

(2014) 09 AHC CK 0113

In the Allahabad High Court

Case No : Trade Tax Revision Nos.-153, 154, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 167, 168, 169 and 170 of 2011

Marico Ltd.

APPELLANT

Vs

The Commissioner, Commercial Taxes

RESPONDENT

Date of Decision : 12-09-2014

Acts Referred:

Uttar Pradesh Value Added Tax Act, 2008 — Section 70

Citation : (2015) 78 VST 423

Hon'ble Judges : B. Amit Sthalekar, J

Bench : Single Bench

Advocate : Shubham Agrawal and Amitabh Mani, Advocate for the Appellant

Judgement

B. Amit Sthalekar, J.—These revisions have been filed assailing the order of the Commercial Tax Tribunal, Lucknow dated 28.3.2011. They arise out of various appeals filed by the revisionist before the Tribunal and have been decided by a common order and therefore the aforesaid revisions involve common question of law and fact and are being decided by this common judgment.

2. The question of law involved in these revisions are as to whether pure coconut oil which is manufactured by the revisionist is taxable at 4% under entry 43 or entry 131 of Schedule II Part A of the U.P. VAT Act, 2008. The other question of law in the case is as to whether Revive Instant Starch, which is also manufactured by the revisionist and which contains 90% tapioca starch and about 3% of other additives is liable to be charged to tax under Entry 118 of Schedule II Part A of VAT Act, 2008 or was liable to be treated as an unclassified item chargeable to tax at 12.5%.

3. Briefly stated the facts of the case are that the revisionist is a registered Company manufacturing 100% pure coconut oil having a license under the Food Adulteration Act and the same is sold in the market as coconut oil and on the packaging it is mentioned as "A premium quality 100% pure edible oil made from the finest coconut". The assessing officer however treated coconut oil as an

unclassified item on the ground that under the common perception coconut oil is associated more with hair oil under the brand name of Parachute. The assessing officer held that the coconut oil of the brand name Parachute is commonly understood as hair oil and is therefore liable to tax at 12.5% under the unclassified list item no. 5. For purposes of arriving at this conclusion, the assessing officer has placed reliance upon the decision in the case of The Bombay Oil Industries (P) Limited Vs. The Commissioner of Trade Tax So far as Starch under the brand name of Revive is concerned, the same was treated an unclassified item.

4. So far as the Parachute coconut oil is concerned, the Tribunal has held that the findings of the authorities below that merely because Parachute coconut oil is commonly associated with hair oil therefore the product in question should be treated as hair oil and not as edible oil under Entry 43 or Entry 131 of Schedule II Part A to the U.P. VAT Act, 2008 is not correct. It is however, noticed that having observed as much the Tribunal fell short of itself recording any finding as to whether coconut oil fell within entry 43 or 131 of Schedule II Part A of the U.P. VAT Act, 2008 and therefore remitted all the appeals to the appellate authority for reconsideration.

5. So far the Revive Instant Starch is concerned, the Tribunal held that Entry no. 118 of Schedule II Part A mentions Starch, Sago and sabudana and has rejected the claim of the revisionist that Revive Starch be treated as classified item under Entry 118 of the Schedule II Part A.

6. I have heard Shri Bharat Ji Agarwal, learned senior counsel assisted by Shri Shubham Agrawal for the revisionist and Sri Sanjeev Shankdhar, learned counsel for the respondent, Revenue.

7. So far as the finding of the Tribunal on the question of coconut oil is concerned, in my opinion the Tribunal having accepted that the findings recorded by the authorities below that pure edible coconut oil should be identified by its common parlance association with hair oil was not a sound finding and the appellate authority should have determined as to whether it fell within Entry 43 or Entry 131 of Schedule II, Part A is no doubt a correct finding but having said that it was incumbent upon the Tribunal, since the matter was before it and also within its competence, to have itself recorded a clear and unambiguous finding as to whether pure coconut oil (edible) fell within Entry 43 or Entry 131 or both for the purposes of tax. The Tribunal has in any case not accepted the finding of the appellate authority or the assessing officer that edible coconut oil should be treated as an unclassified item taxable at 12.5%.

8. Entry 43 of Schedule II Part A of the U.P. VAT Act, 2008 mentions edible oil and oil cake therefore if Parachute pure coconut oil which is marked as "edible" on its packaging cannot be labeled as hair oil and therefore an unclassified item liable to tax at 12.5% it must necessarily be classified as edible oil under Entry no. 43 of Schedule II Part A and therefore, in my opinion would be liable to tax

at 4% and not as an unclassified item taxable at 12.5%.

9. So far as Revive Instant Starch is concerned, it contains the following ingredients:

10. The submission of the learned senior counsel is that Tapioca starch which is edible comprises about 97% of the product and the remaining items from 2 to 7 contains a negligible 3% of the chemicals and therefore Revive Starch must necessarily be classified as Starch falling in Entry 118 of Schedule II, Part A and therefore liable to tax as such and not be treated as an unclassified item.

11. The submission further is that Entry 118 of the Schedule II, Part A mentions only Starch and does not draw any distinction between edible starch and non edible starch and therefore it would make no difference if by addition of about 3% of sodium lauryl sulphate, silicon dioxide, perfume essence B, titanium dioxide, microguard and colour granules collectively it would become inedible and therefore the Tribunal was not correct in holding that since Revive Starch is inedible it cannot be treated as Starch equivalent to Starch mentioned in Entry 118 which is clubbed with Sago and Sabudana nor is the revisionist entitled to the benefit of Section 70 of the U.P. VAT Act or the Central Excise Tariff Act, 1985 heading no. 3505.10 which mentions "dextrines and other modified starches"

12. Section 70 of the U.P. VAT Act provides for allotment of commodity code and provides that in respect of any entry of any Schedule of the Act, the State Government may prepare a list of commodities which shall be deemed covered under the said entry of the said Schedule and may on the basis of harmonized system of nomenclature as adopted by the Government of India under the Central Excise Tariff Act, 1985 allot commodity code to the commodities so vested. However, in this revision, the revisionist has not sought the benefit of Section 70 of the U.P. VAT Act but is rather relying upon the Entry 118 which mentions Starch as a commodity and therefore liable to tax at 4%..

13. Shri Sanjeev Shankdhar, learned counsel for the Revenue rebutting the submissions of the learned senior counsel, on the other hand, submitted that Starch in Entry 118 of the Schedule II, Part A must necessarily be read collectively with Sago and Sabudana and that since Sago and Sabudana are edible items therefore the Starch included in Entry 118 would necessarily mean edible starch and not Revive Starch which is admittedly not edible starch since after mixing of 3% of the chemicals to tapioca starch it no longer remains edible. The learned counsel for the Revenue further submitted that applying the principles of ejusdem generis since Sago and Sabudana are edible items therefore Starch in Entry 118 must necessarily be interpreted to mean edible starch, as the meaning of the word would flow from the context in which the word or words preceding it or following it collectively mean. In my view Sago and Sabudana in Entry 118 have not been mentioned as edible or inedible nor has it been informed to the Court that there is any other form of Sago or Sabudana which may not be edible. So far as Starch is concerned, there is no dispute that

the same exists inedible as well as edible form. Therefore unless it is also shown that Sago and Sabudana do not exist in inedible form, the principle of ejusdem generis cannot be applied as a rule of interpretation to include Starch as mentioned in Entry 118 to include only edible Starch.

14. At this point Shri Bharat Ji Agarwal, learned senior counsel has referred to a judgment of the Supreme Court reported in 1979 U.P.T.C. 573 (SC) Alladi Venkateshwarlu Vs. Government of Andhra Pradesh where the Supreme Court had occasion to interpret the word Rice as existing in Item 66 (b) of the Schedule I to the Andhra Pradesh General Sales Tax Act, 1957 and it was held in paragraph 10 that the term Rice is wide enough to include Rice in its various forms whether edible or inedible. Rice in the form of grain is not edible but parched rice and puffed rice are edible but the entry "Rice" covers both forms of rice. Paragraph 10 of the said judgment reads as under:

"It is clear that there is a distinction between "paddy", as found in Item 8 of the Second Schedule, and "rice", as mentioned under Item 66 of the First Schedule. Apparently, the removal of the husk makes this difference. It is true that the First Schedule, which contains as many as 136 items, includes a number of separate fairly detailed entries. Entry 58 is for bran or husk of "rice" and Entry 59 is for "de oiled bran of rice". It appears, therefore, that "rice in husk" is "paddy". When it is removed from husk, the husk and rice become separately taxable. But, there are not separate entries for rice and rice reduced into an edible form by heating or parching without any addition of ingredients or appreciable changes in chemical composition. The term "rice" is wide enough to include rice in its various forms whether edible or inedible. Rice in the form of grain is not edible. Parched rice and puffed rice are edible. But, the entry "rice" seems to us to cover both forms of rice. At any rate, it is wide enough to cover them."

15. In paragraph 8 of the said judgment the Supreme Court further held as under:

"We do not think that it is fair to so interpret a taxing statute as to impute an intention to the legislature to go on taxing what is virtually the same product in different forms over and over again. Such a result would be contrary to basic axioms of taxation. Unless the language of the taxing statute was absolutely clear, it should be given an obviously unfair interpretation against the assessee."

16. The learned senior counsel for the revisionist has also referred to the judgment of the Supreme Court in the case of Mauri Yeast India Pvt. Ltd. Vs. State of U.P. and Another, wherein the Supreme Court has held that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred. Paragraph 6 of the said judgment reads as under:

"We, therefore, are of the opinion that if there is a conflict between two entries one leading to an opinion that it comes within the purview of the tariff entry and another the residuary entry, the former should be preferred."

17. Having considered the submissions of learned counsel for the parties, I am of the view that word Starch as used in Entry 118 of Schedule II Part A of the U.P. VAT Act, 2008 has neither been referred to as edible or inedible and therefore Revive Starch must be held to be falling within the meaning of word Starch as used in Entry 118. If it had been the intention of the Legislature to distinguish between edible and inedible Starch, the Entry 118 itself would have explicitly said so and therefore when the Legislature itself is silent a meaning or interpretation to a word used in the statute must not be given which the Legislature itself did not intend and did not say in so many words.

18. Therefore on the view taken above and the law laid down by the Supreme Court, the order of the Tribunal dated 28.3.2011 is set aside.

19. All the above revisions are allowed.