
(1985) 04 RAJ CK 0046
In the Rajasthan High Court

Rampuria Ice Factory

APPELLANT

Vs

The State of Rajasthan

RESPONDENT

Date of Decision : 30-04-1985

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1985) 6 ECC 204

Hon'ble Judges : S.K. Mal Lodha, J;G.M. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

G.M. Mal Lodha, J.—The unsuccessful petitioner, whose writ petition under Article 226 of the Constitution was dismissed vide judgment dated July 10, 1978, by the learned single Judge of this Court, has filed this appeal u/s 18 of the Rajasthan High Court Ordinance, 1949.

2. The petitioner-appellant Rampuria Ice Factory ("the Company") is a public limited company under the Companies Act. Its registered office is situate near Power House, Bikaner. The main object of the company is to manufacture, produce and process the goods and in doing so, it has to freeze water, milk or other similar goods meaning thereby that the main business of the company is to manufacture different commodities by freezing and converting water, milk or other such substances into slabs. The Rajasthan State Electricity Duty Act, 1962, (Rajasthan Act No. 12 of 1962) (for short "the Act") came into force from May 21, 1962. Section 3(3) of the Act empowers the State Government to reduce or remit the electricity duty on the energy consumed, "(1) by a consumer in any industry in the manufacture, production, processing or repair of goods". The State Government in exercise of the powers conferred by Section 3(3) of the Act issued the notification (Annexure-1) dated March 26, 1962, by virtue of which a consumer engaged in an industry in the manufacture, production, processing or repair of goods was exempted from the payment of the electricity duty. The material part of the notification (Annexure-1) is as follows:

?the State Government being of the opinion that it is expedient in public interest to do so hereby exempts from tax the energy consumed.

(1) by a consumer in any industry in the manufacture, production, processing or repair of goods, and....

3. Subsequently, the State Government by another notification (Annexure-2) dated November 1, 1965, imposed a duty of 1 paise per unit even in regard to energy consumed in industries engaged in manufacture, production, processing, etc.

4. The Assistant Commissioner, Excise and Taxation, ("the A.C.E.T.") Bikaner, by virtue of the powers conferred by notification No. 264 (E. Duty)/62/105 dated 1st October, 1962 granted the certificate of exemption.

5. It appears that by notification (Annexure-4) dated September 29, 1962, the State Government cleared the prevailing doubts and specifically declared that the ice factories and ice candy factories shall be exempted from duty. Certain audit objections were raised and the Rajasthan State Electricity Board ("the R.S.E.B.") while issuing the bill (Annexure-5 and 5-A) of October, 1974 added arrears of duty for the years 1972-73 amounting to Rs. 11,770.80 and Rs. 2,568.80. Thereafter, the company made the representation (Annexure-6) stating that it is not liable to pay any duty in view of the exemption granted by the State Government u/s 3(3) of the Act read with the notification dated March 26, 1962, and the notification dated September 29, 1967. Other objections were also taken for opposing the levy of the duty. The Assistant Engineer vide his letter (Annexure-7) dated December 2, 1974, informed the company for the first time that the arrears have been found due against it on account of the fact that it was liable to pay duty at 5 paise per unit in place of 1 paise per unit. In view of the dispute between the Assistant Engineer as guided by the audit party, the company approached the Commercial Taxes Officer (C.T.O.) under Rule 11 of the Rajasthan Electricity (Duty) Rules, 1970, ("the Rules", herein). The C.T.O. vide his order (Annexure 9) dated November 23, 1976, held that the exemption could not be granted to the Company as it is also doing the business of storage and freezing of milk in the account of Delhi Milk Scheme, Delhi. He further held that the storage and freezing of the milk did not fall under the category of industry engaged in "manufacture" and as such, the Company is liable to pay 5 paise duty on the energy consumed.

6. An appeal was filed before the Deputy Commissioner (Appeals), Commercial Taxes, Bikaner, under Rule 11 of the Rules. The Deputy Commissioner by his order dated February 28, 1978, dismissed the appeal. It is relevant here to reproduce the following from the appellate order.

In conclusion, it may be said that as the dealer merely did refrigeration work for freezing the milk given by Delhi Milk Supply Scheme to Rampuria Ice Factory which was not in the nature of a manufacture but primarily refrigeration work and that too not for itself but is only a job work, the concessional rate of

electricity duty of 1 paisa per unit on electricity consumed laid down as per notification referred to above could not be availed of by the dealer but the same is chargeable at normal rate of electricity duty.

7. A writ petition was filed by the Company under Article 226 of the Constitution seeking to quash the letter (Annexure-7) dated November 30, 1974, Order (Annexure-9) dated November 25, 1976, of the C.T.O. Bikaner, and the Order (Annexure-11) dated February 28, 1978, of the Deputy Commissioner (Appeals). A direction was sought restraining the respondents from recovering any amount from the Company by way of duty at all or in the alternative anything in excess of 1 paisa per unit as prescribed in the notification dated November 1, 1965. A declaration was also sought that the company is not liable to pay any electricity duty under the Act as it is exempted and in the alternative in any case it is not liable to pay more than 1 paisa per unit. The learned single Judge by his judgment dated July 10, 1978, dismissed the writ petition summarily. Hence this appeal as aforesaid.

8. We have heard Mr. L.R. Mehta, learned Counsel for the appellant and Mr. K.C. Bhandari, learned Counsel for the respondents.

9. Rampuria Ice Factory is an industry was not disputed by the learned Counsel for the Company and that it consumes energy.

10. From the submissions that were advanced before us, the only point that arises for our consideration is whether the Company is engaged in "processing" and so, it is only liable to pay 1 paisa per unit only and nothing in excess of it can be recovered from it. It will be relevant here to refer the agreement (Annexure-12) dated April 28, 1976, which was executed between the Chairman, Delhi Milk Scheme, New Delhi and the "Company. The Delhi Milk Scheme has been described in the agreement as the first party and the Company has been mentioned as the second party. By this agreement, the first party agreed to accept the offer of the second party to chill/freeze the milk on the terms and conditions mentioned therein. Clauses 7, 8 and 9 of the Agreement (Annexure-12) may usefully be quoted:

7. That the first party shall pay the second party for providing the above facilities for chilling of milk @ Rs. 3.35 per quintal of milk chilled.

8. Whenever it is considered necessary by the first party to freeze a portion or the entire quantities of milk, the second party shall freeze milk promptly as before for which the first party shall pay to the second Party at the following rates:

(a) 1st 50 qtls. Rs. 5.30 per qtl. (b) Next 50 qtls. Rs. 4.25 per qtl. (c) Above 100 qtls. Rs. 3.00 per qtl. (d) Minimum guarantee Rs. 9000/- both for chilling and freezing per month.

9. In the event of failure to chill/freeze the milk or provide chilled water at desired temperature required for chilling all the milk of the first party by the

second party due to failure of this plant and machineries, power/generator, the second party shall be liable to pay for sourage/curdling of milk at the following rates:

(a) Sourage of milk @ Rs. 10/- per qtl.

(b) Curdled milk @ full Price of milk including commission/collection charges as declared by Delhi Milk Scheme from time to time:

(Provided) that the sourage/curdling of milk was beyond the control of the second party, the first party may in its discretion, waive part or full penalties recoverable from the second party which shall be binding on the second party.

11. A perusal of the order (Annexure-9) dated November 25, 1976, of the C.T.O. shows that he was influenced by the fact that the storage and freezing of milk do not fall in the category of "manufacture" and, therefore, concessional rate of duty is not permissible. In appeal, the Deputy Commissioner (Appeals) opined that the company did refrigeration work for freezing the milk given by the Delhi Milk Supply Scheme to Rampuria Ice Factory and so, it was not in the nature of "manufacture". According to him, it was primarily refrigeration work and that too not for itself but only a job work, and so the concessional rate of electricity duty of 1 paisa per unit on electricity consumed laid down as per notification referred to above could not be availed of by the dealer (company). The learned single Judge was of the opinion that the process of freezing of milk cannot be said to be one of "manufacture" and, therefore, concessional rate of one paisa per unit as contemplated by the notification (Annexure-2) cannot be taken advantage of by the company. In other words, he repelled the argument that was raised on behalf of the company that it converts milk into milk slabs just as water is converted into ice in the ice factory by the process of freezing and so it is "manufacture" of goods. The learned single Judge agreed with the Deputy Commissioner (Appeals) that freezing of milk by the company for the purpose of carriage, it does not undergo any process of "manufacture" like the preparation of ice-candy, ice-cream or even ice, because after the manufacture of ice-candy, ice-cream or ice, they become commercially different articles from water or milk but the milk which the petitioner freezes on behalf of the Delhi Milk Supply Scheme is not commercially a different article and the freezed milk is still saleable only as milk. In these circumstances, the only question that arose was whether the freezing of milk by the Company for the Delhi Milk Supply Scheme amounted to "manufacture" of goods and the electric energy supplied to the Company is exempted from payment of duty u/s 3(3) of the Act. The learned single Judge opined that the conversion of the milk into milk slabs by process of freezing is not "manufacture" of goods.

12. The words used in the notification Annexure-2 dated November 1, 1965, are "manufacture", "production", "processing" or "repair" of goods. For the present purpose, it is not necessary to examine the meaning of the word "manufacture", for in our opinion, conversion of milk into milk slabs by freezing involves

"processing" and, therefore, the company is liable to pay duty at the rate of 1 paisa per unit.

13. In Chambers Twentieth Century Dictionary, "process" as a noun has been defined as under:

a state of being in progress or being carried on: a sequence of operation or changes undergone.

14. According to Webster's Dictionary, "process" means "to subject to some special process or treatment, to subject (especially raw material) to a process of manufacture, development or preparation for the market, etc., to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasteurising, fruits and vegetables by sorting and repacking." In Webster's New International Dictionary, (Vol. II) besides other things, "process" has been defined to mean, "a course of procedure, something that occurs in the series of action".

15. In the Oxford English Dictionary (Vol. VIII), "process" has been defined to mean besides other things, "to preserve fruit, vegetable, etc., by some process".

16. In Words and Phrases Permanent Edition 33A (at page 50). the following passage from the American Judgment is relevant:

The word "preserving" as used in the statement of the nature of an invention, setting out that it consists in a method of preserving fish and other articles by placing them within a chamber and cooling the latter by means of a freezing mixture, refers to the process to which the article is subjected in such chamber, Piper v. Moon CCNY 19 FED Cas 72.726.

17. In the same book, in Vol. 34, a detailed examination has been made of the word "process" from pages 25 and onwards. It would be proper to refer some of the connotations stated therein. In general:

A "process" is a mode, method or operation, whereby a result or effect is produced. Kelley vs. Coe 99 F 435: 69 App. D.C. 202 .

"Process" means to subject to or treat by a special process; to prepare by an artificial or a special process; to preserve fruit, fish, flesh, etc., by some process--Buron Fish v. Clander 67 NE 546, 146 OSt 631.

The "sharp freezing" of meat, butter and eggs, and ageing of "green" cheese constituted "processing", within purview of sales and use tax exemption and electricity sold to freezing plant operator for use in processing such food stuffs for ultimate sale at retail was not subject to tax even though operator did not own food thus processed; but electricity sold for use in storing such products was subject to tax, I.C.A. (page 263).

18. According to Black's Law Dictionary, Fourth Edition (at page 1369) "process" means "a series of actions, motions or occurrences; progressive act or

transaction; continuous operation; method, mode or operation, whereby a result or effect is produced."

19. From the various meaning given to the words "process" or "processing", it is clear that it is an activity, and it needs some course of operations.

20. In *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, it was observed as under:--

Where therefore, any commodity is subjected to a process or treatment with a view to its "development or preparation for the market" as, for example, by sorting and repacking fruits and vegetables, it would amount to processing of the commodity within the meaning of Section 8(3)(b) and Rule 13. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation would amount to processing of camphor powder as held by the Calcutta High Court in *Sri Om Prakas Gupta Vs. Commissioner of Commercial Taxes and Others*, What is necessary in order to characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change.

(Underlining is ours)

21 In *Mewad Sheet Garh v. The State of Rajasthan* 1980 RLW 461 it was observed as under:

The meaning of the expression, "processing of goods" in my opinion cannot be different in common parlance than its ordinary literal meaning and it is that meaning which appears to be accepted even by the common man. Even if in common parlance, it is understood that "processing of goods" means goods whereby some change is brought about by subjecting it to some process. Still the words have to be given meaning in the context of the legislative intent, as found expressed in the Notification as well as in proviso (3) to Section 3 of the Act. It is significant to note that electricity duty has been reduced where energy is consumed in any industry in the manufacture, production, and even in repairs of goods and admittedly, also where goods have been processed bringing about some change. The question is where in any industry any process is adopted for preservation of goods and energy is consumed in that process, is that excluded from the purview of the notification. In my humble opinion such cannot be the intendment of the proviso (3) to Section 3 and the notification. It is the public interest which is the consideration for issuance of notification by the State Government and is the public interest, which weighed with the legislature empowering State Government to issue Notification. It is in the public interest

that the foodstuffs may be preserved and may be made available to the community at cheaper rates. In this context in my opinion, it can be said that proviso (3) to Section 3 of the Act covers cases where goods do not undergo any change and still have been subjected to process.

22. We are informed that an appeal is pending against the decision rendered in Mewad Sheet Garh's case 1980 RLW 461. Having bestowed our most anxious and careful consideration to the reasons given by the learned Judge in Mewad Sheet Garh's case 1980 RLW 461 we find ourselves in complete agreement with him. We are of opinion that the conversion of milk into milk slabs by freezing does involve processing of goods as envisaged by Sub-clause (c) of the notification (Annexure-2) dated November 1, 1965, and, therefore, the company is liable to pay duty at the concessional rate of 1 paisa per unit. It is not liable to pay the enhanced electricity duty in respect of the energy consumed by it as conversion of milk into milk slabs involves "processing" and to that extent, the demands raised against the Company in respect of the enhanced electricity duty are quashed.

23. The result is that we allow the appeal, set aside the judgment dated July 10, 1978, of the learned single Judge, by which, he dismissed the writ petition summarily. The writ petition is partly allowed and the order Annexure-7 dated November 30, 1974 Annexure-9, dated November 25, 1976, and Annexure-11 dated February 28, 1978, are quashed and it is declared that the Company is not liable to pay the enhanced electricity duty in respect of the energy consumed by it in the processing of milk into milk slabs and is only liable to pay duty on the electricity consumed at the rate of 1 paisa per unit in accordance with the notification (Annexure-2) dated November 1, 1965. As a result of that the respondents are restrained from recovering the duty at the enhanced rate of 5 paise instead of 1 paisa per unit from the Company.

24. There will be no order as to costs.