

(2004) 03 AHC CK 0195
In the Allahabad High Court
Case No : C.M.W.P. No. 1898 of 1982

Geep Industrial Syndicate Ltd.

APPELLANT

Vs

Cess Officer and Others

RESPONDENT

Date of Decision : 03-03-2004

Acts Referred:

Citation : AIR 2004 All 271 : (2004) 3 AWC 1933 : (2004) 101 FLR 462 : (2005) 1 RCR(Civil) 530

Hon'ble Judges : V.M. Sahai, J; Krishna Murari, J

Bench : Division Bench

Advocate : S.P. Gupta, Vijai Ratan Agarwal, Vivek Ratan and N. Lal, for the Appellant; H.N. Tripathi, S.L. Srivastava, S.S.C. and S.C., for the Respondent

Final Decision : Allowed

Judgement

V.M. Sahai and Krishna Murari, JJ.—The petitioner is a public limited company carrying on business of manufacturing and marketing of batteries (dry cells), miniature lamps and torches. It has two industrial establishments. In one establishment torches and miniature lamps and in the other batteries (dry cells) are manufactured. The petitioner received a notice dated 27.12.1979 from the Cess Officer to submit a return regarding quantity of water consumed for every calendar month with effect from 1.4.1978 and pay cess to the Board. On 5.1.1980 the petitioner submitted his reply that his industry is not covered under Schedule I of the Water (Prevention and Control of Pollution) Cess Act, 1977 (in brief the Act). The Cess Officer on 15.1.1980 wrote to the petitioner to furnish the details of raw materials used and products manufactured in the factory of the petitioner. Before the petitioner could furnish the details he received two assessment orders passed by the Cess Officer on 4.2.1980 in Cess No. 57/11 and 33/17 for the period April, 1978 to December, 1979. Thereafter, on 8.2.1980 the petitioner furnished details and returned both the assessment orders with the request to the Cess Officer that he should first ascertain whether the petitioner's industry is covered by the Act or not.

2. The Cess Officer on 15.2.1980 held that the petitioner's industry was covered under entries 1, 2 and 7 of Schedule I of the Act as it processes ferrous or non-ferrous metals and chemicals to manufacture its products. He also passed two revised assessment orders No. 96/10 and 52/17 for April, 1978 to September, 1978 and October, 1978 to December, 1978. The petitioner challenged the order dated 15.2.1980 u/s 13 of the Act before the Appellate Committee which dismissed the appeal on 13.11.1981 and affirmed the order passed by the Cess Officer. Both the orders dated 15.2.1980 and 13.11.1981 have been challenged by the petitioner in this writ petition.

3. Sri Vijai Ratan Agarwal learned senior counsel assisted by Sri Vivek Ratan for the petitioner, urged that the petitioner is not engaged in any of the industries as mentioned in Schedule I of the Act and is not liable to pay any water cess. He further urged that in Schedule I of Industries (Development and Regulation) Act, 1951 the petitioners' industry is listed under the heading "electrical equipment". In the "Handbook of Indigenous Manufacturers" published by Directorate General of Technical Development the industry of the petitioner has been placed under the heading "Light Electrical Industries". He urged that the petitioner's industry is not ferrous or non-ferrous metals or chemicals industry and no metallurgical operation is carried or in the industry of the petitioner nor any metal is manufactured. The petitioner purchases metals from the market in whatever form it is needed for the manufacturing of torches. He urged that no chemical is manufactured. Therefore, the orders passed by the Cess Officer and appellate committee are illegal and liable to be quashed.

4. On the other hand. Dr. H.N. Tripathi learned counsel appearing for respondent Nos. 1 and 2 has urged that the metal is purchased and is processed in the industry of the petitioner and thereafter torches are made by processing the metal. Therefore, the industry of the petitioner would be covered under Item No. 15 of Schedule I of the Act. The petitioner also manufactures batteries (dry cells) with chemical process, therefore, the petitioner's industry would be covered under entry Nos. 1, 2 and 7 of Schedule I of the Act and as such he is liable to pay the cess on the water consumed by the petitioner. In support of his argument he placed reliance on the Division Bench decision of this Court in *Agra Engineering Industries Artoni v. Union of India* and Anr. 1987 ALJ 41.

5. The question is whether the petitioner's industry which processes the metal and by giving it shape manufactures torch cases is an industry covered under Schedule I of the Act. In the Schedule I the electrical industry or light electrical industries do not find place. If the petitioner purchases metal from the market and gives only shape to it and makes flashlight cases, this processing does not change the nature of the metal but in common parlance it would be understood as torch or flashlight case and not metal. The Apex Court in *M/s. Saraswati Sugar Mills Vs. Haryana State Board and others*, while considering entry No. 15 of Schedule I of the Act, has held that in manufacture if something is brought into existence which is different from that originally existed in the sense that the

thing produced, by itself is a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article. If the end product produced by the industry is not mentioned in the Schedule I, then it will not be liable to cess tax under the Act. In order to bring an industry within any of the entries in Schedule I it has to be seen what is the end product produced by that industry. This decision has been followed by the Apex Court in *Britannia Industries Ltd. vs. T. N. Pollution Control Board*, (2000) 9 SCC 68 wherein the appellant before the Apex Court manufactured biscuits, bread and cakes. It used wheat flour, milk powder, sugar and vanaspati. The appellant's industry was assessed to cess under entry 15 of Schedule I. The authorities under the Act held that the appellant used ingredients wheat, sugar and vanaspati which were vegetables while milk powder was an animal product and by mixing and processing these biscuits etc. were manufactured. The Apex Court held that wheat flour which was used by the appellant in the manufacture of biscuits, bread and cakes is not a vegetable product. Wheat in common parlance, is not 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. They are utilised as ingredients for manufacturing altogether a different product, biscuits, bread and cakes. Therefore, it was held that the industry of the appellant was not covered by Schedule I of the Act.

6. On the basis of the aforesaid decisions of the Apex Court it is clear that it is not the raw material or the ingredients used by an industry in the manufacturing process, but it is the final product that is relevant for the purpose of tax under the Act. In common parlance torch is considered to be a source of light and not a metal. The petitioner is producing torches, batteries (dry cells) and miniature lamps which come under the electrical or light electrical industry but electrical industry does not find mention in Schedule I. Since the electrical industry has not been mentioned in Schedule I, the petitioner's industry is not covered by the Act and is not liable to pay any cess on the water consumed by it.

7. In view of the aforesaid decisions of the Apex Court we find that the Division Bench decision of this Court in *Agra Engineering Industry* (supra) is no longer a good law. The petitioner also manufactures batteries (dry cells) by using chemicals as raw material but entirely a different commodity is produced which in common parlance is known as battery and not chemical, therefore, it is not covered in Schedule I of the Act. We hold that it is not the raw material or ingredients used by the industry that would determine the nature of industry. It is the end product as understood in common parlance that would be the decisive factor in coming to the conclusion about the nature of industry. The products manufactured by the petitioner industry would fall in light electrical industry and would not fall in Schedule I of the Act. The petitioner is not liable to pay any cess on the water consumed by it. The petitioner had deposited cess under the interim order dated 4.5.1982, therefore, he is entitled for refund.

8. Since the petitioner succeeds on the first point it is not necessary to consider

other arguments raised by the learned counsel for the petitioner.

9. In the result the writ petition succeeds and is allowed. The orders dated 15.2.1980 passed by the Cess Officer and order dated 13.11.1981 passed by the appellate committee, Annexures-4 and 7 respectively to the writ petition are quashed. The petitioner shall be entitled for refund of the amount deposited under the interim order of this Court. The respondents shall refund the entire amount within three months from the date a certified copy of this order is produced before the respondent No. 1.

10. Parties shall bear their own costs.