

A.F.R.

Court No. - 7

Case :- SALES/TRADE TAX REVISION No. - 21 of 2021

Revisionist :- M/S Balrampur Chini Mills Ltd.

Opposite Party :- Commissioner Of Commercial Taxes U.P.
Lko

Counsel for Revisionist :- Rishabh Pandey,Rahul Agarwal

Counsel for Opposite Party :- C.S.C.

Hon'ble Alok Mathur,J.

1. Heard Sri Rahul Agarwal, learned counsel for petitioner as well as Sri Sanjay Sarin, learned Standing Counsel for respondents.

2. By means of present revision, the revisionist has challenged the judgment of the Full Bench of the Commercial Tax Tribunal dated 25.02.2021 passed in Appeal No. 01 of 2021 whereby they have upheld the opinion / decision of the Commercial Tax Tribunal, Uttar Pradesh dated 18.08.2021 wherein it was held that revisionist is not entitled for the benefit of Notification issued by the State of U.P. dated 10.08.2017 wherein the industrial units registered under the U.P. G.S.T. Act, 2017 were entitled for concessional rate of tax on the price of diesel which is used in the process of manufacture of taxable goods against a certificate prescribed by the Commissioner.

3. It has been submitted by learned counsel for revisionist that revisionist is under the U.P. G.S.T. Act and is engaged in manufacture of sugar by its unit at Balrampur, Uttar Pradesh. It is stated that for the purpose of manufacture of sugar, the sugar-cane is purchased from the farmers which are brought by them to the cane purchase centre established within the reserved area or assigned area. From the cane purchase centres the sugarcane is transported by the revisionist industrial unit to the factory premises where it is crushed and ultimately results in manufacture of sugar and also other byproducts.

4. The controversy pertains to the purchase of diesel at concessional rate of tax as per Notification of the State Government dated 10.08.2017 where the concession could not be availed by the revisionist due to want of certificate of the Commissioner as prescribed therein.

5. The petitioner being aggrieved by non-issuance of the

certificate by the Commissioner had invoked the provisions of Section 59 of U.P. Value Added Tax (VAT) Act and referred the dispute to the Commissioner stating that they were fully entitled and eligible for being granted permission for purchase on concessional rate of tax of diesel but merely for want of a certificate by the Commissioner they were deprived of the same and consequently prayed that they should be declared to be eligible under the Notification dated 10.08.2017 entitling them to purchase diesel on concessional rate of tax.

6. The Commissioner by his opinion/order dated 04.12.2020 has rejected the application of the revisionist on two grounds. Firstly, that the crushing process starts only when the sugarcane reaches the factory premises and in the present controversy the petitioner is seeking purchase on concessional rate of tax on diesel for its transportation from the cane purchase centre to the factory premises. He was of the view that no aspect of 'manufacturer' is involved in transportation of sugarcane from cane purchase centre to the factory premises.

7. The second reason for rejecting the prayer of the revisionist was that with regard to transport from the cane purchase centre to the factory premises, the State Government in any case is covered by a Notification dated 07.12.2019 wherein the petitioner and the other Sugar Industries has been granted 42 paisa per quintal per kilometer rebate on the price of the sugarcane which is deducted from the farmer and accordingly, he was of the view that double benefit would accrue to the revisionist in case they were also given the benefit of the Notification dated 10.08.2017.

8. The revisionist being aggrieved by the order dated 04.12.2020 has preferred an appeal before the Commercial Tax Tribunal. The Commercial Tax by means of impugned judgment dated 25.02.2021 also upheld the order of the Commissioner, Commercial Tax dated 04.12.2020 against which the present revision has been filed.

9. The Commercial Tax Tribunal has also affirmed the opinion/order rendered by the Commissioner while rejecting the appeal preferred by the revisionist.

10. Learned counsel for revisionist has submitted that the first issue is pertaining to as to whether the process of manufacturing commences from Cane Purchase Centre or after the sugarcane reaches the factory premises is no longer in res-integra and a Coordinate Bench of this Court in the case of **M/s Triveni Engineering & Industries Ltd Vs. Commissioner Trade Tax, (Sales/Trade Tax Revision No. 1496 of 2004)** has extensively

dealt this aspect, as under:-

"6. The term used in Section 8(3)(b) of Act, 1956 is "for use by him in manufacture or processing of goods for sale", which are relevant for the purpose of present case since other items mentioned therein are not admittedly attracted. The question would be whether the two activities, in respect whereof revenue has found assessee guilty of violation, the purpose, for use of which, diesel was allowed to be purchased against Form-C, is one authorised or not.

7. In order to understand, it would be appropriate first to examine as to what is the actual way in which assessee claim aforesaid two activities to constitute part of manufacture and processing of goods.

8. The assessee deals in manufacture and sale of sugar for which sugarcane is the basic raw material. The sugarcane is produced by individual farmers. Sugarcane constitutes basic raw material for the assessee for manufacturing sugar. However, supply and purchase of sugarcane from farmers is not free, inasmuch as, it is controlled by statute and in Uttar Pradesh, it is regulated by U.P.Sugarcane (Regulation of Supply & Purchase) Act, 1953 (hereinafter referred to as "Sugarcane Supply and Purchase Act, 1953").

9. A sugar factory cannot purchase sugarcane from any farmer at its own volition but it is bound to purchase sugarcane only from such farmers, who are within a reserved area declared by Cane Commissioner for the purpose of a particular sugar factory, or assigned to it. For the purpose of sale and purchase of sugarcane in reserved or assigned area, State Government is empowered to regulate it vide Section 16 of Sugarcane Supply and Purchase Act, 1953. In this regard, it has framed rules namely U.P.Sugarcane (Regulation of Supply & Purchase) Rules, 1954 (hereinafter referred to as "Sugarcane Supply and Purchase Rules, 1954"). The factory owner is required to specify cane purchase centres throughout reserved area/assigned area so that farmers may not be required to transport sugarcane for long distance and factory owner himself would purchase sugarcane at those purchase centres and thereafter transport to its factory for its use. At purchase centres, factory owner is also obliged to provide weighment facilities and adequate labour for loading and unloading cane at such purchase centres. This is evident from Rules 38, 38-A and 39 of Sugarcane Supply and Purchase Rules, 1954. The sugarcane purchased by factory owner at purchase centres therefore, become property of factory owner at such purchase centres and therefrom, it has to be transported by him upto the

pithead in the factory for the purpose of its crushing.

10. It is not disputed by learned Standing Counsel that if the sugarcane is stored in factory premises itself, at some place, since a very large quantity thereof would be required continuously, and, if it is transported from that storage point to the pithead for crushing purpose, such transportation would form part of manufacture. In that view, I do not find why transportation of sugarcane from purchase centres to factory premises should be excluded from the term "manufacture of sugar". Nothing has been shown to this Court so as to pursue to take a different view in the matter.

11. The term "manufacture" has varied meanings and has got various shades. It has to be considered in the context of item, which is up for consideration. General understanding of term "manufacture" is that it means bringing into existence a new substance. The word "manufacture" implies a change but every change in the raw material is not manufacture.

12. In CST Vs. Lal Kunwa Stone Crusher (P.) Ltd., (2000) 118 STC 287 (SC) the Court said that definition of the word "manufacture" makes it clear that every activity in relation to goods not only alter the same but also processing the same has also been included.

13. The term "manufacture" includes any process or part of process for making, altering, ornamenting, finishing, taking, labelling or otherwise drawing or tapping with a view to sell or distribute in the context of a drug. The "manufacture" involves series of processes and includes any process incidental or ancillary to the completion of a manufactured product as held in Union of India Vs. Ahmedabad Electricity Co. Ltd., (2003) 11 SCC 129.

14. In the context of mining of ore, the Court in Chowgule & Co. Pvt. Ltd. and Anr. Vs. Union of India & Ors., AIR 1981 SC 1014 said:

"Where a dealer is engaged both in mining operation as also in processing the mined ore for sale, the two processes being interdependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site mined ore for sale, the two processes being interdependent, it would be essential for carrying on the operation of processing that the ore should be carried from the mining site where the mining operation comes to end to the place where the processing is carried on and that would clearly be an integral part of the operation of processing and if any

machinery, vehicles, barges and other items of goods are used for carrying the ore from the mining site to the place of processing, they would clearly be goods used in processing of ore for sale. It is obvious that, in the present case, the mining of ore is done by the assessee with a view to processing the mined ore through the Mechanical Ore Handling Plant at the Marmagao harbour and the entire operation of mining ore and processing the mined ore is one integrated process of which transportation of the mined ore from the mining site to the Marmagao harbour is an essential part and, in the circumstances, it is difficult to see how the machinery, vehicles, barges and other items of goods used for transporting the mined ore from the mining site to the Marmagao harbour can be excluded from consideration on the ground that they are not goods used in processing of ore for sale. The decision of this Court in Indian Copper Corporation case (supra) is directly in point and completely supports this conclusion which we are inclined to reach on principle. The assessee in that case was a company which mined copper and iron ore from its own mines, transported the ore to its factory and manufactured finished products from the ore for sale."

(emphasis added)

15. In J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. Sales Tax Officer, Kanpur and Anr., 1965 (1) SCR 900, the Court said that if a process or activity was so integrally related to the manufactured goods so that without that process or activity, manufacture may, even if theoretically possible, be commercially inexpedient, goods intended for use in the process or activity would qualify.

16. In the present case, sugarcane in its entirety cannot be purchased by sugar factory at its factory premises and under law, it is bound to purchase from the farmers at cane purchase centres. For manufacturing of sugar, crushing of sugarcane is an integral part and for that purpose, sugarcane has to be transported from its place of storage or where it has been purchased to the point of crushing pit where it has to be off loaded for crushing. To my mind, this is integrally connected part of process of manufacturing of sugar and therefore diesel purchased against Form-C if used for cane procurement from centres to factory, it would not amount to violation of purpose for which the said diesel was purchased. The question no.1, therefore, is answered accordingly."

11. According to the aforesaid judgment, undoubtedly, the transportation of sugarcane from the Cane Purchase Centre to the Factory Premises is included in the term 'manufacture' of

sugar and the Tribunal has not correctly appreciated the controversy and has clearly erred in law.

12. It has further been submitted that the said judgment has become final and the State did not challenge the same before Hon'ble the Supreme Court

13. The second question which arises for consideration is with regard to the benefit obtained by the revisionist under the Notification dated 07.12.2019 which according to the State Advised Price, the revisionist was also given 42 paisa per quintal per kilometer to a limit of Rs. 8.35 p per quintal for transportation of the sugarcane from the Cane Purchase Centre to the Factory Premises.

14. In this regard, it has been submitted that the said amount as prescribed in the Notification dated 07.12.2019 pertains to transportation of sugarcane and it is clearly not in relation to the purchase of diesel for transportation of sugar which two things are distinguishable and separate.

15. It was further vehemently submitted that Notification to benefit of which is being sought by the petitioner dated 10.08.2017 is applicable all across the board to all the manufacturing units which fulfill conditions prescribed therein, namely, that the beneficiary industrial unit should be engaged in manufacture of taxable goods under the U.P. G.S.T. Act and for the said manufacture they are required to obtain a certificate from the Commissioner, subsequent to which they will be entitled to purchase diesel at the concessional rate of tax. It has been submitted that the Notification dated 07.12.2019 and 10.08.2017 have been passed by the State of U.P. which was fully aware of the benefits being granted to the industrial units. The beneficial piece of legislation or policy seeking to promote industrialization which itself does not provide for any restriction or limitations in its application to any particular segment or the industries given by the State Government has to be liberally construed keeping in view the object for such grant of subsidies or benefits to the industrial units.

16. Sri Sanjay Sarin, learned Standing Counsel for the State has opposed the revision. He has submitted that there is no infirmity in the order passed by the Commissioner, Commercial Tax as well as Commercial Tax Tribunal wherein it has denied the benefit to the revisionist of the Notification dated 10.08.2017 where it was found that the revisionist is already taking benefit of concessional rate of tax as provided for by the State Government in its Notification dated 07.12.2019 and they cannot be given a benefit of transportation of sugarcane from the

Cane Purchase Centre to Factory Premises, once the same benefit has already been obtained by the revisionist.

17. The benefit granted by Notification dated 07.12.2019 clearly confines to the industrial units who are engaged in manufacture of sugar after purchasing sugarcane from the farmers where benefits of transportation from the Cane Purchase Centre to the Factory Gate was provided, while by Notification dated 10.08.2017. Benefit for concessional rate of tax was provided to all the industrial units for the purpose of manufacture of taxable goods. Clearly even if the revisionist has received benefit under the Notification dated 07.12.2019 he cannot be denied the benefits under Notification dated 10.08.2017 inasmuch as there is no provision for excluding the revisionist for being granted benefit under the said Notification, and no such restrictions could be placed before us.

18. Had it been the intention of the Government to deny the benefit of the Notification dated 10.08.2017 in light of the fact that the sugar industrial units are already obtaining benefits under Notification dated 07.12.2019, the said facts would have been clearly mentioned in the Notification dated 10.08.2017. In absence of any restrictive clause in the Notification dated 10.08.2017, the Tribunal as well as the Commissioner, Commercial Tax had erred in interpreting and restricting the interpretation of the Notification dated 10.08.2017 in its application to the sugar manufacturing units.

19. In light of the aforesaid discussions, this Court is of the considered view that Commissioner, Commercial Tax as well as Commercial Tax Tribunal both have erred in interpreting the provisions of Notification dated 10.08.2017, according this Court is of the considered view that the revisionist clearly falls within the ambit of provisions contained in the aforesaid notification and was entitled to the benefit for purchase of diesel at the concessional rate of tax as prescribed therein.

20. In light of the above, the revision is **allowed**. The impugned orders dated 04.12.2020 and 25.02.2021 are set aside.

(Alok Mathur, J.)

Order Date :- 2.8.2024

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