IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No. 1009 of 2010
With
TAX APPEAL No. 1010 of 2010

For Approval and Signature:

HONOURABLE MR.JUSTICE V. M. SAHAI
HONOURABLE MR.JUSTICE N.V. ANJARIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MORVI VEGETABLE PRODUCTS LTD - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR TANVISH BHATT FOR M/S WADIA GHANDY &CO for Appellant(s) : 1,
MR KABIR HATHI AGP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE V. M. SAHAI
and
HONOURABLE MR.JUSTICE N.V. ANJARIA

Date :28/09/2012

CAV JUDGMENT

(Per : HONOURABLE MR.JUSTICE N.V. ANJARIA)

These two appeals arise out of common judgment dated 15th June 2009 of the Gujarat Value Added Tax Tribunal, Ahmedabad, in Second

Appeals No.576 of 2003 and 577 of 2003 corresponding to years 1998-1999 and 1999-2000 respectively, whereby the Tribunal dismissed the appeals of the appellant-assessee. As the facts are similar and the issue is common, both the appeals are being considered and decided together.

2. At the time of admission, this Court formulated the following substantial question of law, which is common in both the appeals.

> *"Whether on the facts and in the circumstances of the case, the Appellate Tribunal was right in law in holding that there should not be any process or thing in between production of oil and sale thereof for the purpose of compliance of condition and for claiming benefit under Entry No.11(2) incorporated under section 49(2) of the Gujarat Sales Tax Act, 1969?"*

3. The appellant is engaged in the business of manufacturing and selling of groundnut oil, Vanaspati ghee etc., and is a registered dealer under the provisions of Gujarat Sales Act, 1969, (hereinafter referred to as 'the Act' for sake of brevity). The appellant purchases oil seeds (*raida*) against Form No.24B which are crushed, and therefrom edible oil (*raida* oil) is manufactured. A part of edible oil manufactured is sold directly in the market, and the other part of the quantity out of the total is utilized to obtain what is called as Vanaspati ghee by processing the same.

3.1 Section 49(2) of the Act deals with exemptions. Subsection (2) thereof inter alia provides that the State Government may in public interest by a notification published in Official Gazette exempt any specified class of sales or of purchases from payment of the whole or any part of the tax payable under the provisions of the Act. In exercise of powers available

under section 49(2), the State Government issued the notification, the extract of which showing relevant Entry No.11(2) is as under:

Sr.No.	**Class of Sales or Purchases**	**Exemption whether or whole or part of tax**	**Conditions**
11(2)	Purchases of oils seeds other than groundnut, peanut or castor seeds by a dealer who is an oil miller.	To the extent to which the amount of purchase tax under section 19B of the Act exceeds two paise in the rupee.	If the oil miller uses the seeds so purchased in the manufacture of edible oil or washed cotton seed oil for sale which shall not take place outside the State of Gujarat.

3.2 As per the aforesaid Entry, purchases of oil seeds other than groundnut, peanut or castor seeds by a dealer, who is an oil miller, would qualify for exemption. The exemption column provides that the exemption would be to the extent to which the amount of purchase tax under section 19B of the Act exceeds two paise. If the Entry applies and the conditions thereof are satisfied, the sales tax would be assessed at 2%, otherwise, the rate of tax applicable would be 4%. It is the condition for claiming exemption that the seeds purchased should have been used by the oil miller in manufacture of edible oil or washed cotton seed oil for sale, and further that such sale shall not take place outside the State of Gujarat.

3.3 The appellant is a dealer, and also an oil miller. The purchases in question are Raida seeds, which are not groundnut, peanut or caster seeds. The conditions to the above extent are satisfied. The appellant manufactures edible oil, which qualifies for exemption under the entry. The

appellant claimed aforesaid benefit of concessional rate of tax in respect of Vanaspati ghee procured from the edible oil. By order dated 23.08.2002, the Assistant Sales Tax Commissioner, Circle-35, Rajkot, refused that benefit in respect of the quantity of Vanaspati ghee or edible ghee in respect of year 1998-1999. The appeal preferred by the assessee before the Deputy Sales Tax Commissioner, Circle-35, Rajkot, came to be dismissed by order dated 30.06.2003. It was held that the 2% rate of tax mentioned in Entry No.11(2) of the notification would not apply to the sale of edible ghee, which was a new item manufactured from edible oil (Raida oil), and that the concessional rate would be available to the direct sale of R*aida* oil.

3.4 The facts for year 1999-2000 in the other cognate appeal are similar, wherein also, the assessing authority and the first Appellate Authority on same consideration rejected appellant’s claim in respect of Vanaspati ghee. The appellant challenged the order of the Appellate Authority before the Tribunal, which culminated into the impugned common judgment of the Tribunal, giving rise to the present controversy.

3.5 In the context of above facts, the question which has fallen for consideration is `whether the commodity Vanaspati ghee obtained from edible oil (Raida Oil) would be covered by the aforementioned Entry 11(2) of the notification'.

4. We heard learned advocate Mr. Tanvish Bhatt for M/s Wadia Gandhi & Company for the appellants, and learned Assistant Government Pleader Mr. Kabir Hathi appearing for the respondent authorities in both the appeals at length.

4.1 Learned advocate for the appellant submitted that obtaining Vanaspati ghee from edible oil did not involve any manufacturing activity. He submitted that both the edible oil and Vanaspati ghee were essentially the same commodity. It was submitted that the Tribunal erred in holding that the appellant was not entitled to be benefited under Entry No. 11(2) on the ground that in conversion of vegetable oil into vegetable ghee, a manufacturing process was undergone. He submitted that all the conditions of the relevant entries were satisfied, and the benefit of exemption ought to have been granted in respect of the sale of vegetable ghee also. He submitted that the condition of the relevant entry did not prohibit processing of edible oil.

4.2 Learned advocate for the appellant further submitted that the Tribunal misinterpreted the entry as well as the law on the subject. He submitted that in any view the Entry No.11(2) in the notification was required to be construed liberally for the benefit of the dealer. He relied on decision of the Supreme Court in ***State of Maharashtra v. Shiv Dutt and Sons (84 STC 497)*** to contend that the edible oil and Vanaspati ghee were not different commodities. A decision in ***Shyam Oil Cake Ltd. v. Collector of Central Excise, Jaipur [(2005) 1 SCC 264]*** was relied on to submit that the apex court therein held that the process of refining edible oil did not amount to manufacture. Another apex decision in ***Champaklal H. Thakkar v. State of Gujarat (AIR 1980 SC 1889)*** was referred to in order to emphasise that Vanaspati is essentially an oil and would remain oil, and merely because it was subjected to certain process, it would not convert into any different substance, as was held therein. Lastly, learned advocate for

the appellant submitted that the Tribunal relied on the decision in ***Tungabhadra Industries Limited v. Commercial Tax Inspector (11 STC 827)*** by totally misreading it.

4.3 On the other hand, learned Assistant Govt. Pleader, Mr.Kabir Hathi, for the respondent, defended the impugned judgment, supported the view of the department, and submitted that when the Vanaspati ghee is produced from *raida* oil, it is a manufacturing process wherein altogether a different product comes out.

5. Before considering the issue and the rival contentions in detail, the definition of the term `manufacture' occurring in section 2(16) of the Act deserves to be noted, which reads as under:

> *""**manufacture"** with all its grammatical variations and cognate expressions, means producing, making, extracting, collecting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods; but does not include such manufactures or manufacturing processes as may be **prescribed;"***

5.1 As per the definition in section 2(16) above, one of the forms of manufacture is processing. For our purpose, the processing must result into `manufacture' as understood in legal parlance. What is `manufacture' and what amounts to `manufacturing process' have been the subject matter of consideration by the courts in catena of decisions under different branches of law. It would be useful to look into the relevant decisions on the aspect, keeping in view the principle stated by the Supreme Court in ***Ashirvad Ispat Udyog v. State Level Committee [(1998) 8 SCC 85],*** that for understanding the word `manufacture', its definition occurring in that

particular statute only and not in other Acts should be applied.

5.2 The Supreme Court in ***Chowgule and Company Pvt. Ltd. v. Union of India (47 STC 124)*** explained, the plain and natural meaning of the word `process',

> *"The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but with each process suffered, the commodity would experience a change. Wherever a commodity undergoes a change as a result of some operation performed on it or in regard to it, such operation would amount to processing of the commodity. The nature and extent of the change is not material. It may be that camphor powder may just be compressed into camphor cubes by application of mechanical force or pressure without addition or admixture of any other material and yet the operation may amount to processing of camphor powder as held by the Calcutta High Court in Om Parkash Gupta v. Commissioner of Commercial Taxes, What is necessary in order to characterise an operation as "processing" is that the commodity must, as a result of the operation, experience some change."*

5.3 In ***Orient Paper & Industries Ltd. v. State of M.P. [(2006) 12 SCC 468***] the Supreme Court quoted definition of word `manufacture' in Black's Law Dictionary, (5th Edn.) as extracted below:

> *"The process or operation of making goods or any material produced by hand, by machinery or by other agency; by the hand, by machinery, or by art. The production of articles for use from raw or prepared materials by giving such materials new forms, qualities, properties or combinations, whether by hand labour or machine".*

5.4 In ***The Dy. Commr. Sales Tax (Law), Board of Revenue (Taxes) v. M/s. Pio Food Packers (AIR 1980 SC 1227)*** the Supreme Court while dealing with the question `whether slicing of pineapple fruit to be sold in

sealed cans amounted to manufacture' held that it was not a manufacture, the Supreme Court deliberated the principles which are relevant to notice,

> *"There are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly, manufacture is the end result of one or more processes through which the original commodity is made to pass. The nature and extent of processing may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage. With each process suffered, the original commodity experiences a change. But it is only when the change, or a series of changes, take the commodity to the point where commercially it can no longer be regarded as the original commodity but instead is recognised as a new and distinct article that a manufacture can be said to take place. Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity."*
>
> *(para 5)*

5.5 In ***Commissioner of Sales Tax, U.P. v. Dr. Sukh Deo [(1969) 23 STC 385]*** Supreme Court held that the ingredients necessary to constitute `manufacture' are (i) there must be change in substance and different article must emerge having distinctive character, and used from the raw material by the use of physical labour or by mechanical process, (ii) the articles produced either by physical or by mechanical process will be on large scale, and will pass as commercial commodity from hand to hand.

5.6 The decision in ***Hiralal Ritmal v. Commissioner of Sales Tax [8 STC 325]*** of the Madhya Pradesh High Court which considered the meaning

of expression `manufacture' occurring in the Madhya Bharat Sales Tax Act, 1950, viewed that it was not necessary that there must be a transformation in the materials, and that the transformation must have advanced so far that new article is commercially known as a different one from the input material. All that needed was that the material should have been changed for modifying by men's art for industry to make out a capability of selling in an acceptable from which may satisfy some want, desire, a fancy or a taste of a man.

5.7 The ratio of ***B.P. Oil Mills Ltd. v. Sales Tax Tribunal (111 STC 1888)*** could be properly made applicable to the instant controversy, as the facts in that case were akin to the present case. The petitioner company before the Supreme Court was engaged in manufacture and sale of oils, and it used to refine different varieties of oils such as lin seed oil, castor oil, mustard oil, groundnut oil etc. These oils called `ordinary oils' were treated to remove acids present therein so as to ultimately transform them into refined oils. The issue was whether the refined oils would attract the same rate of tax as leviable in respect of ordinary oils. In that context the Supreme Court considered the definition of `manufacture' in section 2(e-1) of the U.P. Trade Tax Act, 1948, which envisaged processing and the same was almost similarly worded as the definition under section 21b) in our case.

5.8 The court discussed the word `process' quoting its explanation from the decision in ***Chowgule & Company (supra)***, and held that the treatment to the ordinary oils to obtain therefrom the refined oil would fall within the expression `manufacture'. It was observed,

> *“In view of the fact the activity of refining the ordinary oils for the purpose of making it to be refined oils amounts to `processing', one of*

the various forms of `manufacture', the petitioner would be deemed to be a manufacturer of the refined oils, and if it effects the first sale after the manufacture thereof in the State of Uttar Pradesh it will be liable to pay tax on the refined oil notwithstanding the fact that oils from which the refined oils were prepared had also been subjected to tax."

5.9 It was pertinently observed that whenever a commodity is subjected to any process of manufacture, it will become taxable at the hands of the dealer who effects its first sale. It was observed that a commodity, which was an outcome of manufacture, would be liable to tax at the point of sale by the manufacturer, and the incidence of tax emanates from the element of `manufacture' as defined in the Act, and not from the factum of transformation of the commodity into a new commodity.

5.10 In ***Amritsar Sugar Mills Company Limited v. U.S. Naurath (AIR 1965 Punjab 68)*** the Punjab High Court considered the very proposition `whether conversion of oil into vegetable ghee amounts to manufacture, with reference to provisions of East Punjab General Sales Tax Act, 1948'. It was though not in the direct context of word `manufacture', but in the context of definition of `purchase' in section 2(ff) of that Act, wherein the word `manufacture' occurred, it was held that no purchase tax was leviable because the conversion of oil into Vanaspati did not amount to `manufacture' within the meaning of section 2(ff). Following observations deserve to be noticed,

"The question that falls for determination in the present case is whether for the purposes of the East Punjab General Sales Tax Act the conversion of oil into vegetable ghee amounts to 'manufacture of vegetable ghee. In our view, it does, and lot of assistance can be derived from the Supreme Court decision in Delhi Cloth and General Mills Co's case, AIR 1961 SC 791. Moreover, the substance that is produced is a new substance known to the trade apart from oil. If

anybody goes to buy groundnut oil. in the market he will be given the oil in the liquid form. nobody will give him vegetable ghee manufactured from groundnut oil. He will have to specifically ask for Vanaspati ghee and if he wants Vanaspati ghee produced from groundnut oil he will have to say Vanaspati ghee produced from groundnut oil. Thus it will be apparent that in trade circles as well as the common man the oil and the vegetable ghee produced from that the common use in daily life, that is both server as a cooking medium."

"Moreover there is an additional use which is universally recognised top which the vegetable ghee is put. It is commonly used to adulterate pure ghee (animal fat). On the other hand groundnut oil or even refined groundnut oil without hydrogenation or without being solidified by any other process is wholly unfit for the purpose of adulteration with pure ghee. It is commonly used to adulterated pure oil or even refined groundnut oil without hydrogenation or without being solidified by any other process is wholly unfit for the purpose of raw groundnut oil for the manufacture of vegetable ghee is acquisition of goods for use in the manufacture goods for use in the manufacture of goods for sale within the meaning of session 2(ff) of the Act."

(para 11)

6. Now referring to the decisions relied on by learned advocate for the appellant in ***Shyam Oil Cake (supra)*** which was under the Central Excise Act, 1944, it was held by the Supreme Court that the duty paid edible vegetable oil when subjected to a certain process to refine it, was still not excisable. That decision is not relevant. Similarly, ***Champaklal (supra)*** would hardly apply to the issue involved here. Therein, the Supreme Court considered in the context of Sch. Part-I, Item 5 of the Minimum Wages Act, 1948 what is employment in an oil mill, and whether employment in a Vanaspati manufacturing concern was an employment in an oil mill. The word `oil' was considered in that background.

6.1 ***Shiv Dutt (supra)*** was distinguished in ***B.P. Oil Mills (supra)***, and it was observed that there the question was whether the process applied by the dealer of batteries by way of re-immersion of the plates of the batteries in electrolyte, and re-charging them with electric current before the sale to the consumer fell within the meaning of expression `manufacture', On facts the Supreme Court found that it was not manufacturing, because the dealer was doing nothing new to the battery in asmuch as the plates of the batteries, when manufactured, had already been subjected to the process of immersion in electrolyte and charging thereof with electric current.

6.2 The learned advocate for the appellant is right in submitting that in the impugned order the Tribunal wrongly relied on the decision in ***Tungabhadra (supra),*** and what it applied were the contentions of party and not the conclusions on the point. It is true that in ***Tungabhadra (supra)*** the Supreme Court was never considering the meaning of `manufacturing', but was dealing with the issue of interpretation of expression `groundnut oil' used in Madras General Sales Tax (Turnover and Assessment) Rules, 1939. ***Tungabhadra (supra)*** was explained and distinguished in ***B.P. Oil Mills (supra)*** by the Supreme Court and in ***Amritsar Sugar Mills (supra)*** also the Punjab High Court referred to and distinguished the same. However, Tribunal's error in relying *on* ***Tungabhadra (supra)*** does not help appellant's case in any way. The ultimate conclusion by it is correct and it relied on ***B.P. Oil Mills (supra)*** also.

7. Simply speaking `manufacture' connotes transformation of an article or a commodity into another one. Such transformation may be brought out

by any processes of whatever kind or degree. The essence of manufacture is that it will change the commodity to a new one. When a distinct commodity is brought out, normally the original stuff, article, commodity or raw material would lose its character. The acid test is that the new commodity or article has its distinct identity in the market. In other words, it has acquired its own commercial personality or identity to be brought and sold in the market as a separate commodity than one from which it is obtained.

7.1 Having regard to the judicial reasoning flowing from the decision above it appears that for the purpose of sales tax laws, the connotation `manufacture' means and relates more to the activity or process of bringing out new article or commodity having a marketable identity of its own, rather to the transformational changes in its mould. The change of internal characteristics or properties of the original material or commodity processed may be a test, but it is not the only test or an overriding test. The dominant yardstick for what is `manufacture' is the newness of commercial identity and distinct marketing character of the commodity.

7.2 An article or commodity can be said to be `manufactured' if in the eye of its prospective consumer, it is a new and separate in its application and use. If a customer goes to the market to buy edible oil, no seller would give him vegetable ghee manufactured from the edible oil. A customer would specifically demand or buy vegetable oil or vegetable ghee as per his need or want. A housewife would make distinction between edible oil and vegetable ghee while purchasing or using them, and would not treat both as one and the same commodity. Thus, in the trading community as well as

amongst the consumers' class the edible oil and vegetable ghee are two different commodities distinctly recognised. They both are brought, sold and used as separate commodities for different purposes.

7.3 Applying the above tests to the instant case, the vegetable ghee expressed out from the edible/vegetable oil is a manufacturing activity. The vegetable ghee is manufactured. It is obtained from edible oil by subjecting the edible oil to a process. It falls within `manufacture' definition of section 2(16) which is wide enough to encompass the variety of form such as producing, making, extracting, altering, furnishing or otherwise processing or adapting any goods. A commodity `vegetable ghee' which is processed out is a distinct commodity. In the market it is separately known and identified from edible oil.

7.4 The issue can be looked at from another standpoint. The condition requires that the seeds should be used in the manufacture of edible oil. The appellant does manufacture edible oil from the oilseeds it purchases. However, he subjects some quantity of edible oil to further process and procures there from vegetable ghee for which exemption is claimed. On the face of it the condition is not satisfied because admittedly seeds are not used for manufacturing the vegetable ghee directly. The exemption in tax is available only for manufacture of edible oil from oil seeds. The vegetable ghee is not manufactured from the oil seeds as such. There is a intermediary commodity edible oil. The edible oil is processed further to express the ghee. It is only edible oil which is covered under entry 11(2) and the vegetable ghee cannot come in the purview. The incidence of tax is event of sale. The Vegetable ghee obtained from vegetable oil is a

separately salable commodity in the market, having a tax event of its own.

8. In light of the above position of law emerging and for the reasons supplied hereinabove, the ultimate conclusion by the Tribunal is upheld, which are as under:

> *".... When it is found that there was a manufacturing process, it cannot be said that the appellant has used oil seeds purchased against form 24B in the manufacture of edible oil for sale. In the present case, the edible oil has not been manufactured for sale but between the manufacture of oil and it's sale, there is a manufacturing process as indicated above."*
>
> *".... the condition required as aforesaid for the application of entry 11(2) of a notification issued under sub-sec.2 of sec.49 of the Act has not been satisfied and hence the appellant is not entitled to the benefit of entry 11(2). Therefore, the appellant cannot claim that the sale of vegetable ghee should be taxed at 2% and not at 4%. On the other hand, the department is right when it has taxed the sale at 4% by rejecting the claim of the appellant to be assessed in terms of entry 11(2) of a notification issued under sub-sec.2 of sec. 49 of the Act."*

9. As a result, the question is answered against the assessee and in favour of the department. The appellate Tribunal was right in law in holding that there should not be any process or thing in between the production of oil and sale thereof for the purpose of compliance of condition and for claiming benefit under entry No.11(2) incorporated under section 49 in question.

10. Both the appeals are accordingly dismissed.

(V.M. SAHAI, J.)

(N.V. ANJARIA, J.)

(SN DEVU PPS)