

SUPREME COURT OF INDIA

Additional Commissioner (Legal), Commercial Taxes, Rajasthan

Vs.

Lohiya Agencies

C.A.No.180-186 of 2019

(Ranjan Gogoi and Sanjay Kishan Kaul, JJ.,)

08.01.2019

JUDGMENT

Sanjay Kishan Kaul, J.,

SLP(C)No.3194-3200/2018

1. Leave granted.

2. 'Gypsum' (calcium sulphate dihydrate - $\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$) is a natural mineral which is used in a variety of activities and products like pesticides, as a soil additive, as a water additive, as a food additive, for plant treatment, but, more importantly, in the present context, for construction purposes. Under the Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as 'RVAT'), Entry 56 of Schedule IV specified 'Gypsum' as a taxable entity, at This Entry was, however, amended and substituted vide Notification No. F.12(63)FD/Tax/2005-19, dated 19.4.2006, notified, inter alia, to expand the meaning of Entry 56 of Schedule IV of the RVAT by changing it to 'Gypsum in all its forms'. The short question which arises for consideration in the present appeal is whether 'gypsum board' would fall within this Entry 56, and be taxed at 4%, for the relevant assessment years, or whether it would fall in the then residuary Entry 1 of Schedule V, to be taxed at 12.5%.

3. The brief facts which have given rise to the present dispute are as follows. M/s. Indian Gypsum Ltd. (hereinafter referred to as 'IGL'), a manufacturer of what is commonly known as drywall or 'gypsum board', moved an application under Section 36 of RVAT before the Additional Commissioner, Commercial Tax Department, Rajasthan, Jaipur for ascertaining whether gypsum board would fall within the category of the amended Entry 56 of Schedule IV of the RVAT, with 4% rate of tax applicable, or under the residuary Entry referred to aforesaid. The Additional Commissioner, vide order dated 27.9.2007, opined that 'gypsum board', being commercially a different product would not fall under Entry 56 of Schedule IV of the RVAT but would fall under the residuary Entry, making it subject to the 12.5% slab of taxation. The gravamen of reasoning of the Additional Commissioner, as found from the order, is that 'gypsum board' is a separate commercial product using a different name and

thus the factum of 95% of the 'gypsum board' being constituted of gypsum is not relevant, as supported by the fact that a long manufacturing process is involved in preparing 'gypsum board', wherein in addition to the calcination process, additives, paper, foam, water etc., are used, resulting in the formation of a product having uses, quite dissimilar to gypsum.

4. M/s. Lohiya Agencies/respondent No.1, is stated to be a merchant dealing in 'gypsum board' procured from IGL and, thus, came to be assessed by the Commercial Tax Officer for the assessment year 2006-07 and 2007-08 on 25.8.2007, post-inspection of his premises. Since the sale of gypsum board has been made with the VAT rate at 4% despite the said goods not falling under Entry 56 of Schedule IV of the RVAT, it was alleged by the Tax Department that there was tax evasion which led to initiation of proceedings under Sections 25, 55 & 61 of RVAT and the respondent firm was made liable to pay the differential tax of 8.5% for the assessment years, along with penalty and interest. The endeavours of the respondent No.1, assessee, before the Deputy Commissioner (Appeals) failed in terms of order dated 2.1.2009 and also before the Rajasthan Tax Board vide order dated 21.11.2012. This culminated in a revision petition being filed before the Rajasthan High Court which, however, reversed the views expressed by the forums below, in terms of the impugned order dated 3.2.2017. In arriving at such a conclusion, the High Court relied upon judgments of the Bombay High Court in *Commissioner of Sales Tax, Mumbai v. India Gypsum Ltd*¹. and the Supreme Court in *The States of Gujarat v. Sakarwala Brothers*² as well as in *Trutuf Safety Glass industries v. Commissioner of Sales Tax, U.P*³.

5. We have had the benefit of arguments and reference to judicial pronouncements, by both the parties before us with Mr. Harsha Vinoy, learned counsel canvassing the case of the appellant, while on behalf of the respondent No.1, the submissions were made by Mr. M.P. Devanath, learned counsel.

6. In our considered view, to truly appreciate the controversy at hand, two aspects have to be kept in mind. Firstly, the change of the Entry by a conscious decision of the legislature, whereby the Entry of mere 'gypsum' was changed to 'gypsum in all its forms'. This certainly signified that something more than basic gypsum was sought to be included in the Entry by referring to 'gypsum in all its forms'. The sequitur would be whether 'gypsum board' would fall in the expanded definition of 'gypsum in all its forms' or whether it is completely a different product.

7. Secondly (it is really in order to appreciate the first), what is the original composition of gypsum, and how does the processing convert it into gypsum board, would have to be examined.

8. Gypsum wallboard is a cellulosic composite material, also known as drywall, used as an interior wall in many building applications and also in limited external applications. This composite material consists of a flat board comprising of a gypsum core with the external surfaces covered with paperboard. The result is a three-layer composite composed of paper/gypsum/paper. The primary raw material continues to be gypsum mineral [Calcium Sulphate Dihydrate (CaSO₄.2H₂O)] and cellulose.

9. A perusal of the material available in public domain on manufacture of gypsum board shows a common thread insofar as methodology is concerned. It will be useful to extract the process from one such material as under:-

"Gypsum board is manufactured in a two step process. In the first step, finely crushed and ground gypsum [calcium sulphate dihydrate ($\text{CaSO}_4 \cdot 2\text{H}_2\text{O}$)] is heated and partially dehydrated (Calcined) to Calcium Sulphate Hemihydrate ($\text{CaSO}_4 \cdot \text{H}_2\text{O}$), called stucco in the industry, also popularly known as 'Plaster of Paris'. A unique characteristic of stucco is that when it is mixed with the proper amount of water, it forms a smooth plastic mass which can be molded into any desired shape. When the hardening has been completed, the mass has been chemically restored to its rock-like state.

This characteristic has also been used in the development and production of gypsum board. In the second step of manufacturing process stucco is mixed with number of additives, foam and an excess amount of water to prepare gypsum slurry which is extruded on a fast moving, continuous board production line between two layers of special gypsum papers. 'Raw' gypsum board is then allowed to fully hydrate - calcium sulphate hemi hydrate is converted back to dihydrate - before it is cut to desired size and before it enters a 'gypsum kiln', where at elevated temperature the excess water is driven off."

10. In commercial terms, 'gypsum board' is defined as gypsum between two paper sheets. Gypsum derived from recycled gypsum board can be used in many ways in which gypsum is originally used too, such as –

- (a) The manufacture of new drywall
- (b) Use as an ingredient in the production of cement
- (c) Application to soils and crops to improve soil drainage and plant growth
- (d) A major ingredient in the production of fertilizer products
- (e) An additive to composting operations

11. If we look into other forms of gypsum, where gypsum is innately present in the end product, two examples stare at us: (i) Plaster of Paris and (ii) gypsum blocks. Plaster of Paris (stucco) is merely calcinated calcium sulphate, a dehydrated form of gypsum. Gypsum Blocks, on the other hand, are composed of gypsum plaster, water and in some cases additives like vegetable or wood fibre, for greater strength. The gypsum boards are used as thinner plasterboards for paneling stud walls. The aforesaid material itself gives rise to the conclusion that there are no major chemical changes in gypsum which are carried out other than dehydration and mixing of additives, so that the paper sheets can be used on both sides,

to be made capable of being used as a board.

12. Keeping in mind the aforesaid factual findings, let us turn to the judicial views dealing with the subject in question, whether relating to gypsum board or in respect of other products, where there is derivation of some other end product. (1) Commissioner of Sales Tax, Mumbai v. India Gypsum Ltd. (supra) The Division Bench of the Bombay High Court was concerned with a similar legal conundrum as to whether 'gypsum board' would fall under the Entry C-41 of the Maharashtra Value Added Tax Act which reads as 'gypsum of all forms and descriptions'. The court opined that the legislature having used the phraseology, some meaning would have to be assigned to the words by which there would be an explanation of the terminology. The Division Bench, relying on the case of State of Gujarat v. Sakarwala Brothers (supra) observed that the expression 'form' was used for items with various shapes, sizes as well as uses vis-a-vis the original product. It was the chemical composition of the substance in question that mattered for deciding whether it fell within the scope of a particular Entry. Since the main composition of gypsum board continues to be gypsum, which takes the form of the board, gypsum board was held to fall in Entry C-41 of the Maharashtra Value Added Tax Act. (2) Trutuf Safety Glass Industries v. Commissioner of Sales Tax (supra) This judgment has been used as an aid in the impugned order to support the conclusion in favour of the assessee.

'12 The word 'form' connotes a visible aspect such as shape or mode in which a thing exists or manifests itself, species, kind or variety. The use of the word 'in all forms' is different from the expression 'all kinds'. The conceptual difference between the words "all kinds' and 'in all forms' is that the former multiplies items of the same kind while the latter multiplies the same commodity in different forms. The use of the word 'in all forms' widens the scope of the Entry.'

13. It is settled position in law that while interpreting the entry for the purpose of taxation, recourse should not be made to the scientific meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. This is what is known as "common parlance test'

20. The question is not what may be supposed and has been intended but what has been said. 'Statutes should be construed not as theorems of Euclid". Judge Learned Hand said, "but words must be construed with some imagination of the purposes which lie behind them'. (See Lenigh Valley Coal Co. v. Yensavage) "

(emphasis supplied)

(3) State of Gujarat v. Sakarwala Brothers (supra) The interpretation of Entry 47 of Schedule A to the Bombay Sales Tax Act came into question as to whether patasa, harda and alchidana were 'forms' of sugar containing more than 90% of sucrose. Since the chemical composition of all three was the same and they could be converted back into sugar upon being dissolved in water, and being subjected to 'appropriate processes', the court opined in favour of the assessee. The Bench noted with approval

that in a similar line pertaining to the question of whether hydrogenated groundnut oil continued to be groundnut oil, notwithstanding it was opined that two conditions have to be satisfied - firstly, it must be from groundnut oil and secondly, it must be oil. Since hydrogenated oil was from groundnut and, in its essential nature it remained an oil and continued to be used for the same purpose as groundnut oil, the hydrogenated oil did not alter its character as oil despite being semisolid.

(4) *State of Jharkhand and Ors v. LA Opala R.G. Ltd.* This court examined whether glassware manufactured by the assessee could be understood to be a 'type of glass or glass sheet' so as to be taxable at the rate of 3% vide notification S.O No. 25, dated 25.06.2001, issued by the government of Jharkhand. It was observed as under:

'22. It is a settled law that in taxing statutes the terms and expressions must be seen in their common and popular parlance and not be attributed their scientific or technical meanings. In common parlance, the two words "type" and "form" are not of the same import. According to the Oxford Dictionary, whereas the meaning of the expression "types" is "kind, class, breed, group, family, genus"; the meaning of the word "form" is "visible shape or configuration of something" or the "style, design, and arrangement in an artistic work as distinct from its content". Similarly, Macmillan Dictionary defines "type" as "a group of people or things with similar qualities or features that make them different from other groups" and "form" as "the particular way in which something appears or exists or a shape of someone or something". Therefore, "types" are based on the broad nature of the item intended to be classified and in terms of "forms", the distinguishable feature is the particular way in which the items exist. An example could be the item "wax". The types of wax would include animal, vegetable, petroleum, mineral or synthetic wax whereas the form of wax could be candles, lubricant wax, sealing wax, etc.'

(emphasis supplied)

(5) *Rajasthan Roller Flour Mills Assn v. State of Rajasthan* Whether flour, maida and suji would fall under the meaning of the item 'wheat' under Section 14 of the Central Sales (Tax) Act was the question. The relevant extract is as under:

23. The following observations of Venkataramiah, J. in *Raghurama Shetty [(1) Ganesh Trading Co. v. State of Haryana, (1974) 3 SCC 620 : 1974 SCC (Tax) 100 : (1973) 32 STC 623; (2) Babu Ram Jagdish Kumar and Co. v. State of Punjab, (1979) 3 SCC 616 : 1979 SCC (Tax) 265 : (1979) 44 STC 159 and (3) State of Karnataka v. Raghurama Shetty, (1981) 2 SCC 564 : 1981 SCC (Tax) 134 : (1981) 47 STC 369]* can usefully be quoted: (SCC pp. 566-7, paras 8-

11) "There is no merit in the submission made on behalf of the assessee 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 of consumers' goods or final utilisation of

consumers' goods by consumers involving activities like eating of food, drinking of 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 assessee had consumed the paddy purchased by them when they converted it into rice which is commercially a different commodity."

'24. Applying the reasoning adopted hereinabove, it must be held that when wheat is consumed for producing flour or maida or suji, the commodities so obtained are different commodities from wheat. The wheat loses its identity. It gets consumed and in its place new goods/commodities emerge. The new goods so emerging have a higher utility than the commodity consumed. They are different goods commercially speaking.'

(emphasis supplied)

(6) AHadi Venkateswarlu & Ors. v. Govt, of Andhra Pradesh & Ors. Whether parched rice and puffed rice would fall under Entry 66(b) of Schedule I to the Andhra Pradesh General Sales Tax Act,1957 which read 'rice obtained from paddy that has met tax under the Act' was the question examined.

"12. Even if parched rice and puffed rice could be looked upon as separate in commercial character from rice as grain offered for sale in a market, yet, keeping in view the other matters mentioned above, it could not be presumed that it was intended to exclude from entry 66 "rice", which at any rate, had not so changed its identity as not to be describable as "rice" at all. 'Muramaralu' was after all rice even though it was puffed. 'Atukulu' even though parched was still called rice. We must also remember that the schedule which we have to interpret is in the English language where the term rice is still found in the rendering or description of 'palalu' as well as that of 'muramaralu' in the English language. And, in any case, if two interpretations of a provision are possible, we think that we ought to, in such a case, apply the principle that the interpretation which favours the assessee should be preferred."

(emphasis supplied)

(7) Tungabhadra industries Ltd. v. The Commercial Tax Officer, Kurnool (supra)

In this judgment already referred to aforesaid, the following extract may be useful for our purpose:

"08. 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 in(sic.) 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."

(emphasis supplied)

The aforesaid observations are important as inter-molecular or configurational chemical changes that resulted in the hardening of the oil was held not to exclude it from the Entry.

Our view

13. On giving consideration to the matter in issue, we find that the amended Entry 56 of Schedule IV of the RVAT, read as 'gypsum in all its forms', would include 'gypsum board' under the term 'all its forms'.

14. We are persuaded to come to the aforesaid conclusion on the basis that, it can hardly be doubted that a meaning has to be given to the Entry made by the legislature, expanding the original Entry from 'gypsum' to 'gypsum in all its forms'. If the object was to include only 'gypsum', then why would the Entry be changed to 'gypsum in all its forms'? The corollary would also be as to what is meant by 'in all its forms', as it is not, as if mere geometrical alteration of a shape would form part of the Entry. In such a situation, the original Entry itself was comprehensive enough to have included it. We have noticed the view taken by the Bombay High Court in an almost identical situation except that the Entry there was 'of all forms and descriptions'. But the discussion was more or less confined to the expression 'of all forms'. This court in Sakarwala Brothers (supra) observed that it was the chemical composition of the substance in question that mattered, to decide whether it would fall within the scope of a particular Entry. In the present case, there is really no chemical change which occurs in the substance as dehydration only reduces the water content and thereafter, it is mixed with additives for the purpose of increasing bonding and other related purposes. Substantively, the character of 'gypsum' is not changed in the mechanical exercise of converting it into a board along with, of course, certain chemical processes of heating and mixing, to achieve an ultimate objective.

15. The observations of this Court in *Trutuf Safety Glass Industries (supra)* are of significance, where a distinction is sought to be made between the words 'in all forms' as juxtaposed to the expression 'all kinds'. The words 'all kinds' are said to be restricted to multiple items of the same kind, while the expression 'in all forms' is to multiply the same commodity into different forms. Therefore, different 'forms' of gypsum would get included in the expression 'in all forms'.

16. A reference to the timeless statement of Hand, J. that 'words must be construed with some imagination of the purposes which He behind them', would require us to construe the expression 'in all forms' being added to 'gypsum' to naturally include not only just gypsum in its original form but in different forms as well.

17. To fully understand the scope of Entry 56 of Schedule IV of the RVAT, we have looked into the manufacturing process of gypsum board. A reference to the extract aforesaid would show that the initial steps are of only crushing and grinding the gypsum whereafter it is heated and partially dehydrated, which in turn is called 'stucco' or 'Plaster of Paris'. There does not appear to be any doubt that such 'stucco' would form part of the Entry 'in all its forms'. The unique characteristic of stucco, when mixed with water, is that the smooth plastic mass so formed can be molded into the desired shape, which obtains its rock-like state on hardening. This very characteristic is stated to be used in the development and production of gypsum board. In the second step of the manufacturing process, stucco is mixed with a number of additives in an excess amount of water to prepare a slurry, to be ultimately converted back into a dehydrated form, before being cut into desired sizes. Not only that, 'gypsum board' is defined as real gypsum between two paper sheets. Will that take away from the description of gypsum? We think not. Even if the sheets are added, the wide description 'in all its forms' would certainly include 'gypsum board'.

18. In the case of *Sakarwala Brothers (supra)*, the factum of there being the same chemical composition of patasa, harda and alchidana and the ability to convert them back into sugar on being dissolved in water and on being subjected to other 'appropriate processes', resulted in a finding that they would be included as 'any form of sugar'. In fact, gypsum board, devoid of its top and bottom boards, can be utilized, with some processing, in a similar manner as gypsum. When the meaning of the word 'form' is meant to include 'visible shape or configuration of something', as observed in *State of Jharkhand (supra)*, we cannot see any reason why gypsum board would not form a part of the expanded terminology 'in all its forms'.

19. In the same line, this Court in *Alladi Venkateswarlu (supra)*, has given an expanded definition to 'rice obtained from paddy that has met tax under the Act' to include parched rice and puffed rice within the term 'rice' as it had not changed its identity so as to not be describable as 'rice' at all. A broad interpretation was, thus sought to be given by applying the 'common sense' rule of interpretation. Similarly, this Court in *Tungabhadra Industries Ltd (supra)* observed that even if an inter-molecular or configurational chemical change takes place which results in hardening of the oil, its nutritional properties continue to be the same. Moreover, even if it acquires new properties, in the sense that the tendency to turn rancid is

greatly removed and it is easier to transport, 'hydrogenated groundnut oil' was held not to be excluded from the original Entry of 'groundnut oil'.

20. All the aforesaid examples show that wherever an expression 'in all its forms' is used, it has resulted in an expanded meaning, which is a logical corollary of such an expression being added to the original Entry. To take a view to the contrary in the given situation would amount to giving no meaning to the added expression as there are really not too many possibilities on what could have been included in such an expression.

21. We may also note another fact which has come to our notice that in terms of notification No.S.O.36.No.F.12(59)FD/Tax/2014-14 dated 14th July, 2014, the RVAT was amended to include, in Schedule V, a separate Entry under item No.19(viii) 'gypsum board and other false ceiling material'. Thus, the legislature by a conscious decision in 2014, sought to create a separate Entry for gypsum board, which was not the case in respect of the assessment years in question. This, in our view, belies the endeavor to include gypsum board in the residuary Entry, before such specific inclusion as then there would have been no need for such an Entry. The obvious attempt is to exclude it from 'gypsum in all its forms' in Schedule IV of RVAT and create a separate Entry in Schedule V, whereafter it would naturally be governed by the tax rate applicable to the Entry in question.

22. We, thus, dismiss the appeals leaving it open to the parties to bear their own costs.