
(1984) 04 BOM CK 0049
In the Bombay High Court
Case No : Writ Petition No. 537 of 1984

New Nagpur Copra Industries	Vs	APPELLANT
The State of Maharashtra and another		RESPONDENT

Date of Decision : 06-04-1984

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 14(6), 2(17)

Citation : (1985) 60 STC 380

Hon'ble Judges : Mohta, J;Ginwala, J

Bench : Division Bench

Judgement

Mohta, J.—What principally falls for consideration in this writ petition is whether the word "copra" as found in entry No. 6(viii) in Schedule B, Part II, of the Bombay Sales Tax Act, 1959 ("the BST Act" for short) takes within its ambit copra powder (copra-kis).

2. The relevant entry reads thus :

"6. Oil-seeds, that is to say, -

(i) to (vii)

(viii) Coconut (i.e., copra excluding tender coconuts (Coco nucifera).

(ix) to (xx)"

The petitioner is a partnership firm carrying on business of manufacture of copra oil and copra powder. According to the petitioner - a position not disputed - it prepares copra powder by simple process of crushing desiccated copra, which process does not involve either addition of new substance or subtracting any ingredients resulting into any chemical change in the substance of copra or loss of its identity. The Sales Tax Officer (Recovery), Unit-I, Nagpur, respondent No. 2, passed two assessment orders dated 29th December, 1983 for different periods, namely, 1st November, 1978 to 21st October, 1979 and 22nd October, 1979 to 7th November, 1980 rejecting the stand in the returns filed by the

petitioner that copra powder was subject to sales tax only at 4 per cent. as mentioned in Schedule B, Part II. The respondent No. 2 held that copra powder is altogether a different substance than copra and as it was not included either in Schedule B or in the exempted category of goods mentioned in Schedule A, it was subject to tax at 5 + 3 per cent. under residuary entry No. 22 of Schedule E as it stood at the relevant time, i.e., before its amendment by Maharashtra Act No. 32 of 1981. By this writ petition these two orders are impugned.

3. It appears that the respondents were consistently treating copra powder as "copra" for the purposes of the BST Act till the year 1978 when the Commissioner of Sales Tax of the State took a different view of the matter, vide his order dated 23rd October, 1978 in the case of M/s. Mahesh Khopra Industries and M/s. Malhar Products. By the time the impugned orders were passed, the question involved with reference to the Central Sales Tax Act ("the CST Act" for short) was decided by the Karnataka High Court in the case of Sri Lakshmi Coconut Industries v. State of Karnataka [1980] 46 STC 404. The respondent No. 2 refused to follow the said decision in preference to the view taken by the Commissioner. It may be mentioned the relevant entry in Section 14 of the CST Act and entry in question in the BST Act are in pari materia.

4. Now, it is a trite law that the object of such single point taxation is the commercial commodity and not the substance of which it is made. Difference lies not in the validity of this age old principle but in its application. Various authorities have been considered by the Karnataka High Court in arriving at the conclusion. It is unnecessary to refer in details to all of them. However, few important decisions may be noticed. In Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool, it is held that hydrogenated groundnut oil (vanaspati) and groundnut oil are one and the same commodity for the purposes of rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. In Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another, the Supreme Court has held that parched rice (poha) puffed rice (murmura) are rice within the meaning of entry 66(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act, 1957. In the case of State of Gujarat v. Sakarwala Brothers [1967] 19 STC 24 (SC), the Supreme Court has held that patasa, harda and alchidana fall within the word "sugar" in entry 47 of Schedule A to the Bombay Sales Tax Act, 1959. In the case of Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, the word "coal" is held to include "charcoal". In State of Gujarat Vs. Prakash Trading Co., Ahmedabad, the word "soap" is held to be wide enough even to include "shampoo". The conclusion arrived at by the Karnataka High Court in substance is that "copra" does not cease to be so only because it is subjected to simple process of crushing as the substance of copra by this process does not undergo any change of substantial character.

5. The Commissioner had taken a view - which is supported by the respondents even before us - that copra and copra-kis are commercially two different

commodities, they are put to different uses and the relevant entry does not refer to copra simpliciter but as a species of the genus - oilseed and as copra-kis does not answer the description - oilseed, the expression "copra" in the context means only copra full or in halves but not crushed copra. It seems to us that no reasons exist to depart from the conclusion arrived at by the Karnataka High Court and that the stand taken by the Revenue cannot be accepted in face of series of decisions laying down various tests on the point.

6. We will first take up the point that entry copra is not copra simpliciter but as oilseed-copra. In this connection the word "that is to say" used in the entry falls for consideration. In Stroud's Judicial Dictionary, 4th Edition, page 2753, this word has been explained thus :

"That is to say. (1) "That is to say" is the commencement of an ancillary clause which explains the meaning of the principal clause. It has the following properties :

(1) it must not be contrary to the principal clause.

(2) it must neither increase nor diminish it.

(3) where the principal clause is general in terms it may restrict it."

Thus this expression is generally used to fix the meaning of what is to be defined and not to amplify the meaning. This expression when used in the case of specified goods is meant to exhaustively enumerate the goods on a given list. The object of enumeration is to indicate the types of goods each of which would constitute a separate class. Judged from these standpoints it seems to us that "copra" is an independent species of goods to be treated as such for interpreting this entry and only because several independent items like this are grouped under one genus - oilseed in this case - the position does not alter. The contention, that the commodity has to be "seed" in order to be attracted by the relevant entry does not appear to be bound even for additional reason. Dictionary meaning of the word "seed" is : that is a flowering plant's unit of reproduction or germ capable of developing into another such plant. Now, it cannot be disputed that the unit of reproduction of the coconut plant is a coconut with its shell and husk and not a desiccated kernel which is incapable of germination. One of the items in this list is groundnut which means also groundnut with its shell. It is matter of common knowledge that groundnut with shell is incapable of germination and that it is the groundnut kernel which is a germ capable of developing into another plant. Thus answering the description of "seed" for attracting this entry is not at all decisive. Inclusion of copra halves in entry "copra" by the Revenue itself indicates the hollowness of this stand. The pertinent question that in this context arises is - if process of cutting into two does not change the position, will the process of cutting into more than two make the difference ? In this connection, legislative history of this entry will also not be out of place. Before amendment by Maharashtra Act 32 of 1973, the entry read as under :

"Oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics, and the like but not cocount in shell and kernel which are declared tax-free under entry 13A in Schedule A."

What is significant is that before amendment there was no exhaustive enumeration of the commodities.

7. It is nobody's case that in the preparation of copra powder there is either any additive or there is a significant change in ingredients of copra. In our judgment this aspect of the matter goes to the very root of the question. Clear ratio of the various Supreme Court decisions is that unless the nature of the original substance changes the derivative substance should be taxed as the original substance in the absence of specific provision to the contrary. The tests of end use of the articles and so also of retaining of the form of the original articles have been pushed in background by the Supreme Court in a series of decisions referred to above. Nothing else can explain equating of vanaspati with groundnut oil, alchidana with sugar, charcoal with coal, shampoo with soap and parched or puffed rice with rice. All these items are commercially recognised as different commodities and their uses are not always the same. The clear ratio laid down is that it is not the form but the substance that matters and unless the identity of an article is completely lost due to changes in character, the item should be construed wide enough to include that item in all its forms, in the absence of specific provision to the contrary. We may at this stage also refer to the case of Commissioner of Sales Tax v. Agarwal & Co. [1983] 52 STC 117 in which this Court has taken a view that entry 36 of Schedule A to the BST Act relating to milk includes even evaporated or dehydrated milk or milk powder.

8. The following definition of the term "manufacture" in section 2(17) of the BST Act is also relevant to the point :

""manufacture", with all its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed."

Rule 3 of the Bombay Sales Tax Rules, 1959 gives the list of manufacturing processes which for the purposes of clause (17) of section 2 of the BST Act are not included. Rule 3(xvii) reads thus :

"3. (xvii) mixing, sorting, moulding, bleaching, polishing, cutting, re-shaping, re-cutting, grinding, drilling holes in, and stringing of precious stones (including diamonds) and pearls and bunching of pearls."

Thus, it will be seen that mere cutting is not considered as manufacturing process for the purposes of the BST Act. The ordinary concept of manufacturing process is wide to include even the process of cutting [see section 2(m) of the

Factories Act, 1948].

9. We must also bear in mind one of the salient rules of interpretation of a fiscal statute that if two interpretations are reasonably possible, the one in favour of the taxpayer should be accepted.

10. There is yet one more aspect to the whole question and it relates to maintaining consistency in law if possible. The karnataka High Court had interpreted the entry "oil-seed" as found in section 14(6) of the CST Act. That entry and entry No. 6 in the BST Act are in pari materia, and therefore, in effect we are interpreting also the Central legislation. This Court for the sake of uniformity has put upon itself a self-imposed restriction of normally not differing from the view of another High Court on the Central legislation. In *Maneklal Chunilal and Sons Ltd. Vs. Commissioner of Income Tax (Central), Bombay*, it is observed :

"A Special Bench of the Madras High Court has taken the view favourable to the Commissioner and contrary to the view suggested by Mr. Palkhiwala and in conformity with the uniform policy which we have laid down in Income Tax matters, whatever our own view may be, we must accept the view taken by another High Court on the interpretation of the section of a statute which is an all India statute."

Following this decision, in another Division Bench of this Court in the case of *Commissioner of Income Tax, Bombay City I Vs. Chimanlal J. Dalal and Co.*, it is observed :

"This is the practice of this Court, and, as we have already stated, it has been generally followed by this Court, barring certain exceptions like where inadvertently the decision was not brought to its notice or where in the decision of the other Courts some relevant provision of law had been omitted to be considered. The decision of the Gujarat High Court is a very elaborate one, considering all the relevant provisions of law. This is, therefore, not a case in which we should depart from the aforesaid policy of this Court. The answer, therefore, will have to be against the Revenue."

11. Shri Desai, the learned Assistant Government Pleader, invited our attention to some of the decisions which according to him have taken a contrary view. In the *State of Travancore-Cochin v. Shanmuga Vilas Cashew-nut Factory* [1953] 4 STC 205 (SC) it has been held that "cashew-nuts" and "cashew-nut kernels" are two different commodities. While dealing with this point, it is observed :

"By this process of manufacture the respondents really consume the raw cashew and produce new commodities. The resultant products, oil and edible kernels, are well recognised commercial commodities. They are separate articles of commerce quite distinct from the raw cashew-nuts. Indeed, it is significant that the respondents place orders for "cashew-nust" but orders are placed with them for "cashew-nut kernels". In the circumstances, "the goods" exported are not the

same as the goods purchased. The goods purchased locally are not exported. What are exported are new commodities brought into being as a result of manufacture."

In this case, a particular process has been held to be a manufacturing process by which altogether new commercial product emerges. Apart from this distinguishing feature, in the face of long line of later decisions referred to above it is difficult to hold that ratio decidendi of this case will have application to the case in hand. The Punjab High Court in *Dewan Chand Chaman Lal v. State of Punjab* [1977] 39 STC 75 has held that in entry "oil-seeds including groundnut" in Schedule C of the Punjab General Sales Tax Act, 1948 parched groundnuts are not included. This entry is differently worded and uses the terminology "included" which implies the amplifying meaning as against terminology "that is to say" which is restrictive in nature. Moreover the subsequent view taken by the Supreme Court that parched rice and puffed rice are included within the ambit of the word "rice" in the case *Alladi Venkateswarlu and Others Vs. Govt. of Andhra Pradesh and Another*, has a binding force on us and has to be preferred. In *Sri Siddhi Vinayaka Coconut and Co. and Others Vs. State of Andhra Pradesh and Others*, "dried coconuts" and "watery coconuts" have been held to be different commodities for the purposes of the A. P. General Sales Tax Act. It is difficult to appreciate how this decision renders any support to the stand of the Revenue. All depends upon scheme of each enactment. Even in the BST Act different forms of coconut are treated differently. "Coconut in shell : and separated kernel of coconut other than copra" are included in Schedule A at entry 11 and are not object of any sales tax at all. Thus this decision also does not support the Revenue.

12. All that remains is the consideration of the preliminary point about maintainability of the present petition on the ground that alternate remedies provided under the BST Act are not exhausted. Apart from the fact that existence of alternate remedy is no statutory bar and is only a self-imposed restriction which the Courts have put upon themselves we are not inclined, to uphold this point in this case for variety of reasons. The first is that by now the appeal has become time-barred. Secondly, pure question of law of general public importance is involved in the matter. Thirdly, the Department is unlikely to depart from its stand. We are informed that orders to reopen all assessments previous to 1978 are already issued.

13. To conclude, the petition is allowed and the rule is made absolute in the above terms. The impugned orders dated 29th December, 1983 (annexures 1 and 2) are quashed and set aside. Needless to mention that the Department is free to make fresh assessment in the light of what has been observed above. As pure question of law of some importance is involved in this petition and as the parties have contested the matter as a test case, we would make no order as to costs.