said notification has been issued in exercise of powers u/s 9(4) of the Act, it may be useful to look at the words in the Section to decide on the applicability of the beneficial scheme to the petitioner industry or to a certain process in the said industry. Section 9(4) of the Act is extracted as herein below:

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:

Provided that the State Government may withdraw any such exemption granted by any scheme at any time as it may think proper.

16. Under the afore quoted Section 9(4) of the Act, the Government by issuing notifications may frame scheme for grant of relief of sales tax exemption in respect of industries set up within the State and the said exemption is to be granted for production of such goods as may be specified in the notification. Exemption may be granted on tax payable on the raw material or on other inputs purchased by the concerned industries or on manufactured goods sold by such notified industries.

17. From a reading of the said section, it appears that production of goods is envisaged under the provision of Section 9(4). Since the entitlement of the petitioner is required to be examined with reference to the language contained in said Section and also the words in the notification itself, it may not be entirely correct to rely on the wider definition of "manufacturer" given u/s 2(22) of the Act, to decide as to whether, the activity of the petitioner in processing "raw mustard oil" to produce pure "mustard oil", would be eligible for sales tax exemption under the notification dated September 20, 1997 issued u/s 9(4) of the Act.

18. By the notification dated September 20, 1997 the beneficial scheme has been made applicable on purchase of raw material and sale of finished products manufactured in eligible units located within the State of Assam. What is thus envisaged is production of a product by using raw material, to make an unit eligible for the benefit of sales tax exemption under the scheme notified on September 20, 1997.

19. In the instant case, by the process that is used within the petitioner's factory, no new product can be said to be produced inasmuch as, the petitioner, through the process of purification of "raw mustard oil" does not convert "raw mustard oil" into anything else but mustard oil. Thus, the raw material used, as well as the produced goods, is nothing but mustard oil, although it may be mustard oil of better quality.

20. The authorities while examining the case of the petitioner unit during the deliberation on April 9, 2004 found that the petitioner is purchasing major quantity of mustard oil for use as raw material and after filtering the purchased mustard oil, is packing it in pouches and selling the same. The Review Committee found that there is no manufacture through such process as no physical change take place in the raw material used and accordingly decided not to grant the benefit of sales tax exemption.

21. However, at the same time, the petitioner has been granted eligibility certificate for sales tax exemption, for the production process carried out in his

factory, whereby mustard oil is produced from mustard seeds.

22. Thus when oil becomes the finished product by using seeds as the raw material, the production process of the petitioner has been held to be eligible for benefits of exemption under the scheme notified on September 20, 1997.

23. Keeping the aforesaid provisions of the Section 9(4) of the Act and the language of the notification dated September 20, 1997 in mind, I am of the view that the process of filtration of raw mustard oil, to produce pure mustard oil, has been rightly held by the respondent authority to be ineligible for granting sales tax exemption, under the scheme notified through the said notification issued u/s 9(4) of the Act.

24. It can be also noted that the respondent authorities had taken the impugned decision deciding on the ineligibility of the petitioner, as far back as on April 9, 2004. Yet the petitioner has not taken any steps to challenge the said decision for three long years. Explanation given by the petitioner for not approaching this Court with reasonable expediency, by citing the excuse of prolonged illness of petitioner's mother, in my view, cannot be accepted as a reasonable explanation to overlook the laches of the petitioner, to approach this Court within a reasonable time after the impugned decision.

25. The petitioner has not been vigilant and slept over his rights and on this ground also, I am not inclined to entertain this writ petition.

26. In view of the above discussion, the writ petition is not accepted and the same is accordingly dismissed.