(2015) 04 MP CK 0148

In the Madhya Pradesh High Court

Case No : Writ Petition Nos. 247 and 248 of 2007, 462, 1841, 1843 and 6587 of 2009, 2584, 4902, 8700 and 9766 of 2010, 3914 of 2011, 5617 and 10205 of 2012, 9535, 9537, 9539 and 10593 of 2013 and 6416 of 2014

Tata Tea Ltd. APPELLANT

Vs

Commercial Tax Officer and Others RESPONDENT

Date of Decision : 22-04-2015

Acts Referred:

Constitution of India, 1950 — Article 286(a)

Citation : (2015) 83 VST 178

Hon'ble Judges : P.K. Jaiswal, J;S.C. Sharma, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

S.C. Sharma, J—Regard being had to the similitude in the controversy involved in the present cases, the writ petitions were analogously heard and by a common order, they are being disposed of by this court. Facts of Writ Petition No. 462 of 2009 are narrated hereunder. The petitioner before this court has filed this present writ petition being aggrieved by the order dated November 20, 2008 passed by the Additional Commissioner of Commercial Tax, M. P., in Revision Case No. 49/08/Ind/ET for the period with effect from April 1, 2003 to March 31, 2004 dismissing the petitioner''s revision filed under section 62(1)(b) of the Madhya Pradesh Commercial Tax Act, 1994 read with Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976. The petitioner-company is a duly incorporated and registered company under the Companies Act, 1956 engaged in the business of manufacture and sale of tea. The petitioner-company is having its own tea gardens situated outside the State of Madhya Pradesh where the tea is grown and processed in the units which results in finished commodities. The tea manufactured by the petitioner-company outside the State of Madhya Pradesh is sold through its C & F depots and consignment agents appointed throughout the country. The company is also registered as a dealer under the provisions of the Madhya Pradesh Commercial Tax Act, 1994 and under the provisions of the Central Sales Tax Act, 1956. By virtue of the aforesaid registration also it continued to be registered as a dealer under the provisions of the VAT Act, 2002 which came into force from April 1, 2006. The company has established a unit for blending tea of different grades and repacking the same under smaller consumer packages at Mangliya., Distt. Indore. It has been contended that the petitioner-company receives different grades of finished tea from its gardens/depots situated outside the State of Madhya Pradesh and in Madhya Pradesh blending of tea is done and it is repacked in smaller consumer packets. In short, different grades of tea is mixed at Indore and contention of the petitioner is that it is nothing but a physical mixing of different grades of tea without involving any mechanical or chemical process, no physical or chemical change even there is no change in the commercial name of the commodity and prior to blending it is known as tea and after blending it is known as tea. Petitioner has further stated that after establishment of blending unit at the Mangliya, Indore in the year 1998, the petitioner did not deposit entry tax on the unblended tea brought in the State of Madhya Pradesh for blending to the extent of transfer of blended tea out of State of Madhya Pradesh after its blending. It has been further stated that it was based upon the fact that no entry tax could be levied on the entry of goods which are not meant for consumption or use in local area. Petitioner has further stated that thereafter the company started paying entry tax at the time of entry of goods and on transfer of goods outside the State of Madhya Pradesh a claim for set off was made in accordance with the proviso to section 3(1) of the Entry Tax Act. Petitioner has further stated that the modus operandi was changed in view of the fact that there was a time lag between the entry of the goods and subsequent transfer outside the State after blending. Petitioner has further stated that the petitioner''s claim for set off in respect of transfer of blended tea having been completed by the assessing authority up to 2002-03 and the petitioner assessment for the period with effect from April 1, 2002 to March 31, 2003 was completed vide order dated January 16, 2006 and the claim of the petitioner-company was allowed and the assessing officer allowed the set off for the period in question. Petitioner has further stated that for the period with effect from April 1, 2003 to March 31, 2003 the petitioner claimed a set off in accordance with the proviso to section 3(1) of the Entry Tax Act in respect of blended tea transferred outside the State of Madhya Pradesh. The assessment was completed by order dated December 7, 2006. The petitioner submitted a detailed reply and stated that in view of the notification issued by the State Government in exercise of the powers conferred by clause (o) of section 2 of the Madhya Pradesh Commercial Tax Act, 1994, the process of blending of tea does not constitute a process of manufacture. There is no change in the commercial duty, i.e., the tea which was brought into the State of Madhya Pradesh for the purpose of blending and tea transferred outside the State of Madhya Pradesh after its blending. The petitioner placed heavy reliance upon the definition of expression "manufacture" as defined under section 2(o) of the Madhya Pradesh Commercial Tax Act and his contention is that such definition of manufacture was applicable for the purpose of entry tax also. It has also been stated that since blending of tea has been statutory excluded from the definition of manufacture and in absence of any manufacture there could not be any change in commercial commodity as such it can never be said that the tea brought to the State of Madhya Pradesh for the purpose of blending is either used or consumed in the local area. Petitioner''s claim was disallowed by the assessing authority by order dated December 7, 2006 and the assessing authority refused to grant the set off to the petitioner on the ground that the process of blending tea does not constitute a process of manufacture but it has been used and consumed while it has undergone the process of blending. The petitioner submitted an appeal before the Appellate Deputy Commissioner of Commercial Tax and the appellate authority has also dismissed the petitioner''s appeal, thereafter, the petitioner has preferred a revision before the Additional Commissioner of Commercial Tax and the same has been dismissed. Contention of the petitioner is that the blending of tea does not mean that the goods have been used or consumed and, therefore, in the light of section 3(1) of the Entry Tax Act no such tax can be imposed upon the petitioner-company and the petitioner-company is entitled for a set off. Learned counsel for the petitioner has placed reliance upon the following judgments:

"(1) Nilgiri Ceylon Tea Supplying Co. Vs. The State of Bombay, (1959) 61 BOMLR 1383 : (1959) 10 STC 500 .

(2) Upton India Limited v. State of Karnataka [1994] 95 STC 225 (Karn).

(3) Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers, AIR 1980 SC 1227 : (1980) 6 ELT 343 : (1980) 3 SCR 1271 : (1980) 46 STC 63 .

(4) Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, AIR 1981 SC 1014 : (1985) ECR 263 : (1993) 67 ELT 34 : (1981) 1 SCC 653 : (1981) 2 SCR 271 : (1981) 47 STC 124 .

(5) Divisional Deputy Commissioner of Sales Tax and Another Vs. Bherhaghat Mineral Industries, (2000) 92 ECR 17 : (2000) 246 ITR 230 : (2001) 9 SCC 768 .

(6) Commissioner of Sales Tax, UP Vs. M/s. Lal Kunwa Stone Crusher (P)Ltd., AIR 2000 SC 1161 : (2000) 117 ELT 279 : (2000) 3 JT 204 : (2000) 2 SCALE 363 : (2000) 3 SCC 525 : (2000) 2 SCR 276 : (2000) 118 STC 287 : (2000) AIRSCW 939 : (2000) 2 Supreme 369 .

(7) State of Maharashtra Vs. Mahalaxmi Stores, (2002) ECR 529 : (2003) 152 ELT 30 : (2002) 9 JT 633 : (2003) 1 SCC 70 : (2003) 129 STC 79 : (2003) 1 UJ 748 .

and his contention is that in the aforesaid case mixing of different grades of tea does not constitute a process of manufacture and, therefore, once the process of manufacture is not taking place the question of using different grades of tea while conducting the blending process does not arise. The petitioner has prayed for allowing of the writ petition and quashment of the impugned orders."

2. On the other hand, learned counsel arguing the matter on behalf of the respondent-State has straightway drawn attention of this court towards the charging section, i.e., section 3 of the Entry Tax Act, 1976 and his contention is that once the goods are brought inside the State of Madhya Pradesh and they are used as different grades of tea in the process of blending, by virtue of section 3 , the entry tax has to be paid and the question of set off as claimed by the petitioner does not arise. He has placed reliance upon the judgment delivered in the case of Badrinarayan Vs. State of M.P. and Others, (1988) 70 STC 12 and in the case of Chandrabhan Brijmohan and Co. Vs. D.K. Verma, Additional Assistant Commissioner of Sales Tax, Jabalpur and another and his contention is that keeping in view the aforesaid judgments as different grades of tea is used in the process of blending the question of allowing the claim of the petitioner does not arise and entry tax has rightly been charged.

3. Heard learned counsel for the parties at length and perused the record.

4. In the present case, the entry tax is levied by virtue of statutory provisions as contained under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976. Section 3(1) of the Act, reads as under:

"There shall be levied an entry tax,--

(a) On the entry in the course of business of a dealer of goods specified in Scheduled II, into each local area for consumption, use or sale therein; and

(b) On the entry in the course of business of a dealer of goods specified in Schedule III into each local area for consumption or use of such goods but not for sale therein;

and such tax shall be paid by every dealer liable to tax under the Vanijyik Kar Adhiniyam who has effected entry of such goods:

Provided that no tax under this sub-section shall be levied,--

(i) in respect of goods specified in Schedule II other than the local goods, purchased from a registered dealer on which entry tax is payable or paid by the selling registered dealer;

(ii) in respect of goods specified in Schedule II which after entry into a local area are sold outside the State or in the course of inter-State trade or commerce or in the course of export out of the territory of India;

(iii) in respect of goods specified in Schedule III imported from outside the State for consumption or use but which have been disposed of in any other manner;

(iv) in respect of goods exempted from entry tax under section 10;

and if tax on the entry of any goods specified in Schedule II or Schedule III effected during any period has been deposited by a dealer into the Government treasury and subsequent to such entry the goods are disposed of in the manner described in clause (ii) of this proviso, such dealer shall be entitled to a set-off of the tax already paid by him in respect of such goods and such set-off shall be adjusted towards the tax payable by him in such manner as may be prescribed:

Provided further that notwithstanding anything contained in this Act, where a dealer in the course of his business, purchases goods from a person or a dealer other than a registered dealer who has effected entry of such goods into a local area prior to such purchase, the entry tax shall be paid by the dealer who has purchased such goods:

Provided also that notwithstanding anything contained in this Act, where a dealer liable to pay tax under the Vanijyik Kar Adhiniyam in the course of his business into a local area, purchases goods specified in Schedule III, other than goods which are local goods in relation to such local area, from another dealer of the same local area for consumption or use, the entry of such goods shall be deemed to have been effected into such local area by the dealer who has purchased such goods for the aforesaid purpose and entry tax shall be paid by such dealer:

Provided also that in respect of packing material ''sale'' shall mean the sale of packing material as such and shall not include its sale along with the goods packed or contained therein."

5. The aforesaid statutory provision of law provides for imposition of entry tax and the word manufacture/processing does not find place in the aforesaid statutory provision of law. The words "use" and "consumption" finds place in the aforesaid statutory provision of law. In the present case, it is an undisputed fact that different grades of tea is brought into the State of Madhya Pradesh by the petitioner and in the process of blending, different grades of tea is used while conducting the process of blending.

6. In the case of Badrinarayan Vs. State of M.P. and Others, (1988) 70 STC 12 , the Division Bench of this court, in paragraph 3 to 5 has held as under (pages 14 to 16 in 70 STC):

"3. Having heard the learned counsel for the parties, we have come to the conclusion that this petition deserves to be allowed. The short question for consideration in this case is whether the petitioner was entitled to the grant of eligibility certificate in accordance with the provisions of the notification dated October 23, 1981 issued by the State Government under section 12 of the Act. The relevant provisions of that notification, which were in force at the material time, are as follows:

''F. No. A3-41-81(35)-ST-V dated October 23, 1981.--In exercise of the powers conferred by section 12 of the Madhya Pradesh General Sales Tax Act, 1958 (No. 2 of 1959), the State Government hereby exempts the class of dealers specified in column (1) of the Schedule below, who have set up industry in any of the districts of Madhya Pradesh specified in the annexure to this notification and have commenced production after April 1, 1981, from payment of tax under the said Act for the period specified in column (2), subject to the restrictions and conditions specified in column (3) of the said Schedule:

Now, it is not disputed that the petitioner has set up an industry at Indore, which is one of the districts specified in the annexure to the notification. It is also not disputed that the petitioner holds a certificate of registration under the Act. The only ground on the basis of which eligibility certificate was refused to the petitioner was that the process of blending tea leaves carried on by the petitioner, did not amount to ''manufacture'' and hence, the petitioner could not be held to be engaged in the production of any commodity.

4. The question that arises for consideration in this petition, therefore, is whether as a result of blending of different qualities of tea leaves, a commercially new and distinct commodity comes into existence. In this connection, we may usefully refer to the following observations of the Supreme Court in Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others, AIR 1981 SC 1014 : (1985) ECR 263 : (1993) 67 ELT 34 : (1981) 1 SCC 653 : (1981) 2 SCR 271 : (1981) 47 STC 124 at page 131 :

The Revenue however relied on the decision of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. Vs. The State of Bombay, (1959) 61 BOMLR 1383 : (1959) 10 STC 500 . The assessees in this case were registered dealers in tea under the Bombay Sales Tax Act, 1953, and they purchased in bulk diverse brands of tea and without the application of any mechanical or chemical process, blended these brands of different qualities according to a certain formula evolved by them and sold the tea mixture in the market. The question arose before the sales tax authorities whether the different brands of tea purchased and blended by the assessees for the purpose of producing the tea mixture could be said to have been "processed" after the purchase within the meaning of the proviso to section 8(a), so as to preclude the assessees from being entitled to deduct from their turnover under section 8(a) the value of the tea purchased by them. The High Court of Bombay held that the different brands of tea purchased by the assessees could not be regarded as "processed" within the meaning of the proviso to clause (a) of section 8 , because there was "not even application of mechanical force so as to subject the commodity to a process, manufacture, development or preparation" and the commodity remained in the same condition. The argument of the Revenue before us was that this decision of the Bombay High Court was on all fours with the present case and if the blending of different brands of tea for the purpose of producing a tea mixture in accordance with a formula evolved by the assessees could not be regarded as "processing" of tea, equally on a parity of reasoning, blending, of ore of different chemical and physical compositions could not be held to constitute "processing" of the ore. Now undoubtedly there is a close analogy between the facts of Nilgiri Ceylon Tea Supplying Co. Vs. The State of Bombay, (1959) 61 BOMLR 1383 : (1959) 10 STC 500 and the facts of the present case, but we do not think we can accept the decision of the Bombay High Court in Nilgiri Ceylon Tea Supplying Co. Vs. The State of Bombay, (1959) 61 BOMLR 1383 : (1959) 10 STC 500 as laying down the correct law. When different brands of tea were mixed by the assessees in the Nilgiri Ceylon Tea Supplying Co. Vs. The State of Bombay, (1959) 61 BOMLR 1383 : (1959) 10 STC 500 for the purpose of producing a tea mixture of a different kind and quality according to a formula evolved by them, there was plainly and indubitably processing of the different brands of tea, because these brands of tea experienced, as a result of mixing, qualitative change, in that the tea mixture which came into existence was of different quality and flavour than the different brands of tea which went into the mixture.''

In view of the aforesaid observations of the Supreme Court, the contention advanced on behalf of the respondents that the petitioner was not engaged in the production of any article cannot be upheld. It is significant to note that in a subsequent notification dated October 16, 1986 issued under section 12 of the Act, ''blending of tea'' is one of the industrial units specified, to whom exemption under the notification would not be available. This shows that but for this provision, exemption would have been available. Such a provision was not incorporated in the notification dated October 23, 1981. Under the circumstances, it must be held that the refusal to issue eligibility certificate to the petitioner was not justified.

5. For all these reasons, this petition is allowed. The respondents are directed to issue an eligibility certificate to the petitioner in accordance with the provisions of the notification dated October 23, 1981 (annexure 3). In the circumstances of the case, parties shall bear their own costs of this petition. The outstanding amount of security deposit, if any, shall be refunded to the petitioner."

7. Blending of tea was held to be a kind of production of a new commodity by the Division Bench of this court.

8. In the case of Chandrabhan Brijmohan and Co. Vs. D.K. Verma, Additional Assistant Commissioner of Sales Tax, Jabalpur and another , it was held as under:

"The words ''consumption'' and ''use'' in the context of entry 52 of List II were construed by the Supreme Court in Burmah Shell Oil Storage and Distributing Co. India Ltd. Vs. The Belgaum Borough Municipality, AIR 1963 SC 906 : (1963) 2 SCR 216 Supp . The Supreme Court observed that ''the two expressions use and consumption together therefore, connote the bringing in of goods and animals not with a view to taking them out again but with a view to their retention either for use without using them up or for consumption in a manner which destroys, wastes, or uses them up''. It was further pointed out that ''in this context, the word "consumption", as has been shown above, must receive a larger meaning than merely the act of consuming in the generally understood sense.'' The court then adopted with approval the meaning of ''generally understood senses.'' The court then adopted with approval the meaning of ''consumption'' as explained in Anwarkhan Mahboob Co. Vs. The State of Bombay

(Now Maharashtra) and Others, AIR 1961 SC 213 : (1961) 1 SCR 709 : (1960) 11 STC 698 which was a case relating to the application of the Explanation to article 286(a) of the Constitution. In Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others, AIR 1961 SC 213 : (1961) 1 SCR 709 : (1960) 11 STC 698 the Supreme Court said that ''consumption consists in the act of taking such advantage of the commodities and services produced as constitute the "utilization" thereof. The court further observed that the word ''consumption'' in not limited to the final act of consumption and that ''any kind of user which is ordinarily spoken of as consumption of the particular commodity.'' is covered by the word. The meaning was further explained by giving the illustration of utilization of consumption of cotton at different stages leading to the manufacture of wearing apparel and its ultimate consumption by men and women who use it as dress. In this context the court observed : It is usual and correct to speak of raw cotton being consume in ginning; of ginned cotton being consume in spinning; of spun yarn being consumed in weaving of woven cloth being consumed in the making of ''wearing apparel''. Further light on the meaning of the words ''consumption'' and ''use'' is thrown by the recent decision of the Supreme Court in Kathiawar Industries Ltd. Vs. Jaffrabad Municipality, AIR 1979 SC 1721 : (1979) 4 SCC 56 : (1980) 1 SCR 243 : (1979) 11 UJ 732 where it was held that un-crushed salt brought within the municipality for being crushed in the appellant''s factory before it was exported was brought for consumption or use within the municipal limits and octroi tax was payable on it. Although in this case it was observed that crushed salt was a new product. It does not appear that for ''consumption'' or at any rate for ''use''. It is necessary that a new product should emerge from the commodity entering the local area before it could be said to have been consumed of used within, and the word ''use'' in wider than consumption and that any kind of utilization which is ordinarily understood as consumption or use of a commodity entering a local area will make the commodity liable to tax under the Entry Tax Act."

9. In the words of honourable Shri Justice G.P. Singh, the then Chief Justice, the word ''consumption'' is a word of wide import and the word used is wider than consumption and any kind of utilisation which is ordinarily understood as consumption or use of a commodity entering a local area will make the commodity liable to tax under the Entry Tax Act. In the light of the aforesaid judgment delivered by the Division Bench of our own High Court, this court is of the considered opinion that the petitioner is certainly not entitled for any relief of whatsoever kind only because blending of tea does not fall within the meaning and term ''manufacture'' in the light of the statutory exclusion of the process of blending from the definition of the word ''manufacture'' under the Madhya Pradesh Commercial Tax Act. Keeping in view section 3(1) of the Entry Tax Act, as the commodity in question has been used and the words ''consumption and use'' are mentioned in the charging section, in the light of the Division Bench judgments, this court is of the considered opinion that the revisional authority was justified in dismissing the revision of the petitioner. In respect of the

judgments relied upon by the learned counsel for the petitioner, as they all relate to manufacturing process and the term manufacture, are of no help to the petitioner. No case for interference is made out in the matter.

10. The writ petition is accordingly dismissed and other identical writ petitions are also dismissed.

11. That some of the writ petitions are also arising out of the orders passed by the Deputy Commissioner, Commercial Tax, Indore/appropriate authority by which a penalty has been imposed for not paying the tax dues. Earlier also the parties have approached this court and the matter was remanded back to the competent authority to pass appropriate order on the point of imposition of penalty.

12. Section 69 of the Madhya Pradesh Commercial Tax Act, reads as under:

"69. Power of Commissioner or appellate or revisional authority to impose penalty in certain circumstances.--(1) If the Commissioner or the appellate or revisional authority, in the course of any proceedings under this Act is satisfied that a dealer has concealed his turnover or the aggregate amount of purchase prices in respect of any goods or has furnished false particulars of his sales or purchases, as the case may be, in his return or returns for any year or part thereof or has furnished a false return or returns for such period, the Commissioner or the appellate or the revisional authority as the case may be, may initiate proceeding separately for imposition of penalty under this section.

(2) The proceeding under sub-section (1) shall be initiated by the Commissioner or the appellate or revisional authority as the case may be, by issue of a notice in the prescribed form for giving the dealer an opportunity of being heard. On hearing the dealer, the Commissioner or the appellate or the revisional authority as the case may be, shall pass an order not later than one calendar year from the date of initiation of such proceeding or within such further time as allowed by the State Government, directing the dealer that, he shall in addition to the tax payable by him pay by way of penalty a sum which shall not be less than three times but shall not exceed five times of the amount of tax evaded.

(3) If the total tax shown as payable according to the return or returns and paid by a dealer for any period or part thereof is less than eighty per cent of the total tax assessed under section 27 such dealer shall be deemed to have concealed his turnover or aggregate of his purchase prices or to have furnished false particulars of his sales or purchases in his return or returns to have furnished a false return or returns for the purpose of sub-section (1) unless he proves to the satisfaction of the Commissioner or the appellate or the revisional authority, as the case may be, that the concealment of the said turnover or the aggregate of purchase prices or furnishing of particulars of sales or purchases or furnishing of the false return or returns was not due to any fraud or gross negligence on his part.

(4) Subject to such restrictions and conditions and in such manner as may be prescribed, a dealer, on whom a penalty has been imposed under sub-section (2), may opt to pay a lump sum amount which shall be fifty per cent of the amount of penalty imposed under the said sub-section. Once the dealer has exercised the option and has paid the lump sum amount, he shall not have any right to challenge the order of penalty in any forum. The balance amount of the penalty, shall stand waived."

13. This court has very carefully gone through the aforesaid statutory provision of law and the fact remains that the liability of entry tax was not satisfied in time by the petitioner and the matter was hanging before various authorities and was also pending before this court. The State was certainly deprived of the Revenue which would have fetched interest and would have been used by the State Government and, therefore, this court is of the considered opinion that keeping in view section 69 of the Madhya Pradesh Commercial Tax Act, the authorities were justified in imposing penalty. Resultantly, the penalty imposed by the competent authority is also upheld and the petition, i.e., Writ Petition No. 9535 of 2013 and other identical writ petitions which are arising out of imposition of penalty are accordingly dismissed.