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**(2004) 11 AHC CK 0293**

**In the Allahabad High Court**

J.K. Enterprises APPELLANT

Vs

Commissioner of Trade Tax RESPONDENT

**Date of Decision :** 09-11-2004

**Acts Referred:**
Central Sales Tax Act, 1956 — Section 8(5)

**Citation :** (2008) 11 VST 390

**Hon'ble Judges :** Rajes Kumar, J

**Bench :** Single Bench

**Final Decision :** Allowed

# Judgement

Rajes Kumar, J.—Present revision u/s 11 of the U.P. Trade Tax Act, 1948 (hereinafter referred to as "the Act") is directed against the order of the Tribunal, dated February 17, 1994 relating to the assessment year 1982-83 under the Central Sales Tax Act, 1956.

2. Short question involved in the present revision is whether the turnover of refined rapeseed oil and refined mustard oil for Rs. 2,51,568 was liable to tax at one per cent under the Central Sales Tax Act under Notification No. ST-II-1376/X-902(63)-50, dated April 1, 1968. The assessing authority levied the tax on the aforesaid sales at 10 per cent and held that under the Notification No. ST-IM376/X-902(63)-50, dated April 1, 1968, the sale of rapeseed oil and mustard oil are liable to tax at one per cent and not the turnover of refined rapeseed oil and refined mustard oil. First appeal filed by the applicant was rejected. Tribunal also rejected the second appeal, filed by the applicant.

3. Heard learned Counsel for the parties.

Learned Counsel for the applicant submitted that refined rapeseed oil and refined mustard oil are rapeseed oil and mustard oil. They are only one of the forms of rapeseed oil and mustard oil. He submitted that rapeseed oil and mustard oil under the Notification No. ST-II-1376/X-902(63)-50, dated April 1, 1968 includes refined rapeseed oil and refined mustard oil. Learned Standing Counsel relied upon the order of the Tribunal.

4. I have perused the order of the Tribunal and the authorities below.

Notification No. ST-II-1376/X-902(63)-50, dated April 1, 1968 reads as follows:

Whereas the State Government is satisfied that it is necessary so to do in the public interest.

Now, therefore, in exercise of the powers under Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Act No. 74 of 1956), the Governor is pleased to direct that, with effect from April 1, 1968, the tax payable under the said Act by any dealer having his place of business in Uttar Pradesh in respect of sale by him from such place of business of rapeseed oil and mustard oil in the course of inter-State trade or commerce shall be calculated at the rate of one paisa per rupee.

5. In my opinion, rapeseed oil and mustard oil under the notification includes refined rapeseed oil and refined mustard oil. Refined rapeseed and refined mustard oil is one of the forms of rapeseed oil and mustard oil. Under the notification, there is nothing to show that it excluded refined rapeseed oil and refined mustard oil. Rapeseed oil and mustard oil under the notification includes all forms of rapeseed oil and mustard oil including refined oil. In the case of Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, the honourable Supreme Court held as follows:

Nor is the learned Advocate-General well-founded in his submission that the processing of the oil in order to render it more acceptable to the customer by improving its quality would render the oil a commodity other than ''groundnut oil'' within the meaning of the rule. For instance, if the oil as extracted were kept still in a vessel for a period of time, the sediment normally present in the oil would settle at the bottom leaving a clear liquid to be drawn out. The learned Advocate-General cannot go so far as to say, that if this physical process was gone through, the oil that was decanted from the sediment, which it contained when it issues out of the expresser, ceased to be ''groundnut oil'' for the purposes of the rule. If the removal of impurities by a process of sedimentation does not render groundnut oil any the less so, it follows that even the process of refining, by the application of chemical methods for removing impurities in the oil, would not detract from the resulting oil being ''groundnut oil'' for the purpose of the rule. It may be mentioned that processes have been discovered by which even on extraction from the oil mill, the oil issues without any trace of free fatty acids. It could hardly be contended that if such processes were adopted what comes out of the expresser is not groundnut oil. The submission of the learned Advocate-General based on a contention that the Tribunal and the learned Judges of the High Court erred in holding that even refined groundnut oil was ''groundnut oil'' for the purpose of the rule, must be rejected.

It was further held by the honourable court that, "the benefit of the deduction from the turnover cannot be denied, unless the hydrogenated groundnut oil has

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ceased to be ''groundnut oil''. To be groundnut oil, two conditions have to be satisfied. The oil in question must be from groundnut and secondly, the commodity must be ''oil''". It was held that, "in its essential nature therefore no change has occurred and it remains an oil--a glyc-eride of fatty acids--that it was when it issued and of the press".

The honourable Supreme Court also observed that:

But neither mere absorption of other matter, nor inter-molecular changes necessarily affect the identity of a substance as ordinarily understood. Thus for instance there are absorptions of matter and inter-molecular changes which deteriorate the quality or utility of the oil and it might be interesting to see if such additions and alterations could be taken to render it any the less ''oil''. Groundnut oil when it issues out of the expresser normally contains a large proportion of unsaturated fatty acids--oleic and linoleic--which with other fatty acids which are saturated are in combination with glycerin to form the glyceride which is oil. The unsaturated fatty acids are unstable, i.e., they are subject to oxidative changes. When raw oil is exposed to air particularly if humid and warm, i.e., in a climate such as obtains in Madras, oxygen from the atmosphere is gradually absorbed by the unsaturated acid to form an unstable peroxide (in other words the change involves the additions of two atoms of oxygen) which in its turn decomposes breaking up into aldehydes. It is this oxidative change and particularly the conversion into aldehydes that is believed to be responsible for the sharp unpleasant odour, and the characteristic taste of rancid oil. If nothing were done to retard the process the rancidity may increase to such extent as to render it unfit for human consumption. The change here is both additive and inter-molecular, but yet it could hardly be said that rancid groundnut oil is not groundnut oil. It would undoubtedly be very bad groundnut oil but still it would be groundnut oil and if so it does not seem to accord with logic that when the quality of the oil is improved in that its resistance to the natural processes of deterioration through oxidation is increased, it should be held not to be oil.

The Supreme Court therefore held that

both the refined oil and hydrogenated oil after processing the groundnut oil remain to be groundnut oil and, therefore, the dealer was entitled to benefit of Rule 18(2) and to consequent deduction.

6. In the case of Commissioner of Sales Tax v. Prag Ice and Oil Mills [1975] 35 STC 520 : [1974] UPTC 608, this Court held as follows:

It may be remembered that the acids and chemicals that are added to the groundnut oil in order to prepare vegetable oil are added to it with a view to refine the oil. It becomes clearer and more acceptable as an edible oil; but the process of refining does not change the nature and character of the commodity. It remains groundnut oil.

7. The above decision of the division Bench has been affirmed by the apex court

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in the case of Commissioner of Sales Tax v. Prag Ice and Oil Mills reported in [1991] 80 STC 403. The apex court has held as follows:

The High Court following the judgment of this Court in Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, , came to the conclusion that the residue left, after going through the process of acids and chemicals, continues and remains to be the groundnut oil and is taxable at one per cent. We agree with the reasoning and the conclusions reached by the High Court.

8. Thus, the view taken by the Supreme Court in Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, as well as Prag Ice and Oil Mills case [1991] 80 STC 403(SC) , was that refining or hydrogenation of the groundnut oil does not change the nature of the oil and only impurities are removed by refining or hydrogenation and in that process even if some other matter is absorbed that does not affect the identity of the substance as it is ordinarily understood. The groundnut oil will remain to be the groundnut oil. The case of the present dealer also the refining is done by chemical processes. The ordinary mustard oil and sunflower oil are treated with alkali to remove the acid present therein. The acid free oil so obtained are then bleached with absorbent cotton and/or activated carbon and are deodorized with steam. The ordinary oil is thus made acid-free, odour-free and colour-free by subjecting them to the aforesaid chemical processes which are transformed into refined oil.

9. In the case of I.T.C. Agro-Tech Limited Vs. Commissioner of Trade Tax, this Court held that refined mustard oil and refined sunflower oil continues to be mustard oil and sunflower oil inasmuch as its basic nature remains the same. The decision of the apex court in the case of B.P. Oil Mills Limited v. Sales Tax Tribunal reported in [1998] 111 STC 188 : [1998] UPTC 1020, is not applicable to the present case. The dispute before the apex court was whether process of refining of oil amounts to manufacturing within the definition of Section 2(e-1) of the U.P. Trade Tax Act, 1948. The apex court held that process of refining of oil amounts to manufacturing with the definition of Section 2(e-1) of the Act. There is no such dispute in the present case. The decision of the apex court has to be read in the context of the case. In the present case, the apex court in the case of Tungabhadra Industries Limited [1960] 11 STC 827, and division Bench of this Court in the case of Commissioner of Sales Tax v. Prag Ice and Oil Mills [1975] 35 STC 520, which has been affirmed by the apex court held that the refined groundnut oil remains the same as groundnut oil.

10. For the reasons stated above, I am of the view that the refined rapeseed oil and refined mustard oil is liable to taxed at the rate of one percent under Notification No. ST-II-1376/X-902(63)-50, dated April 1, 1968.

11. In the result, revision is allowed. Order of the Tribunal dated February 17, 1994 is set aside. Tribunal is directed to pass appropriate orders u/s 11(8) of the Act.

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