(2012) 08 GAU CK 0002

In the Gauhati High Court

Case No : Writ Petition (C) No. 1683 of 2010

Jai Chemical Industries — APPELLANT

Vs

State of Assam and Others — RESPONDENT

Date of Decision : 30-08-2012

Acts Referred:
Assam Value Added Tax Act, 2003 — Section 105, 2(30)

Citation : (2013) 63 VST 202

Hon'ble Judges : Adarsh Kumar Goel, C.J;Ujjal Bhuyan, J

Bench : Division Bench

Advocate : Ashok Saraf, D. Baruah, Miss N. Hawelia, Ms. M.L. Gope, S. Chetia and A. Goyal, for the Appellant; D. Saikia, for the Respondent

Judgement

Adarsh Kumar Goel, C.J.—This order will dispose of W.P. (C) No. 1683 of 2010, W.P. (C) No. 6445 of 2010 and W.P. (C) No. 1677 of 2010, as it is stated by learned counsel for the parties that the same issue is involved in all the three petitions. In W.P. (C) No. 1683 of 2012, the petitioner has challenged the order dated August 28, 2009 passed by the Commissioner of Taxes, Guwahati, u/s 105 of the Assam Value Added Tax Act, 2003 holding that the process of production of soapstone powder from soapstone did not amount to manufacturing for the tax benefits under the Assam Industries (Tax Exemption for Pipeline Units) Order, 2005 and consequential order dated March 3, 2010 declining to renew certificate of entitlement.

2. The case of the petitioner is that it is producing soapstone powder from soapstone. The process followed is as follows:

Soapstone which is also known as steatite or soaprock is a metamorphic rock, a talc schist. It is largely composed of mineral talc and is rich in magnesium. It is produced by dynamothermal metamorphism and metasomatism which occurs in the areas where tectonic plates are subducted, changing rock by heat and pressure with influx of fluids but without melting. The said soapstone is composed of dominantly of talc, with varying amounts of chlorite and amphiboles (typically tremolite, anthophyllite, and magnesiocumming-tonite), and trace to minor FeCr-oxides. It may be schistose or massive. Soap-stone is formed by the metamorphism of ultramafic protoliths (e.g., dunite or serpentinite) and the metasomatism or siliceous dolostones.

At this stage, it may be relevant to mention the uses of soapstone powder. The soapstone powder which the petitioner manufactures though to the knowledge of the people in general is used in the manufacture of talcum powder but mostly is used as an important filler material for paper, paints, rubber plastic and insecticide industries. In fact, if may be relevant herein to mention that the uses of the soapstone powder in the above-mentioned industries are due to its extreme softness, smoothness, hydrophobicity, high lubricating and hiding power for its ability to absorb oil and grease.

The final product what the petitioner manufactures do not come into existence on the basis of just grinding of the soapstone. It has to undergo a complicated process of treatment unlike boulders being crushed by stone crushers into powder. The process of manufacture of soapstone powder is as follows:

First, the entire raw material which is soapstone is washed and thereafter the undesirable particles as well as quartz stone is separated from the basic raw material by experienced skill manpower. Subsequent thereto, the entire materials upon being separated from the undesirable particles are dried. Upon being dried, the entire materials again come into a solid form. Thereafter, the said solid form is again sorted out and thereafter put in a jaw crusher whereby the soapstone is processed into small chips. Then by a bucket elevator, it is lifted to a hooper. In the hooper, the materials are stored. From the hooper by a gear pulley, the materials are sent to a pulverisor. In the pulverisor, a high speed swing bitter is used. The function of a high speed bitter is to pulverize and heat the materials to dry out the moisture. The fine powder which results upon being pulverized and heated is swept by a section of blowers from the chamber through whizzer classifier and in this process, the silica is separated by a separator. The function of the whizzer blade and cone is to check the oversized particles and regulate the mesh size by shifting the whizzer blade to the cone side. The function of the blower is to deliver size particles to the cyclone. In the cyclone, the particles are separated from the air by centrifugal force developed in the cyclone. The powder so discharged from the cyclone outlet and the separated air return back to the chamber by semi-round band. The excess are, grids, silica and undesirable elements which may have remained after undergoing the aforementioned process thereafter escapes through the dust collector bag connection with the semi-round band. The extra find particles are collected through the dust collector. It is only after undergoing the aforementioned process that the final product is received by complying with all the technical specifications which is thereafter checked in the laboratory. After the finished product comes into existence, the same are packed in 50 kg. bags for being sold and marketing. The above process would clearly show that the process of manufacturing done by physical labour and mechanical and electrical power undergoes a very highly technical as well as complicated process. At this stage it may further be relevant herein to mention that the difference in the chemical specifications of the raw material, i.e., soapstone with the finished product, i.e., soapstone powder. The following is stated hereinbelow:

3. Under the Industrial Policy of the State of Assam, 2003, certain sales tax exemption benefits have been given as per the Assam Industries (Tax Exemption for Pipeline Unit) Order, 2005. Accordingly, the petitioner made an application for eligibility certificate. The District Level Committee approved the petitioner for issuing of eligibility certificate on January 2, 2007 subject to clearance from the Sales Tax Department. Thereafter, on February 7, 2007, after due enquiry, the Sales Tax Department found the petitioner eligible for sales tax concession as per conditions applicable to such exemption. Accordingly, eligibility certificate dated July 9, 2007 was issued in favour of the petitioner. Based thereon, certificate of entitlement was also issued, which was valid from June 13, 2006 to March 31, 2007, subject to renewal from year to year. The said certificate was renewed up to March 31, 2009. The Assistant Commissioner of Taxes in the case of R.K. Chemicals who is W.P. (C) No. 1677 of 2010 sought clarification from the Commissioner of Taxes whether production of soapstone powder from soapstone amounted to manufacturing. The Commissioner held in negative relying upon the judgment of the honourable Supreme Court in State of Maharashtra Vs. Mahalaxmi Stores, wherein it was held that crushing of boulders into stone chips did not amount to manufacturing. According to the petitioner, the said judgment was distinguishable as crushing of boulders to small size was different from converting soapstone to powder by a process which amounted to manufacture. As a result of the said process, a new marketable product came into existence, in any case, a view had already been taken by the Department in the case of the petitioner and eligibility certificate had been issued. The same could not be cancelled nor refused to be renewed on mere change of opinion on a debatable issue.

4. We have heard learned counsel for the parties.

5. The learned counsel for the petitioner submits that the Department having taken a view that the petitioner was eligible for tax exemption, the said opinion could not be changed without any valid basis. The petitioner having acted upon the exemption, was entitled to continue to avail of the said benefit, in absence of change of situation unless it is illegal or inequitable to allow the same. It was also submitted that the clarification issued by the Commissioner was not justified as the process of grinding of soapstone amounted to manufacture in view of ratio of judgment of the Bombay High Court in Commissioner of Income Tax Vs. Premier General Traders P. Ltd., , wherein the judgment of the High Court in State of Maharashtra Vs. Mahalaxmi Stores, (which has been later affirmed by the honourable Supreme Court) was held to be distinguishable. Reliance has also been placed on decisions of the honourable Supreme Court in MRF Ltd.,

Kottayam Vs. Assistant Commissioner (Assessment) Sales Tax and Others, , Pondicherry State Cooperative Consumer Federation Ltd. Vs. Union Territory of Pondicherry, , and Vadilal Chemicals Ltd. Vs. The State of Andhra Pradesh and Others, . Reliance has also been placed on the definition of "manufacturing" u/s 2(30) of the Act, which is as follows:

2(30) ''manufacture'' means any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name, character use, but does not include such activity of manufacture as may be prescribed;

6. The learned counsel for the Revenue supports the view taken by the Commissioner of Taxes.

7. We have considered the rival submissions of the parties.

8. Question for consideration is whether the Department having once held the process undertaken by the petitioner to be "manufacturing", the renewal thereof could be declined merely by change of opinion on a debatable issue. Further question is whether the earlier view holding the process in question to be manufacturing was a possible view.

9. In a recent order dated August 23, 2012 in W.P. (C) No. 2603 of 2011 (Sunil Kumar Taparia Vs. State of Assam and Others,), considering the issue in identical circumstances in the context of clause 12 of the Assam Industries (Tax Exemption for Pipeline Units) Order, 2005, it was observed (page 556 in 57 VST):

13. The above clause clearly lays down that eligibility certificate once granted can be cancelled only if there is violation of any condition or information furnished was found to be false or if certificate was obtained by fraud or misstatement or suppression. The impugned order does not show either the allegation of fraud, misrepresentation or suppression on the part of the petitioner nor violation of any of the condition of the eligibility. Only ground on which eligibility certificate has been terminated is the change of opinion as to the eligibility of the petitioner to get the benefit. This course is clearly ultra vires the power conferred under clause 12 of the 2005 Order, referred to above. This being the clear position, it is not necessary to go into the question whether activity of the petitioner amounts to manufacturing in view of law laid down in the judgment of this court in Deepak Kumar Poddar Vs. State of Assam and Others, . The issue is debatable and as per opinion earlier formed by the Department, the petitioner was eligible. No subsequent development or suppression or misrepresentation by the petitioner has been pointed out. In these circumstances, the impugned orders cannot be sustained.

10. Following the above, we conclude that mere change of opinion at a belated stage cannot be a ground for declining eligibility certificate and entitlement thereof granted after due consideration in absence of fraud, misrepresentation or

suppression on the part of the assessee. This view is also supported by judgments relied upon on behalf of the petitioner. Moreover, earlier view granting eligibility to the petitioner was certainly a possible view. Questions are answered accordingly. Accordingly, the impugned orders in W.P. (C) No. 1683 of 2010 and W.P. (C) No. 1677 of 2010 are quashed. The matter may now be decided afresh in accordance with law within three months.

11. As regards W.P. (C) No. 6445 of 2010, it is pointed out that though case of the petitioner is identical to W.P. (C) No. 1683 of 2010 and W.P. (C) No. 1677 of 2010, the Department is not following the view taken in the said cases in view of the order of Commissioner dated August 28, 2009. Once the Department has taken a view for eligibility for exemption under the scheme which has been held to be possible view not open to be changed on mere change of opinion, it will not be fair to take a different view in different cases. We find merit in this contention.

12. Accordingly, we direct that respondent No. 5 may take a decision in the light of the above observation within two months from the date of receipt of a copy of this order. Writ petitions stand disposed of accordingly.