

(2001) 07 KAR CK 0086
In the Karnataka High Court
Case No : Writ Appeal No. 3981 of 2001

Sree Ramakrishna Soapnut Works

APPELLANT

Vs

Superintendent of C. Ex.

RESPONDENT

Date of Decision : 20-07-2001

Acts Referred:

Citation : (2004) 164 ELT 238

Hon'ble Judges : P.V. Reddi, C.J;N.K. Patil, J

Bench : Division Bench

Advocate : R.V. Prasad, for the Appellant;

Final Decision : Dismissed

Judgement

1. The learned Single Judge following the direct judgment of this Court in The Superintendent of Central Excise Head-Quarters Preventive, Bangalore-III and Others Vs. The Karnataka Soapnut Powder Manufacturers Association (Registered), Bangalore and Another, held that, ""Shikakai powder" (used as a shampoo for cleaning hair) is a taxable commodity under the Central Excise Tariff Act. The adjudicating authority whose order was questioned in the writ petition followed the said judgment. In the aforementioned case, the Division Bench held as follows :

"In the present case the "shikakai" is made into powder by applying labour and pounding process or some other process to make "shikakai" into powder and "shikakai powder" which is distinct from "shikakai" is produced. It is separate and distinct commodity. Therefore, it amounts to manufacture."

2. In the concluding part, it was held that "shikakai powder" would come within the ambit of the item "others" grouped as 3305.90. It may be mentioned that the SLP filed against the said judgment was dismissed on 17-1-2000. Learned counsel for the appellant submits that the Division Bench proceeded on the wrong presumption that sub-heading item 3305.90 "others" occurring in Chapter 33.05 applies. It is pointed out that the said chapter is under Customs Tariff.

However, there is an equivalent Chapter and sub-heading under Central Excise Tariff. It may be an inadvertent mistake. Nevertheless, in the tariff schedule contained in Chapter 33, it may still fall under 33.05 under the residuary item "others" provided that the manufacture is involved. The Division Bench held in the aforementioned case that such manufacturing operation is involved. When once it is found shikakai has been manufactured into shikakai powder, undisputedly, it falls under Chapter 33.

3. The learned counsel for the appellant however draws our attention to an unreported decision of the Division Bench of this Court under the Sales Tax Act. The short judgment is extracted hereunder :

"The only question for decision is whether for the purposes of sales tax, "Seegekai" and "Seegekai powder" are the same articles.

For converting "seegekai" into "Seegekai Powder" no elaborate process is required. It merely consists of powdering the "Seegekai". Therefore, the Tribunal was not right in opining that "Seegekai Powder" is something different from "Seegekai". This view of ours gains support from the decision of the Supreme Court in *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, .

In the result, this petition is allowed and the order of the Tribunal as well as the orders of the authorities which are impugned in this petition are set aside."

It is not clear from the said order, which entry or which provision of the Sale Tax Act, the learned Judges were considering. That apart, whether manufacture was involved, was not specifically gone into by the learned judges. We would prefer to follow the more direct and recent decision on the point, though, as contended by the learned counsel for the appellant much can be said against the view taken by the Division Bench in the latest case.

4. We are, therefore, not inclined to entertain the writ appeal. The writ appeal is dismissed.