

(2000) 10 KAR CK 0024

In the Karnataka High Court

Case No : Civil Revision Petition No's. 1530 and 2417 of 2000 (Tax)

State of Karnataka and Others

APPELLANT

Vs

Kothari Industrial Corpn.

RESPONDENT

Date of Decision : 09-10-2000

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 15 A

Citation : AIR 2001 Kar 101

Hon'ble Judges : V.G. Sabhahit, J; R.V. Raveendran, J

Bench : Division Bench

Advocate : G.K. Bhat, Govt. Pleader, for the Appellant; B.V. Katageri and S.S. Angadi, for the Respondent

Final Decision : Dismissed

Judgement

Raveendran, J.—These revision petitions by the Revenue u/s 15-A of the Karnataka Tax on Entry of Goods Act, 1979 (for short, KTEG Act), are against the order dated 10-12-1999 passed by the Karnataka Appellate Tribunal, Bangalore in KTEG Appeals Nos. 31 and 32 of 1999. These petitions relate to the assessment periods 1-4-1992 to 31-3-1993 and "1-4-1993 to 31-3-1994". The respondent is an assessee under the Karnataka Sales Tax Act, 1957 (for short, KST Act) and KTEG Act. The respondent is engaged in the activity of mixing fertilizers and swelling fertilizer mixtures.

2. The respondent causes entry of several chemical fertilizers (Urea, Ammonium Sulphate, Calcium Nitrate, Ammonium Nitrate etc.,) into various local areas in Karnataka and mixes them in the proportions prescribed in the Fertilizer Control Order, 1985 and sells the mixtures known as "NPK Mixture" (i.e. Nitro-Phosphate with Potash mixture). The respondent caused the entry of raw materials of the value of Rs. 1,00,20,794.00, during the period 1-8-1992 to 31-3-1993 and raw materials of the value of Rs. 1,49,79,141.00 during the period 1-4-1993 to 31-3-1994. The Assessing Authority, by orders dated 29-11-1995 and 5-10-1995, has subjected the said value of the "raw materials", which were used

by the respondent for preparing NPK Mixture, to Entry tax at the rate of 1%. According to the Assessing Authority, the matter is covered by item No. 80 of I Schedule to KTEG Act read with Item No. 81 of Notification No. FD 69 CET 92 (HI), Bangalore, dated 30-7-1992.

3. Feeling aggrieved, the respondent filed appeals before the Joint Commissioner of Commercial Taxes (Appeals) Malnad Division, Shimoga contending inter alia that the chemical fertilizers and chemical fertilizer mixtures (NPK Mixture) are one and the same commodity; that chemical fertilizer is not one of the items that is enumerated in Schedule-I; that there is no manufacture of "NPK mixture" by using chemical fertilizers as "raw materials" and therefore entry of chemical fertilizers could not be subjected to entry tax as Raw materials and therefore, the Assessing Authority was not justified in subjecting the value of raw materials to entry tax at the rate of 1%.

4. The said contention of the respondent was rejected by the first Appellate Authority by two separate orders dated 12-12-1999 in KTEG Appeal No. 20/1991-98 and No. 3 of 1997-98 respectively. The First Appellate authority relied on the decision of the Supreme Court in Shaw Wallace and Co. Ltd. Vs. The State of Tamil Nadu, , and held that a fertilizer mixture, is different from the several fertilizers which form the component parts of the fertilizer mixtures and therefore the fertilizer mixture should be treated as an article different and distinct from the several component fertilizers that go into making of the fertilizer mixture.

5. Feeling aggrieved, respondent herein filed appeals before the Karnataka Appellate Tribunal in KTEG Appeals Nos. 31 and 32 of 1999 u/s 14 of the KTEG Act. The Tribunal by its common order dated 10-12-1999, allowed the appeals, holding that there is no manufacture of a different commodity by mixing different kinds of fertilizers, and therefore the fertilizers, which are purchased and used in the fertilizers mixture; and as there is no manufacturing of a new product, there can be no levy of entry Tax on the Fertilizers brought into the local area.

6. Feeling aggrieved, the Revenue has filed these revision petitions, contending that the Tribunal ought to have rejected the appeals by following the decision of the Supreme Court in Shaw Wallace and Co. Ltd. Vs. The State of Tamil Nadu, . The Revenue contends that there is a manufacture of a new product by mixing several fertilizers and the fertilizer mixture (NPK Mixture) is a commodity different from chemical fertilizers which form component parts of the mixture.

7. Shaw Wallace and Co. Ltd. Vs. The State of Tamil Nadu, related to scope of Item No. 21 of the I Schedule to Tamilnadu General Sales Tax Act, 1959. Item No. 21 of the I Schedule of Tamilnadu Act described 16 chemical fertilisers. The first 15 were individual chemical fertilizers. Item 16 was "any mixture of one or more of the first 16 chemical fertilizers and one or more of the organic manures". In that case, the appellant manufactured and dealt in chemical fertilizers and prepared fertilizer mixtures by dry mixing various chemical fertilizers which were

described as S1. Nos. 1 to 15 of Item No. 21 of the I Schedule to Tamilnadu Act. For the assessment years 1969-70 and 1970-71, the appellant therein claimed that fertilizer mixture prepared by it could not be said to be a commodity different from the Ingredients composing the mixture and as the components of the mixture purchased within the State had suffered tax u/s 3(2) read with Item No. 21 of I Schedule to the said Act, the fertilizer mixture could not be taxed again. The High Court disallowed the appellant's claim. On appeal, the Supreme Court confirmed the decision of the High Court, holding (i) that it was only when chemical fertilizer specified in sub-items 1 to 15 of Item No. 21 of I Schedule was sold in the same condition, in which it was purchased, that it was not subject to a fresh levy; and (ii) that the question whether there was any manufacturing process involved in the preparation of any fertilizer mixture or whether shovel mixing of the chemical fertilizers amounted to manufacture or not was wholly irrelevant for the purpose of determination of the question arising for decision in that case. The Supreme Court observed that the mixtures produced by the appellant were different from their component parts and their properties and uses were also different and they were different commercial products and therefore, the appellant was not entitled to claim exemption of tax. The Supreme Court did not go into nor decide the question whether mixing of several chemical fertilizers to produce a Fertilizer mixture amounted to manufacture of a new product or not. In fact, it observed that it was not relevant for that case to examine whether mixing and preparing a fertilizer mixture amounted to manufacture. Hence, the said decision is of no assistance.

8. On the other hand, having regard to the description of Item 80 in I Schedule of KTEG Act read with Item No. 81 of the Notification dated 30-7-1992, to subject the "said materials" to entry tax, "manufacture" of an "intermediate" or "finished product" is necessary. Only when there is a manufacture of any intermediate or finished product, the raw material or component parts or inputs which are used in the manufacture will attract levy of tax under the KTEG Act at the rate of 1%. If there is no manufacture, there can, obviously, be no levy of tax.

9. Whether the blending or mixing of different qualities of ore with different physical and chemical composition would amount to manufacture, was considered by the Supreme Court in *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, . The Supreme Court held as follows (Para 5 of AIR) :

"The point which arises for consideration under the first question is as to whether blending of ore in the course of loading it into the ship through the Mechanical Ore Handling Plant constituted manufacture or processing of ore. Now it is well settled as a result of several decisions of this Court, the latest being the decision given on 9th May, 1980 in Civil Appeal No. 2398 of 1978, *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, , that the test for determining whether manufacture can be said to have taken

place is whether the commodity which is subjected to the process of manufacture can be longer be regarded as the original commodity, but is recognised in the trade as a new and distinct commodity. This Court speaking through one of us (Pathak, J.) pointed out: "Commonly manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But, it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place". The test that is required to be applied is; does the processing of the original commodity bring into existence a commercially different and distinct commodity? On an application of this test, it is clear that the blending of different qualities of ore possessing differing chemical and physical composition so as to produce ore of the contractual specifications cannot be said to involve the process of manufacture, since the ore that is produced cannot be regarded as a commercially new and distinct commodity from the ore of different specifications blended together. What is produced as a result of blending is commercially the same article, namely, ore, though with different specifications than the ore which is blended and hence it cannot be said that any process of manufacture is involved in blending of ore."

10. The principles laid down in *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, apply to this case. Several fertilizers are mixed to produce a fertilizer mixture. The end product of mixing several chemical fertilizers is also a chemical fertilizer. In fact, it does not have a different commercial name but is called as NPK (Nitrophosphate with Potash) Mixture. The Fertilizer (Control) Order, 1985 specifies different maximum prices for different blends or mixtures of chemical fertilizers, which are used for different types of soils or for growing different kinds of agricultural produce. But the products which go into mixture, and the mixture, are all fertilizers, used to fertile the soil. As the component parts and the end product have the same properties and are used for the same purpose, it cannot be said that the end product (NPK mixture) is a different product. The mixing and blending of different chemical fertilizers is not therefore "manufacture" but is only a processing.

11. In the circumstances, we agree with the finding of the Tribunal that no manufacturing is involved by mixing different types of chemical fertilizers. Therefore, causing of entry of several chemical fertilizers which are mixed to produce "NPK mixture" sold by the respondent cannot be subjected to entry tax under Item 80 of I Schedule read with Item No. 81 of the Notification dated 30-7-1992 issued under the KTEG Act.

12. In view of above, these revision petitions have no merit and they are

accordingly rejected. Parties shall bear their own costs.