
(2012) 06 GAU CK 0135
In the Gauhati High Court
Case No : Writ Appeal No. 212 of 2009

M/s North Eastern Chemicals

APPELLANT

Vs

The State of Assam

RESPONDENT

Date of Decision : 19-06-2012

Acts Referred:

Assam General Sales Tax Act, 1993 — Section 17(4)

Citation : (2012) 06 GAU CK 0135

Hon'ble Judges : N. Kotiswar Singh, J; Adarsh Kumar Goel, J

Bench : Division Bench

Advocate : J.C. Gaur, for the Appellant; S. Saikia, for the Respondent

Final Decision : Dismissed

Judgement

N. Kotiswar Singh, J.—Heard Mr. J.C Gaur, learned counsel appearing for the appellant-petitioner and Mr. S.Saikia, learned counsel appearing for the respondents. interfere with the decision of the Assam Board of Revenue in holding that the appellant-petitioner who is engaged in the business of "Tallow" is liable to pay tax at the rate of 8% as an item within the residuary entry in the Schedule to the Assam General Sales Tax Act, 1993 and not at the rate of 4% as claimed by the appellant-petitioner which is prescribed for the specific entry of "meat" under the said Act.

2. The brief facts of the case as may be relevant for the purpose of this appeal may be stated as follows.

The appellant-petitioner is a registered dealer under the provisions of Assam General Sales Tax Act, 1993 and had been dealing in "Tallow" among other items and had been submitting its tax return under the Assam General Sales Tax Act, 1993 (hereinafter referred to as the "AGST Act, 1993") treating the item "Tallow" as taxable at the rate of 4% as per entry 1(b) of the Second Schedule to the AGST Act, 1993 and the Taxation authorities had been accepting the same since 1993 and had been assessing the payment accordingly. However, when the

appellant-petitioner submitted its return for the period 2001 to 2002 to the respondent No.4 and made payment of the requisite taxes, the respondent No.4 made an assessment order on 27.7.2004 u/s 17(4) of the AGST Act, 1993 enhancing the rate of taxes on the turn over of "Tallow" from 4% to 8% on the ground that the item "Tallow" is not covered by entry 1(b) of the Second Schedule meant for the item "meat" but falls under the residuary category of other goods under Third Schedule of the AGST Act, 1993.

3. On being assessed on the higher rate as stated above, the appellant-petitioner preferred an appeal before the respondent No.3, the Deputy Commissioner of Taxes (Appeals) under AGST Act, 1993 challenging the validity of the said enhancement of the rate of taxes on the said item of "Tallow", which however, was dismissed by the respondent No.3 vide order dated 29.5.2007. The respondent No.3 vide its order dated 29.5.2007 had rejected the plea of the appellant-petitioner on the ground that "Tallow" was never treated as a "meat" and sold as a "meat" in popular sense and common sense and there was no irregularity in the assessment of "Tallow" @ 8% by the authorities.

4. Against the dismissal of the said appeal by the respondent No.3, the appellant-petitioner again filed an appeal before the Assam Board of Revenue u/s 5A of the Assam General Sales Tax Act, 1993 challenging the validity of the said order dated 29.5.2007, which was also dismissed by the Assam Board of Revenue vide its judgment and order dated 6.4.2009 by applying the principle of common parlance. It was held that in the common usage in the trade, the item "Tallow" is never understood or treated as "meat" and "Tallow" is never sold as "meat". As admitted by the appellant-petitioner, "Tallow" may be packed in containers for purchased for use in various manufacturing processes such as bakery, textile, pharmaceutical industries, etc. which clearly shows that "Tallow" which is used for different purposes and is not treated as "meat".

5. Being aggrieved by the aforesaid decision of the Assam Board of Revenue, the appellant-petitioner again preferred a Review Petition for review before the said Board which was also rejected vide order dated 4.6.2009. Thereafter, the appellant-petitioner approached this Court by filing a writ petition being W.P(C) No.2332 of 2009 challenging the aforesaid assessment @ 8% and the decision of the authorities, as stated above. The learned Single Judge vide order dated 17.6.2009, after considering the facts and also considering the reasons given by the Assam Board of Revenue, rejected the contentions of the appellant-petitioner and did not find fault with the determination made by the assessing authorities as well as by the Revenue Board and held that "Tallow", dealt with by the petitioner falls within the residuary entry of the schedule under the AGST Act, and as such the finding of the assessing authority is proper and it does not suffer from any infirmity which would justify interference by the writ Court. Accordingly, by the aforesaid impugned judgment and order dated 17.6.2009, the writ petition was dismissed.

6. The present appeal has been preferred against the said judgment and order

dated 17.6.2009 passed in W.P(C) No. 2332 of 2009.

7. The only ground agitated before this Court by the appellant petitioner is that "Tallow" is an animal fat which is part of the animal meat and as such, is identical with "meat", and as such, the assessing authority should determine the rate of taxes for "Tallow" as under the item of "meat". The appellant-petitioner contends that "Tallow" and "meat" are basically the same item with different nomenclatures. Learned counsel appearing for the appellant-petitioner has also stated that otherwise also "Tallow" is an animal fat which is used like oil and Vanaspati for human consumption as well as for other uses in bakery, lubricants, greasing of machineries, pharmaceutical industries and as a sizing materials in textiles industry. Since the composition of "Tallow" is similar to that of oil, oil cakes and de-oiled cakes which are all items taxable at the rate of 4 paise in a rupee vide item Sl.No.4 and 126 of Schedule II of the AGST Act, "Tallow" should be also taxed at the said same rate.

8. We have heard the learned counsel appearing for the parties and we have perused the judgments rendered by the Assam Board of Revenue as well as by the learned Single Judge and we do not find any reason to differ from the reasoning and conclusion reached therein.

9. Even though "Tallow" which is an animal fat, can be a part of "meat" but in common parlance, "Tallow" is never identified with "meat". "Meat" is normally understood for the purpose of consumption as food and not for any other use. "Tallow", though may be part of "meat" has varied uses for the purpose of industrial, pharmaceutical industries uses and not normally used for consumption. "Tallow" is, thus under the common parlance, never understood as "meat".

10. It is now well settled that in interpreting items in statutes like the Excise Tax Acts, whose primary object is to raise revenue and for which purposes they classify diverse products, articles and substances resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. (See *Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh*,); *CCE Vs. Ferroplast (P) Ltd.(II)*, 1994 Supp (2) SCC 678. "Tallow" may be technically part of "meat" being derived by slaughter of animal, however, as already observed, it conveys a different meaning in common parlance. "Tallow" is not understood normally in common parlance for human consumption or other consumption, but for use in various industrial and other purposes as stated above. Even if the composition of the "Tallow" is similar to the composition of the oil, oil cakes and de-oiled cakes which are listed at Sl.No.4 and 126 of the Schedule II of the AGST Act, 1993, as stated above, under the common parlance, "Tallow" is not known as "oil". Under

common parlance, "oil" denotes different thing from the word "Tallow" even though scientifically or technically it may be of similar nature. Further, under the AGST Act, the item oil or oil cake is not defined to include "tallow" within its meaning. Therefore, we have to understand "tallow" as it is understood in common parlance. Accordingly, the contention of the appellant-petitioner that the "Tallow" should be treated as "meat" or that it can be identified with "oil" for the purpose of taxation cannot be entertained. Consequently, we are of the view that there is no merit in the writ appeal and accordingly, the same is dismissed.