
(2007) 03 GAU CK 0045
In the Gauhati High Court

Kundanmal Sharma

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 17-03-2007

Acts Referred:

Citation : (2007) 3 GLT 310

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Amitava Roy, J.—The proceedings witness successive stages of the challenge pertaining to transport subsidy for oil cake produced in the industrial unit of the petitioner. Whereas, the subject matter of impugment in Civil Rule No. 5685/1997 is the decision against the admissibility of such subsidy for by products in a manufacturing process likely to include oil cake, the assailment in WP(C) No. 3979/2000 is on the direction for refund of Rs. 22,43,369/- paid to the petitioner on the said account for oil cake treating it to be a by product. By order dated 28.07.2000, this Court while issuing Rule had stayed the demand of refund contained in the impugned letter dated 27.06.2000. The foundational facts being the same and the primary issue common, the petitions were analogously heard and are being disposed of together. The essential facts are in WP(C) No. 3979/2000.

2. I have heard Mrs. Millie Hazarika, Senior Advocate assisted by Ms. A. Ajitsaria, Advocate for the petitioner and Mr. B.C. Saikia, learned State Counsel for the official respondents.

3. The petitioner is the proprietor of Shree Mahabir Rice Flour & Oil Mills which is a registered S.S.I. Unit under the Directorate of Industries & Commerce, Assam. It is engaged in the business of manufacturing mustard oil and oil cake in the said mill. The certificate of registration is also to the above effect. In the year 1971, the Government of India promulgated a scheme called "Transport Subsidy

Scheme of 1971" (for short hereafter as "Scheme") for the grant of cash subsidy for transport of raw materials and finished goods to and from certain selected areas, primary objective thereof being to promote industrial growth therein. Whereas, "raw material" signifies the raw materials actually required by the industrial unit in its manufacturing process as approved by the Government of India and/or Government of the State concerned, "finished goods" denote the goods actually produced by the industrial unit in accordance with the manufacturing programme approved by the Government of India or the Government of the State in which it is located. According to the petitioner, the said scheme which was initially valid upto 31.03.1979 was extended till 2007. In terms of the scheme, the State Level Committee set up by the Government of Assam was required to scrutinize, sanction and pass the claims for transport subsidy of the claimants. As per the procedure, on completion of the above exercise by the State Level Committee, the Director of Industries, Assam who is the Member Secretary of the State Committee has to accord sanction for disbursement of the transport subsidy to the claimants through the Assam Industrial Development Corporation Ltd. or the Assam Financial Corporation. The expression " "finished goods" envisaged under the scheme understandably has to be synonymous with a manufactured product.

On being registered under the scheme, the petitioners unit was provided registration No. TIDC-(TS) 82-11 dated 09.12.1983. The petitioner had been claiming transport subsidy in respect of raw materials used in its mill and mustard oil and oil cake being the finished products manufactured therein. The petitioner's claim for transport subsidy for the period 01.04.89 to 31.08.93 having been scrutinized, verified and passed by the State Level Committee, an amount of Rs. 32,21,980.00 was accordingly disbursed. The said amount included an amount of Rs. 22,40,369.00 being transport subsidy on oil cake for the said period.

By letter dated 14.07.1997 issued by the Under Secretary to the Govt. of India, Ministry of Industries, Department of Industrial Policy and Promotion it was communicated that the transport subsidy of a by-product which may include oil cake also was not admissible and accordingly the State Government was advised not to entertain any claim for such subsidy for a by product. Comprehending that the observations in the said letter vis-a-vis oil cake had the potential of annihilating his claim for transport subsidy for oil cake which according to him was a finished product, the petitioner sought to invoke the writ jurisdiction of this Court for quashing the said letter. Civil rule No. 5685/1997 was thus filed.

During the pendency of the said proceeding, by letter dated 27.06.2000 issued by the Additional Director (U.S.), Directorate of Industries and Commerce, Assam, the petitioner was intimated that transport subsidy was not allowable on oil cake which was a by product and that therefore, the amount of Rs. 22,40,369.00 paid to his unit for the period 01.04.89 to 31.08.93 was liable to be refunded. The petitioner was thereby required to deposit the said sum in the

related Revenue Head. Being aggrieved, the petitioner followed up his earlier challenge in WP(C) No. 3979/2000.

4. The petitioner has asserted that the oil cake is a finished product having a separate and distinct identity of its own and is an independent marketable commodity in the commercial world. He has maintained that oil cake is not an ancillary or incidental product and it is one of the principal finished products of the processing activities in his mill which is borne out by the registration certificate issued by the Director of Industries. The petitioner has averred that the mustard seeds purchased from Teju, Roing, Khonsa in Arunachal Pradesh are dried in the drying yard and thereafter cleaned and put in the crushing machine wherefrom 20 kgs of Mustard Oil (out of 100 kgs) is produced. The crushed seeds thereafter are put in the repeller wherefrom approximately 6 kgs of oil cake is produced along with a very small quantity of mustard oil i.e. 4 to 5 kgs. The rest of the oil seeds are left as the residue which are sold as manure. It has been asserted that the process of crushing Mustard seeds yields 32% of Mustard Oil and 66% of oil cake and both the items are finished products having separate identities and sold in the market as such. It has been reiterated that oil cake carries all the attributes of a finished product and is by no means is scrap or waste and therefore, the decision to brand it as a by product and the demand of refund of the transport subsidy already defrayed on that count is wholly arbitrary and illegal. In absence of any counter by the State respondents, the above statements on oath have remained uncontroverted.

5. Mrs. Hazarika has empathically urged that oil cake produced in the petitioner's unit along with the mustard oil being a finished product within the meaning of the scheme, the impugned decision is patently illegal and is unsustainable in law. The manufacture of oil cake being a process intended to be undertaken by the petitioner as is reflected by the registration certificate, the respondent authorities were clearly in error in demanding refund of the transport subsidy disbursed therefor, she urged. According to the learned Senior counsel, oil cake being a manufactured product independent and distinct of mustard oil and not being an incidental residue nor a by product, it was a finished product under the scheme for which the petitioner was entitled to the transport subsidy. Referring to the process in particular, for production of oil cake as set out in the writ petition, she urged that the unrebutted facts clearly demonstrate that it was in conformity with the manufacturing programme approved by the government and therefore, the impugned decision adjudging oil cake to be a by product in the instant case is arbitrary and flawed. Consequently, the demand for refund of the transport subsidy paid to the petitioner on that account is non est in law. Tested by the criteria spelt out by a host of decisions essential to inform a manufacturing process, the oil cake produced in the petitioner's unit is unmistakably a finished product under the scheme and therefore, in any view of the matter, the impugned decision is unjustifiable in law, she urged. Ms. Hazarika sought to reinforce her submissions relying on the decisions of the Apex Court in (i) *The Workmen represented by Secretary Vs. The Management of Reptakos*

Brett and Co. Ltd. and another, Sonebhadra Fuels Vs. Commissioner, Trade Tax, U.P., Lucknow, Sonebhadra Fuels, Appellant v. Commissioner, Trade Tax, U.P., Lucknow, Respondent and of this Court in North East Pure Drink Private Ltd., Petitioner v. State of Assam and Anr. Respondents (2004) 3 GLT 131.

6. Mr. Saikia, as against this maintained that oil cake being an incidental by product of the manufacturing process of mustard oil, the impugned decision as conveyed in the letter dated 14.07.1997 is valid. As a corollary, the demand of refund of transport subsidy erroneously disbursed to the petitioner is unassailable.

7. The competing arguments have received due consideration of this Court. As the entitlement of the transport subsidy is traceable to the scheme, logically therefore, the rival stands are to be tested by the yardstick prescribed thereby. Expedient thus it would be to refer thereto at the threshold.

8. The Transport Subsidy Scheme, 1971 is for grant of subsidy on the transport of raw materials and finished goods to and from certain selected areas with a view to promote growth of industries there. Therein "Raw material" means any raw materials actually required and used by an industrial unit in its manufacturing programme as approved by the Government of India/Union Territories and or by the Government of the State in which it (industrial unit) is located.

"Finished product" has been defined to mean goods actually produced by an industrial unit in accordance with the manufacturing programme approved by the Government of India and or the Government of the State/Union Territory in which the industrial unit is situated. In short, "transport subsidy" as comprehended in the scheme is for the industrial units located in the selected areas in respect of raw materials which are brought into and finished goods which are taken out of such areas. For the finished goods to be eligible to transport subsidy, the same have to be actually produced by the concerned industrial unit in accordance with the manufacturing programme approved by the Government of India and/or Government of the State/Union Territories in which the industrial unit is located. It is not in dispute that the manufacturing process pursued by the petitioner in his industrial unit for production of mustard oil and oil cake is in conformity with such approved manufacturing programme.

9. A bare perusal of the letter dated 14.07.1997, subject matter of challenge in Civil Rule No. 5685/1997 does not reveal any decision that the oil cake per se is a by product and therefore irrespective of the manufacturing process leading to the production thereof, it would not attract transport subsidy therefore under the scheme. While emphasizing that transport subsidy was not admissible on by products it has only been conveyed thereby that oil cake may also be a by product. No unequivocal determination thereby that oil cake is essentially a by product has been communicated thereby. The letter dated 14.07.1997 therefore in my considered view, cannot provide an irrefutable premise for any

administrative decision that oil cake has been identified to be a by product for all intents and purposes. Not only the pleaded assertions in the writ petition have remained uncontroverted, in course of the hearing as well, the learned State counsel could not invite the attention of this Court to any material or record to suggest otherwise. In that view of the matter, the very foundation of the demand of refund of the transport subsidy for oil cake released in favour of the petitioner is non-existent. The impugned order dated 27.06.2000 therefore proceeded on the misconception that oil cake has been determined to be a by product as per letter dated 14.07.1997. It being so, the impugned demand is liable to be adjudged ineffectual, null and void plainly on this count alone.

10. The impugned decision may be tested as well on the touchstone of the definition of finished product and the manufacturing process administered by the petitioner to produce oil cake. The certificate of registration issued by the Directorate of Industries to the petitioner's firm M/s Mahabir Oil, Flour and Rice Mill discloses that its manufacturing activities were relatable to the production of mustard oil and oil cake. It presupposes therefore that the petitioner had declared before the concerned authorities of the industries department of the State to undertake production of the above two commodities in his industrial unit. Disclosing the different stages of the manufacturing process the petitioner has stated that for production of mustard oil, the seeds are dried in the drying yard and after cleaning are put in the crushing machine wherefrom 26 kgs of mustard oil is produced from 100 kgs of oil seeds. To produce oil cake the crushed seeds are thereafter put in the repeller wherefrom 6 kgs of oil cake is produced at that stage. The process also yields 4-5 kgs of mustard oil. The residual oil seeds however, are used as manure. According to the petitioner, the break up of the articles produced is (1) 32% mustard oil (2) 66% oil cake and (3) 2% residue. These averments as alluded hereinabove have remained unquestioned. A brief reference of the authorities cited at the Bar at this stage is necessary.

11. In Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam (supra), the question that arose for consideration before the Apex Court was whether coconut fibre was an entity separate from the husk in the commercial parlance. The count noticed that the process involved in making coconut fibre from coconut husk was that the green husk was soaked in saltish sea water for days together and after decomposition were subjected to beating process either by manual or mechanical process and then the fibre was extracted. The query posed was whether any manufacturing process was involved in converting the husk into fibre and whether the latter was different from the former. Dilating on the purport of "manufacture", the Apex Court held that by the process of manufacture something is produced and brought into existence which is different from that, out of which it is made in the sense that the thing produced is by itself a commercial commodity capable of being sold or supplied so much so that the material from which the thing or product is manufactured may necessarily lose its identity or may become transformed in its

basic or essential properties.

12. The observations of the Constitution Bench of the Apex Court in *Ujagar Prints Vs. Union of India (UOI)*, as extracted hereinbelow was recalled.

The prevalent and generally accepted test to ascertain that there is "manufacture" is whether the change or the series of changes brought about by the application or processes take the commodity to the point where, commercially, it can no longer be regarded as the original commodity but is, instead, recognized as a distinct and new article that has emerged as a result of the processes. The principles are clear. But difficulties arise in their application in individual cases. There might be borderline cases where either conclusion with equal justification be reached. Insistence on any sharp or intrinsic distinction between "processing" and "manufacturer", we are afraid, results in an oversimplification of both and tends to blur their interdependence in cases such as the present one.

It ruled that for a manufactured product the article that emerges from the process must be distinct and new recognized or sanctioned as such in the commercial parlance for sale or supply.

13. The question posed in *Sonebhadra Fuels (supra)* was whether coal briquettes was a different commercial commodity from coke or coal for determining its eligibility for sales tax exemption under U.P. Trade Tax Act. Dwelling on the scope "manufacture" in general terms, the Apex Court with particular reference to Section 2(e-1) of the said statute answered the question in the affirmative. It recalled its decision in *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, that where any commodity is subjected to a process or treatment with a view to its development or preparation for the market it would amount to processing which might vary from case to case, slight or extensive and that it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes processing. The Apex Court also referred to the Constitution Bench decision in *Devi Das Gopal Krishnan and Others Vs. State of Punjab and Others*, involving extraction of oil from oil seeds holding that the edible oils produced were different from oil seeds and that the edible oil produced was taxable though tax had already been paid on the oil seeds.

14. This Court in *North East Pure Drink Pvt. Ltd. (supra)*, while examining whether the use of visicoolers (a type of refrigerator) to be installed at the distributor point for marketing soft drink "Pepsi" chilled was an integral part of the manufacture thereof made a detailed survey of the Judicial pronouncements on the essentialities of a manufacturing process. It inter alia referred to the decision of the Apex Court in *B.P.L. India Ltd. Vs. Commissioner of Central Excise, Cochin*, to the effect that manufacture of a product is a mixed question of fact and law and contingent on the nature and extent of the process which may vary from case to case. It held that when a change takes place and a new and

distinct commodity comes into existence known to the consumers and the commercial community as a product which can no longer be regarded as the original, such a change constitutes a process of manufacture. The petitioner's plea was rejected in the accompanying facts.

Precedents reiterating the above views are legion, but it is inessential to burden this decision therewith. In absence of any definition of manufacture as in the instant case, it is attributable to a process whereby raw material(s) applied therein, in course thereof transform into a new commodity distinctly different therefrom (raw materials) identifiable and recognized in the commercial world to be a different product with characteristic features utility and marketability. To be accorded the status of a manufactured or finished product it ought not to be either a residue, waste or by product of the process, simpliciter. In course of the same drill by the application of the process or the treatment commercially a different product has to emerge with distinct identify recognized and identified in the commercial parlance for sale or supply thereof. The manufactured product must be identifiable on its own in the prevalent commercial field and marketable as such. It has to be a commodity undergoing radical transformation as distinguishable from the original substance. In the metamorphosis to be undergone the original commodity has to shed its earlier features and assume a form with unique qualities acceptable in the commercial world in its own worth. The nature of the process, the stages involved, the treatment applied and the end purpose thereof thus have a decisive bearing in ascertaining whether the resultant commodity merits the grade of a finished product. The following definition of manufacture as provided in the Black's Law Dictionary, 5th Edition seems to be aligned with the preponderance judicial opinion noticed hereinabove.

Manufacture--The process or operation of making goods or any material produced by hand, by machinery or by other agency, anything made from raw materials by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine.

15. An identical issue had been raised in Civil Rule No. 3760/1997, Jai Bhagawan Oil and Flour Mills, Petitioner v. The Union of India and Ors., Respondents. The petitioner therein having been denied the transport subsidy under the same scheme for oil cake sought redress by way of a writ of mandamus to the respondents to grant the same. Though, the petitioner had pleaded therein that in the process pursued, mustard oil and oil cake were produced as finished products on crushing mustard seeds and that those were marketable items, the particulars of the exercise involved had not been spelt out in details unlike in the present case. The emphasis was that the Govt. of Assam had been treating mustard oil and oil cake to be finished products under the scheme of transport subsidy. The respondents there resisted the claim asserting amongst others that oil cake was not a finished product in the process of extraction of oil by crushing mustard seeds. In view of the state of pleadings and want of essential facts

outlining the manufacturing process and the treatment provided to the mustard seeds stage by stage leading to the yield of oil cake, this Court after noticing the authorities on manufacture and manufacturing process declined to interfere holding that the petitioner had failed to independently establish that oil cake produced by it was a finished product under the scheme.

16. The factual complexion in the case in hand is different. Not only the petitioner in categorical term has recited the manufacturing process in details phase wise with the assertion that the oil cake so produced has its independent marketable identity and utility, the sworn statements have also remained un-rebutted. The process undertaken by the petitioner evinces an overt endeavour on his part to conduct it for producing oil cake leaving an ultimate residue of 2% of crushed mustard seeds. From the stand point of percentage of mustard oil and oil cake produced from the oil seeds involved as well, oil cake cannot either be held to be a by product or an insignificant residue of the manufacturing activity.

17. On a consideration of the totality of the pleaded facts and the precedential principles of manufacture and manufacturing process as enunciated, I am of the view that oil cake produced by the petitioner in his industrial unit by following the process claimed is a finished product under the scheme for which he is entitled in law to the transport subsidy thereunder.

18. In the result, the petitions succeed. The impugned letter dated 22.07.2000 is set aside and quashed. This determination, however, is limited to the instant proceeding being essentially fact oriented. The broad parameters pertaining to the manufacture and manufacturing process though well established, the ultimate conclusions need be guided by the facts of each case. No costs.