

M/s. Tungabhadra Industries Ltd.

Vs

The Commercial Tax Officer, Kurnool

Civil Appeal No. 498 of 1958

(S.K. Das, M. Hidayatullah, K.C. Das Gupta, J.C. Shah, N. Rajgopala Ayyangar JJ)

18.10.1960

JUDGMENT

AYYANGAR J. -

This appeal on a certificate under Art. 133 of the Constitution granted by the High Court of Andhra Pradesh raises for consideration principally the question whether hardened or hydrogenated groundnut oil (commonly called Vanaspati) is "groundnut oil" within the meaning of Rule 18(2) of the Madras General Sales-Tax (Turnover and Assessment) Rules, 1939.

Tungabhadra Industries Ltd. - the appellant in this appeal - has a factory of considerable size at Kurnool in the State of Andhra Pradesh. The company purchases groundnuts and groundnut kernel within the State and manufactures groundnut oil and also refined oil as well as hydrogenated oil all of which it sells. The appeal is concerned with the assessment to sales-tax of this company for the year 1949-50.

Section 3 of the Madras General Sales-Tax Act, 1939, enacts :

"3. (1) Subject to the provisions of this Act, -

(a) every dealer shall pay for each year a tax on his total turnover for such year; and

(b) the tax shall be calculated at the rate of three pies for every rupees in such turnover.

#(2).....(3).....  
.....##

(4) For the purposes of this section and the other provisions of this Act, turnover shall be determined in accordance with such rules as may be prescribed :

Provided that no such rules shall come into force unless they are approved by a resolution of the Legislative Assembly.

(5) The taxes under sub-sections (1) and (2) shall be assessed, levied and collected in such manner and in such instalments, if any, as may be prescribed :

Provided that -

(i) in respect of the same transaction of sale, the buyer or the seller, but not both, as determined by such rules as may be prescribed, shall be taxed;

(ii) where a dealer has been taxed in respect of the purchase of any goods in accordance with the rules referred to in clause (i) of this proviso, he shall not be taxed again in respect of any sale of such goods effected by him."

Rules were made by virtue inter alia of these provisions entitled "The Madras General Sales-Tax Turnover and Assessment Rules, 1939". Of these, those relevant to the present context are Rules 4 & 5. Rule 4 reads :

"4. (1) Save as provided in sub-rule (2) the gross turnover of a dealer for the purposes of these rules shall be the amount for which goods are sold by the dealer.

(2) In the case of the undermentioned goods the gross turnover of a dealer for the purposes of these rules shall be the amount for which the goods are bought by the dealer -

(a) groundnut - "

The result of the combined operation of section 4(1) & (2) in the case of those who purchased groundnut and having crushed them sold the oil obtained was, that they had to pay tax on both their purchases of groundnut and their sales of oil produced therefrom. This was considered by the rule making authority to be an unfair burden and relief was accordingly provided by Rules 5 and 18 of the same rules, the material portions of which ran :

"5. (1) The tax or taxes under section 3 ..... shall be levied on the net turnover of a dealer. In determining the net turnover the amounts specified in clauses (a) to (1) shall, subject to the conditions specified therein, be deducted from the gross turnover of a dealer.

Clause (k) of this rule reads :

(k) in the case of a registered manufacturer of groundnut oil and cake, the amount which he is entitled to deduct from his gross turnover under rule 18 subject to the conditions specified in that rule."

(This rule was amended by a notification dated November 9, 1951, by the addition of the words "(other than refined groundnut oil)" after the word "groundnut oil", but this modification of the rule is not relevant to the present case which is concerned with the assessment of a period anterior to the modification).

Rule 18 referred to here reads, to quote only the material words :

"18. (1) Any dealer who manufactures groundnut oil and cake from groundnut and/or kernel purchased by him may, on application to the assessing authority having jurisdiction over the area in which he carries on his business, be registered as a manufacturer of groundnut oil and cake.

(2) Every such registered manufacturer of groundnut oil will be entitled to a

deduction under clause (k) of sub-rule (1) of rule 5 equal to the value of the groundnut and/or kernel, purchased by him and converted into oil and cake if he has paid the tax to the State on such purchases :

Provided that the amount for which the oil is sold is included in his net turnover :

Provided further that the amount of the turnover in respect of which deduction is allowed shall not exceed the amount of the turnover attributable to the groundnut and/or kernel used in the manufacture of oil and included in the net turnover.

Explanation. - For the purpose of this sub-rule -

(a) 143 lb. of groundnut shall be taken to be equivalent to 100 lb. of kernel;

(b) 143 lb. of groundnut or 100 lb. of kernel when converted into oil will normally be taken to yield 40 lb. of oil; and

(c) one candy of oil shall be taken to be equivalent to 500 lb. of oil."

Then follow other provisions not relevant for the purposes of the present appeal.

The appellant was registered as a manufacturer of groundnut oil under r. 18 (1). That the appellant purchased the groundnuts, the value of which was claimed as a deduction in the turnover within the State and paid tax on such purchase to the State was not in dispute. Nor was there any controversy that the sale price of the oil expressed out of and sold either as raw groundnut oil, refined oil or hydrogenated oil was included in the turnover of the appellant.

The Deputy Commercial Tax Officer, Kurnool, who completed the assessment of the appellant accepted the figures of purchases and sales submitted by it, and dealing with the claim for the deduction of the purchase price of the groundnuts from the proceeds of the sale of all oil by the company - raw, refined and hydrogenated - granted a deduction in respect of the purchase price of the groundnuts attributable to the unrefined oil sold by the appellant, but held that the appellant was not entitled to the deduction claimed in respect of the refined and hydrogenated oil for the reason that it was only unrefined or unprocessed groundnut oil that was connoted by the expression 'groundnut oil' in rule 5(1)(k) read with rule 18(1) and (2) of the Turnover and Assessment Rules. This order of the Deputy Commercial Tax Officer was affirmed by the Commercial Tax Officer on appeal and the appellant filed a further appeal to the Sales-Tax Appellate Tribunal. The second appellate authority upheld the contention of the appellant in regard to the sale to refined oil but rejected it in so far as it related to the sales of hydrogenated oil. The matter was thereafter brought up before the High Court of Andhra Pradesh by a Tax Revision Case filed under section 13(b)(1) of the Act and the learned Judges upheld the view of the Tribunal and disallowed the claim of the appellant to the deduction claimed in regard to the sales turnover of hydrogenated oil. They granted the certificate under Art. 133 which has enabled the appellant to file an appeal to this Court.

The claim of the appellant to the deduction under r. 18(2) on the sales of refined groundnut oil is no longer in dispute. The ground upon which both the Tribunal as well as the High Court decided against the allowance of the deduction in respect of the sales of hydrogenated oil, while upholding the appellants' case as regards refined oil may be briefly stated thus : The exemption or deduction from the sale-turnover under r. 18(2), is on its terms applicable only to the sale of the oil in the form in which it is when extracted out of the kernel. When raw groundnut oil is converted into refined

oil, there is no doubt processing, but this consists merely in removing from raw groundnut oil that constituent part of the raw oil which is not really oil. The elements removed in the refining process consist of free fatty acids, phosphotides and unsaponifiable matter. After the removal of this non-oleic matter therefore, the oil continues to be groundnut oil and nothing more. The matter removed from the raw groundnut oil not being oil cannot be used, after separation, as oil or for any purposes for which oil could be used. In other words, the processing consists in the non-oily content of the raw oil being separated and removed, rendering the oily content of the oil 100 per cent. For this reason refined oil continues to be groundnut oil within the meaning of rules 5(1)(k) and 18(2) notwithstanding that such oil does not possess the characteristic colour, or taste, odour, etc. of the raw groundnut oil.

But in the case of hydrogenated oil which is prepared from refined oil by the process of passing hydrogen into heated oil in the presence of a catalyst (usually finely powdered nickel), two atoms of hydrogen are absorbed. A portion of the oleic acid which formed a good part of the content of the groundnut oil in its raw states is converted, by the absorption of the hydrogen atoms, into stearic acid and it is this which gives the characteristic appearance as well as the semi-solid condition which it attains. In the language of the Chemist, an inter-molecular or configurational chemical change takes place which results in the hardening of the oil. Though it continues to be the same edible fat that it was before the hardening, and its nutritional properties continue to be the same, it has acquired new properties in that the tendency to rancidity is greatly removed, is easier to keep and to transport. Both the Tribunal as well as the learned Judges of the High Court held that the hydrogenated oil (or Vanaspati) ceased to be groundnut oil by reason of the chemical changes which took place which resulted in the acquisition of new properties including the loss of its fluidity. In other words, they held that Vanaspati or hydrogenated oil was not "groundnut oil" but a product of groundnut oil, manufactured out of groundnut oil and therefore not entitled to the benefit of the deduction under r. 18(2).

The arguments of Mr. Visvanatha Sastri for the appellants were briefly two : (1) The reasons behind the rules 5(k) & 18(2) which were designed to afford relief against what would amount practically to double taxation of the same assessee both when he purchased and when he sold the goods, required that the appellants' claim should be allowed. (2) Hydrogenated groundnut oil was no less groundnut oil than either refined or even unrefined oil. The fact that the quality of the oil had been improved does not negative its continuing to be oil and the materials before the departmental authorities and the Court established that it continued to be oil and was nothing more.

The argument bases on the reason of the rule cannot carry the appellant far, since in the present case it is an exemption from tax which he invokes and of which he seeks the benefit. If the words of the rule are insufficient to cover the case, the reason behind the rule cannot be availed of to obtain the relief. Nor could it be said to be a case of double taxation of the same goods at the purchase and sale points which is forbidden by section 3(5) of the Act. If the view adopted by the learned Judges of the High Court that hydrogenated groundnut oil is not "groundnut oil" but a product of groundnut oil were correct, learned Counsel cannot urge that he would still be entitled to the deduction for which provision is made in r. 18(2).

Consequently it is the second of the submission alone which really requires to be examined. In doing so it would be convenient to consider the reasoning on the basis of which the view that hydrogenated oil was not "groundnut oil" was sought to be sustained before us.

The learned Advocate-General of Andhra Pradesh who appeared for the respondent-Commercial

Tax Officer sought to support the decision of the High Court by two lines of reasoning. The first was that the exemption applied only to the sale of the oil as it emerged from the presser and that any processing of the oil including refining, in order to remove even the impurities and free fatty acids, took it out of the category of "groundnut oil" as used in the rule. In support of this submission he referred us to the Table of Conversion of groundnuts and kernel into oil set out in the Explanation to r. 18(2), extracted earlier, and submitted that the 40 lb. of oil for every 100 lb. of kernel was based on the yield of raw groundnut oil and that this was an indication that nothing other than raw groundnut oil was intended to be covered by the expression "groundnut oil" in the rule.

We must however point out that this last submission has no factual basis to support it. It is not known whether the proportion of 40 lb. of oil for every 100 lb. of kernel represents the average weight of oil extractable from different varieties of groundnut kernels or is the average of the different types of oils which may be produced out of different varieties of kernels. In the absence of any definite data in this regard it is impossible to accept the argument that the Table of Conversion justifies any particular construction of what was meant by "ground oil" in the main part of the rule.

Nor is the learned Advocate-General well-founded in his submission that the processing of the oil in order to render it more acceptable to the customer by improving its quality would render the oil a commodity other than "groundnut oil" within the meaning of the rule. For instance, if the oil as extracted were kept still in a vessel for a period of time, the sediment normally present in the oil would settle at the bottom leaving a clear liquid to be drawn out. The learned Advocate-General cannot go so far as to say, that if this physical process was gone through, the oil that was decanted from the sediment which it contained when it issues out of the expresser, ceased to be "groundnut oil" for the purposes of the rule. If the removal of impurities by a process of sedimentation does not render groundnut oil any the less so, it follows that even the process of refining, by the application of chemical methods for removing impurities in the oil, would not detract from the resulting oil being "groundnut oil" for the purpose of the rule. It may be mentioned that processes have been discovered by which even on extraction from the oil mill, the oil issues without any trace of free fatty acids. It could hardly be contended that if such process were adopted what comes out of the expresser is not groundnut oil. The submission of the learned Advocate-General based on contention that the Tribunal and the learned Judges of the High Court erred in holding that even refined groundnut oil was "groundnut oil" for the purpose of the rule, must be rejected.

The next question is whether if beyond the process of refinement of the oil, the oil is hardened, again by the use of chemical processes it is rendered any the less groundnut oil". In regard to this, the learned Advocate-General first laid stress on the fact that while normally oil was a viscous liquid, the hydrogenated oil was semi-solid and that this change in its physical state was itself indicative of a substantial modification of the identity of the substance. We are unable to accept this argument. No doubt, several oils are normally viscous fluids, but they do harden and assume semi-solid condition on the lowering of the temperature. Though groundnut oil is, at normal temperature, a viscous liquid, it assumes a semi-solid condition if kept for a long enough time in a refrigerator. It is therefore not correct to say that a liquid state is an essential characteristic of a vegetable oil and that if the oil is not liquid, it ceases to be oil. Mowrah oil and Dhup oil are instances where vegetable oils assume a semi-solid state even at normal temperatures. Neither these, nor coconut oil which hardens naturally on even a slight fall in temperature, could be denied the name of oils because of their not being liquid. Other fats like ghee are instances where the physical state does not determine the identity of the commodity.

The next submission of the learned Advocate-General 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.

In our opinion, the learned Judges of the High Court laid an undue emphasis on the addition by way of the absorption of the hydrogen atoms in the process of hardening and on the consequent inter-molecular changes in the oil. The addition of the hydrogen atoms was effected in order to saturate a portion of the oleic and linoleic constituents of the oil and render the oil more stable thus improving its quality and utility. But neither mere absorption of other matter, nor inter-molecular changes necessarily affect the identity of a substance as ordinarily understood. Thus for instance there are absorptions of matter and inter-molecular changes which deteriorate the quality or utility of the oil and it might be interesting to see if such additions and alterations could be taken to render it any the less "oil". Groundnut oil when it issues out of the expresser normally contains a large proportion of unsaturated fatty acids - oleic and linoleic - which with other fatty acids which are saturated are in combination with glycerine to form the glyceride which is oil. The unsaturated fatty acids are unstable, i.e., they are subject to oxidative changes. When raw oil is exposed to air particularly if humid and warm, i.e., in a climate such as obtains in Madras, oxygen from the atmosphere is gradually absorbed by the unsaturated acid to form an unstable peroxide (in other words the change involved the addition of two atoms of oxygen) which in its turn decomposes breaking up into aldehydes. It is this oxidative change and particularly the conversion into aldehydes that is believed to be responsible for the sharp unpleasant odour, and the characteristic taste of rancid oil. If nothing were done to retard the process the rancidity may increase to such extent as to render it unfit for human consumption. The change here is both additive and inter-molecular, but yet it could hardly be said that rancid groundnut oil is not groundnut oil. It would undoubtedly be very bad groundnut oil but still it would be groundnut oil and if so it does not seem to accord with logic that when the quality of the oil is improved in that its resistance to the natural processes of deterioration through oxidation is increased, it should be held not to be oil.

Both the Tribunal as well as the High Court have pointed out that except for its keeping quality without rancidity and ease of packing and transport without leakage, hydrogenated oil serves the same purpose as a cooking medium and has identical food value as refined groundnut oil. There is no use to which the groundnut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used. Similarly we consider that hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil. In our opinion, the assessee-company was entitled to the benefit of the deduction of the purchase price of the kernel - or

groundnut, under r. 18(2), which went into the manufacture of the hydrogenated groundnut oil from the sale turnover of such oil.

One other point which is involved in the appeal relates to the claim of the appellant to a deduction in respect of the freight-charges included in the price of the commodity. Under r. 5(1)(g) of the Turnover and Assessment Rules, in determining the net turnover of a dealer he is entitled to have deducted from his gross turnover "all amounts falling under the following two heads, when specified and charged for by the dealer separately, without including them in the price of the goods sold :

#(i) freight;(ii)....." .##

The appellant claimed exemption on a sum of Rs. 3,88,377-13-3 on the ground that it represented the freight in respect of the goods sold by the appellant asserting that they had been charged for separately. The assessing-officer rejected the claim and this rejection was upheld by the departmental authorities and by the High Court in Revision. It would be seen that in order to claim the benefit of this exemption the freight should (1) have been specified and charged for the by dealer separately, and (ii) the same should not have been included in the price of the goods sold. The learned Judges of the High Court held that neither of these conditions was satisfied by the bills produced by the appellant. We consider, the decision of the High Court on this point was correct. In the specimen bill which the learned Counsel for the appellants has placed before us, after setting out the quantity sold by weight (23,760 lb.) the price is specified as 15 annas 9 pies per lb. and the total amount of the price is determined at Rs. 23,388-12-0. From this the railway freight of Rs. 1,439-12-0 is deducted and the balance is shown as the sum on which sales-tax has been computed. From the contents of this invoice it would be seen that the appellant has charged a price inclusive of the railway freight and would therefore be outside the terms of r. 5(1)(g) which requires that in order to enable a dealer to claim the deduction it should be charged for separately and not included in the price of goods sold. The conditions of the rule not having been complied with, the appellant was not entitled to the deduction in respect of freight.

The result therefore is that the appeal is allowed in part and the order of the High Court in so far as it denied to the appellant the benefit of the deduction in the turnover provided by r. 18(2) of the Turnover and Assessment Rules is set aside.

In view of the appellant having succeeded only in part, there will be no order as to costs in this appeal.

Appeal allowed in part.

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