

Rallis India Ltd.

Vs

State of T.N.

Civil Appeals Nos. 1221-22, 1222-A & 1222-B of 1993 with Nos. 4667-4668 of 1994

(S.P. Bharucha, V. N. Khare JJ)

10.11.1998

JUDGMENT

V. N. KHARE, J. -

1. These civil appeals are directed against the judgment of the High Court of Judicature at Madras passed in Tax Cases (Appeals) Nos. 871-872 of 1983 dated 28-7-1992 and Tax Cases (Appeals) Nos. 1100-1101 of 1992 dated 21-9-1992 wherein the High Court has held that the goods in question, namely, gelatine would fall within the description of chemical as described in Entry 138 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 (for short the Act).

2. The appellant herein is incorporated under the Companies Act, 1956 and under memorandum dated 1-9-1983 has succeeded to the business of the erstwhile M/s Protein Products of India Limited which was approved by the order of the Madras High Court dated 29-1-1986. The erstwhile M/s Protein Products of India Ltd. was assessed towards sales tax for the years 1977-78 and 1978-79. Subsequently the said orders of assessment were revised under Section 16 of the Act by the Deputy Commercial Tax Officer on finding that the sales of the product gelatine have been wrongly assessed at 4% multipoint as against liability at 8% in terms of Entry 138 of the First Schedule to the Act. M/s Protein Products of India Ltd. filed appeals before the Appellate Assistant Commissioner, Coimbatore under Section 31 of the Act. The Appellate Assistant Commissioner held that gelatine was made from ossein which was the raw material and ossein is a direct derivative of bone composed of animal proteinoid matter which was a natural mixture of biologicals obtained as a dried extract and thus gelatine would not fall within the meaning of chemicals under Entry 138. Consequently, revised assessment orders were set aside and the appeals were allowed. Subsequently, the Joint Commissioner, Madras exercising suo motu revisional power to revise the appellate orders issued notices to M/s Protein Products of India Ltd. After hearing, the Joint Commissioner, Madras held that gelatine falls within the description of a chemical. Consequently, the appellate orders were set aside and the assessment orders for 1977-78 and 1978-79 were restored as proposed by order dated 21-7-1983.

3. M/s Protein Products of India Ltd. and the appellant filed appeals before the High Court of Judicature at Madras against the orders dated 21-7-1983 passed by the Joint Commissioner. When the matters taken up for hearing, the appellant brought to the notice of the High Court the judgment of the Sales Tax Appellate Tribunal in Tax Appeal No. 642 of 1985 and Tax Appeal No. 1 of 1986 decided on 30-3-1987 in order to show that the Tribunal after having gone into the fact as a fact-finding body has concluded that gelatine cannot be treated as a chemical and that gelatine cannot produce any chemical effect or resulting chemical change when used and further, gelatine was also not an intermediary product. Further, it was brought to the notice of the Court that the Revenue has

not appealed against the said judgment of the Tribunal and it has become final between the parties. The High Court relying on certain decisions, without any kind of additional material or without examining or advert to the findings of the Tribunal held that gelatine falls within the description of a chemical falling under Entry 138 of the First Schedule of the Act. It is in this way the appellant has come to this Court by filing special leave petitions.

4. The learned Counsel appearing for the appellant urged that the Appellate Tribunal being the last fact-finding body after having considered all the relevant materials on record found that gelatine is not a chemical, the High Court without advert to the said judgment and without any kind of additional material has erroneously held that gelatine is a chemical falling under Entry 138 of the First Schedule of the Act. It is not disputed that the Appellate Tribunal as a fact-finding body had gone into the facts and has concluded that gelatine does not fall within the description of a chemical and that judgment became final between the parties. It is also not disputed that the materials in regard to nature and composition of gelatine and the process undertaken to manufacture it were filed in the form of expert opinions from scientists before the Tribunal.

5. One of the expert opinions was from Dr A. Gannasekaran, Professor of Chemistry, which reads as follows :

"Gelatine is a protein obtained from collagen which originates from the animal kingdom mainly from skin and bones with suitable pressure. Molecular weight may vary and does not exist in a fixed proportion. It is mainly used in confectionery products. It has no specific chemical formula and hence it does not come in the category of chemicals as defined in the chemical dictionary."

6. The second opinion placed on record was from Thiru G.O.K. Ummer, Joint Director of Industries and Commerce (Chemicals) and the said opinion was as follows :

"With reference to your letter cited, I am to inform that as per Hacki's Chemical Dictionary, a chemical is defined as a compound of substances of definite molecular composition. Generally, it is restricted to a single molecular species with a definite molecular structure. Gelatine is a protein obtained from collagen by biling skin, ligaments, tender bones, etc., with water under pressure. It is not of definite molecular composition. The molecular weights of gelatine are reported to range from low values of 10,000 or 25,000 to high values reaching 25,000. Based on the definition of chemical given in the dictionary, I am to say that gelatine does not come under 'chemical' as commonly defined."

7. The third opinion filed was from Dr N. Gopalakrishnan, Research and Development Officer in Hindustan Photo Films, which reads as follows :

"Gelatine is a natural colloid of high molecular weight. It is water-soluble protein regulating from collagen (qv). The parent fibrous protein, collagen, is abundant in the animal kingdom comprising the major protein of those proteins found in hides, skins, sinews, bones and connective tissues. It is a natural polymer in use as a protective colloid, emulsifier and a vehicle of sorts in photo emulsions and is a natural product very much in use in the food industry (jelly and all). It is the generic of chemicals."

8. From the aforesaid opinions and other materials which were on record, the Tribunal concluded as follows :

"The perusal of the abovesaid three letters which were issued by very eminent authorities would disclose that gelatine is got out of the animal kingdom, that it is a natural polymer in use as a protective colloid emulsifier and a vehicle of sorts in photo emulsions and is a natural product very much in use in the food industry (jelly and all) and that gelatine has no chemical formula and does not come in the generic of chemicals."

9. In the present case, what we find is that no additional material was adduced before the High Court for showing that gelatine is a chemical. The High Court did not examine the finding of the Tribunal holding that gelatine is not a chemical, which was based upon the materials on record. The finding of fact arrived at by the Tribunal being the last fact-finding body has to be given due weight unless it is found by the High Court that such a finding is either based upon no evidence or irrelevant evidence or incorrect principles. Admittedly, in the present case, no additional material was adduced by the Revenue. As such, the finding recorded by the High Court that gelatine comes under the description of chemical is not sustainable in law. We accordingly set aside the judgments under appeals. The appeals are allowed. No costs.