SUPREME COURT OF INDIA

M/s A.P. Products

Vs.

State of Andhra Pradesh & Ors

Appeal (Civil) 6104-6106 of 2001

(Ashok Bhan and Dalveer Bhandari JJ.)

09.07.2007

JUDGEMENT

DALVEER BHANDARI, J.

1. These appeals are directed against the judgment dated 8th May, 2001 passed by the High Court of judicature, Andhra Pradesh at Hyderabad in Tax Revision Case No.89/94, Tax Revision Case No.90/94 and Writ Petition No. 32154 of 1998.

2. Brief facts which are necessary to dispose of these appeals are recapitulated as under:-

3. The appellant is engaged in the business of purchasing various spices like Cumin Seed (Jeera), Fenugreek Seeds (Methi), Cinnamon (Dalchini), Caraway Seeds (Shahijeera) etc. from the registered dealers in the State of Andhra Pradesh and the said items are subjected to sales tax at the point of first sale under Entry No.182 of the First Schedule to the Andhra Pradesh General Sales

Tax Act, 1957 (hereinafter referred to as the APGST Act, 1957). All the said items are called spices. The appellant by mixing and grinding all these spices together produces 'masala powder' which is used for enhancing the taste of food.

4. The appellant filed income-tax returns for the assessment years 1990-91, 1991-92, 1992-93 claiming exemption on the ground that the ingredients used for the preparation of masala powder have already been taxed under Entry 182 of the First Schedule to the APGST Act, 1957 and as the said ingredients are chargeable only at the first sale point, the masala powder is not further exigible to sales tax. The contention of the appellant was not accepted by the Commercial Taxes Officer. Being aggrieved by the order of the Commercial Taxes Officer, the appellant preferred an appeal before the Appellate Deputy Commissioner, which was rejected. Thereafter, the appellant filed an appeal to the Sales Tax Appellate Tribunal (for short the Tribunal). The Tribunal also rejected the appeal. The Tribunal held that the masala powder is not a mere mixture of some of the spices specified in Entry 182. According to the Tribunal, some of the spices like Cumin Seeds (Jeera), Caraway Seeds (Shahijeera) etc. along with other materials like Salt, Coriander (Dhania) etc. which are not specified in the Entry 182 are powdered and mixed in specified and required proportion and after mixture, these spices lose their original flavour and character and as such cannot be considered as spices falling under Entry 182 of First Schedule.

5. The masala powder prepared after grinding and mixing of various ingredients is commercially a different commodity liable to be taxed. Item 182 of the First Schedule refers to Spices that is to say Cumin Seed (Jeera), Fenugreek Seeds (Methi), Cloves, Cinnamon, Caraway Seeds (Shahijeera), Cardamom, Dry Ginger, Aniseed (Saunf), Nakesar (Kabab Chini), Bay Leaf (Tej Patta), Poppy Seeds, Nutmeg and Mace (Javitri). Masala powder is not specified in the said exhaustive list of goods mentioned in Entry 182. It is the result of grinding or powdering of several ingredients. Some of these spices are specified in Entry 182. The Tribunal upheld the order of the Deputy Commissioner and dismissed the appeal. On appeal, the High Court upheld the order of the Tribunal.

6. The appellant has preferred these appeals against the impugned judgment of the High Court and submitted that the Entry 182 of the First Schedule to the APGST Act, 1957 should not be given a narrow interpretation. The mixtures of spices mentioned in the Entry would also amount to spices within the definition of Entry 182. The appellant also submitted that under VIIth Schedule to the Act, only those goods which are not specified in Ist to VIth Schedules can be taxed.

7. The appellant submitted that the Spices Board constituted under the Spices Board Act has declared a list of 52 items in any form including Curry Powder, Spice Oil, Oleoresins and other mixtures where spices content is pre-dominant as spices as per section 2(n) of the Spices Board Act, 1996. The appellant has set out a list of spices in Annexure P5 along with these appeals. It is not necessary to reproduce the names and details of those spices for deciding these appeals.

8. The appellant has submitted that the APGST Act, 1957 does not define the term manufacture. However, it is submitted that there is no chemical or mechanical process except simple grinding and mixing involved in producing the masala powder. The process does not bring about a new commodity which is differently identified in common and commercial parlance. In support of its contention, the appellant placed reliance on the judgment of this Court in Deputy Commissioner of Sales Tax (Law), Board of Revenue (Taxes), Ernakulam v. M/s PIO Food Packers 1980 Supp (1) SCC 174 and relied on the definition of manufacture as enumerated in the said judgment, which reads as under: Manufacture implies a change, but every change is not manufacture, and yet every change in an article is the result of treatment, labour and manipulation. But something more is necessary. There must be transformation; a new and different article must emerge, having a distinctive name, character or use.

9. The Court in this case held that by cutting the pineapple into slices and thereafter canning it, on adding sugar to preserve it, did not change the identity nor did it bring into existence different goods.

10. The appellant on the basis of aforementioned definition asserted that its activity does not amount to manufacture of a commercially new and distinct commodity liable for payment of tax.

11. The appellant also placed reliance on the following passage from the decision of Alladi Venkateswarlu & Others v. Govt. of Andhra Pradesh & Another (1978) 2 SCC 552. In this case, the Court observed thus:the only question before us is whether the parched rice and the puffed rice are covered by Item 66(b) which reads: rice obtained from paddy that has met tax under the Act. Paddy is defined in the dictionary as rice in the husk. The question is: Does it cease to be even rice when it is converted into parched rice and puffed rice? It is true that it is no longer rice grain as it emerges from the husk. To make it edible as parched rice and puffed rice it has to go through further processes. These are only products obtained by converting rice grain into a different form of it by heating or parching. If such rice is still rice, even if we confine the term rice to grain, is it by going trough these processes of heating or parching converted into separate items for the purposes of Entry 66 in the First Schedule of the Act?

12. This Court answered the aforesaid question as follows: Atukulu (parched rice), and muramaralu (puffed rice) are rice within the meaning of Entry 66(b) of Schedule I of the Andhra Pradesh General Sales Tax Act, 1957.

13. Reliance has also been placed on the case of Tungabhandra Industries Ltd. v. The Commercial Tax Officer, Karnal (1961) 2 SCR 14. In this case, the Court rejected the argument based on an analysis of chemical changes produced by absorption of hydrogen atoms in the process of hardening

and on the consequent inter-molecular changes in the oil. The Court observed that neither mere absorption of other matter nor inter-molecular changes necessarily affect the identity of a substance as ordinarily understood.

14. The hydrogenated oil was from groundnut and in its essential nature it remained oil. It continued to be used for the same purposes as groundnut oil which had not undergone the process. A liquid state was not an essential characteristic of a vegetable oil; the mere fact that hydrogenation made it semisolid did not alter its character as an oil.

15. In the case of Commissioner of Sales Tax, U.P. v. M/s Lal Kunwa Stone Crusher (P) Ltd. (2000) 3 SCC 525, the question arose for adjudication before the Court was whether gitti, stone chips and dust continued to be stone or on crushing stone boulders into gitti, stone chips and dust different commercial goods emerged so as to attract sales tax on their sale. The Court opined that the term stone is wide enough to include the various forms such as gitti, kankar and stone ballast. A similar view was taken by this Court in State of

Maharashtra v. Mahalaxmi Stores (2003) 1 SCC 70.

16. Reliance has also been placed on M/s. Crane Betel Nut Powder Works v Commissioner of Customs and Central Excise, Tirupathi and Anr. (2007) 4 SCC 155. In this case, the Court held that the process of manufacture employed by the appellant did not change the nature of the end product because the end product remained the betel nut. The process involved in sweetening the betel nut does not result in manufacture of a new product. The end product continues to be of original character though in a modified form.

17. On the other hand, the learned counsel appearing for the respondents also placed reliance on a number of decisions to strengthen his arguments that mixing and grinding of different spices along with other ingredients brings about a commercially different products.

18. This Court in Babu Ram Jagdish Kumar & Co. v. State of Punjab & Others (1979) 3 SCC 616 held that although rice is produced out of paddy, they are different things in ordinary parlance. When paddy is dehusked and rice produced there is a change in the identity of the goods. Therefore, inclusion of both paddy and rice in Schedule C would not amount to imposition of double taxation under the Act.

19. The learned counsel appearing for the respondents placed reliance on a Division Bench judgment of the Madhya Pradesh High Court in the case of Sales Tax Commissioner v. hameja Home Industries, Indore (1983) 54 STC 217. This case was cited primarily because the facts of this

case are identical to the facts of the present case. In this case, the question which arose for adjudication was whether the preparation of Garam Masala amounted to manufacture. The Court came to the conclusion that Garam Masala is made by mixing different condiments in certain proportions. The mixing may take place either before or after grinding of the condiments which go to make the product Garam Masala but mixing of condiments has to take place because the product Garam Masala is not obtained merely by grinding of condiments. It is thus clear that the process of obtaining the product Garam Masala is not confined to merely grinding of condiments. It involves something more than grinding to bring into existence a product different from those which are mixed. The conclusion is inescapable that the process of obtaining the product Garam Masala is not excluded by the Rules from the definition of manufacture contained in Section 2(j) of the Act.

20. The respondents have also placed reliance on a Division Bench judgment of the Kerala High Court in the case of Deputy Commissioner of Sales Tax v. Rani Food Products (1988) 68 STC 446. This case was also cited because the facts of this case and the case in hand are identical. The question that arose in this case was whether sambar powder, meat masala, pickle powder etc. are spices under Entry 27 of the First Schedule to the Kerala General Sales Tax Act. The Court in this case observed that it is the original product which is intended as spices and not any manufactured product. The position may be different if there had been only the mixture of coriander and chilly without any process whatsoever. Where coriander and chilly are powdered and mixed in certain proportion with or without other items, the mixture loses its original flavour and no longer retains the character as spices, even though the mixture may be one which is used in the preparation of food and for adding flavour. Thus, the Court approved the judgment of the Tribunal and held that the goods specified do not come under Item 27 and could be taxed only as general goods.

21. The respondents placed heavy reliance on a decision of this Court in Rajasthan Roller Flour Mills Association & Another v. State of Rajasthan & Others (1994) Supp (1) SCC 413. In this case, there was difference of opinion amongst the High Courts in the country over the question whether wheat under Section 14(1)(iii) of The Central Sales Tax Act includes flour, Fine Wheat Flour (maida) and Semolina (suji). The Karnataka and the Patna High Courts have held that it is not included, while the Andhra Pradesh, Rajasthan and the Madras High Courts have taken a contrary view. This Court examined the entire case in great detail. ThisCourts specific findings are reflected in paragraphs 15 and 40 of the said judgment. The relevant portion of para 15 is reproduced as under: It must also be remembered that wheat flour and similarly maida and suji are different commodities from wheat.

22. Three decisions of this Court have held that rice (it is also derived from paddy just as lour is derived from wheat by the process of milling) is different from paddy

23. This Court, in para 40 of the said judgment, observed as under: For the above reasons, we hold that flour, maida and suji derived from wheat are not wheat within the meaning of Section 14(i)(iii) of the Central Sales Tax Act. Flour, maida and suji are different and distinct goods from wheat.

24. In Rajasthan Rollers case (supra), this Court referred to a judgment of four-Judge Bench of this Court in the case of State of Tamil Nadu v. Pyare Lal Malhotra & Others (1976) 1 SCC 834. In para 18 of the said judgment, the Court referred to the Statement of Law which, in our opinion, is vital in deciding the present case also, so we deem it appropriate to reproduce the same as under:Sales tax law is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. As soon as separate commercial commodities emerge or come into existence, they become separately taxable goods or entities for purposes of sales tax. Where commercial goods, without change of their identity as such goods, are merely subjected to some processing or finishing or are merely joined together, they may remain commercially the goods which cannot be taxed again, in a series of sales, so long as they retain their identity as goods of a particular type.

25. In this case, the Court also examined a Constitution Bench judgment of this Court in Ishwari Khetan Sugar Mills P. Ltd. & others v. State of U.P. & others (1980) 4 SCC 136 and other judgments, such as Ganesh Trading Co., Karnal v. State of Haryana & others (1974) 3 SCC 620 and the State of Karnataka v. B. Raghurama Shetty & others (1981) 2 SCC 564.

26. We deem it appropriate to reproduce the relevant observations made by this Court in paras 8,9 and 11 at pages 566-568 in Raghurama Shetty's case (supra): There is no merit in the submission made on behalf of the assesses that they had not consumed paddy when they produced rice from it by merely carrying out the process of dehusking at their mills. Consumption in the true economic sense does not mean only use of goods in the production ofconsumers goods or final utilization of consumers goods by consumers involving activities like eating of food, drinking or beverages, wearing of clothes or using of an automobile by its owner for domestic purposes. A manufacturer also consumes commodities which are ordinarily called raw materials when he produces semi-finished goods which have to undergo further processes of production before they can be transformed into consumers goods. At every such intermediate stage of production, some utility or value is added to goods which are used as raw materials and at every such stage the raw materials are consumed. Take the case of bread. It passes through the first stage of production when wheat is grown by the farmer, the second stage of production when wheat is converted into flour by the miller and the third stage of production when flour is utilized by the baker to manufacture bread out of it. The miller and the baker have consumed wheat and flour respectively in the course of their business. We have to understand the word consumes in Section 6(i) of the Act in this economic sense. At every stage of production, it is obvious there is consumption of goods even though at the end of it there may not be final consumption of goods but only production of goods with higher utility which may be used in further productive processes. Applying the above test, it has to be held that the assessees had consumed the paddy purchased by them when they converted it into rice which is commercially a different commodity.

27. In Ganesh Trading Co.s case (supra), this Court in para 5 at page 623 observed as under:Now, the question for our decision is whether it could be said that when paddy was dehusked and rice produced, its identity remained. It was true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy. It is a misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when paddy is dehusked and rice produced, there has been a change in the identity of the goods.

28. We have heard the learned counsel for the parties at length and carefully examined various judgments cited by the appellant and the respondents. It is an admitted position that the ingredients which are used in preparation of masala after grinding and mixing lose their own identity and character and a new product separately known to the commercial world comes into existence. According to the ratio in Pyare Lal Malhotras case (supra) that the sales tax is intended to tax sales of different commercial commodities and not to tax the production or manufacture of particular substances out of which these commodities may have been made. Since separate commercial commodities emerge into existence, they become separately taxable goods or entities for the purpose of sales tax.

29. In view of the settled legal position as forcefully articulated in Pyare Lal Malhotra and Rajasthan Roller Flour Mills Association's cases (supra), the masala powder prepared after grinding and mixing of various spices and condiments in certain proportion is commercially a different commodity liable to be taxed.

30. In view of our clear conclusion, based on a series of decisions of this Court, the appeals filed by the appellant, being devoid of any merit, are accordingly dismissed. In the facts and circumstances of the case, we direct the parties to bear their own costs.