

(2007) 07 KAR CK 0052
In the Karnataka High Court
Case No : S.T.R.P. No. 35 of 2002

Mrs. Uma Murthy

APPELLANT

Vs

Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 17-07-2007

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 14 (i) (iii)

Citation : (2010) 33 VST 316

Hon'ble Judges : V. Gopala Gowda, J;Arali Nagaraj, J

Bench : Division Bench

Advocate : T.N. Keshavamurthy, for the Appellant; S. Sujatha, A.G.A., for the Respondent

Final Decision : Allowed

Judgement

V. Gopala Gowda, J.—The petitioner-assessee questioned the correctness of the judgment dated March 7, 2002 passed in S.T.A. 572 of 2000 and the order passed by the first appellate authority in KST. AP. No. 260 of 1999-2000 urging various legal grounds and prayed to set aside the impugned judgment and also the orders of first appellate authority and the assessing authority by the following substantial questions of law, which read thus :

A. Whether, in the facts and circumstances of the case, the Appellate Tribunal was right in upholding the orders of the lower authorities denying to the petitioner the benefit of sales tax exemption in terms of G. O. No. CI 140 SPC 93 dated July 12, 1993 read with the certificate of sales tax exemption dated October 10, 1995 granted by the District Industries Centre, Mysore, certifying sales tax exemption on the finished goods ?

B. Whether the Tribunal is justified in upholding the orders of the assessing and appellate authorities who unilaterally denied to the petitioner the benefit of KST exemption on the value of finished goods, though authorized by the Commerce and Industries Department in its Government Order dated July 12, 1993 and

certificate dated October 10, 1995, without getting the same modified or cancelled by the concerned authorities in the Commerce and Industries Department or without obtaining the approval/concurrence of the State Level Committee ?

C. Whether the Tribunal is legally justified in considering that "manufacturing activity" is a pre-condition for grant of exemption from sales tax even though the parent Government order dated July 12, 1993 of the Commerce and Industries Department did not stipulate so ?

D. Whether the petitioner is eligible for sales tax exemption on the value of finished goods, viz., turmeric powder in terms of Government order dated July 12, 1993 of the Commerce and Industries Department read with the certificate dated October 10, 1995 of the District Industries Centre ?

E. Whether the activity of the petitioner, namely, conversion of turmeric roots into turmeric powder is a manufacturing activity so as to be eligible for the benefit of sales tax exemption even in terms of Government Notification No. FD 171 CSL 93 (I and II) dated August 28, 1993?

2. Sri T. N. Keshava Murthy, the learned Counsel appearing on behalf of the assessee, seriously questioned the concurrent finding of fact recorded by the appellate authority, namely, Karnataka Appellate Tribunal (hereinafter called as "the Karnataka Appellate Tribunal") contending that the same is not only erroneous finding but also contrary to law. He has placed strong reliance upon the Government Order dated July 12, 1993 followed by another Government Order dated August 28, 1993 as a measure of follow up to implement the policy of the State Government as contained in Government Order dated July 12, 1993 and further as per the guidelines enumerated in the supplementary Government Order dated August 28, 1993, in the place output manufacture of goods is inconsistent with the earlier Government Order which is the industrial policy of the State Government in extending tax exemptions to the newly established factories including the petitioner-industry. Pursuant to the supplementary notification wherein certain conditions were laid down by the State Government, the certificate was issued by the Department of Industries and Commerce (hereinafter referred to as "the DIC") in favour of the petitioner is not accepted by the assessing authority and the appellate authority which is contrary to the decisions rendered by two Division Bench judgments of this Court reported in the case of Brooke Bond Lipton India Limited v. State of Karnataka [1998] 109 STC 265 and Wipro Infotech Limited v. Additional Deputy Commissioner of Commercial Taxes (Assessment-II) [2000] 117 STC 244. The said certificate is in favour of the assessee. The assessing authority has not referred the same to the DIC or the State Level Committee seeking clarification for not accepting the certificate issued in favour of the assessee. The State Government has framed the industrial policy. To carry out the same subsequent notification was issued. The same cannot be repugnant to the policy, which is approved by the Cabinet of the State Government. The reliance is placed upon the said decisions by the

learned Counsel to show that the assessing authority's and the appellate authority's orders are contrary to the Government notification dated July 12, 1993.

3. The learned Counsel for the petitioner placed strong reliance upon the decision of the Supreme Court in the case of *State of Bihar v. Suprabhat Steel Ltd.* reported in [1999] 112 STC 258 in support of the contention that the State Government has framed the industrial policy : to carry out the same subsequent to notification issued : the same cannot be repugnant to the policy which is approved by the Cabinet of the State Government. Reliance is placed on the said decision to show the finding recorded by the assessing authority, the appellate authority and Karnataka Appellate Tribunal is contrary to the Government notification dated July 12, 1993.

4. The concurrent finding of fact recorded by the appellate authority that the turmeric powder is not different from turmeric roots is once again contrary to the material evidence on record and law laid down by the apex court in the case *Rajasthan Roller Flour Mills Association v. State of Rajasthan* reported in [1993] 91 STC 408 and other two Division Bench judgments of this Court, namely, *Brooke Bond* [1998] 109 STC 265 and *Wipro Infotech* [2000] 117 STC 244. In the decision of *Brooke Bond* [1998] 109 STC 265 two Constitutional Bench decisions of the apex court are referred to at paragraphs 47 and 48, namely, *Empire Industries Limited and Others Vs. Union of India and Others*, and *Ujagar Print's case* [1989] 74 STC 401. The apex court referring to the facts of the case in *Brooke Bond Upton India* [1998] 109 STC 265 (Karn) wherein it is held that there is a manufacturing process involved in preparing blended tea. Therefore, it is contended by the learned Counsel that the judgment of the Supreme Court referred to in the *Brooke Bond Upton India Ltd.'s case* [1998] 109 STC 265 (Karn) with all force is applicable to the fact-situation of the present case to justify the claim of the assessee that the turmeric powder is a distinct and separate commodity in the commercial parlance. Therefore, the finding recorded by the assessing authority and the appellate authority is not only erroneous but suffers from error in law for the reasons that the turmeric powder is no doubt a spice but they have wrongly held that no manufacturing process is involved in the finding recorded by them. Therefore, it is contended that the said finding is erroneous in law and further in support of the same proposition of law, reliance is placed on another Division Bench judgment of this Court, namely, *Assistant Commissioner of Commercial Taxes, V Circle, Bangalore v. J.P. Kumar & Co.* [1998] 109 STC 645 wherein the Division Bench of this Court after referring to the case of *Rajasthan Roller Flour Mills* [1993] 91 STC 408 held that ragi and ragi powder is different and distinct. Further he has placed reliance upon another decision of this Court reported in the case of *Associated Cement Companies Limited, Bangalore v. Government of Karnataka* [1998] 45 Kar LJ 472 (HC)(DB) in support of the same proposition of law and also unreported decision rendered by this Court in *W. P. 11851-11859/2001 (T-Ey.T)* decided on July 24, 2003 (*Unique Creations (Bangalore) Ltd. v. State of Karnataka* [2004] 135 STC 213)

and another unreported Division Bench decision in (Belgaum Tyres & Treads Pvt. Ltd. v. State of Karnataka S.T.R.P. 14/1999-Decided on May 25, 2004) wherein this Court has referred to Wipro Infotech Ltd. [2000] 117 STC 244. To substantiate the contention the learned Counsel has placed reliance upon the certificate issued by the General Manager, D. I. C, Mysore, at annexure E to show that the claim of exemption from payment of tax in respect of turmeric powder according to him which is manufactured in the petitioner's factory is exempted from payment of tax under the Government policy and Government order referred to supra, to that effect the certificate was issued in favour of the assessee by the competent officer, which is erroneously not accepted by the assessing authority and the appellate authority, which is contrary to the decisions of this Court referred to supra. Therefore, Sri. T. N. Keshavamurthy, learned Counsel for the petitioner, submits that the questions of law in this case which are extracted in this order would arise for answering the same in favour of the assessee.

5. Smt. S. Sujatha, learned Additional Government Advocate appearing for the respondent, placed strong reliance upon the Supreme Court decision reported in the case of Krishna Chander Dutta (Spice) Pvt. Ltd. v. Commercial Tax Officer [1994] 93 STC 180. Though the said case is in relation to Section 14 of the Central Sales Tax Act, in the penultimate paragraph the Supreme Court after referring to Rajasthan Roller Flour Mills Association case [1993] 91 STC 408 held that the Notification Nos. 885 and 1915 issued by the West Bengal Government under the provisions of the West Bengal Sales Tax Act, 1954. The apex court has clearly held that turmeric and turmeric powder is concerned, the position is not identical. Applying the functional test it was held in that case that when Section 14(i)(iii) mentioned wheat, it meant wheat alone and not products of wheat like flour, maida and suji. Further made submission that the above decision does not assist the argument of the learned Counsel appearing on behalf of the assessee.

6. Further, the learned Counsel for the respondent placed strong reliance in support of the Division Bench decision of this Court reported in the case of Sri Vinayaka Oil Industries v. State of Karnataka [1993] 91 STC 253 wherein the Division Bench of this Court, after interpretation of the phrase "manufacture" has held that dehusking of tamarind seeds does not amount to manufacture. The said decision is applicable to the facts-situation having regard to the finding of fact recorded by the assessing authority and the appellate authority in their order holding that the powdering of the roots of the turmeric does not involve manufacturing process. Therefore, the said case with all force justify the finding and the reasons recorded on the contentious issues framed by the appellate authority. Therefore, she submits that the questions of law framed by the assessee in the revision petition do not arise for consideration and therefore the same are required to be answered in the negative and against the assessee.

7. With reference to the abovesaid rival and legal contentions this Court after perusal of the findings and reasons recorded by the assessing authority, the

appellate authority and Karnataka Appellate Tribunal in their orders, keeping in view the decisions of the Supreme Court and this Court upon which both the learned Counsel placed strong reliance in justification of their respective legal contentions we answer the questions of law framed in this petition in favour of the assessee for the following reasons in seriatim :

8. Re : Question : A

This question is required to be answered in the negative for the reason that the State Government vide Government notification dated July 12, 1993 granted exemption in favour of the assessee's industry as the same was one of the industries described in Government notification dated August 28, 1993. On the basis of the supplementary notification the certificate issued by the General Manager of District Industries Centre, Mysore, stating that the assessee's industry is registered as small-scale industry located in Kollegal and is registered for the manufacture of vermicelli and spice. We are concerned about the product, namely, turmeric which is one of the spices. In the notification dated July 12, 1993 condition No. (i) stipulates that the interpretation of the Government order and the decision thereon is that of the State Level Co-ordination Committee under the Chairmanship of the Secretary, Commerce and Industries Department. The same shall be final. It is not the case of the respondent-assessing authority that neither the Government policy or the Government order granting exemption u/s 8A of the Karnataka Sales Tax Act to the petitioner-industry in the order is not applicable, but the concurrent finding of the authorities holding that turmeric powder is not different from roots of turmeric. Therefore, no manufacturing process is involved in the product though it is one of the spices. Therefore the assessing authority rejected the claim of the assessee despite the competent officer, namely, General Manager, District Industries Centre, Mysore, has issued the certificate stating that the assessee is manufacturing spices and without referring the said certificate by them either to District Industries Centre or State Level Committee seeking clarification. As held by the two Division Bench judgments of this Court, namely, Brooke Bond Upton India Ltd.'s case [1998] 109 STC 265 and Wipro Infotech Ltd.'s case [2000] 117 STC 244, the rejection of the claim of the assessee without accepting the certificate, though the General Manager of D. I. C, Mysore who is competent to certify that the assessee manufactures spice referable to the turmeric powder from turmeric roots. The reliance placed by the learned Counsel for the petitioner upon the above two Division Bench judgments of this Court are aptly applicable to the facts of the present case. Therefore, we have to answer the finding recorded by the assessing authority, the appellate authority and Karnataka Appellate Tribunal as erroneous in law and non-consideration of the same would vitiate the orders as the same are contrary to the Government order, notification and the certificate issued by the District Industries Centre, Mysore, in favour of the assessee. Therefore, the abovesaid question is answered in favour of the assessee and against the Revenue.

9. Re : Questions B, C, D and E : All these questions are answered together.

The findings of fact recorded by the assessing authority and the first appellate authority are contrary to the Government orders dated July 12, 1993 and August 28, 1993. Sales tax exemption benefit is granted in the aforesaid notifications to the petitioner-industry is supported by the certificate referred to supra issued in favour of the assessee and the same has not been considered in a proper perspective both by the assessing authority and the appellate authority though the District Industries Centre, Mysore, has clearly held that the petitioner is manufacturing spice which is referable to the turmeric powder. The concurrent finding of the appellate authority is erroneous in law for the reason that though the turmeric powder is a spice is the finding recorded by it but it has held that there is no manufacturing process involved for the turmeric powder. Therefore the two Division Bench judgments reported in the cases of this Court in Brooke Bond Lipton [1998] 109 STC 265 and Wipro Infotech [2000] 117 STC 244 and Rajasthan Roller Flour Mills Association's case [1993] 91 STC 408 of this apex court are not accepted by the appellate authorities in support of the legal contention urged by the petitioner's counsel. The said approach of the appellate authority is erroneous in law for the reason that the Supreme Court has examined the provisions of the Rajasthan Sales Tax Act and various other statutory enactments of the sales tax of different States with reference to List II of entry 54 of the Seventh Schedule of the Rajasthan Sales Tax Act, wherein the apex court has held that flour, maida and suji derived from wheat are not "wheat" within the meaning of item (iii) of Section 14(i) of the Central Sales Tax Act, 1956 : they are different and distinct goods from wheat. The submission made by the learned Additional Government Advocate that the abovesaid decision rendered keeping in view of the provisions of Section 14(i) and (i)(iii) of the Central Sales Tax Act and therefore the same cannot be applied to the exemption granted u/s 8A of the Karnataka Sales Tax Act which contention is wholly untenable in law.

10. Therefore the abovesaid contention cannot be accepted by us for the reasons that the Supreme Court with reference to the provisions of the Central Sales Tax Act, keeping in view the exemption order granted, has been extensively considered with reference to various Supreme Court decisions referred to supra and held that the product referred to supra is quite different and distinct product from wheat. The said decision has been rightly followed by the Division Bench decision of this Court in the case of Assistant Commissioner of Commercial Taxes, V Circle, Bangalore v. J.P. Kumar & Co. [1998] 109 STC 645. Further, what is manufacturing activity is elaborately referred to by the Division Bench decision in the case of Brooke Bond Lipton India Ltd.'s case [1998] 109 STC 265 (Karn), in which two Constitutional Bench decisions of the apex court are referred to at paragraphs 47 and 48, namely, Empire Industries case reported in [1987] 64 STC 42 and Ujagar Print's case [1989] 74 STC 401. In the Empire Industries' case [1987] 64 STC 42 the apex court had an occasion to deal with grey fabric after it had undergone various process of bleaching, dyeing, sizing, printing,

finishing, etc., emerges as a commercially different commodity with its own price structure. Further, with reference to Ujagar Prints" case [1989] 74 STC 401 (SC) at paragraph 48 in the Brooke Bond Lipton India case [1998] 109 STC 265 (Karn) referred to, the Division Bench of this Court held that liberal approach to be adopted and the phrase must be widened in the judicial concept of the word "manufacture" as held in the judgment of the apex court. It is said that keeping in view the varied and multifarious aspects of the present day industrialisation, the Supreme Court in the said case took note of the price structure. A unit in Brooke Bond Lipton India Ltd. case [1998] 109 STC 265 (Karn) produced blended tea packages by the operation of the modern automatic machines ensuring unadulterated blended tea in order to maintain its basic qualities and properties like colour and flavour for a longer period. The said decision rendered by the Division Bench after following the binding precedent of the apex court in the case referred to supra, with all fours supports the case of the petitioner particularly having regard to the certificate dated October 10, 1995 issued by the General Manager, District Industries Centre, Mysore, wherein he has stated that the petitioner manufactures turmeric powder which is one of the spices. The finding of the assessing authority and the appellate authority not accepting the said certificate and not referred the certificate to the officer of the District Industries Centre seeking clarification and not granted the benefit to the petitioner under the Government notification and they have recorded a finding against her as already we have held that the finding recorded is not only erroneous for non-consideration of the same in favour of the assessee but the same is opposed to the Government policy and exemption granted by the Government vide its order referred to supra and the law laid down by the apex court and the two decisions of the apex court and two Division Bench decisions of this Court referred to supra. Therefore, we hold that the Karnataka Appellate Tribunal is not right in not extending the benefit of exemption from payment of sales tax in favour of the assessee.

11. The conversion of turmeric roots into turmeric powder certainly involves manufacturing activity to get eligibility by the petitioner to avail of the benefit of exemption from payment of sales tax in terms of the Government order dated August 28, 1993. In this regard it is worthwhile to make reference to the Constitutional Bench decisions of the apex court reported in the case of Union of India (UOI) Vs. Delhi Cloth and General Mills, . The apex court while interpreting items 12 and 13 of the First Schedule under the Central Excises and Salt Act, 1944, the meaning of "goods" and "manufacture" has been examined and held that substance produced by the manufacturer at an intermediate stage is not put in the market would not make any difference to the chargeability of the substance to excise duty if, it is covered by an item in the First Schedule to the Act. After holding as stated above the phrase "manufacture" is explained at paragraph 14 with reference to the Edition of Words and Phrases, Vol. 26 from an American judgment. The relevant passage reads thus :

"Manufacture" implies a change, but every change is not manufacture and yet

every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation : a new and different article must emerge having a distinctive name, character or use.

12. In the Empire Industries" case [1987] 64 STC 42 the apex court has referred to the decision of the Supreme Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pto Food Packers, wherein the apex court in that case examined the consumption of commodity in the process of manufacture and held that determination test would be processing of pineapple into slices under selling does not involve its consumption. Further made an observation in the said case that the goods purchased should be consumed. The consumption should be in the process of manufacture and the result must be the manufacture of other goods. The said observation squarely applies to the fact-situation, particularly, having regard to the certificate issued by the General Manager, District Industries Centre, Mysore, where he has stated that the petitioner is manufacturing the turmeric powder from the roots of turmeric. The said certificate is not accepted by the assessing authority, the appellate authority and also Karnataka Appellate Tribunal without assigning valid reason whatsoever and without referring the same to the District Industries Centre, Mysore, seeking clarification and the same should not have been rejected by them.

13. In view of the aforesaid undisputed facts and the certificate issued by the competent officer certifying that the assessee has been manufacturing the goods of turmeric powder by following certain manufacturing processes such as the roots of turmeric are boiled, dried, powdered and coloured. The above manufacturing processes involved in manufacture of turmeric powder, which is one of the spices different and distinct from the roots of turmeric. Therefore, we have to hold that there is a manufacturing process involved in manufacture of turmeric powder from roots of turmeric. This has been rightly certified by the certifying officer but not accepted by the assessing authority, the appellate authority and Karnataka Appellate Tribunal without assigning valid reasons. Therefore, the findings of the assessing authority, the appellate authority and Karnataka Appellate Tribunal are not only erroneous but error in law. Therefore, the aforesaid questions of law framed in this petition by the petitioner are also required to be answered in favour of the assessee. Accordingly, we answer the same in favour of the assessee.

14. Accordingly, the revision petition is allowed and the impugned orders of the first appellate authority, the assessing authority and Karnataka Appellate Tribunal are hereby set aside. We hold that the petitioner is entitled for exemption from payment of sales tax in respect of turmeric powder goods which is termed as spice under the Government order dated August 28, 1993.