

(2003) 08 CAL CK 0032
In the Calcutta High Court
Case No : Writ Petition No. 945 of 2003

Sethia Oils Limited and Another

APPELLANT

Vs

Assistant Commissioner, Commercial Taxes, Postabazar
Charge and Others

RESPONDENT

Date of Decision : 14-08-2003

Acts Referred:

Citation : (2004) 137 STC 41

Hon'ble Judges : Barin Ghosh, J

Bench : Single Bench

Judgement

Barin Ghosh, J.—Schedule IV of the West Bengal Sales Tax Act, 1994 describes the goods, on sale whereof tax is leviable. Admittedly, in that Schedule de-oiled rice bran has not been mentioned as one of the goods, on sale of which tax is leviable. However, Clause No. 253 of the said Schedule provides that items of goods not specified by name or description, other than the goods specified in Schedule I or Schedule VIIIA, shall also be the goods, on sale of which tax is leviable. In terms of Clause 253 of Schedule IV, therefore, tax is leviable on de-oiled rice bran unless the same is specified in Schedule I or Schedule VIIIA.

2. There is no dispute that neither in Schedule I, nor in Schedule VIIIA, de-oiled rice bran has been specified. In Schedule I goods have been specified on sale of which tax is not leviable. Clause 14(c)(ii) thereof describes husk and bran of all cereals and pulses except rice bran when sold on or after April 1, 2000. Therefore, if rice bran was sold on or before April 1, 2000, no tax was leviable thereon. The question is whether de-oiled rice bran and rice bran are the same commodity or not.

3. Rice bran is available from husking mills. They are husk or bran of rice. They were sold at the relevant time, as reported to me by the learned counsel for the Revenue, at about Rs. 5,000 per ton. The petitioner has a solvent extraction plant. Through the said plant the petitioner extracts the oil content in rice bran. Whatever is left after such extraction is called in the commercial world as de-

oiled rice bran, in other words, rice bran having no oil content therein.

4. The learned counsel for the Revenue has reported to me that during the relevant time the price of de-oiled rice bran was around Rs. 2,000 per ton. Can it, therefore, be said that rice bran and de-oiled rice bran are the same commodity ?

5. The assessment year in question in the instant case is the four quarters ending March 31, 1997. The original assessment was made contending that rice bran and de-oiled rice bran are not the same product and, accordingly, Schedule I will not apply to de-oiled rice bran. This assessment was assailed before the appellate authority. The appellate authority remitted back the matter.

6. Subsequently, again assessment was made. The assessing officer observed, "Once the oil content is removed, they no longer remain the rice bran contemplated by the law for the purpose of exemption under Schedule I". On that basis once again the assessing officer by his order dated March 18, 2002 held that the petitioner was liable to pay sales tax upon the sale of de-oiled rice bran. The petitioner then filed an appeal before the appellate authority. The appellate authority by the order dated February 27, 2003 rejected the appeal. The appellate authority found as a fact that the assessing officer disallowed the claim for exemption of de-oiled rice bran extraction, as the same is not a commodity under Schedule I on the ground that law envisages exemption of sale proceeds of only those rice bran which are full of oil content and once oil is extracted, they no longer remain the rice bran contemplated by law for the purpose of exemption under Schedule I and held as follows :

"On due consideration of the facts and circumstances of the instant matters, it is amply clear that the claims for exemption of sales of de-oiled rice bran extraction under the West Bengal Sales Tax Act, 1994 and under the Central Sales Tax Act, 1956 have been rightly disallowed by the ACCT/PB charge and no interference on this account is called for."

Being aggrieved by this stand of the Revenue, the present writ petition has been filed.

7. While the learned counsel appearing on behalf of the petitioner in order to substantiate his client's contention that rice bran and de-oiled rice bran are same or similar commodity relied upon a judgment of a division Bench of the Karnataka High Court in *Oil Seeds, Oil Seeds, Oil Trade and Industry's Association and Another Vs. State of Karnataka and Others*, the learned counsel appearing on behalf of the Revenue in order to bring home her client's point of view that rice bran and de-oiled rice bran are different commodities relied upon a judgment of a learned single Judge of the Allahabad High Court in *Commissioner of Sales Tax Vs. Prayag Ice and Oil Mills, .*

8. Before I deal with these two judgments, it is my duty to point out that the impugned appellate order was passed by Sri S.C. Som, Deputy Commissioner,

Commercial Taxes, Kolkata, North Circle. The said gentleman, i.e., Sri S.C. Som, in his capacity as Deputy Commissioner, Commercial Taxes, Kolkata, North Circle, by an order dated September 3, 2001 held in relation to the petitioner for the assessment year of four quarters ending March 31, 1998 that rice bran and de-oiled rice bran have been exempted for the material period and onwards by an enactment of August 1, 2001.

9. The learned counsel for the Revenue submitted that the order dated September 3, 2001 where the self-same gentleman exercising his power of appellate authority decided that de-oiled rice bran is outside the purview of sales tax, made the said pronouncement on the basis of his the then information of law, but the impugned order came into being subsequently, for the assessing officer correctly pointed out that de-oiled rice bran and rice bran are different commodities.

10. The learned counsel for the petitioner submitted that despite taking this diagonally opposite stand on February 27, 2003, no step has yet been taken to touch upon the order dated September 3, 2001.

11. The name de-oiled rice bran made the commodity separate from rice bran. It was known that de-oiled rice bran could be had after extraction of oil from rice bran. Therefore, the basic informations were available while two opposite orders were passed by the same person exercising same jurisdiction. The earlier decision was reversed by the same authority without noting anything more. Such state of affair does not inspire confidence. Apart from that, opposite views expressed by an authority, upon which the commercial interest of a citizen is dependent in relation to the self-same matter, is not only unwarranted but the same causes unnecessary confusion, although a decision in an earlier revenue matter cannot be treated to be *res judicata* for the later. For 1997 there will be no tax liability, but for 1998 there will be such liability, although the law remains the same, is somewhat not acceptable.

12. I would not accept the views of the learned single Judge of the Allahabad High Court in the case mentioned above, for the simple reason that in that case, although there is an observation to the effect that rice bran is a by-product of paddy and de-oiled rice bran is a by-product of rice bran and by-product of a by-product cannot retain the same character everywhere, I think, the learned Judge was not at all called upon to decide that issue in that case. As appears from the judgment, it appears to me that the issue before his Lordship was whether de-oiled rice bran was or was not cattle fodder. Cattle fodder enjoyed exemption. Rice bran was excluded from the term, cattle fodder, for the purpose of exemption. The question, thus, arose whether de-oiled rice bran will or will not be cattle fodder. This was answered by saying, since rice bran is a by-product of paddy and de-oiled rice bran is a by-product of rice bran and inasmuch as by-product of a by-product cannot retain the same character everywhere, rice bran and de-oiled rice bran are different commodities and although rice bran has been excluded, de-oiled rice bran will remain included in cattle fodder. The expression

"by-product" has been defined in McGraw Hill Dictionary of Scientific and Technical Terms as "a product from a manufacturing process that is not considered the principal material". Where paddy is the principal material, rice bran will be its by-product, inasmuch as composition of paddy and composition of rice bran are different. Where rice bran is the principal material, the oil extracted therefrom will be its by-product, for the composition thereof will be different. What will remain after such extraction is rice bran with much less oil content, but the composition will remain the same. By-product is such a thing, which comes into existence by reason of change in the composition of the principal material. I, therefore, cannot agree with the learned single Judge, Commissioner of Sales Tax Vs. Prayag Ice and Oil Mills, of the High Court at Allahabad that de-oiled rice bran is by-product of rice bran.

13. There appears to be no dispute that one of the ingredients with which rice bran is structurally constructed is oil. The moment oil, to the extent possible, is extracted from rice bran, it becomes de-oiled rice bran. There is, therefore, a structural change in rice bran when it becomes deoiled rice bran. The question is, can it be said that de-oiled rice bran is a by-product of rice bran ? To my mind, it is not because there is no change in the composition of rice bran and de-oiled rice bran. Before extraction of oil the rice bran was full of oil but after extraction of oil the rice bran is not full of oil. It is nobody's case that oil content of rice bran can be altogether removed. It is an accepted position that some oil will still remain after extraction. The basic physical characteristics, thus, will remain unchanged. There is no change in the composition at all. There is a vast difference between a structural change and a change in the composition. I cannot, therefore, accept that de-oiled rice bran is a by-product of rice bran.

14. In the case referred above, the division Bench of the High Court of Karnataka, Oil Seeds, Oil Seeds, Oil Trade and Industry's Association and Another Vs. State of Karnataka and Others, has correctly held that by soaking the rice bran cake, i.e., de-oiled rice bran, in rice bran oil, the oil content can be restored. What it had therefore stated is that there is a structural change, but the substratum, i.e., the physical characteristics, remains the same. I would, therefore, accept the views of the division Bench of the Karnataka High Court and declare that even after extraction of oil, to the extent possible, from rice bran, the product that remains can only be called rice bran and nothing else. The prefix de-oiled is for the purpose of signifying the fact that the oil content in the rice bran has been extracted to the extent possible, as and by way of a commercial term for the purpose of making the people aware as to exactly what he is being offered for sale.

15. In the facts and circumstances, I declare the de-oiled rice bran is rice bran and nothing else. The same is covered by Schedule I, 14(c)(ii) of the Act and accordingly, no tax is leviable thereon. With that declaration, I set aside the original order of assessment as well as the appellate order and remand back the matter to the assessing authority for the purpose concluding the assessment on

the basis of the above declaration.

16. This disposes of the writ petition.

17. There shall be no order as to costs.

Let xeroxed signed copies of this judgment and order be made available to the parties, if applied for, upon usual undertaking.