

(1987) 07 PAT CK 0046

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 4413 of 1981 and Civil Writ Jurisdiction Case No. 2346 of 1983

M/s Champaran Sugar Company Limited

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 06-07-1987

Acts Referred:

Constitution of India, 1950 — Article 252(1)
Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 10(1), 10(2), 10(2)(15), 14, 2(c)

Citation : (1989) PLJR 543

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : K.D. Chatterjee, K.N. Gupta and Satyendra Krishna Prasad, for the Appellant; T.K. Jha and A.B. Ojha, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—These two writ petitions were heard together with the consent of the parties, as they involve common question of law and are being disposed of by this common judgment. In these writ petitions the sole question that falls for determination is as to whether a "sugar industry" is a chemical industry or an industry where processing of vegetable products is carried out, within the meaning of the provisions of the Water (Prevention and Control of Pollution) Cess Act, 1977.

2. The facts of the cases are in a very narrow compass and are not much in dispute. The petitioner admitted is the owner of two sugar factories; one situated at Chanpatia and another at Barachakia. The aforementioned two sugar factories are engaged in the manufacture of sugar by vacuum pan process. It is alleged that in course of manufacture of sugar, sulphur is used only for the purpose of cleaning the cane juice and at no other stage of manufacturing process any other chemical is used.

3. The parliament enacted the Water (Prevention of Pollution) Control Act, 1974 (Act no. VI of 1974) (hereinafter referred to as "the 1974 Act". The said Act was enacted in terms of Article 252(1) of the Constitution on the basis of resolutions passed by both the Houses of Legislatures of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh etc., to the effect that the matters relating to regulation of the Prevention and Control of Pollution of Water. The Parliament thereafter with a view to augment the financial resources of the Boards constituted under the aforementioned 1974 Act enacted the Water (Prevention and Control of Pollution) Cess Act, 1977 (hereinafter referred to as "Water Cess Act"). Section 3 of the aforementioned Water Cess Act, 1977 provides for levy and collection of cess for the purpose of carrying out the object as mentioned in the 1974 Act. Sub-sections (2) and (3) of Section 3 of the said Act further provides that cess would be payable by every person carrying on any specified industry (underlining is mine) for any of the purposes specified in column 1 of Schedule 2 thereof.

4. It is not in dispute that "sugar industry" as such is not an industry specified in Schedule 1 appended to the aforementioned Water Cess Act and as such is not "specified industry" within the meaning of section 2(c) thereof.

5. The petitioner received a notice dated 22.12.1978 whereby and where under it was required to submit a return for furnishing the requisite details showing the quantity of water consumed by it for the periods mentioned therein. The petitioner in reply to the afore-mentioned notice contended that it was not liable to pay any cess under the aforementioned Water Cess Act in view of the fact that sugar industry is not a specified industry. The petitioner, however, under protest and without prejudice to its right submitted its returns.

6. The respondent no. 3, however, on the basis of the figures furnished in the said returns for the relevant years assessed the petitioner by an order dated 17.12.1979 as contained in Annexure-2 in C.W.J.C., No. 4413 of 1981 and by an order dated 18.12.1979 as contained in Annexure-1 in C.W.J.C., No. 23(sic)6 of 1983. The petitioner purported to be being aggrieved by and dissatisfied with the aforementioned orders preferred appeals before the respondent no. 2, who by its judgments as contained in Annexure-6 in C.W.J.C., No. 4413 of 1931 and Annexure-4 in C.W.J.C., No. 2346 of 1983 dismissed the said appeals. The petitioner, in this writ petition, prays for issuance of appropriate writ quashing the orders and judgments aforementioned.

7. The respondents in passing the orders of assessment rejected the contentions raised on behalf of the petitioner to the effect that it is not liable to pay any cess under the provisions of the Water Cess Act but held that "sugar industry is either a "chemical industry" or a "vegetable processing industry" as contemplated under item nos. 7 and IS of the Schedule appended to the Water Cess Act.

8. Mr. K. D. Chatterjee, learned senior counsel appearing on behalf of the petitioner contended that "sugar industry" is neither a "chemical industry nor a

"vegetable processing industry". Mr. T. K. Jha, learned senior counsel appearing for the contesting respondents on the other hand, contended that the orders aforementioned are correct inasmuch as a "sugar industry" comes either within the purview of item no. 7 or item no. IS mentioned in the Schedule 1 appended to the Water Cess Act.

9. In the Water Cess Act the word "industry" has not been defined. Section 2(c) of the said Act, however, defines "specified industry" as meaning any industry specified in Schedule I.

It cannot be disputed that certain industries are regulated by or under the provisions of the Industries (Development and Regulation) Act, 1951. In the said Act also the word "industry" has not been defined but the word "existing industrial undertaking" has been defined in section 3 (bb) thereof; Section 3(bb) of the Industries (Development and Regulation) Act, 1951 reads as follows:-

3 (bb) "Existing industrial undertaking" means-

(a) in the case of an industrial undertaking pertaining to any of the industries specified in the First Schedule as originally enacted, an industrial undertaking which was in existence on the commencement of this Act or for the establishment of which effective steps had been taken before such commencement, and

(b) in the case of an industrial undertaking pertaining to any of the industries added to the First Schedule by an amendment thereof, an industrial undertaking which is in existence on the coming into force of such amendment or for the establishment of which effective steps had been taken before the coming into force of such amendment.

The said Act further defines schedule industry in section 3(1) thereof as meaning any of the industry specified in the First Schedule thereof. In the first Schedule of the said Act chemical industry has been mentioned in item no. 19, sugar industry in item no. 25 and Food processing industry in item no. 27.

10. As the word "industry" has not been defined in any of the relevant statutes in my opinion, the word has to be construed as understood in common parlance or commercial sense.

The word "industry" while referring to the specified items, in my opinion, should be understood as an industry where manufacturing processes are going on, product whereof is the item mentioned in the Schedule. In other words, a sugar industry must be held to be meaning an industry where the end product is the "sugar"; similarly a chemical industry means an industry where the end product is a chemical and a processing of animal or vegetable products industry means an industry where animal and vegetable products are processed. Although it may be dangerous to import the definition of words given in a particular statute for the purpose of construction of the said word in the context of another statute but, in my opinion, the Industries (Development and Regulation) Act, 1951 being

a parent statute so far as the matter relating to development and regulation of industries are concerned, the object for classifying the different industries in the Schedule thereof can be taken in aid of (sic) the purpose of considering as to whether sugar industry comes within the purview of (sic) provisions of the Water Cess Act or not.

In my opinion, sugar industries are classified in different statutes under different heads (sic) for distinct purpose and object. Such purpose (sic) or object is the applicability of certain (sic) and/different provisions thereof in relation (sic) to certain industries. The Industries (Development and Regulation) Act, 1951 has the requisite (sic) declaration as envisaged under Entry 52 List of the 7th Schedule of the Constitution and (sic) been enacted, as noticed hereinbefore, for (sic) development and regulation of certain industries.

11. Although the definition of the word "industry" is not to be given a wide meaning as the said word in the instant case is not (sic) tended to be used for the purpose of constituting (sic) a legislative entry; nor the definition of (sic) said word as defined in various dictionaries would be of much help; but even from (sic) trend of the definition of the word "industry" as mentioned in various dictionaries it would appear that the limit product or the end-product of an industry was intended to be measured (sic) thereby.

12. In Shorter Industrial Dictionaries "industry" has been defined as meaning a particular "branch of productive labour", a trade (sic) manufacture.

13. In Webster New 20th Century Dictionary the word "industry" has, inter alia, been defined as (a) Systematic work; habitual employment (b) Any branch of trade, business production, or manufacture; as the paper industry; the motion picture industry (c) Manufacturing productive enterprises as distinguished from agriculture.

14. In Ballentine's Law Dictionary "industrial employment" has been defined as a place for engaging in an industry; particularly manufacturing requiring both capital and labour.

15. From the aforementioned definitions of "industry" as given in various dictionaries it would appear that processes involved in manufacturing is an industrial product has never been considered to be an industry.

16. In the Industries (Development and Regulation) Act, 1951 the Schedule industries, wherever necessary, have been sub-divided into several categories and sub-categories wherefrom it would be evident that the entries in the Schedule appended to the aforementioned Act are exhaustive. The very fact that different entries in the aforementioned Act contained the sugar industry vis-a-vis the chemical industry and food processing industry clearly goes to show that the said industries, in the wisdom of the Parliament, were considered to be of different nature and it cannot be construed that one overlap with the other. Similarly, the very fact that in different other statutes, as for example, Employees Provident

Fund and Miscellaneous Provisions Act, 1948, Industrial Disputes Act (Tamil Nadu Amendment), "the Sugar Industry", "Chemical Industry" and "Food Processing Industry" have been mentioned separately also is demonstrative of the fact that the parliament all along intended that the said industries should be treated separately and distinctly. In *Motipur Zamindary Co. (Pvt) Ltd., vs. State of Bihar & org* (19 (sic) 2 Vol. XIII) (Sales Tax Cases page 1) the sugar cane has been held to be not a green vegetable. In the aforementioned decision the Supreme Court has quoted with approval its earlier judgment reported in 1961 Vol. 12 S.T.C., page 286 which in turn has quoted with approval a judgment of the Nagpur High Court in *Madhya Pradesh Pan Merchants' Association vs. State of Madhya Pradesh* reported in 1956 7 S.T.C., 99:-

The word "vegetables" in taxing statutes is to be understood as in common parlance i.e., denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table.

From the aforementioned decision it is evident that sugar cane being not a vegetable, processing of sugar cane into sugar does not make the "sugar industry" an industry for processing of vegetable products industries.

17. Mr. T.K. Jha, learned senior counsel appearing on behalf of the respondents, however, placed great reliance upon the Text Book of R. Norris Shreve on Chemical Process Industries (2nd edition), Chapter II at page 9 for the purpose of showing that "Chemical Engineering" requires that the respective unit processes and operations being applied to the various manufacturing procedures and made reference to Chapter XXX of the same book for the purpose of showing that sugar and starch industry has been mentioned therein and has been dealt with. He, therefore, contends that sugar industry comes within the purview of the chemical industry.

18. He further relied upon the Penguin Dictionary of Chemistry written by D.W.A. Sharp where sugar has been defined as follows :

The sugars are carbohydrates, the majority of the natural sugars containing six or twelve carbon atoms in the molecule. They are crystalline, very soluble in water and generally have a sweet taste. The sugar of commerce called cane sugar or beet according to its origin, is the disaccharide sucrose.

19. In the said dictionary the word "sucrose" has been defined as cane or beet sugar. He, therefore, contends that for manufacturing "sucrose" a chemical engineering process is required to be applied in unit processing/unit operations and further it may be a processing for vegetable products industry as "sucrose" while processes becomes "sugar".

20. In my opinion, the aforementioned contention of Mr. T.K. Jha is not correct and is misconceived.

21. As would be indicated hereinbefore, in my opinion, a particular process involved at one stage of manufacture of product is hardly of any consequence. It

may further be noted that the Water Cess Act not only imposes a fiscal liability but also a penal one. Section 14 of the Water Cess Act particularly sub-section (2) thereof provides for imposition of a criminal liability upon every person who having been found to be liable to pay cess under the Act willfully or intentionally evade or attempt to evade the payment of such cess shall be punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 1000/- or with both.

22. In *State of Uttar Pradesh and another vs. M/s Korea India Ltd.*, (A.I.R., 1977 S.C. 132) after taking into consideration various decisions it was held as follows:-

Bearing in mind the ratio of the above mentioned decisions, it is quite clear that the mere fact that the word "Paper" forms part of the denomination of a specialized article is not decisive of the question whether the article is paper as generally understood. The word "paper" in the common parlance or in the commercial sense means paper which is used for printing, writing or packing purposes. We are, therefore clearly of opinion that carbon paper is not paper as envisaged by entry 2 of the aforesaid Notification.

Similarly, the Supreme Court of India in *Dunlop India Ltd., vs. Union of India* (AIR 197) S.C. 597) after taking into consideration the various decisions held as follows:-

It is well established that in interpreting the meaning of words in a taxing statute, the acceptance of a particular word by the Trade and its popular meaning should commend itself to the authority.

Dealing with the meaning of the term "vegetables" in the Excise Tax Act in *King vs. Planters Nut and Chocolate Company Limited*, 1951 CLR 122 the Exchequer Court observed as follows:-

Now the statute nearly everyone, the producer or manufacturer, the importer, wholesaler and retailer, and finally, the consumer who, in the last analysis pays the tax. Parliament would not suppose in an Act of this character that manufacturers, producers, importers, consumers, and others who would be affected by the Act, would be botanists. The object of the Excise Tax Act is to raise revenue, and for this purpose to class substances according to the general usage and known denominations of trade. In my view, therefore, it is not the botanist's conception as to what constitutes a "fruit" or "vegetable" which must govern the interpretation to be placed on the words, but rather what would ordinarily in matters of commerce in Canada be included therein. Botanically, oranges and lemons are berries, but otherwise no one would consider them as such. "The Exchequer Court also referred to a pithy sentence from "200 chests of Tea", per Story, J., [(1834) 9 Wheaton (US) 435] that "the Legislature does not suppose our merchants to be naturalists, or geologists, or botanists.

It is clear that meanings given to articles in a fiscal statute must be as people in trade and commerce, conversant with the subject, generally treat and

understand them in the usual course. But once an article is classified and put under a distinct entry, the basis of the classification is not open to question. Technically and scientific tests offer guidance only within limits. Once the articles are in circulation and come to be described and known in common parlance, we then see no difficulty for statutory classification under a particular entry.

In *Union of India (UOI) and Others Vs. Gujarat Woollen Felt Mills*, it was held as follows:-

The well known rule in interpreting items in statutes like the Central Excises and Salt Act, 1944 is that "resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

23. Further it is well settled that while considering a word the scientific meaning should not be taken in aid, vide *Nawn Estates (P.) Ltd. Vs. Commissioner of Income Tax, West Bengal*, *India International Industries vs. Commissioner of Sales Tax, U.P.*, (1981 Excise Law Times page 325) and *Advani Oerlikon Ltd.*, and another vs. *Union of India & ors.*, (1981 ELT 432).

24. From the aforementioned decisions as referred to hereinbefore it is evident that the word "Sugar Industry" cannot be given a very wide meaning but has to be given the meaning as understood in common parlance or commercial sense. In this connection reference may also be made to a recent decision of Allahabad High Court in *Mahabir Industries vs. State of U.P.*, and anr., reported in 1987(67) STC 251.

25. Further only because an industry requires chemical processes to be gone into at one stage for the purpose of manufacturing a product does not make the industry as such a chemical industry. It is well known that for the purpose of manufacturing a product, either the same involves a chemical transformation or a physical transformation or both. In most of the industries for the purpose of manufacturing of a product either chemical transformation or physical transformation or both of a raw material (s) is required to be gone into. Such changes whether physical or chemical may involve either unit processes or unit operation which has been mentioned in the aforementioned book of Shreve. In my further opinion, only because chemical engineering is to be taken recourse to for the purpose of manufacturing a product, the same does not necessarily mean that the industry would be a chemical industry. There may be and in fact are various industries where different branches of engineering are required to be invoked, but if the aforementioned theory is applied then an industry may become different industries for the purpose of same statute or different statutes which in a given case may lead to an absurd situation. A particular industry may have to go into several processes before its final product emerges.

26. Further in a case of this nature the processes involved in industry, in my opinion, is not decisive. If the "Chemical Process Industries" by Shreve is to be taken an authority for the purpose of proposition the industries which required

chemical processes should be declared to be a chemical industry, in that event Petroleum Industry, Ceramic Industry, Cement Industry, Textile Industry, Paper Industry, Fertilizer Industry and Coal Industry as mentioned in item nos. 5, 9, 10, 11, 12 and 13 of the Schedule appended to the Water Cess Act come within the purview of the Chemical Industry inasmuch as in the process of manufacture of petroleum products, ceramic products etc., also, according to the learned author, chemical engineering processes have got to be gone into as the processes for manufacturing of the said products have also been dealt with in the aforementioned book like "Sugar starch Industries" which would not be a correct interpretation. In my opinion, the very fact that the aforementioned industries have been mentioned separately in the First Schedule appended to the Water Cess Act is clearly demonstrative of the fact that the same were not to be included in the chemical industry as otherwise there was absolutely no necessity whatsoever to include them in the First Schedule appended to the Water Cess Act. As for example it may be mentioned that "paper" which is a product from bamboo may also be held to be a chemical industry. Same is the case of "Textile Industry" or "Fertilizer Industry" which may also be held to be chemical industry inasmuch as there cannot be any doubt that in the process of manufacturing of textile, paper or fertilizer the unit processing or unit operation is involved.

27. Further the very fact that the respondent no. 2 himself in its judgment was not sure as to whether "sugar industry" comes within the purview of "chemical Industry" or processing of "animal or vegetable product industry" is also indicative of the fact that the respondents themselves are not sure about the position. In State of Bihar Vs. Bhagirath Sharma and Another, it has been held by the Hon'ble Supreme Court that a person must be aware of its liability imposed upon him by the statute. In the instant case as has been noticed hereinbefore the respondents are not sure as to whether liability imposed upon the petitioner is because of its owning a "chemical industry" or a "processing of animal vegetable products industry".

28. In the instant case, in any event, by reason of the provision of the Water Cess Act a fiscal liability and/or a penal liability is imposed and as such in case of a doubt or dispute with regard to interpretation of statute the same should be construed in favour of the petitioner. It is also well settled principle of law that while considering the applicability of the provisions of Act, if two interpretations are possible in respect of a fiscal statute or penal statute the same are to be construed strictly. Reference in this connection may be made in A.V. Fernandez Vs. The State of Kerala, it has been held as follows:-

It is no doubt true that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the other hand, the case is not covered within the four corner of the provisions of the taxing statute, no tax can be

imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter. We must of necessity, therefore, have regard to the actual provisions of the Act and the rules made there under before we can come to as contended by the Sales Tax Authority.

In the Commissioner of Income Tax, Bombay City I, Bombay vs. M/s Maharashtra Sugar Mills Ltd., Bombay, AIR 1971 S.C. 2434) it has been held as follows:-

The finding of the Tribunal that the cultivation of sugar cane as well as the manufacture of sugar constitutes one business is a finding of fact. That finding has not been challenged before us. What was urged on behalf of the department is that the assessee's business consisted of two parts namely (1) cultivation of sugarcane and the manufacture of sugar. The former part being agricultural operation, the income there from is not exigible to tax and therefore, any expenditure incurred in respect of that activity is not deductible. This contention proceeds on the basis that only expenditure incurred in respect of a business activity giving rise to income, profit or gains taxable under the Act can be given deduction to and not otherwise. We see no basis for this contention. To find out whether a deduction claimed is permissible under the Act or not, all that we have to do is to examine the relevant provisions of the Act. Equitable considerations are wholly out of place in construing the provisions of taxing statute, we have to take the provisions of the statute as they stand. If the allowance claimed is permissible under the Act then the same has to be deducted from the gross profit. If it is not permissible under the Act, it has to be rejected. As mentioned earlier, it is not disputed that the cultivation of sugar cane and manufacture of sugar constituted one single and indivisible business. Section 10(2) says that profits u/s 10(1) in respect of a business should be computed after deducting the allowances mentioned therein. One of the allowances allowed is that mentioned in Section 10(2)(15) which says that any expenditure laid out or expended wholly and exclusively for the purpose of such business shall be deducted as an allowance. The mandate of section 10(2)(15) is plain and unambiguous. Undoubtedly the allowance claimed in this case was laid out or expended for the purpose of the business carried on by the assessee. The fact that the income arising from a part of that business is not exigible to tax under the Act is not a relevant circumstance. For the foregoing reasons we agree with the view taken by the High Court.

In Advani Oerlikon Ltd & anr vs. Union of India & ors., (1981 ELT 432) it has been held by the Bombay High Court after taking into consideration various Supreme Court decisions that there has been continued depreciation by the Supreme Court in authorities in resorting to personal observations, technical books, dictionary meanings and the end-use of articles sought to be made liable to excise duty. In the said discussion, judgment a decision of Supreme Court in Dy. Commissioner, Income Tax and Sales Tax, Quilon vs. Travancore Rubber and Tea Co., (STC) (1967) XX 520 527) (sic)

In all cases of taxation the burden of proving necessary ingredients laid down in the law to justify is upon the taxing authority.

In the *The Martand Dairy and Farm Vs. The Union of India (UOI) and Others*, it has been held as follows:-

Fascinated we were by the imaginative and realistic picturisation of the expression "products sold in sealed containers" projected, by Sri S.T. Desai, counsel for the assessee-appellant but, on further reflection, we veered round to the view presented by Sri Sanghi, for the State, that after all law is not always logic and taxation considerations may stem from administrative experience and other factors of life and not artistic visualization or neat logic and so the literal, though pedestrian interpretation must prevail.

From the aforementioned decisions it would be absolutely clear that while construing a fiscal statute no aid can be taken from scientific meaning given to it in scientific dictionaries or the process involved in relation to the manufacturing of the end product and a fiscal statute in case of doubt should be construed in favour of the subject.

30. Further as seen hereinbefore section 14 of the Water Cess Act provides for a penalty. A Division Bench of this Court in *R.J. Sinha and anr vs. The State* (1983 BLT 97) has while holding that penal statute should be strictly construed and while doing so quoted the following:-

In the case of *London and North Eastern Railway Company and Berriman*, 1946 AC 278 Lord Simonds quoted with approval the following observations of Lord Esher N.K. In the case of *Tuck & Sons vs. Priester*, (1887) 19 QBD 629, 638:-

We must be very careful in construing that section, because it imposes a penalty. If there is a reasonable interpretation which will avoid the penalty in any particular case, we must adopt that construction. If there are two reasonable constructions we must give the more lenient one. That is the settled Rule for the construction of penal sections.

The above authority was also followed by the Supreme Court of India in the case of *Tolaram Relnmal and another vs. State of Bombay*, AIR 1934 S.C. 496."

31. Having given my anxious consideration to all aspects of the matter, I am of the opinion, that the sugar industry is neither a chemical industry nor a processing of animal or vegetable products industry as contemplated under item nos. 7 and 15 of the First Schedule appended to the Water Cess Act. In the result, these writ petitions are allowed and the order as contained in Annexures-2 and 6 in Civil Writ Jurisdiction Case No. 4413 of 1981 and Annexures 1 and 4 in Civil Writ Jurisdiction Case No. 2346 of 1983 are hereby quashed. Let a writ of certiorari be issued accordingly. These writ petitions are, therefore, allowed with costs. Hearing fee is assessed at Rs. 1000/-.