

(1980) 10 DEL CK 0013

In the Delhi High Court

Case No : Civil Writ Appeal No. 261 of 1970

Jaswant Sugar Mills Ltd.

APPELLANT

Vs

Union of India and Others

RESPONDENT

Date of Decision : 21-10-1980

Acts Referred:

Citation : (1981) ILR Delhi 169

Hon'ble Judges : Prakash Narain, Acting C.J.; S. Ranganathan, J

Bench : Division Bench

Advocate : Ved Vyas, L.C. Goyal and C.L. Choudhry, for the Appellant;

Judgement

Prakash Narain, A.C.J.

(1) The only question which arises for determination in this petition under Article 226 of the Constitution of India is the construction to be placed on a proviso contained in a notification issued by the Central Government bearing No. 13/65 of February 13, 1965 under the power conferred by sub-rule (1) of Rule 8 of the Central Excise Rules, 1944. This notification was, "admittedly, issued with a view to give incentive to the production of sugar in our country. The notification was issued exempting sugar in column 2 of the table therein falling under sub-item (1) of the first Schedule of the Central Excise and Salt Act, 1944 from certain duty livable thereon as was in excess of the duty specified in column 3 of the said table. In plain language, for production of sugar over and above a certain quantity the manufacturer was entitled to certain rebate.

(2) The petitioner is a public limited company incorporated under the Indian Companies Act. Its business is to manufacture and sell sugar: The petitioner manufactures sugar in its factory situated at Meerut.

(3) There is a sugar factory known as S. B. Sugar Mill at Bijnor. It was originally owned by a partnership concern comprised of six brothers. The partnership firm was dissolved through court action in 1944. The mill thereafter became the property of the six brothers as co-owners. Banarsi Dass is one of the brothers.

This mill also used to manufacture and sell sugar under the name and style of S. B. Sugar Mills, Bijnor. In 1948 Banarsi Dass purchased the share of one of his brothers. He, Therefore, became a co-owner to the extent of 1/3 in this joint property. At the time of the dissolution of the partnership an agreement was arrived at between the six brothers that the running of the factory will be leased out by the co-owners to anyone " among themselves on a bid being made by each of the co owners .The lease was to be for a period of 5 years. Banarsi Dass took the lease of S. B. Sugar Mills, Bijnor in 1961 for a period of 5 years.

(4) It seems that Banarsi Dass had some financial difficulties. and was looking for finance to run the S. B. Sugar Mills, Bijnor. He, Therefore, approached the petitioner to finance the running of the Bijnor Mill. Accordingly, the petitioner, a public limited company, entered into a partnership with Banarsi Dass as an individual, originally, inter alia, on the terms that the profit and losses would be shared half and half by the petitioner and Banarsi Dass. A partnership firm was duly constituted known as S. B. Sugar Mills Lease Firm. Since Banarsi Dass needed more finance, he persuaded the petitioner to put in more money in the running of the Bijnor Mill. The petitioner agreed to put in an investment of Rs. 20 lakhs. In consideration thereof, the terms of the partnership were amended and petitioner's share in profit and losses was agreed to be 3/4 and Banarsi Dass" share 1/4. S. B. Sugar Mills Lease Firm was duly registered and it is said was assessed as such even for the purposes of Income Tax.

(5) In 1965 the Central Government announced its policy of giving incentive for greater production of sugar by its notification above-referred to.

(6) The petitioner as an independent manufacturer of sugar claimed benefit or rebate under the said notification of 1965, issued by the Central Government. It was, however, denied the benefit on the ground that the production of sugar of both the Meerut and the Bijnor Mills had to be clubbed together to find out whether the petitioner was entitled to claim rebate under the policy of. the Government contained in the said notification. The petitioner challenges the same. It is contended that the S. B. Sugar Mills Lease Firm is a distinct person and entity and its production of sugar in the Bijnor mill cannot be allowed to adversely affect the rights of the petitioner vis-a-vis its production of sugar in the mill at Meerut. The proviso in the notification under which rebate is claimed reads as under :

"PROVIDED that where a manufacturer of sugar has more than one factory engaged in the production of sugar, then, for determining the excess quantity produced in his factories for the purposes of granting exemption under this notification, sugar produced in all such factories during the period or periods specified in the Table shall be taken into account as a " whole."

The question, Therefore, as we have said earlier, is whether manufacturer of sugar envisaged by the above proviso means Jaswant Sugar Mills Ltd. by itself for the Meerut factory or does it mean Jaswant Sugar Mills Ltd. as a legal entity

producing sugar both individually at Meerut and along with Banarsi Dass at Bijnor.

(7) It cannot be disputed that a partnership concern by itself is not a legal entity. A partnership concern or firm has, however, been given individual status in various enactments like the Income Tax Act or the Code of Civil Procedure. The question is whether it is a "person" Clause (42) of Section 3 of the Central Clauses Act defines this word as under :

"(42)"person" shall include any company or association or body of individuals, whether incorporated or not." On a plain reading of the General Clauses Act it would appear that S. B. Sugar Mills Lease Firm, a partnership firm or concern, would be a person distinct from the petition which is a public limited company. It is, Therefore, urged that sugar produced in the factory at Meerut is produced by a person other than the person who is manufacturing sugar in the factory at Bijnor. This view finds support from a judgment of the Kerala High Court in Rice and Oil Mills Partnership Firm, Kandassakadavu v. Deputy Superintendent of Central "Excise, Trichur, 1960 Kerala Law Times 1087(1).

(8) Learned counsel for the respondent however, contests this proposition. He mainly bases his case on the observations of the Supreme Court in Dulichand Lakshminarayan Vs. The Commissioner of Income Tax, Nagpur, . This was a case arising out of the provisions of the Income Tax Act, 1952. It was observed that to import the definition of the word "person" occurring in Section 3(42) of the General Clauses Act, 1897 into Section 4 of the Partnership Act will be totally repugnant to the subject of the partnership law. The word "persons" in Section 4 of the Partnership Act contemplates only natural or artificial, i.e. legal persons, a firm is not a "person" and as such is not entitled to enter into a partnership with another firm or Hindu undivided family or individual. "The point in issue was whether a-firm so constituted could claim registration u/s 26-A of the Income Tax Act. Having held that, the Supreme Court further observed as under :

"IT is clear from the foregoing discussion that the law, English as well as Indian, has, for some specific purposes, some of which are referred to above, relaxed its rigid "notions and extended a limited personality to a firm. Nevertheless, the general concept of partnership, firmly established in both systems of law, still is that a firm is not an entity or "person" in law but is merely an association of individuals and a firm name is only a collective name of those individual who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the persons who have agreed to carry on business in partnership....."

In R.M. Chidambaram Pillai and Another Vs. Commissioner of Income Tax, Madras, , (confirmed by the Supreme Court in Commissioner of Income Tax, Madras Vs. R.M. Chidambaram Pillai and Others,) which is also a case arising out of circumstances in which the provisions of the Income Tax Act, 1922 had to be construed, it was observed as under :

" THE statutory effect just mentioned is also in consonance with the principles of

the law of partnership. Notwithstanding the fact that a firm like an association of persons is for the purpose of assessment treated as a separate entity, it is not a legal person having a corporate character distinct from that of its members. A firm is but a compendious expression of the relationship between the partners, who, by an agreement between them "embark on a commercial venture and contribute capital or labour and share profit and loss according to mutual understanding....."

Nevertheless after making the above observations the Full Bench went on to notice that, "In mercantile practice the trade seems to look upon the firm as a kind of a body distinct from its members and capable in its right of own- ing property and entering into dealings and creating rights and liabilities binding on the partners. But in law that clearly is not the position". Therefore, though technically in law a partnership is not a legal entity or a juristic person, there are occasions, both in law and in practice, when a firm has been treated as having a distinct personality from those of the partner's. Indeed, as noticed earlier, the CPC and the Income Tax Act recognise a partnership firm as a "person" or an entity having independent and distinct existence liable for its acts and entitled to enforce rights. One has to see the context before opining in law whether in those circumstances the firm would or would not be distinct entity.

(9) The intention of the notification, referred to above, was to increase production of sugar in the country. That is why incentive was. offered by giving a rebate of duty. If that incentive is to be qualified by some technical approach, the purpose of issuing the notification would be defeated. In the context in which the word "manufacturer" is used in the proviso read earlier, we are of the view that manufacturer is that person or entity which is directly controlling or is responsible for the manufacture of sugar. The petitioner as such could not control or was in charge of manufacturing -sugar in the factory at Bijnor. It was more or less a financing party. Be that as it may, it could control the production of sugar at Bi)"nor only along with Banarsi Dass. At Meerut the petitioner was wholly and solely in charge of and controlling production of sugar. Therefore, for the purposes of the mill at Meerut it would be a distinct person from what the petitioner was along with Banarsi Dass qua manufacture of sugar at Bijnor. In the background in which the notification was issued and in the context in which the word "manufacturer" has been used, we hold that the production of the Meerut and the Bijnor mills could not be clubbed together.

(10) The proviso refers to a case where a manufacturer "has" more than one factory and to a determination of the excess quantity of sugar produced in "his" factories as compared with an earlier specified period. Even assuming that the words within inverted commas do not envisage the ownership by the same person of two factories or more but are wide enough to take in cases where the same person has an interest in two factories or more which entitles him to run the factories and market their produce for his own profit, can it be said that the lease hold interest in the Bijnor Mill is that of the petitioner-company ? The

answer it seems clear, must be in the negative. The Supreme Court explained the nature of a partner's interest in a firm in *addanki Marayanappa and another v. Bhaskara Krishnappa* (A.I.R. 1965 S.C. 1300) (4) in the following words : "

" THE, provisions of Ss. 14, 15, 29, 32, 37, 38 and 48 (of the Partnership Act) make it clear that whatever may be the character of the property which is brought in by the partners when the partnership is formed or which may be acquired in the course of the business of the partnership it becomes the property of the firm and what a partner is entitled to is his share of profits, if any, accruing to the partnership from the realisation of this property, and upon dissolution of the partnership to a share in the money representing the value of the property. No doubt, since a firm has no legal existence, the partnership property will vest in all the partners and in that sense every partner has an interest in the property of the partnership. During the subsistence of the partnership, however, no partner can deal with any portion of the property as his own. Nor can he assign his interest in a specific item of the partnership property to -anyone. His right is to obtain such profits, if any, as fall to his share from time to time and upon the dissolution of the firm to a share in the assets of the firm which remain after satisfying the liabilities set out in Clause (a) 178 and sub-clause (i), (ii) and (iii) of Clause (b) of S. 48. The whole concept of partnership is to embark upon a joint venture and for that purpose to bring in as capital money or even property including immovable property. Once that is done whatever is brought in would cease to be the exclusive property of the person who brought it in. It would be the trading asset of the partnership in which all the partners would have interest in proportion to their share in the joint venture to the business of partnership. The person who brought it in would, Therefore, not be able to claim or exercise any exclusive rights over any property which he has brought in, much less over any other partnership property. He would not be able to exercise his right even to the extent of his share in the business of the partnership. It is true that even during the subsistence of the partnership a partner may assign his share to another. In that case what the assignee would get would be only that which is permitted by S. 29(1), that is to say, the right to receive the share of profits of the assignor and accept the account of profits agreed to by the partners."

In view of the above observations it will be difficult to say that the leasehold interest in Bijnor Mill or its produce or any specified share therein would belong to the petitioner- company merely because it is a partner in the Bijnor firm. The construction sought for by the department would also create a good deal of practical difficulty in its implementation. For example, it will be impossible to give a workable construction to the proviso on the basis suggested by the respondents in a case where two factories are run by two different firms with one or more common partners (as happened in the Kerala case cited earlier) particularly if some of the common partners also have their own individual Factories. In such a case the department cannot obviously aggregate the produce of all the factories together for the purposes of the notification in the

hands of all the common partners. Nor can it be contended, in view of the decision of the Supreme Court referred to above, that the shares of each of the common partners in the, production of the various factories would alone be aggregated. The position will become even more complicated if there is a change in the constitution of the firms between the base period and the period of assessment. Having regard to these considerations, it appears to us that the only construction possible is that. in the context of the notification, a firm should be treated as an independent entity as is being done in several other contexts.

(11) The result is that we make the rule absolute and issue a writ of certiorari setting aside the order passed by the Superintendent (A), Central Excise Division, Meenit, dated November 27, 1975 (Annexure K) rejecting the petitioner's claim amounting to Rs. 3,02, 605.65, the order dated February 3, 1967 passed by the Collector of Central Excise, Kanpur, dismissing the appeal of the petitioner (Annexure N) and the order of the Central Government is revision. passed on December 16, 1969 (Annexure O) and direct the respondents to reconsider the case of the petitioner for rebate under the aforesaid notification , accordance with law laid down by us. In the circumstances of the case, the Parties will bear their respective costs.