
(1993) 07 OHC CK 0001

In the Orissa High Court

Case No : Original Jurisdiction Case No's. 4524, 4525, 4528 and 4529 of 1990

Orissa Forest Corporation

APPELLANT

Vs

Collector of Customs and Central Excise and Another

RESPONDENT

Date of Decision : 13-07-1993

Acts Referred:

Central Excises and Salt Act, 1944 — Section 2(d), 2(f), 3

Citation : (1993) 44 ECC 1

Hon'ble Judges : B.L. Hansaria, C.J;R.K. Patra, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.K. Patra, J.—The facts in all the aforementioned cases are few, point involved is solitary it being whether railway sleepers, sawn timber and wooden sawn sizes are tiber simpliciter or they are "manufactured" as such as excisable goods to be leviable with duty u/s 3 of the Central Excises and Salt Act, 1944. As all the cases stem from common and similar orders passed by the Central Excise Authority, they have been heard together and are being disposed of by this common judgment.

2. The petitioner is a Government corporation which is engaged inter alia in the business of taking forest lease and conversion of logs into timber and dispose of the same through its different agencies. The Collector, Central Excise and Customs, Bhubaneswar issued notice to the petitioner to show cause as to why it should not be levied with central excise on the afore-mentioned goods for different periods specified in the notices. The petitioner instead of replying to the said notices prayed for personal hearing which was granted by the designated authority. After hearing the petitioner, the authority has held that excise duty is leviable on railway sleepers, sawn timber, wooden sawn sizes u/s 11-A of the aforesaid Act read with Rule 9(2) of the Central Excise Rules, 1944 for different periods covering from 28-2-1988 to 2-4-1988 as per Annexure-1 of each of the writ petitions. This has led the petitioner to challenge the orders in this group of

writ petitions.

3. Mr. B.K. Mohanty, learned Senior Counsel has submitted that the goods in question to be leviable with excise duty must be manufactured as envisaged u/s 3 of the Central Excises and Salt Act, 1944 and the petitioner who merely gets the logs converted to railway sleepers, sawn timber and wooden sawn sizes does not manufacture them as such. Learned Counsel has contended that "manufacture" results in emergence of a different article and asked us to accept that railway sleepers, sawn timbers and wooden sawn sizes converted from timber continue as timber they do not lose their character as timber. Shri A.B. Misra, learned Counsel for the Revenue, on the other hand, has refuted this contention raised on behalf of the petitioner and submitted that the goods in question are distinct commodities in the market for which they are subjected to levy of duty as per relevant items mentioned in the schedule.

4. Section 3 of the Central Excise and Salt Act, 1944 which is the charging section provides that there shall be levied and collected duties of excise on all excisable goods other than salt, which are produced or "manufactured" in India at the rates set forth in the Schedule to the Central Excise Tariff Act, 1985 (Central Act No. 5 of 1986). The said Central Act No. 5 of 1986 has come into force on 28th of February, 1986. Prior to the said date, duty on excisable goods was leviable at the rates specified in the Schedule of the Central Excises and Salt Act, 1944. There is no dispute at the Bar that prior to 28-2-1986 the goods in question were sought to be brought under the residuary item 68 of the Schedule. In the Schedule of the Central Act No. 5 of 1986 the following entries under the distinct heading nos. 44.02 and 44.03 find mention:

Heading	Sub-	Description of goods	Rate	No. heading of	No. duty
1	2	3	4		
	44.08	4402.00	RAILWAY OR TRAMWAY SLEEPERS	12%	(CROSS-TIES), WHETHER IMPREGNATED OR NOT.
	44.03	4403.00	WOOD, SAWN OR CHIPPED LENGTH-WISE, 12% SLICED OR PEELED WHETHER OR NOT PLANED, SANDED OR FINGER-JOINTED, OF A THICKNESS EXCEEDING 6 MM.		

5. Section 2(d) of the Central Excises and Salt Act, 1944 defines excisable goods to mean goods specified in the First Schedule, as being subjected to a duty of excise. The definition has two limbs, i.e. to be excisable goods the products should fall within one of the items mentioned in the Schedule and at the relevant time they should also be chargeable to duty. "Manufacture" as defined in Section 2(f) of the aforesaid Act "includes any process incidental or ancillary to the competition of manufactured product".

6. In the case of South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and

Others, the word "manufacture" occurring in Section 3 of the Central Excises and Salt Act, 1944 directly came up for consideration before the Apex Court. The Bench consisting of four Hon'ble Judges observed in paragraph 14 of the judgment:

The Act charges duty on manufacture of goods. The word "manufacture" implies a change but every change in the raw material is not manufacture. There must be such a transformation that a new and different article must emerge having a distinct 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 something which can ordinarily come to the market to be bought and sold and is known to the market....

7. In *Saraswati Sugar Mills v. Haryana State Board* AIR 1988 SC 224, the Apex Court brought out the distinction between processing and manufacture by observing as below in paragraph 15:

The essential point thus is that in manufacture something is brought into existence which is different from that originally existed in the sense that the thing produced is by itself a commercially different commodity whereas in the case of processing it is not necessary to produce a commercially different article.

8. Let us now consider the cases which were referred to and cited at the Bar which can conveniently be classified into two groups, namely, cases in which the revenue/the assessee seeks to bring a particular product under a particular item by adopting the procedure of interpretation and cases in which products answer their description mentioned under the relevant item.

9. In *State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another*, (on which the learned Counsel for the petitioner heavily relied on) it has been held that timber and sized or dressed logs are one and the same commercial commodity. In the said case, the Court was dealing with one of the notifications issued by the State Government making standing trees agreed to be severed liable to be taxed on turnover of purchase. Their Lordships took into consideration the definition of "timber" as mentioned in the Orissa Forest Act, 1972 to include trees fallen or felled and all wood cut off or sawn. By noticing that the dictionary meaning largely tallied with the statutory meaning of timber, the Apex Court held that even planks, beams, rafters would also be timber. In the said case the question whether timber sawn, to particular sizes would be distinct commercial commodity did not come up for consideration.

10. *Collector of Central Excise, Madras Vs. Kutty Flush Doors and Furniture Co. (P) Ltd.*, , pressed into service by the learned Counsel for the petitioner, was a case where the Apex Court did not interfere with the finding of fact recorded by the Tribunal that no new product emerged by sawing of timber into several sizes. It was case where the excise authority by observing that conversion of timber logs into sawn timber involved transformation whereby a new different article

with distinct name, character and use emerged held that excise duty was payable under the residuary Item No. 68 of the erstwhile Schedule of the Central Excises and Salt Act, 1944. The said view was reversed by the Tribunal (CEGAT) who came to the conclusion that no new product emerged by sawing of timber into several sizes. Against the decision of the Tribunal an appeal was preferred by the Collector of Central Excise and the Apex Court having regard to the facts found by the Tribunal which was the final fact finding authority did not interfere in the matter. It may be noted that the Apex Court was not dealing with item nos.44.02 and 44.03 of the Schedule of the Central Act 5 of 1986 where clear description of goods for which duty is leviable has been indicated, which answer to the description of sawing of timber into different sizes.

11. *New Swastik Flour Mill and Anr. v. State of Karnataka* 1992 (84) STC 49(Kar) is a decision of the Karnataka High Court holding that atta, maida and suji of wheat are not different from wheat which is a declared goods and, therefore, the turnover of these items cannot be subjected to tax u/s 5(3) (a) of the Karnataka Sales Tax Act if the wheat out of which the said items are prepared had already suffered tax as declared goods. In that case validity of item No.138 of the Second Schedule to the aforesaid Sales Tax Act which authorises levy of tax on atta, maida and suji produced out of wheat was challenged on the ground that it is inconsistent with Section 15 of the Central Act. Thus the challenge itself in the said case being on a different ground the ratio of that case has no bearing on the cases at hand.

12. In *Kuttirayin and Co. and Others Vs. The State of Kerala and Others*, a Bench of the Kerala High Court was dealing with the question whether timber logs converted to sizes, planks and scantlings are the logs consumed in the manufacture of other goods to attract liability u/s 5(A)(1)(a) of the Kerala General Sales Tax Act, 1963. The Court held that planks and scantlings are commercial articles different from the logs from which they are sawn. At any rate they do not remain the same commercial article for one who requires planks or scantlings would not go to a timberyard and ask for timber logs or vice versa. In paragraph 8 of the judgment, the Bench observed, "we are not aware of any such commodity" as "sizes". If timber logs are cut into sizes to facilitate transport and stacking, it cannot be said that commercial articles different from timber logs emerge but on the other hand logs sized into beams, sleepers, etc., are different commercial articles which are sold and purchased as beams, sleepers, etc. and not as timber logs.

13. *Pravat Timber Depot v. State of Andhra Pradesh* 1981 (48) STC 189(AP) saw the Andhra Pradesh High Court examining vires of entry 145 of the First Schedule to the Andhra Pradesh Sales Tax Act. The challenge was on the ground, inter alia, that timber, though cut into sizes, continued to be timber within the meaning of entry 63 and hence it was taxable only at the point of first sale and it could not be again taxed at the point of sale by dealers in the form of cut sizes of timber as per entry 145. The challenge was that such a classification of the same

commercial commodity into two items 63 and 145 was arbitrary and artificial. A Division Bench of the Court rejected the contention raised on behalf of the assessee and held that the intention of the legislature to consider items covered under entries 63 and 145 was clear.

14. In *Mukesh Kumar Agarwal & Co. v. State of Madhya Pradesh and Ors.* AIR 1988 SC 562, the Apex Court was called upon to decide whether stacks of eucalyptus wood heaped after separating the bails and poles constitute an answer to the description of timber under entry No. 32-A of Part II of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958. The question posed by their Lordships was whether the subsidiary part of the tree sold in heaps after the bails and poles are separated can be called "timber". The Court was of the view that it would be somewhat of a strain on the popular meaning of the expression "timber" with the sense, size and utility implicit in the idea, to call those wood-heaps "timber" meant or fit for building purposes. Persons conversant with the subject-matter will not call those wood-heaps "timber" whatever else the goods might otherwise be; and having regard to the nature and description of the woods, the wood-heaps are not susceptible to be or admit of being called "timber" with all the concomitants and associations of that idea. However, differences of degree can bring about differences of kind.

15. The question which cropped up in *Modern Candle Works v. Commissioner of Tax, Assam* 1988 (71) STC 362(Gau) was whether wax candles are goods distinct and different from wax for the purpose of the Assam Sales Tax Act, 1947. There the wax was subjected to purchase tax under the Assam Sale of Petroleum and Petroleum Products (including Motor Spirit and Lubricants) Taxation Act, 1955. When the assessee sold candles made out of wax he was called upon to pay sales tax under the Assam Sales Tax Act on the basis that wax candle is a different marketable commodity. A Division Bench of the Gauhati High Court comprising of K.N. Saikia, CJ. and B.L. Hansaria, J. (as their Lordships then were) after reviewing all the decisions then available and by taking into consideration the meaning of "manufacture" held that in view of the fact that candle was a distinct commercially marketed product, the same could not be treated as wax.

16. The journey through the case laws cited at the Bar having come to an end, let us have a glance at the principle of construction in relation to the words used in a taxing statute. Pollock, B. pointed out in *Grenfell v. I.R.C.* (1876) 1 Ex D 242

... if a statute contains language which is capable of being construed in a popular sense such a statute is not to be construed according to the strict or technical meaning of the language contained in it, but is to be construed in its popular sense, meaning of course, by the words "popular sense" that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it.

Story, J. in *Two Hundred Chests of Tea* (1894) 9 Wheaton 430 at 438 (U.S.)

expressed his opinion in a different language reading as follows:

...the particular words used by the legislature in the denomination of articles are to be understood according to the common commercial understanding of the terms used, and not in their scientific or technical sense, for the legislature does not suppose our merchants to be naturalists or geologists, or botanists.

The aforesaid rule of construction in relation to words used in a taxing statute has been consistently followed by the Apex Court, to wit, *State of West Bengal and Others Vs. Washi Ahmed and Others*, .

17. Keeping the aforesaid in view, let us have a look at the goods in question to examine whether they have been rightly subjected to excise duty. We have to state here that in the aforesaid Schedule "railway sleepers" finds mention vide heading No. 44.02, whereas sawn timber and wooden sawn sizes answer the description vide heading No. 44.03 which says, "wood sawn or chipped lengthwise, sliced or peeled etc.". When the legislature has set out different goods clearly describing them in different forms, its intention is clear, viz. that the goods described and as mentioned in the schedule are exigible to duty.

18. In *Union of India (UOI) Vs. Hindu Undivided Family Business known as Ramlal Mansukhrai, Rewari and Another*, , validity of imposition of excise duty on circles of kansi and brass prepared in the process of manufacturing utensils was under consideration. The assessee claimed that the product appearing in the form of uncut circles after rolling of billets by rolling mills could not be called circles in the sense in which the word "circle" was used in item No. 26-A (2) of the Schedule. It was also contended on behalf of the assessee that the circles were prepared without undergoing any such changes as could be held to amount to manufacture so that the circles at that stage were not liable to excise duty under the aforesaid item 26-A(2). The Court found that item 26-A(2) itself envisages excise duty being levied on "circles in any form or size". Rejecting the plea of the assessee the Court observed as follows:

We cannot understand how it can possibly be contended that uncut circles are not circles in any form or size. There is nothing in the item from which an inference can be drawn that the intention of the Legislature was to tax trimmed circles and not uncut circles. If there had been any such intention, the legislature would not have used the expression "circles in any form".

19. In Annexure-1 of O.J.C. No. 4529 of 1990, the excise authority has recorded the following finding:

On the other hand, I find that out of the products only railway sleepers are those which have been made to specifications and they are not just sawn wood. They have undergone a process which has given shape, size, name and use.--It is a manufactured product....

The aforesaid finding recorded by the authority, which is a finding of fact, clearly indicates that railway sleeper after having gone through the process of

manufacture has emerged as a distinctly marketable product and it having been clearly described as the goods in the Schedule vide heading No. 44.02 as exigible to excise duty, we do not find any wrong done by the excise authority in determining the liability on the petitioner. It this finding which distinguishes the present case from that of Kuttty Flush Doors as the finding therein was different. So far as sawn timber and wooden sawn sizes are concerned, they clearly answer the description of the goods mentioned in the Schedule vide heading No. 44.02 (sic 44.03). The legislature clearly intends that wood sawn or chipped lengthwise, sliced, etc., should be taken as distinct commercial goods on which excise duty is leviable. There being no challenge by the petitioner to the validity of the item 44.03 as mentioned in the Schedule, the finding of liability on those goods recorded by the excise authority cannot be upset.

20. In the premises stated above, we do not find any cogent reason to interfere with the impugned orders. The writ petitions are, therefore, dismissed. We make no order as to costs.

Hansaria, C.J.

21. I agree.