

(1990) 11 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 22 of 1988

Sundari Rubber Works

APPELLANT

Vs

State of Tripura and Others

RESPONDENT

Date of Decision : 05-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Tripura Sales Tax Rules, 1976 — Rule 5(2)

Citation : (1991) 81 STC 200

Hon'ble Judges : H.K. Sema, J;B.P. Saraf, J

Bench : Division Bench

Advocate : S. Deb and D.K. Biswas, for the Appellant; M. Chakraborty, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

B.P. Saraf, J.—The writ petitioner is a small-scale industrial unit engaged in the manufacture of tread rubber and mixed compound, having its head office and factory at Agartala in the State of Tripura. It was registered as a small-scale industrial unit with the Department of Industry, Government of Tripura, on February 23, 1979. The actual production started sometime in March, 1982. The petitioner is also registered as a dealer under the Central Sales Tax Act, 1956, hereinafter "the Central Act" and under the Tripura Sales Tax Act, 1976, hereinafter "the Act". During the years 1982-83 and 1983-84, the petitioner manufactured only tread rubber which is a rubber product taxable under item 41 of the Schedule to the Act. The petitioner made a representation to the Secretary, Revenue Department, Government of Tripura, praying for exempting sales of rubber products manufactured by the petitioner from sales tax for at least three years. No exemption was, however, granted. The petitioner, therefore, submitted its returns of turnover for the years 1982-83 and 1983-84 and paid the sales tax due on the sales of "tread rubber" made by it. In the year 1984, the petitioner also started manufacturing the other product, namely, mixed compound which, according to the petitioner, was not taxable under the Act. The

petitioner, therefore, did not include the turnover of mixed compound in the returns for the years ending March 31, 1985 and March 31, 1986. The turnover of tread rubber was only shown and tax was paid thereon. The Superintendent of Taxes did not accept the contention of the petitioner in regard to taxability of mixed compound and by orders of assessment dated February 28, 1987, estimated his turnover for the two years, namely, 1984-85 and 1985-86 by including the turnover of the mixed compound also in the taxable turnover treating it as a rubber product within the meaning of item 41 of the Schedule to the Act and determined the tax payable accordingly. In pursuance of the said orders of assessment, demand notices were also issued demanding Rs. 75,091.48 and Rs. 82,329.89 for the assessment years 1984-85 and 1985-86, respectively. On receipt of the demand notices, the petitioner made a representation before the Commissioner of Taxes on April 17, 1987, objecting to the levy of tax on the mixed compound. According to the petitioner, the item named as "mixed compound" by the petitioner was, in fact, "masticated rubber" and not "rubber product" which is covered by item 41 of the Schedule of taxable goods attached to the Act. In his said representation, the petitioner also claimed that it was entitled to exemption in respect of sales of the manufactured goods during the period of three years from the date of first sale by virtue of Section 3(2) of the Act and Rule 5(2) of the Rules, as it stood prior to its amendment by the Tripura Sales Tax (Seventh Amendment) Rules, 1987, published vide Notification dated February 23, 1987. It may be observed that by the aforesaid Amendment Rules, Rule 5(2) was amended and the exemption under Sub-rule (2) of Rule 5 from sales tax available under the said sub-rule in respect of sales of "all goods manufactured by a newly set up small-scale industry" was restricted to sales of "taxable goods specified by the State Government under Sub-section (2) of Section 3 of the Act". In fact, prior to the amendment of the rule by amendment dated February 23, 1987, a notification had been issued by the Deputy Secretary to the Government of Tripura, Revenue Department, being Notification No. E. 4(4)TAX/TST/82/D-2/1416-25 dated February 20, 1985, u/s 3(2) of the Act by which sales of some of the goods including "rubber product" manufactured by a newly set up small-scale industry established in Tripura after April 1, 1984, were exempted from payment of sales tax on fulfilment of the conditions specified in the said notification. The contention of the petitioner in his representation was that under Rule 5(2) of the Rules, as it stood during the relevant period (prior to the amendment made by the Seventh Amendment Rules, which came into effect from February 26, 1987), it was entitled to exemption in respect of sale of mixed compound made by it independent of any notification under Sub-section (2) of Section 3 of the Act. The Commissioner of Taxes, in reply to the aforesaid representation asked the petitioner to avail the normal relief meaning thereby to file an appeal, revision, etc., against the impugned order of assessment as provided under the Act. The petitioner, thereafter, filed revision petitions before the Commissioner. In the said revision petitions, the only ground on which the assessments were challenged was that "mixed compound" or "masticated rubber" manufactured by the petitioner did

not fall under item 41 of the Schedule of taxable goods and, as such, levy of tax on sales thereof was not tenable. The revision petitions were disposed of by the Commissioner by a common order dated November 5/9, 1987. In the revisional order, the Commissioner held that masticated rubber manufactured by the petitioner was an item which clearly fell within item 41 of the Schedule to the Act and, accordingly, he upheld the order of the assessment and dismissed the revision petitions. Aggrieved thereby, the petitioner has filed this writ petition.

2. In the writ petition, the petitioner has challenged the order of assessment on two grounds. Firstly, that it was entitled to exemption under Sub-rule (2) of Rule 5 of the Rules as it stood prior to the Seventh Amendment Rules. Secondly, that the product "masticated rubber" or "mixed compound" is not a rubber product and, as such, does not fall within item 41 of the Schedule. So far as the first contention is concerned, it may be observed that Rule 5 of the Rules enables a dealer to deduct from his gross turnover certain taxable turnover mentioned therein. Sub-rule (2) of the said rule provides for deduction of turnover of goods manufactured by a newly set up small-scale industry. The deduction is available for a period of three years since the date of first sale of such manufactured goods on fulfilment of conditions specified in the two provisos thereto. Evidently, it is the dealer who has to claim the deduction at the first instance. Only if he makes such a claim, the assessing authority can go into the allowability of the same and for that purpose examine whether the requisite conditions for allowability of such deduction have been fulfilled by the dealer or not. In the instant case, admittedly no such claim was made by the petitioner in the return. Nor it was made before the assessing authority at the time of hearing for assessment. Even in revision before the Commissioner, no such claim was made. The only ground on which the levy of tax on masticated rubber was challenged was that it was not a rubber product and, as such, it did not fall under item 41 of the Schedule of taxable goods. The Commissioner also considered the revision petitions only on that ground and held that masticated rubber was rubber product and, as such, taxable under the Act and, therefore, dismissed the revision petition. In that view of the matter, we are of the opinion that the question of entitlement of the petitioner to claim deduction under Sub-rule (2) of Rule 5 cannot be examined by this Court in exercise of writ jurisdiction, because it requires examination of the facts in regard to fulfilment of the requirements which are condition precedent for such deduction under the said sub-rule. The petitioner did not raise this contention at any stage of the proceedings before the authorities nor brought the requisite facts on record to enable the authorities to examine his claim on that count. Under the circumstances, we are of the opinion that it is not possible to entertain this objection in the present writ petition.

3. The only point that survives for our consideration is whether masticated rubber is a "rubber product" within the meaning of item 41 of the Schedule of taxable goods attached to the Act. Item 41 reads :

"41. Rubber products except condom."

4. The principles that govern interpretation of items in taxing statutes like the Sales Tax Act are well-settled by a catena of decisions of the Supreme Court and this Court. These various decisions and the principles laid down therein were analysed at length recently by this Court in *Assam Cotton Mills v. Commissioner of Taxes* [1990] 76 STC 6 (Gau) ; (1988) 2 GLR 398, *Kali Kumar Sharma v. Sales Tax Tribunal* [1991] 80 STC 330 (Gauhati) ; (1989) 1 GLR 91 and *Shri Chitta Ranjan Saha v. State of Tripura* [1990] 79 STC 51 (Gau) ; (1989) 2 GLR 101. These principles will govern the decision in the present case also. The question for consideration in this case will be whether "masticated rubber" is "processed rubber" or it is a "rubber product". In other words, whether by the process applied by the petitioner, the processed rubber, known as masticated rubber, ceases to be rubber and becomes a different commodity which can be termed as "product of rubber" or "rubber product".

5. Before we proceed to resolve the controversy, it may be expedient to ascertain first the meaning of the expressions "rubber", "masticated rubber" and "rubber products".

Rubber, has been defined in the Random House Dictionary of the English Language (the unabridged edition) as follows :

"Rubber--1. Also called India-rubber, natural rubber, gum, elastic, caoutchouc, a highly elastic, light cream or dark amber coloured, solid substance polymerized by the drying and coagulation of the latex or milky juice of rubber trees and plants..... 2. a material made by chemically treating and toughening that substance, used in the manufacture of erasers, electrical insulation, elastic bands, crepe soles, toys, water hose, tyres and many other products. 3. any of various similar substances and materials made synthetically."

6. The word "masticate" has been defined in the same dictionary to mean:

"1. to chew, 2. to reduce to pulp by crushing or kneading, as rubber..."

7. According to Chamber's Twentieth Century Dictionary, "masticate" means to chew : to knead mechanically, as in rubber manufacture.

8. To decide whether "masticated rubber" is rubber or rubber product, it is also necessary to examine the meaning of the word "product". According to the dictionary, it means a thing produced by labour and effort ; a substance obtained from another substance through chemical change. The question for determination is whether masticated rubber is a form of rubber or is a product of rubber. In other words, whether the process of masticating results in the manufacture of a product which is a different commercial commodity ; or the resultant product is merely a different form of rubber. The fact that it is known by a different name will, however, not be relevant for the above determination.

9. The case of the petitioner is that masticated rubber does not lose its identity as rubber by the process of mastication. "Masticated rubber", according to the petitioner is semi-processed rubber used as a raw material in the manufacture of

the rubber products. According to the respondents, "masticated rubber" is rubber product, as "rubber product" is only admixture of ingredients such as raw rubber, chemicals, carbon, etc.

10. We have considered the rival submissions. We have also perused the dictionary definitions extracted above. We have also tried to ascertain the common parlance meaning of these terms. It is, however, clear that though with every process a commodity experiences a change, it is only when the change, or a series of changes, takes the commodity to a point where 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. In that case, the manufactured article may be said to be a product of the original. Where there is no essential difference in identity between the original commodity and the processed article, the processed article cannot be treated as different and distinct. It must be regarded as still retaining its original identity. The fact that it is known by a different name after processing is not relevant for that determination.

11. This test was applied by the Supreme Court in a number of cases. In *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, it was held that hydrogenated groundnut oil, even after undergoing the process of hydrogenation, did not cease to be groundnut oil. It was observed (at page 834) :

"The next submission.....was that in the course of hydrogenation the oil absorbed two atoms of hydrogen and that there was an inter-molecular change in the content of the substance. This however is not decisive of the matter. The question that has still to be answered is whether hydrogenated oil continues even after the change to be "groundnut oil". If it is, it would be entitled to the benefit of the deduction from the turnover, or to put it slightly differently, the benefit of the deduction from the turnover cannot be denied, unless the hydrogenated groundnut oil has ceased to be "groundnut oil". To be groundnut oil, two conditions have to be satisfied. The oil in question must be from groundnut and secondly the commodity must be "oil". That the hydrogenated oil sold by the appellants was out of groundnut not being in dispute, the only point is whether it continues to be oil even after hydrogenation. Oil is a chemical compound of glycerine with fatty acids, or rather a glyceride of a mixture of fatty acids--principally oleic, linoleic, stearic, and palmitic--the proportion of the particular fat varying in the case of the oil from different oil-seeds and it remains a glyceride of fatty acids even after the hardening process, though the relative proportion of the different types of fatty acids undergoes a slight change. In its essential nature therefore no change has occurred and it remains an oil--a glyceride of fatty acids--that it was when it issued out of the press."

12. In *Deputy Commissioner of Sales Tax v. Pio Food Packers* [1980] 46 STC 63, the Supreme Court held that there was no essential difference between pineapple fruit and the canned pineapple slices. It was observed (at page 66) :

".....there is no essential difference between pineapple fruit and the canned pineapple slices. The dealer and the consumer regard both as pineapple. The only difference is that the sliced pineapple is a presentation of fruit in a more convenient form and by reason of being canned it is capable of storage without spoiling. The additional sweetness in the canned pineapple arises from the sugar added as a preservative. On a total impression, it seems to us, the pineapple slices must be held to possess the same identity as the original pineapple fruit."

It was further observed :

"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."

In *State of Gujarat v. Sakarwala Brothers* [1967] 19 STC 24(gau), the Supreme Court held that "patasa", "harda" and "alchidana" were sugar in different forms and fell within the definition of "sugar".

Reference may also be made to the decision of the Supreme Court in the *State of Orissa v. Titaghur Paper Mills Co. Ltd.* [1985] 60 STC 213 (ori) at 266, where "logs" were held to be "timber" on the ground that they were nothing more than wood cut up or sawn. It was further held (at page 267) that "planks" and "rafters" would also be "timber".

13. Applying the proposition laid down by the Supreme Court in the aforesaid decisions to the facts of the present case, we are of the opinion that masticated rubber is not a product of rubber. By undergoing the process of masticating, rubber did not lose its identity as rubber. The change was not such which could convert the processed rubber into a commodity different and distinct from rubber. The product that emerged as a result of the process, namely, masticated rubber, retained its original identity as rubber. Masticated rubber cannot be held to be a product of rubber. The fact that it is known as masticated rubber or mixed compound is not relevant for the aforesaid determination.

14. In view of the foregoing discussion, we hold that masticated rubber is a form of rubber and not a rubber product and, as such, it is not covered by item 41 of the Schedule of taxable goods attached to the Tripura Sales Tax Act, which provides for levy of tax only on rubber product and not on "rubber", and, therefore, sales thereof are not taxable under the Act.

15. In the result, we allow the writ petition and set aside the impugned order of assessment and the notices of demand. We direct the Superintendent of Taxes to make a fresh assessment excluding the turnover of masticated rubber from the taxable turnover of the petitioner.

16. In the facts and circumstances of the case we make no order as to costs.