
(2005) 12 AHC CK 0083

In the Allahabad High Court

Case No : Trade Tax Revision No"s. 50 and 52 of 1999

S.R. Cannery

APPELLANT

Vs

The Commissioner, Trade Tax

RESPONDENT

Date of Decision : 16-12-2005

Acts Referred:

Central Sales Tax Act, 1956 — Section 8(2A)

Uttar Pradesh Trade Tax Act, 1948 — Section 11, 2

Citation : (2007) 10 VST 23

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Advocate : Kunwar Sakesna, for the Appellant; B.K. Pandey and S.C., for the Respondent

Final Decision : Allowed

Judgement

Rajes Kumar, J.—These two revisions u/s 11 of U.P. Trade Tax Act (hereinafter referred to as "Act") are directed against the orders of Tribunal dated 11.09.1998 both relating to the assessment year 1989-90 under the U.P. Trade Tax Act as well as under the Central Sales Tax Act respectively.

2. In both the aforesaid revisions, following two common questions have been raised:-

(a) Whether on the facts and in; the circumstances of the case, the sales of tinned fresh fruits and green vegetables were liable to tax?

(b) Whether on the facts and in the circumstances of the case, the process of preservation and tinning of fresh fruits and green vegetables could be described as manufacture as defined u/s 2 (e-1) of the U.P. Trade Tax Act?

3. Heard learned Counsel for the parties.

4. Learned Counsel for the applicant submitted that the dealer was carrying on the business of Jam, Jellies, Pickles, Tinned Fresh Fruits and Green Vegetables.

He submitted that the green vegetables and fresh fruits were cut into suitable sizes and were added with saline water for the purposes of preservation and were tinned to make them marketable. It is submitted that such fresh fruits and green vegetables after being tinned remained as fresh fruits and green vegetables, inasmuch as, no physical or chemical change took place. He submitted that green vegetables and fresh fruits were exempted from tax under the U.P. Trade Tax Act, in view of Notification no. 7038 dated 31.1.1985, therefore, in view of Section 8(2-A) of the Central Sales Tax Act, they were not liable to tax under the Central Sales Tax also. He further submitted that the process of tinning did not amounts to manufacture, in as much as, product remained the same and nothing had been manufactured. Tinning had been done only for convenient delivery of goods and to make it marketable. Thus, the view of Tribunal is erroneous and liable to be set aside. He submitted that Notification no. 7038 dated 31.1.1985 has been subsequently modified by Notification no. 595 dated 06.4.1999 and the processed and branded fresh fruits sold in sealed Container have been excluded from the entry of fresh fruits and green vegetables. He submitted that the exclusion in subsequent notification shows that in the earlier Notification no. 7038 dated 31.1.1985 in the entry of fresh fruits and green vegetables processed and branded fresh fruits in sealed Containers were included. He submitted that the subsequent Notification is relevant to explain the intent of legislature with regard to the earlier Notification. In support of his contention, he relied upon the decision of Apex Court in the case of Pappu Sweets and Biscuits etc v. Commissioner of Trade Tax reported in 1998 U.P.T.C. 1086 and the decision of this Court in the case of Macneill and Magor Ltd. v. Commissioner of Trade Tax U.P. reported in 2005 (26) NTN 6 M/S Three Star Paper Mill Pvt. Ltd., Chithera, District Gautam Budh Nagar v. Commissioner of Trade Tax reported in 2005 (27) NTN 99.

5. Learned Standing Counsel submitted that the process of preservation of fresh fruits and green vegetables packed in the Tinned Container brings out a new commercial commodity, hence amounts to manufacture. He submitted that after preservation and tinning the green vegetables and fresh fruits ceases to be the same green vegetables and fresh fruits. He submitted that the subsequent notification no. 595 dated 06.4.1999 was clarificatory in nature.

6. I have perused the orders of Tribunal and the authorities below. The entry of serial no. 27 of Notification no. 7038 dated 31.1.1985 reads as follows:-

Fresh fruits and green vegetables including Masroom

Exempted.

7. Section 2 (e-1) defines "manufacture" as follows:

"manufacture" means producing, making, mining, collecting, extracting, altering, ornamenting, furnishing or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be prescribed;"

8. The question involved for consideration is whether the process of preservation and tinning amounts to manufacture and whether after tinning of fresh fruits and green vegetables they remain as fresh fruits and green vegetables. In my opinion, process of preservation and tinning does not amount to manufacture. The process does not bring any new commercial commodity. If by the process of preservation fresh fruits and green vegetables are preserved as a green vegetables and fresh fruits, they remain as a fresh fruits and green vegetables. They are marketed as a fresh fruits and green vegetables and customers purchases them as a green vegetables and fresh fruits. Thus, merely because they are tinned they do not ceases to be fresh fruits and green vegetables. The subsequent amendment of the entry by the Notification no. 595 dated 06.4.1999 excluding processed and branded fresh fruits sold in a sealed tinned Container from the entry "green vegetables and fresh fruits" also shows the intent of legislature that fresh fruits in tinned Container was included in the entry of fresh fruits and green vegetables. In this view of the matter, in my opinion, order of Tribunal are erroneous and cannot be sustained.

9. In the case of CST v. National Industries Corporation process of repacking of grease in small container has been held not amounting to manufacture within the definition of Section 2 (e-1) of the Act. This Court held that in the process of packing of grease the commodity has not been subjected to any manual, mechanical, chemical, electrical or any other like operation which may be called any art of process for producing preparing for making any article. The constituent and identity of the commodity has remained the same and it has not been put to any process or manufacture whatsoever.

10. In the case of Sterling Foods, A Partnership Firm represented by its Partner Shri Ramesh Dalpatram Vs. State of Karnataka and Another, dealer was involved in purchasing of shrimps, prawns and lobsters and have exported them after processing them by cutting head and tails, peeling, deveining, cleaning and freezing them. Apex Court held that by the reasons of aforesaid process identity of the goods remained same and the commodity subjected to the processing retained its original character and identity. Shrimps, prawns and lobsters are held commercially the same commodity as raw shrimps, prawns and lobsters.

11. In the case of Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, , pineapple was processed into pineapple slices for being sold in sealed cans. Apex Court held that although a degree of processing is involved in preparing pineapple slices from the original fruit, the commodity continues to possess its original identity, notwithstanding the removal of inedible portions, the slicing and thereafter canning it on adding sugar to preserve it and in the circumstances of the case held process does not amount to manufacture.

12. In the case of State of Maharashtra Vs. M/s. Shiv Datt and Sons, etc., , dealer was involved in immersing plates in electrolyte and charging the batteries for substantial period before resale. Apex Court considered the definition of the

manufacture u/s 2(17) of Bombay Sales Tax Rules, which is akin to the definition of the manufacture under U.P. Trade Tax Act. Apex Court held as follows:

The mere fact that the words used in the definition of "manufacture" are very wide should not lead us to so widely interpret them as to render the provision practically meaningless and so as to treat the goods sold as different merely because some slight additions or changes are made in the goods which are purchased before they are sold. It is true that under the Section it is not necessary that there should be "manufacture" in the sense that a new commodity has been brought into existence as would have been required if that words is interpreted in its literal sense. But, at the same time, the section should be so interpreted to mean only such of the various processes referred to in the definition and applied to the goods as are of such a character as to have an impact on the nature of the goods.

In other words, though the words used by the statute, namely, "processed or altered in any manner after such purchase" were very wide, the court read down the scope of this expression and considered that, for the purposes of the definition, there should be some alteration in the nature or character of the goods. In our opinion, the interpretation of Section 2(17) calls for a like limitation on the words used by the statute. As we have already pointed out, that if a very wide interpretation is given, it may lead to impractical consequences.

13. In the case of Krishna Chander Dutta (Spice) Private Limited Vs. Commercial Tax Officer and Others, , dealer was involved in converting whole turmeric and pepper into pepper powder and turmeric powder. Apex Court held that both whole turmeric and pepper and powdered turmeric and pepper are the same commodity.

14. In the case of Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., , Apex Court held that stone boundaries and gitti are same commodity though by size they may be different. Apex Court laid down the following principle:

The purpose of sales tax is to levy tax on sale of goods of each variety and not the sale of the substance out of which they may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods for purposes of sale tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing, they may remain commercially the same goods which cannot be taxed again, in a series of sale, so long as they retain their identity as goods of a particular type.

15. In the case of Hansraj and Sons Vs. State of Jammu and Kashmir and Others, , process of dry fruits has been held not amounting to manufacture.

16. In the case of State of Maharashtra v. Mahalaxmi Stores, reported in 2002 STI (SC) 97, Apex Court held that crushing of boulders into small sizes, known

as a gitti does not amount to manufacture within the definition of Section 2(17) of Bombay Sales Tax Act. Apex Court held as follows:

The contention of the assessee that converting boulders into gitti does not include any manufacturing process within the meaning of the Act, was accepted by the Tribunal. From the order, the aforementioned was referred to the High Court or Bombay. Following the judgment of Deputy Commissioner of Sales Tax v. Pio Food Packers, reported in 1981 UTC 667 (SC), Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, , Chowgule & Co. Pvt Ltd. and Anr. v. Union of India and Ors. reported in 1981 UPTC 702, M/s Sterling Foods v. State of Karnataka and Anr. reported in 1986 UPTC 1236, High Court held that the conversion of boulders into gitti did not amount to "manufacture". It is this view of the High Court that is assailed in this appeal by the Revenue.

Section 2 (17) of the Act defines the term "manufacture" and it reads thus:

Manufacture with all the grammatical variations and cognate expressions means producing, making, extracting, alternating, ornamenting, finishing or otherwise processing, treating or adapting any goods but does not include such manufacture or manufacturing processes as may be prescribed.

From a perusal of the definition, extracted above, it is clear that the processes of producing, making, extracting, alternating, ornamenting, finishing or otherwise processing, treating or adapting of any goods fall within the meaning of the term "manufacture". But it may be pointed out that every type of variation of the goods or finishing of goods would not amount to manufacture unless it results in emergence of new commercial commodity. In the instance case, the very nature of the activity does not result in manufacture because no new commercial commodity comes into existence.

17. In the result, both the revisions are allowed. Orders of Tribunal are set aside and it is held that fresh fruits and green vegetables in tinned Container were not liable to tax under the Notification no. 7038