

(1999) 02 KAR CK 0030

In the Karnataka High Court

Case No : Writ Appeal No's. 1413 and 1736 of 1998

The Superintendent of Central Excise Head-Quarters
Preventive, Bangalore-III and Others

APPELLANT

Vs

The Karnataka Soapnut Powder Manufacturers Association
(Registered), Bangalore and Another

RESPONDENT

Date of Decision : 03-02-1999

Acts Referred:

Central Excise Act, 1944 — Section 2 (f)

Citation : (1999) 65 ECC 33 : (1999) ECR 74 : (1999) 111 ELT 27 : (1999) ILR
(Kar) 1402 : (1999) 3 KarLJ 413

Hon'ble Judges : Y. Bhaskar Rao, Acting C.J.; A.M. Farooq, J

Bench : Division Bench

Advocate : Mrs. Shireen Zafrullah, for the Appellant; Sri H.S. Jois, for M/s.
Vagdevi Associates, for the Respondent

Judgement

Y. Bhaskar Rao, Actg. C.J.

1. The respondents 1 to 5 in the writ petition filed this appeal assailing the judgment of the learned Single Judge disposing of the writ petition directing the release of the seized stock.

2. The brief facts of the case are that the respondent 1 is the Karnataka Soapnut Powder Manufacturers Association (Regd.), at Bangalore. Respondent 2 is Sree Ramakrishna Soapnut Works, Mysore. The writ petition is filed praying to declare that the seizure of soapnut powder and the book of accounts pertaining to the respondent 2 as highhanded and without authority of law, and further seeking a direction to the appellants to forthwith release to the respondent 2, his seized articles and issue a writ in the nature of mandamus, commanding the appellants to forbear from insisting upon the respondents registering themselves obtaining any licence in respect of the processing of soapnut into soapnut powder, the marking thereof, and also directing them to forbear from insisting upon any return of the transactions in respect of the same being filed by them, etc. Certain

quantity of shikakai along with soapnut powder produced by the 2nd respondent was seized by the appellants on the ground that the same is liable to levy of excise duty and that duty has not been paid by the manufacturer. Therefore, the writ petition is filed.

3. During the seizure the representative of the 2nd respondent has given a statement, under compulsion. The issue raised in the writ petition is as to whether the soapnut powder/shikakai powder is liable to excise duty under the Customs Tariff for the year 1994-95. He has averred that soapnut powder is manufactured by crushing the shikakai nuts collected from the forest. Their contention is shikakai and soapnut powder are the same. The annexures produced by the respondents disclose that the Government has declared that shikakai or soapnut powder do not come under the category of Item 15-D included in the Finance Act. It was contended by the Department that the soapnut powder/shikakai powder would come within the ambit of the items "Others" grouped as 3305.99 and therefore is liable to excise duty.

4. The learned Single Judge after hearing both the parties came to the conclusion that the shikakai/soapnut powder belonging to the respondents do not come within the category of Chapter 33.05 of the Customs Tariff and are not liable to be confiscated as has been done in this case and hence he directed for release of the seized stock and also the Account Books. Against that present appeal is filed,

5. Learned Counsel for the appellants firstly contended that shikakai and soapnut both belong to different categories having different genesis. Shikakai is manufactured into shikakai powder. Therefore, it is a manufacturing commodity liable for duty under the Excise Tariff Act. The shikakai powder comes under other items in Chapter 33.05. Therefore, it is excisable. The contention that it will not come under other items and soapnut and shikakai powder is same and are exempted from tax is not tenable.

6. Learned Counsel appearing for the respondents 1 to 5 contended that shikakai and soapnut are known as the same article in the market and the powder also is known with the same name as soapnut and it is exempted from tax. Therefore, it will not come under the Chapter 33.05 as other item. There is no manufacturing process involved in it, making soapnut into powder is not a manufacture as the nature of the commodity is not changed, nor any other commodities are mixed in it. Therefore, not taxable.

7. In view of the above contentions the important question of law that arises for consideration is:

Whether the shikakai powder is a taxable commodity under the Excise Tariff Act?

8. To appreciate the above point it is relevant to note the nature of the two commodities. Botanical name of shikakai is *Acacia Concinna* DC, in Hindi it is called as Kochi, ritha, in Bengali it is called as Ban-ritha, in Marathi it is shikakai, in Gujarathi it is Chikakai, in Telugu Shikaya, in Tamil it is Shikai, and in Kannada

sigekai, in Malayalam it is called as Chikaka. It is a tree a common prickly scandent bush. It occurs in tropical jungles throughout India, especially in the Deccan and is also widely distributed in Burma. The pods contain 6-10 seeds and, when dry, appear brown and wrinkled; they are somewhat depressed between the seeds. The pods of this bush, shikai, are extensively used as a detergent and the dry ones are regularly sold in bazaars. In recent years, the powdered pods, sometimes perfumed, are also marketed. Shikai is preferred to soap when taking an oil bath as it does not leave the skin dry. Soap nut, which has similar properties, is from sapindus species. The pods contain spooning (5%). It is said that they are said to be used in Northern Bengal for poisoning fish.

9. The Webster-III New International Dictionary defines "soapnut" as:

"Soap nut n 1: The seed of a soapberry (*Sapindus Saponaria*) used for making beads and buttons 2: the flat saponaceous pod of an East Indian woody vine (*Acacia concinna*); also : the plant itself.

10. This is meaning given by the Western Dictionary to the word soapberry, but we have to find out how sigekai is understood among the Indian masses. The meaning of the word sigekai as per Kannada-English Dictionary by Rev. F. Kittel is climbing prickly shrub, the pods of which are used like soap for washing the hair etc., *Acacia Concinna* DC etc.).

11. It is to be noticed that the Botanical name of two species i.e., Shikai and soapnut are different, the nature of trees are different, nature of pods are different, nature of content of pod is different, and nature of functioning is also mostly different. The above dictionary has correctly mentioned that often the soapnut is called sigekai which is not correct. It is also to be noted that both are used for cleaning hair or taking oil bath. Both are known by distinct names in the market. People are aware both are distinct commodities. Therefore, it cannot be said that shikakai and soapnut are both same commodities.

12. To understand scope of the meaning of both the above commodities it is relevant to take the example of the sugar and jaggery. Sugar and jaggery are the products of the sugarcane and are used for sweetening, but both are known as different commodities in the commercial parlance. Further, the sugar and khandasari sugar are also different commodities. Thus, merely because the commodities have little similarities, it cannot be said both are same. The English Dictionaries provide the meaning as both are same but to understand it in the Indian commercial parlance, particularly having distinct nature and recognition in the market the same meaning cannot be attributed. It is the fact that packets in which the shikakai powder is sold, it is written as sigekaipudi in Kannada and Soapnut powder in English, that only misleads the consumer. Therefore, the contention that the sigekai is soapnut is not tenable.

13. Learned Counsel for appellant secondly contended that the making of shikakai as powder and marketing the powder amount to manufacturing process. Once it undergoes manufacturing process the Act is attracted and the end

product is taxable. On the other hand learned Counsel for respondents contended that making of powder itself cannot be said manufacturing and there is no manufacturing process. Therefore, it cannot be said that the manufacturing process is involved, the commodity is not taxable.

14. In view of the above contentions the important question of law that arises for our consideration is whether the making of shikakai i.e., making pods into powder by applying labour amounts manufacturing or not?

15. It is settled principle of law that every process is not a manufacturing and it depends on the nature of the end product and the process involved in the changing commodity.

16. The note appended in respect of classification Chapter Note IV reads as follows:

"In relation to products of Heading Nos. 33.03, 33.04, 33.05, conversion of powder into tablets, labelling or relabelling of containers intended for consumers or repacking from bulk packs to retail packs or the adoption of any other treatment to render the products marketable to the consumer, shall be construed as "manufacture" ".

17. It means that powder should be transformed into some other form as tablets and packed or repacked for the purpose of sale. It contemplates third product manufactured from natural or commercial ingredients. As long as these activities are not there it is not possible to consider that there is a manufacturing activity. In the case of the shikakai powder the original shikakai (pods) are made into powder by putting labour and undergoing a process, powder is manufactured for the purpose of sale in the market. When powder is made into tablets and packed for the purpose of sale, it amounts to manufacture making pods into powder and packing them in packets for the purpose of sale amounts to manufacture.

18. It is relevant to refer the case law on the subject. In Union of India (UOI) Vs. Delhi Cloth and General Mills, , the question arose whether manufacture of refined oil from the raw material undertaken by the manufacturers of vegetable products known as "vanaspathi" was liable to the excise duty. The manufacturers purchased groundnut oil and till oil from the open markets and subjected them to different process in order to turn them into "vanaspathi". It was contended by the assessee there that at no stage they produced new products which could come within the items described in the schedule as a vegetable non-essential oils, the contention of the revenue was that the manufacturers in the course of manufacturing "vanaspathi" which was vegetable product from the new groundnut and "til" oil brought into existence refined oil after carrying some process with the aid of the power. So it fell within the description of vegetable non-essential oil and as such it was liable to duty. Considering that case the Supreme Court held that excise duty was on the manufacture of goods and not on sale.

19. The Supreme Court in *Empire Industries Limited and Others Vs. Union of India and Others*, , stated as follows:

"To say this is to equate "processing" to "manufacture" and for this we can find no warrant in law. The word "manufacture" used as a verb is generally understood to mean as "bringing into existence a new substance" and does not mean merely "to produce some change in a substance", however, minor in consequence the change may be. The distinction is well brought about in a passage thus quoted in Permanent Edition of Words and Phrases, Vol. 26, from an American Judgment. The passage runs thus:

"Manufacture" implies a change, but every change is not manufacture and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation; a new and different article must emerge having a distinctive name, character or use".

It is further held that if a new or different article having a distinctive name, character or use results from particular processes, such process or processes would amount to manufacture.

20. In a later case in *Union of India (UOI) Vs. Hindu Undivided Family Business known as Ramlal Mansukhrai, Rewari and Another*, , the Supreme Court after recording the above judgment while considering the word "manufacture" has observed as follows:

"The word "manufacture" is defined in Section 2(f) of the Act as including any process incidental or ancillary to the completion of a manufactured product. The rolling of billet into a circle is certainly a process in the course of completion of the manufactured product, viz., circles. In present case, as we have already indicated earlier, the product, that is sought to be subjected to duty, is a circle within the meaning of that word used in Item 26-A(2). In the other two cases which came before this Court, the articles mentioned in the relevant items of the First Schedule were never held to have come into existence, so that the completed product, which was liable to excise duty under the First Schedule, was never produced by any process. In the case before us, circles in any form are envisaged as the completed product produced by manufacture which are subjected to excise duty. The process of conversion of billets into circles was described by the legislature itself as manufacture of circles".

21. In *Allenbury Engineers Pvt. Ltd. Vs. Ramkrishna Dalmia and Others*, , the Supreme Court also considered the word manufacture and followed earlier decisions.

22. In *Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam Vs. Pio Food Packers*, , considering the scope of Section 5-A(1)(a), of Kerala General Sales Tax Act, 1963, the Supreme Court as per the facts and circumstances of the case held that there was no manufacture and the principles enunciated by the Court are as follows:

"There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. 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. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity".

23. This decision was followed in the later judgments in *Chowgule and Co. Pvt. Ltd. and Another Vs. Union of India (UOI) and Others*, .

24. In *Empire Industries Limited's* case, *supra*, the amendment made to the term "manufacture" so as to include the process not to be ultra vires of the Entry 84, List I of Seventh Schedule of Constitution of India, where processing of bleaching, dyeing and printing was included in the process of manufacture was questioned. The Supreme Court considering the constitutional validity of the said amendment has elaborately considered the earlier aforesaid judgments along with other judgments and approved the dicta laid down in the aforesaid judgments.

25. Therefore, whether a particular process amounts to manufacturing or not has to be considered according to facts of each case. 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.

26. The learned Counsel for the respondents contended that if any doubt arises in the construction of provisions of taxing statutes the same must be resolved in favour of the assessee and relied on the judgment of the Supreme Court in *STP Limited Vs. Collector of Central Excise, Patna and Others*, and in *Steel Authority of India Limited v. Collector of Central Excise*, (1997) 10 SCC 335 .

27. The learned Counsel for the respondents contended that same is exempted from tax as per Entry 14. "Shikakai" powder being "soapnut" powder is also exempted from tax. We have already held that "shikakai" and "soapnut" both are different species and are separate commodities. So, exemption granted to "soapnut" will not apply to "shikakai" powder.

28. There is no doubt about the principles laid down by the Supreme Court. In the present case no doubt arises. Therefore, the question of construction of a statute where doubt arises has not arisen in this case, therefore, these judgments are not applicable to facts of the present case.

29. In view of the above stated circumstances we hold that "shikakai" is a different commodity from "soapnut". The preparation of the "shikakai" powder from "shikakai" amounts to manufacturing and therefore it is excisable commodity under the Act.

30. Therefore, the "shikakai powder" comes within the ambit of Chapter 33 of the Customs Tariff. Chapter 33.05 reads as hereunder:

"33.05

Preparations for use on the hair;

3305.10

Shampoos;

3305.20

Preparations for permanent waving or straightening;

3305.30

Hair Lacquers;

3305.90

Others".

31. The shikakai powder would come within the ambit of the items "Others" grouped as 3305.90, so it is liable to excise duty. Accordingly, the writ appeal is allowed, order of the learned Single Judge is set aside.