

(1987) 01 MAD CK 0021
In the Madras High Court

Devar Sugar and Abkari Co. Ltd., Madras	APPELLANT
Vs	
Additional Secretary to Government of India and Others	RESPONDENT

Date of Decision : 01-01-1987

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2

Citation : (1987) 01 MAD CK 0021

Hon'ble Judges : Nainar Sundaram, J

Bench : Single Bench

Judgement

Nainar Sundaram, J.—This writ petition coming on for hearing on this day upon perusing the petition and the affidavit filed in support thereof

the order of the High Court, dated 16.4.1980 and made herein, and the counter and Reply affidavits filed herein and the records relating to the

order in order No.278/79, dated 11.4.1979 on the file of Additional Secretary, Government of India, Ministry of Finance, Department of

Revenue, New Delhi comprised in the return of respondents to the writ made by the High Court, and upon hearing the arguments of Mr. K.P.

Jagadeesan, Advocate for the petitioner and of Mr. T. Somasundaram, Additional Central Government Standing Counsel, on behalf of the

respondents the court made the following order:-

2. By order dated 10.2.1977, the third respondent demanded of the petitioner duty on certain quantity of bagasse used as fuel during the period

between 1.3.1975 and 29.4.1975. The petitioner would contend that bagasse is not a manufactured product so as to be an excisable good under

the Central Excises and Salt Act, 1944 (Central Act 1 of 1944) hereinafter referred to as "the Act". The petitioner would also claim exemption

under Notification No. 58 of 1975, dated 1.3.1975 as amended by Notification No. 77 of 1975, dated 6.3.1975, on the ground that bagasse

must be characterised only as an intermediate good or component part of any goods. Both these contentions were not accepted by the third-

respondent. The petitioner preferred an appeal to the second respondent and that was also not fruitful. There was a further revision to the first-

respondent and that was rejected by the order dated 11.4.1979, impugned in this writ petition.

3. Mr. K.P. Jagadeesan, learned counsel for the petitioner, would press forth the very same two contentions which have not been countenanced

by the respondents as stated above. The learned counsel would submit that bagasse is nothing but the refuse coming out by crushing the sugarcane,

in the course of manufacture of sugar by the petitioner, that the petitioner by itself does not market the bagasse as a commercial product and that

no process of manufacture within the meaning of Section 2(f) of the Act is involved in the case of bagasse and hence the demand of duty on the

concerned quantity of bagasse is incompetent.

4. The main part of Section 2(f) reads as follows :

In this Act, unless there is anything repugnant in the subject or context, -

(f) ""manufacture"" includes any process incidental or ancillary to the completion of a manufactured product.....

The question as to when a manufacture of a product takes place is a mixed question of law and fact, depending on the construction of the

expression "manufacture" occurring in Section 2(f) of the Act and on what is known to the consumers and the commercial community as a

commercial product. It is not in dispute that bagasse could as a fuel and in fact the petitioner admittedly uses bagasse as a fuel in its own plant and

further bagasse also has the characteristics of a commercial product in that it is being used in the manufacture of paper and paper boards. The

question as to whether the petitioner itself marketed bagasse is not germane for deciding whether the process of manufacture is involved or not.

Manufacture"" implies a change or a series of changes, and when there is an essential difference in identity between the original commodity and the

commodity, which comes out of the processing, certainly "manufacture" is involved. It is not possible to say that bagasse is the same as the

sugarcane, after the sugarcane has gone through the process of crushing, for getting the product of sugar out of it. Out of the crushing process, of

the sugarcane the ultimate product of sugar as well as bagasse come out, and bagasse, as stated above, is certainly a commercial product. As

pointed out by the Supreme Court in *Empire Industries Ltd. and Others v. Union of India and Others* 1985 2 ELT 179 (SC), if by application of

labour and skill an object is transformed to the extent that it is commercially known differently, it will suffice to say that manufacture has taken place

for the purpose of Central Excise, and the degrees of transformation and labour and skill spent are irrelevant. In this view, I am not able to sustain

the first contention urged by the learned counsel for the petitioner.

5. Secondly, learned counsel for the petitioner would contend that as per the notification referred to above, bagasse should be held to be as

intermediate goods or the component part of any goods. This submission also I am not able to sustain. The ultimate product that has been

manufactured by the petitioner is sugar. "Intermediate good or component part of any goods could only mean a product or a component which

results in the course of manufacture of the final product and goes to make the component for the final product and goes to make the component for

the final product and certainly not an independent by- product as in the case of bagasse. Bagasse is certainly not a component part of sugar as

such. Equally so, it is not a product which results in the intermediate stage in the course of manufacturing the final product so as to merge with the

final product as such.

6. For the above reasons the writ petition is dismissed. No costs.