(1973) 04 CAL CK 0011

In the Calcutta High Court

Case No : C.R. No. 1185 (W) of 1969

Mahabirprasad Birhiwala APPELLANT

Vs

State of West Bengal and Others RESPONDENT

Date of Decision : 06-04-1973

Acts Referred:
West Bengal Sales Tax Act, 1954 — Section 2(b)

Citation : 77 CWN 543 : (1973) 31 STC 628

Hon'ble Judges : Debi Prosad Pal, J

Bench : Single Bench

Advocate : Aloke Chakraborty, for the Appellant;Samarendra Nath Dutt, for the Respondent

Final Decision : Dismissed

Judgement

Debi Prosad Pal, J.—The petitioner in this application has challenged the order of the Additional Commissioner, Commercial Taxes, on the short question as to whether conversion of turmeric and black pepper purchased by the petitioner and crushed into powder can be considered as "manufactured or processed by him" so as to attract liability under the West Bengal Sales Tax Act, 1954 (hereinafter referred to as the Act). The facts which have given rise to this controversy are shortly as follows : The petitioner''s business is to purchase "whole" turmeric and black pepper from the market, to crush them into powder and to sell such powdered turmeric and black pepper. The petitioner purchased between 30th July, 1963 and 15th November, 1963,, "whole" turmeric and "whole" black pepper in the State of West Bengal and paid tax on the said purchase under the Act. He filed his return for the period of assessment between 30th July, 1963, to 15th November, 1963 (Dewali year 2020), showing his gross turnover for the period at Rs. 29,461.48. As the entire sale consisted of powdered turmeric and powdered black pepper, the petitioner claimed exemption in respect of the tax on such sale as he had purchased on payment of tax under the Act from the local market. This contention of the petitioner was, however, negatived by the

Commercial Tax Officer on the ground that the notified commodities purchased from the local markets were turmeric and black pepper in the "whole form" which were subsequently processed into "powdered form" and sold in the market. Hence the sale of the powdered form of turmeric and black pepper attracts tax under the Act. The petitioner preferred an appeal before the Assistant Commissioner of Commercial Taxes and a revisional application before the Additional Commissioner of Commercial Taxes against the order of the Assistant Commissioner of Commercial Taxes. The Additional Commissioner held that the act of powdering turmeric and black pepper is also an act of manufacture and hence the petitioner being a manufacturer of powdered turmeric and black pepper in West Bengal is a dealer under the provisions of the Act and is liable to pay tax on sales of powdered turmeric or black pepper. The Assistant Commissioner of Commercial Taxes against whose order the petitioner came before the Additional Commissioner of Commercial Taxes was of the view that the transformation of the whole turmeric and black pepper into a powdered form does not involve any act of manufacture, but constitutes an act of processing and hence under the provisions of the Act, even the act of processing any notified commodity makes a person dealer liable to pay tax under the Act.

2. Being aggrieved by the order of the Additional Commissioner, the petitioner moved this court and obtained a rule nisi. The main contention urged before me by Mr. Aloke Chakraborty, the learned counsel for the petitioner, is that the conversion of "whole" turmeric and black pepper into powdered form by crushing cannot be said to be manufacture or an act of processing and hence the petitioner does not satisfy the test of a dealer within the meaning of Section 2(b) of the Act in respect of the sale of the said commodity in its powdered form. To appreciate this contention it is necessary to refer to certain relevant provisions of the Act. The Act imposes a tax on the sale of certain notified commodities in West Bengal. Notified commodity, according to Section 2(a) of the Act, means any commodity specified u/s 25 of the Act. The said Section 25 authorises the State Government to specify such commodity by notification in the official Gazette, if the State Government is of the opinion that it would be in the public interest that any commodity, which is liable to taxation under the Bengal Finance (Sales Tax) Act, 1941, should be taxed under the Act. By a notification dated 1st May, 1955, the following commodities were declared to be notified commodities within the meaning of Section 2(a) of the Act :

Black and white pepper, known locally as gol marich, that is to say, the berry of the plant ''Piper Nigrum'', whole, broken, ground or powdered, or of any other form or description whatsoever.

Turmeric, known locally as haridra or halud, that is to say, the product obtained from the plant ''Curcuma Longa'', whole, broken, ground or powdered, or of any other form or description whatsoever.

4. u/s 2(b) of the Act, a dealer means any person who sells notified commodities manufactured, made or processed by him in West Bengal, or brought by him into

West Bengal from any place outside West Bengal, for the purpose of sale in West Bengal. The question that calls for consideration is whether "whole" black pepper and turmeric when crushed into powdered form can be said to have been manufactured or processed within the meaning of Section 2(b) of the Act. In my opinion, such an act of crushing does not constitute manufacture. The word "manufacture" has not been defined in the Act and in the absence of any definition of the word "manufacture" in the Act, the word should be given the same meaning as is attributed to it in ordinary parlance. Etymologically the word "manufacture" comes from the Latin word manu, which means "hand" and the word facere, which means "to make". In origin, therefore, the word implied the making of anything by hand. With the passage of time this expression "manufacture" has acquired different shades of meaning. The most generic meaning of the term "manufacture" is "action or process of making articles or material by the application of physical labour or mechanical power". The other limited meaning of the word implies a transformation of raw materials into a commercial commodity or a finished product which has a separate identity : Commissioner of Income Tax, Bombay City I Vs. Tata Locomotive and Engineering Co. Ltd., . In the context of sales tax legislation, if the goods to which some labour is applied remain essentially the same commercial article, it cannot be said that the final product is the result of manufacture: Commissioner of Sales Tax, U. P., Lucknow v. Harbilas Rai & Sons [1968] 21 S.T.C. 17 (S.C.). The essence of manufacture is the changing of one object into another for the purpose of making it marketable. For the purpose of ascertaining whether it is a different thing or not, one has to consider whether the thing made is a distinct entity for commercial purposes. In my opinion, such process of transformation of black pepper and turmeric into powdered form does not amount to manufacture.

5. Mr. Dutt appearing for the respondent made an alternative contention that even if such an act does not constitute a manufacture, it comes within the meaning of the expression "processing". The expression "processed" appearing in Section 2(b) of the Act has not also been defined and hence it would bear the ordinary and natural meaning attributed to it. According to Oxford Dictionary, one of the meanings of the word "processed" is "a continuous and regular action or succession of actions, taking place or carried on in a definite manner and leading to the accomplishment of some result". The activity contemplated by the definition is general, requiring only continuous and regular action leading to the accomplishment of some result. In the case of Sri Om Prakas Gupta v. Commissioner of Commercial Taxes [1965] 16 S.T.C. 935, B.N. Banerjee, J., held that converting camphor powder into camphor cubes is an act of processing within the meaning of Section 2(b) of the Act. His Lordship held that the word "processed" appearing in Section 2 (b) of the Act has been used in the general sense. It is not one of the requisites that the activity should involve some operation on some material in order to its conversion to some other stuff. In my opinion, the contention of the learned counsel for the respondent is correct. If the word "processed" is to be construed in a general way requiring only

continuous and regular action leading to the accomplishment of some result, I see no reason why b''ack pepper and turmeric when converted into its powdered form does not involve an act of processing. It is not necessary, in my opinion, that in order to be a process within the meaning of Section 2(b) of the Act, as a result of that process, the raw material should be converted into any other form. The word "processed" in its ordinary connotation would embrace within its scope the conversion of black pepper and turmeric into its powdered form. In my view, the sale of such powdered black pepper and turmeric would make the petitioner a dealer within the meaning of Section 2(b) of the Act.

6. For these reasons, this application fails. The Rule is discharged. Interim order, if any, is vacated.

7. There will be no order as to costs.