
(2017) 01 MP CK 0134
In the Madhya Pradesh High Court
Case No : 3221 of 2015

Municipal Corporation, Jabalpur

APPELLANT

Vs

Manoj Patel

RESPONDENT

Date of Decision : 03-01-2017

Acts Referred:

Companies Act, 1956, Section 25 - (1) In these articles-
Madhya Pradesh Vat Act, 2002, Section 70 Section 26A, Section 14(1B)

Citation : (2017) 01 MP CK 0134

Hon'ble Judges : S. C. Sharma, Rajeev Kumar Dubey

Bench : Single Bench

Judgement

1. The petitioner No.1 before this Court is an Association of Soyabean Processors and it is incorporated and registered u/S. 25 of the Companies Act. Petitioner No.2 is again a Company incorporated and registered under the Companies Act 1956 and the present petition has been filed, as stated in the Writ Petition, for protecting the interest of its Members who are manufacturing Soya Oil and Deoiled Cake including Defatted Soya Flakes and Defatted Soya Grits. The petitioners have challenged before this Court the order dated 24/3/2015 and order dated 26/6/2014 passed by the Commissioner of Commercial Tax in exercise of powers conferred u/S. 70 of the M.P. VAT Act, 2002. The learned Commissioner has determined the classification of commodities known as "Defatted Hypro Soyameal, Defatted Soya Hypro, Defatted Soya Flakes and Defatted Soya Grits" etc., The petitioners are manufacturing superior quality of deoiled cakes in terms of higher protein percentage with some modification in the manufacturing process i.e., dehulling of seeds. It has been further stated that superior quality of deoiled cake is sold in the name and style of defatted soya products or hypro soya products. It has been further stated that under the M.P. VAT Act, so far as classification of deoiled cake for the purpose of taxation is concerned, the same is a tax free commodity specified in Entry No.3, Schedule I

of the MP VAT Act, 2002. Entry No.3 reads as under : 3. Aquatic feed, poultry feed and cattle feed including feed supplements, concentrates and additives, grass, hay, straw, deoiled cake including soya meal, cotton seed oil cake, mustered oil cake and makka khali.

2. Further contention of the petitioners is that although the DOC is a tax free commodity, the raw-material required for manufacturing of DOC ie., Soyabean Seed being notified goods for the purpose of Sec. 14(1B), the manufacturers of DOC are entitled to get full input tax rebate in respect of input tax required to be paid to the purchasing dealer in view of the special provision contained in Sec. 14 (1B) of the Act. A notification has also been issued by the State Government on 1/4/2011 whereby Soya DOC has been notified for the purpose of Sec. 14(1B) and the manufactures of Soya DOC are entitled to claim full ITR in respect of input taxes paid by them for purchase of raw-material ie. Soya Seeds. Further contention of the petitioners is that as per Sec. 26A of the MP VAT Act 2002, which has been inserted w.e.f. 24/12/2007, there is a provision of deduction of tax at source in respect of certain notified goods according to which, a registered dealer purchasing notified goods from another registered dealer for sale or consumption, is required to deduct input tax from the amount payable to him to the selling dealer for such purchase and is obliged to issue certificate of deduction of tax in the manner prescribed under the provisions of the Act. After such deduction of tax, the purchasing dealer of such notified goods is required to deposit such amount deducted which is over and above the input tax rebate notionally admissible u/S. 14 on such purchases and is entitled to retain as refund the amount deducted by him ie., equal to notional ITR admissible u/S. 14 on such purchases. Soyabean has been notified for the purpose of said provisions of Sec. 26A by Notification dt. 4/1/2008, meaning thereby, the cumulative effect of the provision of Sec. 14(1B) read with Sec. 26A is that while on one hand the manufactures of Soya DOC would deduct tax at source from the purchase price payable to the selling registered dealer and retain such tax as refund to the extent of ITR notionally allowable to them u/S. 14(1B). The contention of the petitioners is that such benefit is applicable even to Defatted Soya Hypro, Defatted Soya Flakes and Defatted Soya Grits, as they are superior quality to DOC only. Further contention of the petitioners is that they have claimed such benefits in the past, however, to the utter surprise, the Commissioner of Commercial Tax has issued notice u/S. 70 to the petitioner and after hearing the petitioners, he has passed the impugned order. The learned Commissioner by the impugned order dt. 26/6/2014 has arrived at a conclusion that the Defatted Soyabean products which are superior in quality and sold in market under different names cannot be said to be DOC or Soyabean Meal according to common parlance and classified the Entry No.3 of Schedule I of the M.P. VAT Act 2002 in the category of cattle feed or food supplement on the basis of its use as cattle feed used in poultries or fisheries which are also tax free. Contention of the petitioners is that the impugned order passed by the respondent and the classification made by him, is on erroneous basis and based upon erroneous

application of test of classification of commodities for the purposes of taxation and it deserves to be set aside. The common parlance test applied by the Commissioner is bad in law.

3. The respondents have also filed a reply and their contention is that since different manufacturing process has been adopted for the production of defatted soya products or hypro soya products, the same cannot be termed as higher quality soyabean DOC. Respondents have further stated that the Commissioner has rightly held that while producing Soya DOC, there is no such process of dehulling of soyabean, whereas, while manufacturing of defatted soya products or hypro soya products is done, it improves the quality of products meaning thereby different manufacturing process is involved and two different kinds of products come out and, therefore, the classification done by the Commissioner is justified.

4. This Court has carefully gone through the Writ Petition, the impugned order and the reply filed by the respondents.

5. The facts leading to the present case are that the petitioners are engaged in the business of extraction of soya oil from soya seeds and has established soya extraction plants in Madhya Pradesh. During the course of extraction of oil from oil seeds, a product called De-oiled Cake (DOC) is also generated. Certain processors, for getting a superior quality of soya DOC, in terms of higher protein percentage, make slight modification in manufacturing process, viz., dehulling which enhances protein percentage in the DOC, without adding any other material. Such DOC with higher protein percentage is sold in the market as defatted soya product or hypo soya product and are sold at little higher price than the normal DOC. The Commissioner has merely on the basis of the name of the product and the price of the product has treated these defatted soya product or defatted hypro soya products as different from normal DOC. In the impugned order, although the Commissioner has accepted that the soya hypro products are better or superior quality of DOC, has treated them as different commodities from normal DOC.

6. Contention of the petitioner is that the products in question are nothing but superior varieties of DOC and continue to fall in the category "De-oiled Cake including soya meal". Submission of the petitioner that merely on the basis of commercial name of the product and the price of the product, the same cannot be treated different from normal DOC. The term "DOC" is itself a wider term and would cover all its forms.

7. Learned counsel for the petitioner has placed reliance upon the judgment delivered by the apex Court in the case of *Alladivenkateswarlu and others Vs. Government of Andhra Pradesh* reported in (1978) 41 STC 394 (SC), wherein, while dealing with a similar issue, the apex Court has held that "rice in husk" is "paddy", when it is removed from husk and the husk and rice become separately taxable under the Act. But there are no 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 rice in Entry 66 of the Andhra Pradesh Act is wide enough to cover both forms of rice. The term rice as ordinarily understood in English language would include both parched and puffed rice.

8. In the present case, the defatted hypro soya products which are merely superior qualities of DOC itself obtained without addition of any ingredients or appreciable changes in chemical composition are nothing but different forms of DOC and would, therefore, be covered in de-oiled cake including soya meal.

9. Learned counsel for the petitioner has further placed reliance upon the judgment delivered by the apex Court in the case of Commissioner of Commercial Tax, U.P. Vs. A.R. Thermosets (Pvt.) Ltd., reported in (2016) 29 STJ 561 (SC), wherein the apex Court held that Bitumen emulsion is also covered in the entry pertaining to Bitumen. The apex Court opined that Bitumen is a generic expression which would include different types of bitumen. The nature and composition of product and the item specified in the entry is important. Matching of the goods with the entry in the schedules is tested on the basis of identity of the goods in question in the entry and by applying common parlance. Where such similarity with popular sense meaning exists, the generic entry would be construed as including the goods in question. The entry in question uses the word bitumen without any further stipulation or qualification. Therefore, it would include any product which has the composition of bitumen and in common parlance which is treated as bitumen and which can be used as bitumen.

10. Thus, it is evident that the test laid down by the apex Court in the said decision squarely applies to the present case where goods specified in Entry-3 are "Deoiled Cake including soya meal" and the expression "Deoiled cake" is a generic expression which would include different types of DOC ie., defatted soya hypro products also. Even otherwise according to the principles of specific Vs. General entry when the product falls under specific entry, its end use cannot determine its classification. A reference in this respect may be made to the decision of the apex Court in the case of CCE Vs. Carrier Aircon Ltd., reported in (2006) 9 STJ 292, wherein the apex Court has held that chillers which are known in trade parlance as refrigerating equipments could not be classified as part of air-conditioning system merely because 90% of the chillers manufactured by assessee were used in air conditioning system. The judgment delivered in the case of Carrier Aircon Ltd., (supra) is followed in the case of Prakash Industries Ltd., Vs. ACCT reported in (2013) 22 STJ 13.

11. In the light of the aforesaid, this Court is of the considered opinion that the impugned order is bad in law and, therefore, the product in question would fall in category of deoiled cake including soyabean meal, as specified in Entry No.3 of Schedule I of the M.P. VAT Act, 2002.

12. Resultantly, the impugned order dated 24/3/2015 and the order dated 26/6/2014 are quashed and the present Writ Petition stands allowed and disposed of.

13. No order as to costs.