
(1998) 06 AP CK 0032

In the Andhra Pradesh High Court

Case No : Writ Petition No. 21976 of 1996 and Batch

Rajashree Oils and Extractions

APPELLANT

Vs

Deputy Commissioner (CT), Kurnool and another

RESPONDENT

Date of Decision : 18-06-1998

Acts Referred:

Constitution of India, 1950 — Article 14, 301, 302, 303, 304

Citation : (1998) 5 ALD 209 : (1998) 5 ALT 9 : (1998) 3 APLJ 1

Hon'ble Judges : S.V. Maruthi, J;N.Y. Hanumanthappa, J;B. Sudershan Reddy, J

Bench : Full Bench

Advocate : Mr. N. Jayasurya, for the Appellant; Government Pleader for Commercial Taxes and G.P. for Revenue, for the Respondent

Judgement

S.V. Maruthi, J.—The reference to the Full Bench is made by Mr. Justice M.N.Rao and Mr. Justice T.N.C. Rangarajan as they were at that time expressing a doubt as to the correctness of the judgment in *State of Andhra Pradesh v. M/s Jayanti Oil Mills Private Limited* (1995) 20 APSTJ 255. The facts in brief are as follows:

2. The assessee is a dealer in groundnut oil. It has a Solvent Extract Plant at Guntakal where it extracts groundnut oil from groundnut oil cake which has already suffered tax. On the footing that such oil falls within the Entry 24(b) in the First Schedule to the Andhra Pradesh General Sales Tax Act (for short "the Act") the assessee has paid tax only at the rate of 2 1/2 paise in the rupee and assessments have been completed on that basis for the assessment year 1993-94. However, the impugned notices have been issued for bringing the said sales of groundnut oil within the scope of Entry 24(a) on the ground that the oil has been extracted not from the groundnut but only from groundnut oil cake and it will not, therefore, fall within the Entry 24(b). For this proposition the basis is the decision of this Court in *M/s. Jayanti Oil Mills case* (supra).

3. It was argued by the learned Counsel for the petitioner before the Bench that the judgment in *M/s.Jayanti Oil Mills case* (supra) is not correct as it has overlooked the facts that the real source of the oil is only groundnut even though

it has been transformed into groundnut oil cake after partial extraction and further oil is extracted from the groundnut oil cake by application of Solvent Extraction Process due to technological advancement which was not available at the time when the Entry was enacted in the Statute. The learned Special Government Pleader for taxes submitted before the Bench that since the matter is at the stage of issue of notice and that he was not aware that any assessment has been made so far, the judgment in M/s. Jayanti Oil Mills case (supra) does not require reconsideration.

4. The learned Judges on a consideration of the respective arguments were of the view that the judgment in M/s. Jayanti Oil Mills case (supra) requires reconsideration. According to the learned Judges, the real issue is whether the groundnut oil has been extracted from a substance which has met with tax and this issue has to be considered with reference to the latest technology, particularly in the context of discriminatory rates of tax in respect of the same commodity depending upon the source from which it was manufactured. Hence the reference.

5. At this stage, it is necessary to refer to the judgment of this Court in M/s. Jayanti Oil Mills case (supra). The facts in brief in that case are that the assessee was a dealer in groundnut oil. The oil was extracted from groundnut oil cake. For the assessment year 1977-78 the assessing authority taxed the turnover in question under 24(a). On appeal the Deputy Commissioner did not agree with the contention of the assessee that because the "groundnut oil cake" has suffered tax the rate applicable should be under 24(b). However, on further appeal the Tribunal took the view that as groundnut cake out of which the oil was extracted has suffered tax, the relevant entry would be 24(b). The Revenue was before the Court in a Tax Revision Case. Disagreeing with the view expressed by the Tribunal, the learned Judges observed that "Had the Legislature wanted to grant the benefit of reduced rate of tax in cases where the tax suffered raw material has been used for extracting groundnut oil, it would have stated so specifically. The intention of the Legislature as indicated above appears to be to tax at the reduced rate only when the raw material for extracting groundnut oil is "groundnut" only but not otherwise. If that be the intention then on the ground that the raw material used for extracting groundnut oil has suffered tax, the reduced rate of tax under 24(b) cannot be made applicable. The learned Judges in support of their view relied on the Judgment of the Punjab and Haryana High Court in Chitar Chemicals Ltd. v. State of Haryana (1994) 93 STC 215. In other words, the learned Judges took a literal interpretation of the Entry viz.. Entry 24 (a) and (b) of the Schedule I of the Act. The correctness of the same is before us.

6. To consider the correctness of the judgment in M/s. Jayanti Oil Mills Pvt. Ltd., (supra), we have to refer to Entry 24 of the I Schedule of the Act which reads as follows:

SI. No. Description of goods Point of levy Rate of tax

24 Groundnut oil or refined oil At the point of first sale 6 paise in the rupee

(a) Groundnut oil or refined oil not covered by sub-item (b) below

(b) Groundnut oil or re-fined oil obtained from groundnut that has met tax under the Act- -do- 2 paise in the rupee

A reading of the Entry makes it clear that groundnut oil or refined oil obtained from groundnut that has already met tax under the Act is liable to be taxed at 2 paise in the rupee under Entry 24(b) while the groundnut oil or refined oil not covered by sub-item (b) is taxable at 6 paise in the rupee. In other words, the end product viz., groundnut oil if extracted from groundnut which has suffered tax is liable to pay tax at 2 paise in the rupee while the very same groundnut (sic oil) if extracted otherwise than from the groundnut is to be taxed at 6 paise in the rupee. If we look at from a different angle, the end product viz., the groundnut oil is liable to be taxed at 2 paise and at 6 paise in the rupee depending on the raw material from which it is extracted.

7. In the affidavit filed in support of the Writ Petition it is stated that:

"Groundnuts are grown by agriculturists and sold by them to dealers or manufacturers of oil. Under item 6 of Schedule -III at 4% on the first purchase point. Oil is extracted from Groundnuts with the aid of expellers. This industry is reserved for the small Scale Sector. The expeller process yields two products. (1) unrefined Groundnut oil (2) Ground nut oil Cake. The unrefined Groundnut oil is either sold directly to consumers or refineries. The groundnut cake contains some oil estimated to be about 7 to 8%. Even this oil can be extracted by Solvent Extraction process. Under the scheme of the taxation, adopted by the A.P.G.S.T. Act, Groundnuts are taxed under item 6 of Schedule III at 4%, Groundnut cake under item 28 of Schedule I at 4% and groundnut oil under item 24.

.....The Legislature recognised that in view of these decisions of the Supreme Court, it was not feasible to constitutionally demarcate Groundnut oils according to the different manufacturing processes. Factors of Practical convenience in levy and collection of tax on groundnut oil were also responsible for this approach. It is to be noted that all oil manufactured by whatsoever process, from groundnuts which are the source material is groundnut oil and nothing else. The existence of intermediate product like groundnut cake or unrefined oil which are even separately saleable would not alter the nature of the ultimate product. It is still oil obtained from groundnut and can only be described as groundnut oil. As a matter of fact, groundnut cake is in substance, only crushed groundnut. Albeit, with lesser content of oil."

8. In the counter affidavit it is stated that since groundnut suffers tax at 4% under Entry 6 of the III Schedule, the oil extracted from groundnut is subjected to a concessional rate of tax while the same is not the case in the case of groundnut oil extracted from the groundnut cake.

9. From the affidavit filed in support of the Writ Petition it appears that by means of expeller process unrefined groundnut oil and groundnut oil cake is obtained. The groundnut oil is sold to consumers and the groundnut oil cake containing 7 to 8% of oil is subjected to Solvent Extraction Process and groundnut oil is extracted. Since an intermediate product i.e., groundnut oil cake comes into existence, the groundnut oil extracted from it is subjected to higher rate of tax though the end product is the same.

10. In other words, the end product has to suffer different rates of tax - one lower and the other higher. There is no rationale behind levying different rates of tax - one lower and the other higher on the same end product and, therefore, it is arbitrary. The effect of imposing different rates of tax on the same end product namely groundnut oil is that the cost of groundnut oil which is extracted from groundnut cake costs more than the groundnut oil extracted from the groundnut. Since, there is no rationale behind such levy, the Entry 24(a) suffers from discrimination.

11. The Revenue tries to justify the same on the ground that the raw material used is different. It is difficult to agree with the contention of the Revenue. Whatever maybe the raw material from which the end product is extracted, the fact remains that the end product remains the same i.e., groundnut oil. The fact that an intermediate product comes into existence before the end product is ultimately brought into existence does not make the end product different. The end product remains the same whether it is extracted from groundnuts or groundnut cake. When the end product is the same, there is no justification for levy of two different rates of tax, one higher and the other lower. The Revenue could not place any material before us justifying two different rates of tax on the same end product namely groundnut oil.

12. The further case of the Revenue is that since the groundnut has already suffered tax at 4%, groundnut oil extracted from groundnut which has suffered tax is to be taxed at the concessional rate of tax. There is justification for the argument of the Revenue that since the groundnut suffered tax at 4%, the groundnut oil extracted from the said groundnut should be subjected to concessional rate of tax. But there is no justification for the Revenue's contention that the groundnut (sic oil) extracted from the groundnut cake does not require any concessional rate of tax. The Revenue while contending that the groundnut oil extracted from groundnut cake does not require any concessional rate of duty is forgetting the fact that the groundnut cake also suffered tax at 2% in the rupee under Entry 28 of the I Schedule of the Act. Therefore, the contention of the Revenue cannot be sustained.

13. Further we can visualise two situations - (1) A dealer may directly purchase groundnut cake and extract oil from it; and (2) Another dealer may purchase groundnut and extract oil and from the residue viz., cake may also extract oil. In the first case, the dealer of groundnut oil pays a tax of 8 paise in a rupee on the groundnut oil viz., 2 paise on groundnut cake and 6 paise on the groundnut oil

thus extracted. In the 2nd case, the dealer pays 4% on the groundnut, 2% on the cake and 6% on the groundnut oil, which comes to 12%. Whereas a dealer who extracts oil from the groundnut directly pays tax at 4 paise in a rupee on the groundnut and 2% on the oil which comes to 6%. In fact the very same dealer has to pay two different rates of tax depending on the raw material from which he has extracted oil. Therefore, the very same groundnut oil extracted suffers different rates of tax depending upon the process of extraction adopted and the raw material from which the groundnut oil is extracted. In other words, a purchaser has to pay higher rate of tax on groundnut oil purchased depending on the method of extraction and the raw material used for extracting the groundnut oil, which in our view, is discriminatory. The same end product is subjected to discriminatory rate of tax depending on the raw material from which it is extracted and the method of extraction adopted for extracting the oil. Groundnut oil viz., the end product should be subjected to the same rate of tax irrespective of the process of extraction followed and irrespective of the raw material from which it is extracted. Groundnut oil extracted from groundnut cake would cost more than the groundnut oil which is extracted from the groundnut under the present Entry 24(a) and (b). Thus, there would be a case of discrimination in respect of the same end product viz., groundnut oil. Therefore, we are of the view that groundnut oil extracted whether from the groundnut which has suffered tax or from the groundnut cake which has suffered tax should be subjected to the same rate of tax and Entry 24(a) which prescribes a higher rate of tax for groundnut oil extracted from groundnut cake suffers from vice of discrimination and, therefore, is violative of Article 14 of the Constitution of India. We declare Entry 24(a) as discriminatory.

14. The learned Judges in *M/s. Jayanti Oil Mills* case (supra) did not examine the issue from the angle of Article 14 of the Constitution. They have adopted a literal interpretation of Entry 24(a) and (b). Even if the Legislature did not want to grant benefit of reduced rate of tax in cases where tax suffered raw material is used for the production of end product, still the question whether different rates of tax on the end product results in discriminatory treatment of the end product is relevant and has to be considered, which the learned Judges have not considered. While adopting a literal interpretation it is incumbent to examine the constitutional validity of the literal interpretation of an entry. If the literal interpretation of the entry results in violation of Article 14, the Courts need not give effect to such literal interpretation of the entry and may declare the entry as violative of Article 14 of the Constitution of India. Therefore, we are of the view that the judgment in *M/s. Jayanti Oil Mills* case is not correctly decided and we over-rule the same.

15. The main argument of the learned Counsel for the assessee is that the issue involved is covered by a judgement of the Supreme Court in *Anand Commercial Agencies Vs. The Commercial Tax Officer VI Circle, Hyderabad and Others*, . The learned Govt. Pleader for the revenue vehemently contended that the Judgment in *M/s. Anand Commercial Agencies* case (supra) is not relevant to the facts of

the present case. It is a case which went up from this Court to the Supreme Court. The facts in brief are that M/s. Anand Commercial Agencies is a partnership firm. The dispute in this case is in the course of assessment for the assessment year 1977-78. The assessee at the relevant period had a total turnover of Rs.31,35,000/-out of which Rs. 14,76,000/- was on account of sale of groundnut oil and refined oil obtained from groundnut which had not borne tax under the A.P. Act because the oil was imported into Andhra Pradesh from the State of Karnataka. The case of the assessee was that the oil had been extracted out of groundnuts which had borne tax under the Karnataka Sales Tax Act. Therefore, the levy of tax on the oil imported from Karnataka into Andhra Pradesh at a rate higher than the rate at which the oil manufactured in Andhra Pradesh is taxed is discriminatory and violative of the appellant's right of freedom of trade and commerce throughout India. There was a difference of opinion between Justice Raghuvver and Justice Amareshwari (as they then were) and the matter was referred to a third Judge viz., Justice Jayachandra Reddy. Justice Jayachandra Reddy (as he then was) agreed with the view of Justice Amareshwari and disagreed with Justice Raghuvver. It was held by Justice Jayachandra Reddy that:

"strictly speaking, the rate of tax was the same for both types of oil. A lower rate of 2 1/2 percent was prescribed under entry 24(b) of the First Schedule to the Andhra Pradesh General Sales Tax Act because groundnut from which this oil was extracted in the State had already " met tax at the rate of 4 per cent under entry 6 of the Third Schedule, and if this oil were to be taxed again at the rate of 6 1/2 per cent the tax burden would be heavy. Ultimately the rate of tax in respect of the sale of both types of oil was kept at 6 1/2 per cent. Merely because a lower rate was prescribed under entry 24(b), it did not mean that oil manufactured from locally purchased groundnuts was taxed at a lower rate. The groundnut and the oil could not be considered in isolation for the purpose of levy of total tax. The quantum of tax on both the groundnut and the oil put together would be the same so far as the State was concerned. The levy of tax under entry 24(a) was not in any manner offensive of Article 301 or 304(a)."

On appeal to the Supreme Court, the Supreme Court reversed the judgment of this Court. While upholding the view of the assessee, it was held that:

"Clause (a) of Entry 24 of the First Schedule to the Act is violative of the provisions of Articles 301 - 304 insofar as it imposes a higher rate of tax on groundnut oil or refined oil which has been obtained from groundnuts that have not been taxed under the Andhra Pradesh Act. The groundnut oil imported by the appellant from Karnataka, the neighbouring State for sale in Andhra Pradesh cannot be taxed at a higher rate than the rate prescribed in clause (b) of Entry 24 of the First Schedule to the Andhra Pradesh Act."

In other words, according to the learned Judges, groundnut oil imported from other states should be subjected to the same rate of tax as groundnut oil extracted from the groundnut which has suffered tax as groundnuts in the other

States have already . suffered tax. Since higher rate of tax on groundnut oil or refined oil which is imported from other State is subjected to higher rate of tax, it was held by the Supreme Court that the higher rate of tax is discriminatory and violative of Articles 301 - 304 of Constitution of India. The learned Judges were examining the issue from the angle of violation of Articles 301 - 304. They were not examining the issue from the angle of Article 14. At any rate, the learned Judges were also of the view that groundnut oil irrespective of the fact whether it is imported or extracted from the -groundnut which has suffered tax in the State should be subjected to same rate of tax. The Judgment of the Supreme Court in M/s. Anand Commercial Agencies case (supra) also supports our view; though on different ground.

16. The learned Government Pleader for the Revenue brought to our notice a number of Judgments which in our view are irrelevant to the facts of the present case.

17. In the light of the above, we answer the question referred to the Full Bench by holding that groundnut oil extracted from groundnut cake which has already suffered tax should be subjected to same rate of tax as groundnut oil extracted from groundnut which has suffered tax in the State and Entry 24(a) of Schedule I to the Act is declared discriminatory and violative of Article 14 of Constitution of India. We answer the Reference accordingly.