

SUPREME COURT OF INDIA

Commissioner of Sales Tax, U.P.

Vs.

Gouti Bandhu, Aligarh

(A Ahmadi and S Kurdukar JJ.)

27.02.1997

ORDER

CA No. 1122 of 1979

1. The question for consideration is whether barley after dehusking is a commercially different commodity liable to be taxed as such under the U.P. Sales Tax Act. In other words, the question is whether removal of husk per se amounts to the creation of a commercially known different commodity and, therefore, can be the subject of purchase tax. The relevant assessment year is 1968-69. During that year the assessee purchased husked barley from certain registered dealers. The said registered dealers had initially purchased barley on which they had paid the tax and thereafter they had removed the husk and sold the barley to the respondents herein. The respondents contended that by merely dehusking the barley they did not bring into existence a new commodity and could not, therefore, be liable to pay once again purchase tax on the said article. However, the Department levied the purchase tax on the premise that a new commodity commercially known was brought into existence and that amounted to manufacture within the meaning thereof under the Act. The High Court relying on an earlier decision reported in *Tilok Chand Prasan Kumar v. STO* held in favour of the assessee and against the Revenue. Hence, this appeal by the Revenue.

2. We have heard the learned Counsel for the appellant. None is present on behalf of the respondents. In *Tilok Chand* case the Court relying on an earlier decision of this Court in *Union of*

India v. Delhi Cloth and General Mills Co. Ltd. 1963 Supp (1) SCR 586; pointed out the material difference between processing and manufacturing and held that dehusking at the most amounts to processing and not manufacturing and, therefore, there is no element of manufacture. Reliance was also placed on the decision of the Gujarat High Court in B. Dar Laboratories v. State of Gujarat this decision, Explanation II came to be introduced by the Amending Act, 1970. The counsel for the Revenue contended that this Explanation applied retrospectively. We are afraid we cannot accede to that contention as the Explanation does not say so whereas the subsequent Explanation introduced a little later expressly says so. That Explanation, therefore, cannot be given retrospective effect. That being so, as the law stood at the relevant point of time, the view taken by the High Court cannot be said to be erroneous. We, therefore, see no reason to interfere with the impugned order in this appeal. The decision may be different in the subsequent orders because of the amendments but we are not concerned with them.

3. In the result, this appeal fails and is dismissed with no order as to costs.

CA No. 2859 of 1980

4. The decision in this appeal was based on the decision of the Division Bench of the High Court in Gouti Bandhu v. CST 1978 UPTC 707. We have just disposed of the appeal arising from that decision and since we have affirmed the view of the High Court therein this appeal too must fail and is dismissed with no order as to costs.