(1993) 07 GAU CK 0026

In the Gauhati High Court

Case No : Civil Rule No''s. 1552 of 1989 and 1154, 1488 and 1963 of 1993

North Cachar Timbers Products and Mrs. Usha Vasudev and Others — APPELLANT

Vs

State of Assam, The Conservator of Forests, North Eastern Cachar Hills Autonomous District Council and Asstt. Conservator of Forests, Hatikhali Range and Others etc. etc. — RESPONDENT

Date of Decision : 02-07-1993

Acts Referred:
Assam Forest Regulations, 1891 — Section 3(3), 3(4), 40, 40(2)

Citation : (1993) 2 GLR 86

Hon'ble Judges : Homchaudhuri, J

Bench : Single Bench

Advocate : A.K. Maheswari, K. Agarwal, M. Hazarika and R.K. Agarwal, for the Appellant; S.N. Bhuyan, General, A.M. Mazumdar, General, D.P. Chaliha, Government Advocate, A. Roy, Government Advocate, C.T. Jamir, Govt. and B.D. Das, for the Respondent

Final Decision : Allowed

Judgement

Homchaudhuri, J.—In these 4 petitions common question involved is whether transit pass, as required under Rule 2 of the Transit Rules framed u/s 40 of the Assam Forest Regulations, 1891 (hereinafter referred to as ''the Regulations'') is applicable for transporation of Veneer. As such, the petitions are disposed of by this common judgment.

2. According to the Petitioners Veneer is manufactured from logs/timbers as a finished product. Forest trees felled are cut into pieces which are called logs/ timber. The Forest Deptt. measures the logs, notes the measurement in Log Measurement Book and collects royalty according to the approved rates and release the same by affixing stamps to the Contractors for free sale. For manufacturing Veneer, those logs are taken to the mill - a power operated rotary and peeling machine. The logs are sectioned in the mill according to the required size, of Veneers i.e. from 3'' to 8'' in length and "4 to 5" in breadth. The bark of

the logs are removed. The sectioned logs are fitted in the peeling machine. The two chocks from the opposite side hold the logs tightly and with the help of power logs moves in circular motion and touch the knife lilted into carriage in force, then thin layers of timber comes out. These thin layers are further cut into piece according to size required-which arc called Veneer. Veneer is used only for the purpose of manufacture of plywood, as such, it is neither timber nor wood. Veneer is a finished product brought out by human labour and machine and is a distinct commodity having a distinct character.

3. The Petitioners transport the Veaeer by Mill Challan on pay-

ment of excise duties in the prescribed rate under the provisions of Central Excise and Salt Act, 1944 in advance before bringing out the same from the mill. Prior to issuance of the impugned circular dated 12.9.86, the manufacturers of veneer transported the Veneer in and from Assam by Mill Challan only and no Transit (T.P.) was necessary for transportation of veneer. The Conservator of Forests, Eastern Assam Circle, Jorhat by circular dated 12.9.86 directed all the D.F.O.''s under his circle to treat veneer as Forest produce and control the movement of veneer under Sections 40(2) of the Regulation with immediate effect. Thereafter the Forest Deptt. of the Govt. of Nagaland, Meghalaya, and Arunachal Pradesh received information from the Forest Deptt. of Assam that Veneer Mills were to obtain TP for transportation of veneer through Assam, Nagaland, Meghalaya and Arunachal Pradesh from the concerned Divisional Forest Officers. The Petitioners have impugned the order dated 12.9.86. While issuing Rule, interim order was passed directing that for transportation of Veneer Petitioners need not be required to obtain Transit Pass (T.P.).

4. The Respondents have filed affidavit-in-opposition. In the affidavit-in opposition Respondents have not denied the statement of the Petitioner about the treatment, labour and manipulation in the Veneer mill for producing veneer out of logs or timber. But the Respondents contention is that inspite of undergoing the process of change, veneer continues to remain a forest produce, namely, ''timber'' and retains the character of timber. As such, as per provision of Rule 2 of the Transit Rules framed u/s 40 of the Regulations, for movement of veneer, TP is necessary.

5. I have heard Mr. A.K. Maheswari, Mr. K. Agarwal, Mr. M. Hazarika, learned Counsels for the Petitioners and Mr. S.N. Bhuyan learned Advocate General, Assam assisted by Mr. D.P. Chaliha, learned Govt. Advocate, Mr. A.M. Mazumdar, learned Advocate General Arunachal Pradesh assisted by Mr. A. Roy, learned Sr. Govt. Advocate, Arunachal Pradesh, Mr. C.T. Jamir, learned Govt. Advocate, Nagaland.

6. Learned Counsels for the Petitioners submit that undisputedly timber/logs from which Veneer is produced can be brought iuto Veneer mill only after payment of royalty and on the strength of TP issued by the competent authority. Timber or logs so brought into the mills undergo transformation due to process

of cutting, peeling, milling etc. in the mill and emerge as a different articles of distinct character and name ''Veneer''. The use of Veneer is also quite different and distinct than that of log or timber, Learned Counsels for the Petitioner further submit, that because of the fact, that after treatment, labour and manipulation, logs or timber transform into Veneer, having different and distinct character and use, and excise duty under the provisions of Central Excise & Salt Act, 1944 is levied at the prescribed rate on the Veneer before removing the same from the mill. Admittedly timber or logs are raw materials and hence no Central Excise duty is charged. In support of the contentions, learned Counsels for the Petitioners have placed reliance in the decisions of the Hon''ble Supreme Court in the following cases:

(1) South Bihar Sugar Mills Ltd. v. Union of India and Anr. reported in AIR 1969 SC 922;

(2) Ganesh Trading Co., Karnal Vs. State of Haryana and Another,

(3) Collector of Collector of Central Excise, Madras Vs. Kutty Flush Doors and Furniture Co. (P) Ltd.,

7. In para 14 of the case of South Sugar Mill (supra), while dealing with the scope of application of the provisions of Central Excise and Salt Act, 1944 the Hon''ble Supreme Court amongst other held:

The Act charges duty on manufacture of goods. The word "manufacture" implies a change but every change in the raw material is not manufacture. Then must be such a transformation that a new and different article must emerge having a distinctive name, character or use. The duty is levied on goods. As the Act does not define goods, the legislature must be taken to have used that word in its ordinary, dictionary meaning. The dictionary meaning is that to become goods it must be some thing which can ordinarily come to the market to be brought and sold and is known to the market. That It would be such an article which would attract the Act....

In the case of Ganesh Trading Co. Karnal (Supra), in para 5 of the said judgment, the Hon''ble Supreme Court held--

It was true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy. It is misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when paddy is dehusked and rice produced, there has been a change in the identity of the goods.

In the case of Collector of Central Excise, Madras (Supra), in para 4 of the judgment, the Hon''ble Supreme Court held:

It is well-settled that excise duty becomes chargeable only when a new and different article emerges having a distinct name, character and use.

In para 5 of the said judgment, i.e. the Collector of Central Excise, Madras (supra), the Hon''ble Supreme Court also held:

It may be worth while to note that ''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 was necessary and there must be transformation; a new and different article must emerge having a distinct name, character or use.

8. The learned Advocate General, Assam submits that Veneer produced from log/ timber continues to be timber and forest produce. Mr. Advocate General has drawn my attention to Sub-section (3) of Section 3 of the Regulations and submits that ''timber'' includes all wood fashioned and that Veneer is a fashioned wood and that the definition of forest produce under Sub-section (4) of Section 3 of the Regulations is not exhaustive but illustrative. Referring to the meaning subscribed to the word ''timber'' in the Law of Lexicon, Words and Phrases Vol. 41A published by the Western Publishing Co., Britannica vol. 19, Oxford English Dictionary, Websters English Dictionary, Mr. Advocate General submits that veneer does not lose the character of timber and continues to be timber in the broader sense. Mr. Advocate General further submits that because of nomenclature of ''Veneer'' it does not imply that veneer is an article of different and distinct character, inasmuch as, the sawn timber, beam, rafter, plank etc. made of timber although have a different names continue to remain as timber. In support of the contention learned Advocate General placed reliance in the case of State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, In Para 91 of the said judgment the Hon''ble Supreme Court held:

A question which remains is whether beams, refters and blanks would also be logs or timber. The Shorter Oxford English Dictionary defines "beam" inter alia as ''a large piece of squared timber, long in proportion to its breadth and thickness'' and the Concise Oxford Dictionary defines it as a ''long piece of squared timber supported at both ends, used in houses, ships etc.'' and according to Webster''s Third New International Dictionary, it means ''a long piece of heavy often squared timber suitable for use in house construction''. A beam is thus timber sawn in a particular way, ''Rafter'' as shown by the Shorter Oxford English Dictionary is nothing but ''one of the beams which give shape and form to a roof and bear the outer covering of slates, tiles, thatch etc. The Concise Oxford Dictionary define ''rater'' in very much the same way; the first defines it as ''one of the sloping beams forming frame work of a roof and the second as ''one of the often sloping beams that support a roof. Rafter would also therefore, be timber or log put to a particular use. A ''plank'' is defined in Shorter Oxford English Dictionary as ''a long flat piece of smoothed timber, thicker than a board, specially a length of timber sawn to a thickness of from two to six inches, a width of nine inches or more, and eight feet or upwards in length.

Placing reliance on the decision, learned Advocate General submits that, veneer is not an article of distinct character but continues to be timber, as such, for the regulation of movement of veneer TP is necessary.

9. Mr. A.M. Mazumdar, learned Advocate General, Arunachal Pradesh while adopting the submissions made by the learned Advocate General, Assam has drawn my attention to Sub-section (4) of Section 3 of the Regulations and submits that the definition of forest produce enumerated in the section is not exhaustive but illustrative, inasmuch as, Veneer is made out of timber and since timber is a forest produce, veneer is also a forest produce and to control the movement of veneer from Arunachal Pradesh to elsewhere, TP is necessary. Mr. C.T. Jamir, learned Govt. Advocate Nagaland also adopted the submissions made by the learned Advocate General, Assam. It is not disputed that the Assam Forest Manual has been adopted in Nagaland, Meghalaya and Arunachal Pradesh.

10. I have considered the submissions made on behalf of the Petitioners as well as on behalf of the Respondents and perused the materials on records. Rule 2 of the Transit Rules framed u/s 40 of the Regulations provides:

2. (a) No forest produce shall be removed except as provided in Sub-rule (b) of this rule unless covered by a pass which shall be in the prescribed form.

In case, Veneer fall within the term forest produce, there is no doubt that for movement and transportation of veneer transit pass in the prescribed form is necessary. As such, the real question which is to be decided in this case is whether ''veneer'' produced out of log/timber after treatment, labour and manipulation in the veneer mill, emerges as a product having distinct name, character and use or still remains to be forest produce.

11. According to ''Britannica'' Vol. 19--

Veneer is a thin layer or sheet of wood uniform in thickness commonly about 0.6-8 millimeters (0.02-0.3 inch). According to the method of production it is classified into rotary cut, sliced and sawn. More than 90 percent of all veneer is rotary cut, but figured woods producing veneer for furniture and other decorative purposes are alleged; sawn veneer is seldom produced because it is a wasteful operation. Veneer are used primarily for plywood and furniture, but also in toys, containers of various kinds, matches, battery separations, and other products. A product related to veneer but still an experimental development, is slice wood; this is thicker and its production is less wasteful than lumber of the same thickness.

According to Oxford Engligh Dictionary:

Veneer: 1. One of the thin (sic) or slips of fine or fancy wood, or other suitable material used in veneering.

2. Material prepared for use in veneering, or applied to a surface by this or some similar process.

3. A merely outward show or appearance of some good quality.

4. One or other of many species of moths of the genus Crambus or family Crambidae; a grass moth.

According to Webster Dictionary--

Veneer: 1. a thin surface layer, usually of wood, laid over a basis of common material;

2. any of the thin layers glued together in plywood;

3. any attractive but superficial appearance or display; as a veneer of culture.

In the Law of Lexicon, the word ''timber'' has been described, thus:

Timber: By the term ''timber'' is meant presently such trees only as are with to be used in building and repairing houses. Many descriptions of trees which are not generally considered as timber are so in some places by custom of the country, being there used for the purposes of building.

According to Websters Dictionary--

Timber: 1. originally, (a) a building; (b) building material.

2. wood suitable for building houses, ships etc. whether cut or in the form of trees.

3. trees collectively.

4. a large piece of dressed wood for building a beam.

According to Oxford English Dictionary--

Timber: 1. A building structure, edifice, house.

2. Building material generally; material for the construction of houses, ships etc. or (in extended sense) of any manufactured article; the matter of substance of which anything is built up or composed; matter, material, stuff.

3. Wood used for the building of houses, ships, etc. or for the use of the carpenter, joiner, or other artisan; wood in general as a material; esp. after it has been suitably trimmed and squared into logs, or further adapted to constructive uses,

4. Applied to the wood of growing trees capable of being used for structural purposes; hence collectively to the trees themselves; standing timber, trees, woods.

Recording to the Words and Pharases Vol. 41A published by the Western Publishing Co.--

Timber: "Timber" means generally such trees as are fit to be used in buildings or ships.

"Timber" is a generic word, meaning "trees", felled or standing to be used for building.

"Timber" is such stuff as is suitable for building and allied purposes.

"Timber" includes all kinds of wood used either for building purposes or in the manufacture or construction of useful articles.

12. From what is ascribed to ''Veneer'' and ''timber'' by the aforesaid authorities it is difficult to hold that ''Veneer'' can be termed as timber in the broader sense: rather veneer appears to be a product of distinct name, character and use. Undisputedly, veneer in the ordinary commercial parlance is known as a distinct finished product and is brought and sold in the market as ''veneer'' and that excise duties are being charged in advance on ''veneer'' before it is brought out of the mill for marketing. It is well settled by the decisions of the Hon''ble Supreme Court in the case of South Bihar Sugar Mills Ltd. (supra) and Collector of Central Excise, Madras (supra) that excise duty becomes charageable only when a new and different article emerges having a distinct name, character and use. Admittedly excise duty is not charged on log/timber from which veneer is produced. Veneer being a article of finished product having distinct name, character and use, excise duty is charged an veneer. As such, there is no escape from holding that although ''veneer'' is produced of log/timber, after the treatment, labour and manipulation in the veneer mill log/ timber is transformed and loses its identity and emerge as a finished product with distinct name ''veneer'' with distinct character and use.

13. The purpose of introduction of transit pass as can be gathered from Section 40 of the Regulations as well as the Transit Rules framed thereunder, is to levy royalty and to control, preserve to regulate the procurement and transportation of forest produce. Admittedly veneer is not produced either in the reserved forest or private forest but in the registered mill and no royalty is levied on veneer. The logs/timbers are supposed to be brought to the veneer mill under TP. It is urged on behalf of the Respondents that although no royalty is charged on veneer but for movement and transportation of veneer transit pass is necessary in order to find out whether the log/timber from which veneer is produced has been legally procured by the mill or not. I fail to understand as to how it is possible to trace out that a particular piece of veneer is manufactured from a particular log/ timber. Admittedly, every veneer mill is required to maintain Conversion Register, which accounts for the quantum of logs/timbers used for producing veneer. Besides, veneer is transported from the mill challan. As such, the original of the production of veneer in the mill from the log/timber procured by the mill can be checked with reference to the Conversion Register and mill challan. The TP obtained for movement of ''veneer'' has been produced in the Court and I find that TP is nothing but a carbon copy of mill challan. It becomes apparent that it will be futile exercise on the part of the forest official to make an endeavour to find out the legality and illegality of procurement of log/timber by the mill with reference to a particular piece of veneer produced in the mill.

14. For the reasons stated above, I have no hesitation to hold that after treatment, labour and manipulation of log/timber in the veneer mill, veneer emerges as a finished product having distinct name, character and use and

cannot be termed as a forest produce. As such for the movement/transportation of veneer obtaining TP and production thereof at the check gate is not necessary. The petitions are therefore, allowed. The impugned circular dated 12.9.86 is set aside. Respondents are directed not to insist on obtaining TP and production thereof at the check gate for transportation of veneer. I make no order to costs.

