(2010) 09 CHH CK 0051

In the Chhattisgarh High Court

Case No : Writ Petition No''s. 1450 and 1451 of 2002

Rajaram Maize Products APPELLANT

Vs

State of Chhattisgarh and Others RESPONDENT

Date of Decision : 28-09-2010

Acts Referred:

Madhya Pradesh General Sales Tax Act, 1958 — Section 12

Citation : (2011) 38 VST 453

Hon'ble Judges : Satish K. Agnihotri, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Satish K. Agnihotri, J.—Both the writ petitions, i.e., W.P. Nos. 1450 and 1451 of 2002, involve a common question of law based on identical facts between the same parties, except the different registration numbers, thus, they are being disposed of by this common order.

2. The Petitioner impugns the legality and validity of the order dated June 29, 2001 (annexure P/1) passed by the Additional Commissioner, Commercial Tax, upholding the orders passed by the authorities below wherein they have held that the maize oil and maize cake are produced during preparation of starch from maize, and thus, are not entitled to exemption under notification dated March 30, 1994 (annexure P/5).

3. The learned Counsel appearing for the Petitioner would submit that the identical issue came into consideration with regard to exemption under notification dated March 30, 1994, issued by the undivided State of Madhya Pradesh, before the High Court of Madhya Pradesh, in a petition Tiled by the sister concern of the present Petitioner. The Division Bench of the High Court of Madhya Pradesh, vide order dated December 24, 2009, in Rajaram and Brothers v. Commissioner of Commercial Tax, M.P. [2010] 32 VST 364, held that the maize oil and cake are by-products of maize, being by-products of cereals. Thus,

the Petitioner therein was granted exemption of the same under notification dated March 30, 1994.

4. Ms. Sharma would further submit that maize is the primary produce and in the process of obtaining starch, germ, gluten, grit and husk, maize oil and cake are produced which are by-products of foodgrain and cereals. There is no dispute that the maize is a cereal under serial No. 7 of the Schedule under the notification dated March 30, 1994. The by-products of foodgrains and cereals are exempted from taxes.

5. On the other hand, Shri Bhatia, learned Counsel appearing for the State/ Respondents would submit that in the process of manufacturing of starch from maize, the by-products like husk, gluten, germ, grit are produced. Grain germ is used as raw material for production of maize oil and maize cake. Thus, maize oil and maize cake are not by-products of the maize, but in the process of production of starch. Thus, maize cake and maize oil are not exempt from payment of taxes under the above-stated notification.

6. The Supreme Court, in Indian Farmers Fertiliser Cooperative Limited Vs. Collector of Central Excise, Ahmedabad, , observed that the exemption notification must be so construed as to give due weight to the liberal language it uses.

7. A Division Bench of the High Court of Madhya Pradesh, considering the same notification, in Rajaram and Brothers [2010] 32 VST 364 has observed as under:

14. When admittedly ''maize'' is specified as ''cereals'' so also ''maize oil'' and ''cake'' to be the ''by-product'' of ''maize'' then as a necessary corollary ''by-product of cereals'', i.e., ''by-product of maize'' would be exempt from payment of sales tax by virtue of exemption notification dated March 30, 1994 (annexure P/2) read with Clause (ii) of entry 91 of Schedule I of the MPCT Act. In other words, once it is admitted that ''maize'' is a ''cereals'' and commodity in question, i.e., ''maize oil/ cake'' are by-products of ''maize'' then ''by-products of maize'' would fall within the four corners of Clause (7) of exemption notification read with Clause (ii) of entry 91 of Schedule I of the MPCT Act thereby exempting such by-products from payment of sales tax.

8. The sister concern of the Petitioner is availing of the exemption pursuant to the order passed by the High Court of Madhya Pradesh in Rajaram and Brothers [2010] 32 VST 364 the same products, i.e., maize oil and maize cake are in question before this Court also.

9. The notification dated March 30, 1994 (annexure P/5) reads as under:

COMMERCIAL TAXES DEPARTMENT In exercise of the powers conferred by Section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), the State Government hereby exempts from 1st April 1994 the class of goods specified in column (2) of the Schedule below from payment of whole of tax under the said Act.

SCHEDULE

Sl. No. Class of goods

1 to 6

7.

...

...

Atta, maida, suji, rawa, flour, and other by-products of foodgrains and cereals.

...

10. Thus, I do not find any reason to take a contrary view as interpreted by the Division Bench of the High Court of Madhya Pradesh in Rajaram and Brothers [2010] 32 VST 364, wherein the same notification was involved.

11. Thus, I am in respectful agreement with the decision in Rajaram and Brothers [2010] 32 VST 364, that the maize oil and maize cake are by-products of maize and are exempted from tax under the notification dated April 30, 1994 (annexure P/5). The impugned orders dated June 29, 2001 (annexure P/1 in both the writ petitions) are quashed, accordingly.

12. In the result, both the writ petitions are allowed. No order as to costs.