IN THE HIGH COURT OF ORISSA AT CUTTACK

STREV No.31 of 2011
&
STREV Nos.19, 20, 21, 22, 23, 24, 36, 37, 40 and 41 of 2013

AFR

State of Odisha represented by Commissioner of Sales Tax, Cuttack .... ***Petitioner***

-versus-

M/s. Geetashree Industries .... ***Opposite Parties***
(In STREV No.31 of 2011)

M/s. Maa Uttarayani Roller Flour Mill
(In STREV No.19 of 2013)

M/s. Maa Bhuasuni Roller Flour Mill
(In STREV No.20 of 2013)

M/s. Shree Mahadevi Dal & Oil Mill
(In STREV Nos.21, 23 & 24 of 2013)

M/s. Shree Hanuman Dal Mill
(In STREV No.22 of 2013)

M/s. Shree Balaji Dal & Flour Mill
(In STREV No.36 of 2013)

M/s. Shree Jagannath Industries
(In STREV No.37 of 2013)

M/s. Madanlal Agarwalla
(In STREV No.40 of 2013)

M/s. Trupti Dal & Flour Mill
(In STREV No.41 of 2013)

Advocates, appeared in these cases:

For Petitioner : Mr. Sunil Mishra,
Additional Standing Counsel

For Opposite Parties : None

CORAM:
THE CHIEF JUSTICE
DR. JUSTICE S. K. PANIGRAHI

JUDGMENT
02.08.2022

Dr. S. Muralidhar, CJ.

1. These revision petitions by the State of Odisha ('Department') seek to urge a common question of law for consideration, viz. "Whether 'Chuni', which is a by-product of 'Dal' i.e. pulses including broken pulses, its husk, chilka and dust can itself be considered 'cattle feed', which is 'schedule goods' within the meaning of Sl. No.66 of Para-I of the Schedule attached to the Orissa Entry Tax Act, 1999 (OET Act)?"

2. The first of these revision petitions STREV 31 of 2011 arises from an order dated 5th February, 2011 of a Single Judicial Member of the Orissa Sales Tax Tribunal, Cuttack (Tribunal) dismissing the appeal of the State of Odisha thereby upholding the order dated 7th March, 2009 of the Deputy Commissioner of Sales Tax, Puri (DCST) holding that 'Chuni' does not come within the scope of the entry 'cattle feed' as it is only one of the raw materials for preparation of the cattle feed and, therefore, not amenable to entry tax.

3. The challenge in the next petition again by the Department i.e. STREV 19 of 2013 is to an order dated 5th January, 2013 of a Two-Member Bench of the Tribunal holding likewise. The other petitions by the Department are against orders of Single Member Benches of the Tribunal holding likewise.

4. The ground on which the plea of the Department has been negatived is that in terms of Section 26 of the OET Act, the manufacturer is to collect tax only towards sale of 'finished products'. Therefore, 'Chuni' being a by-product is not liable to Entry Tax.

5. Mr. Sunil Mishra, learned Additional Standing Counsel for the Department, submits that another Single Member of the Tribunal had taken a contrary view by an order dated 19th August, 2010 while allowing the Department 's appeals in the case of ***State of Orissa v. M/s. Madanlal Agarwalla*** as well as batch of appeals, which included the very same Opposite Party in STREV No.31 of 2011 (M/s. Geetashree Industries), which was for a different year and, therefore, either the matter should have been referred by the SJM to a Larger Bench or the said order should have been followed.

6. The Court finds that barring the Single Member order dated 19th August, 2010 in *M/s. Madanlal Agarwalla (supra),* all of the other orders of the Tribunal against which the present revision petitions have been filed by the State and which are subsequent orders (one of them by a Two-Member Bench) have consistently held that 'chuni' is by itself not 'cattle feed'.

7. Nevertheless, the Court considers it appropriate to settle the issue since it may lead to unnecessary confusion if inconsistent orders were to be passed by the different Benches of the Tribunal.

8. The relevant entry which is at Sl. No.66 of Part-I of the Schedule appended to the OET Act reads as under:

"66. Cattle feed, Prawn feed and poultry feed."

9. The product, which is sought to be subject to entry tax, is admittedly 'Chuni', which is nothing but husk of pulses. It is a by-product, which comes into existence during the process of manufacturing 'Dal' i.e. pulses. This is not in dispute. Also what is not in dispute is that 'Chuni' is not independently sold as 'cattle feed'. It is used to make cattle feed. There are 17 other ingredients which go to make cattle feed apart from 'Chuni'. These include De-oiled Rice bran, Maize, Jawar, Kuthi, Wheal bran cakes and De-oiled cakes (groundnuts), Till oil cake (black)/sunflower DOC/Soyabean DOC, Biri, Chuni, Moong chuni and molasses etc. This apparently was evident from a tender call notice published by Orissa State Cooperative Milk Producers' Federation Ltd. (OMFED) in 2008.

10. Another indication was the list of exempted goods under Schedule-A of the Orissa Value Added Tax Act (OVAT Act). Chokad, which is nothing but husk of 'Dal', is shown at Sr. No.3 of Schedule-A of the OVAT Act pertaining to exempt goods. Cattle feed has been separately mentioned with Chokad. In other words, both are not one and the same although Chokad could be

an ingredient of cattle feed. This is the logic that appears to have prevailed with the DCST, who passed the order dated 7th March 2009, which was upheld by the SJM of the Tribunal by the order dated 5th February, 2011.

11. Turning now to the order of the Single Member Chairman of the Tribunal dated 19th August, 2010 holding the contrary view, it is seen that it has relied on decision pertaining to 'cattle fodder' but in the context of exemption from tax granted to such product. For instance, in ***Garg Cattle Feed Industry v. Food Corporation of India, (2009) 23 VST 99 (P&H)***, the question was whether 'cattle fodder' or 'cattle feed' would be exempted within the contemplation of exempt notification. This was the same context in ***Anand Taluka Co-operative Cotton-sale Ginning and Pressing Society Ltd. v. The State of Gujarat (1980) 45 STC 63*** held that Cotton oil-cake amounts to 'cattle feed'. Again, in ***Kamadhenu Trading Company v. The State of Tamilnadu, (1985) 60 STC 108***, it was held that hay, straw or rice bran or husk and dust of pulses and grams are normally used as 'cattle feed'. All of these were in the context of exemption notifications which exempted certain products from the ambit of taxation. It is in the same context in which the decision in ***Sun Export Corporation v. Collector of Customs, (1998) 111 STC 69 (SC)*** was rendered.

12. However, it cannot be straightaway inferred, on the above basis as has been done by the Single Member Chairman of the Tribunal, that even in the context of bringing a product within the

ambit of tax under the OET Act, the same principle would apply and therefore, 'Chuni' is not a distinct commodity compared to 'cattle feed'.

13. It is one thing to say that a certain product was exempted for the purposes of taxation by virtue of interpretation of an exemption notification, it is another to say that it is amenable to tax by bringing it within the ambit of another product shown in the Schedule to the OET Act and, therefore, bringing it within the fold of taxation. The approach to both cannot be the same. The following passage in ***Principles of Statutory Interpretation*** by Justice G P Singh (13th Edition, 2012), p. 850-851 sets out the legal position lucidly:

"The general rule is strict interpretation of exemptions....There can, however, be no doubt that exemptions made with a benevolent object e.g. to encourage increased production or to give incentive to co-operative movement or for the purpose of developing urban or rural areas for public good....have to be liberally construed."

14. In ***Tata Oil Mills Co. v. Collector of Central Excise AIR 1990 SC 27*** where the exemption was allowed for use of indigenous rice bran oil in manufacture of soap, the question was whether it would be available even if soap is made from rice bran fatty acid derived from rice bran oil. It was observed in that context as under:

> "6....The requirement is that the soap manufacture should, to a prescribed extent, be from rice bran oil as contrasted with other types of oil. The contrast is not

> between the use of rice bran oil as opposed to rice bran fatty acid or hydrogenated rice bran oil; the contrast is between the use of rice bran oil as opposed to other oils. That is the ordinary meaning of the words used. These words may be construed literally but should be given their fullest amplitude and interpreted in the context of the process of soap manufacture. There are no words in the notification to restrict it to only to cases where rice bran oil is directly used in the factory claiming exemption and to exclude cases where soap is made by using rice bran fatty acid derived from rice bran oil. The whole purpose and object of the notification is to encourage the utilisation of rice bran oil in the process of manufacture of soap in preference to various other kinds of oil (mainly edible oils) used in such manufacture and this should not be defeated by an unduly narrow interpretation of the language of the notification even when it is clear that rice bran oil can be used for manufacture of soap only after its conversion into fatty acid or hydrogenated oil."

15. For instance in ***Sun Export Corporation v. Collector of Customs*** (*supra*), the relevant entry in the exemption notification read: "10. Animal feed including compound livestock feed." The word "including" therefore permitted a wider and liberal interpretation of the term 'animal feed'.

16. However, when it comes to bringing a product within the ambit of taxation, then the rule of strict interpretation has to apply. As explained in ***A.V. Fernandez v. State of Kerala AIR 1957 SC 657***

> "29…in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law. If the Revenue satisfies the Court that the case falls strictly within the provisions of the law, the subject can be taxed. If, on the

other hand, the case is not covered within the four corners of the provisions of the taxing statute, no tax can be imposed by inference or by analogy or by trying to probe into the intentions of the legislature and by considering what was the substance of the matter."

17. In ***Commissioner of Sales Tax, U.P. v. Modi Sugar Mills Ltd. AIR 1961 SC 1047***, the principle was explained thus:

> "10…In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency."

18. What perhaps is determinative is Section 26 of the OET Act, which clearly states that it is only a finished product which would be amenable to entry tax. Conscious of this, the Single Member Chairman tries to bring 'Chuni' within the ambit of a 'finished' and a separate 'commercial' product. However, the fact remains that 'chuni' or 'chokad' is only a by-product and not a complete finished product in itself. The finished product as far as the present case is concerned is 'cattle feed' which is what is mentioned in Entry 66 of the Schedule to the OET Act. So, the question to be asked is can in the context of Section 26 of the OET Act read with Entry 66 'Chuni' to be considered in itself to be a finished product and, therefore, not different from 'cattle feed'? The answer to this has to be in the negative since 'Chuni' is one of the 16 ingredients into the making of 'cattle feed' and it is

not the same thing as 'cattle feed' as occurring in Entry 66 of the Schedule to the OET Act.

19. Viewing it from another perspective, which is the trade parlance perspective, if one were to seek to buy 'cattle feed' in the market for such product, would one be given plain 'chuni'? Again, the answer has to be in the negative. Clearly the traders in such products would understand the distinction between the two. As explained in ***Indian Aluminium Cables Ltd. v. Union of India (1985) 3 SCC 284***,

> "12…in determining the meaning or connotation of words and expressions describing an article in a tariff schedule, one principle which is fairly well settled is that those words and expressions should be construed in the sense in which they are understood in the trade, by the dealer and the consumer. The reason is that it is they who are concerned with it, and, it is the sense in which they understand it which constitutes the definitive index of legal intention."

20. For all of the aforementioned reasons, the Court is of the view that 'Chuni' which is the by-product of 'Dal' is not 'cattle feed' and is therefore not amenable to entry tax. Accordingly, there is no merit in any of these revision petitions and they are, therefore, dismissed as such.

(S. Muralidhar)
Chief Justice

(Dr. S. K. Panigrahi)
Judge

M. Panda