IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SALES TAX REFERENCE NO.67 OF 2009
IN
REFERENCE APPLICATION NO.130 OF 2007

The Commissioner of Sales Tax, Mumbai ..Applicant
Vs.
Dynamix Dairy Industries Ltd. ..Respondent

Mr. V. A. Sonpal, Special counsel a/w. Ms. Uma Palsuledesai, AGP for the Applicant.
Mr. C. B. Thakar for the Respondent.

CORAM: S.V. GANGAPURWALA &
G. S. KULKARNI, JJ.
JUNE 13, 2017.

P.C.

. Reference is made on the following issue:

i) Whether on the facts and the circumstances of the case, the Tribunal was justified in holding that, the appellant should be allowed to avail of the exemption benefits qua the said activity so long as the entitlement certificate granted to him in that regard is in force ?

2 The learned counsel for the revenue strenuously contends that the activity of converting raw milk into slim/skim milk does not come within the ambit and purview of manufacturing activity. The learned counsel submits that as the said activity does not come within the scope of manufacturing activity, the Respondent is not entitled for exemption though has been issued entitlement certificate. The learned counsel submits that the condition for grant of exemption is that the entity should be performing manufacturing activity without which the entity is not entitled for exemption from the payment of tax. The learned counsel relies on section 41 of the Sales Tax Act.

It is further submitted that even the Tribunal and the Commissioner have arrived at the conclusion that the activity of converting raw milk into slim/skim milk is not the manufacturing activity. In view of that the Respondent would not be entitled for exemption from payment of tax.

3. The learned counsel for the Respondent supports the order and submits that the entitlement certificate is in force and till the time the entitlement certificate is in force, the respondent would be entitled to exemption from payment of tax. The conversion of raw milk into slim/skim is very much part of the entitlement certificate. As such the Respondent is entitled for exemption. The learned counsel relies on the order passed by this Court in the case of ***Additional Commissioner of Sales Tax, VAT-III, Mumbai vs. B. G. Chitale*** decided on 22/9/2011 bearing Sales Tax Application No.5/2011 in Reference Application No.73/2010.

4. We have considered the submissions canvassed for the respective parties. It is not a matter of debate that the Respondent has been issued an entitlement certificate. The entitlement certificate also details the following products, milk, milk products viz., desi ghee, whole milk/ skim milk, butter etc.

5. For the ready reference, the addendum dated 18/2/2000 of entitlement certificate is reproduced as under:

> "In the certificate of Entitlement No.413102/S/239/LM/977, dated 12/01/1996, granted under 1988, Package Scheme of Incentives to M/s.Dynamix Dairy Industries Ltd., for their Unit located at Plot No.C-94, MIDC Area, Bhagwan Village: Vanjarwadi, Tal: Baramati, District: Pune for manufacture of 1) Milk & Milk Products viz;, the following modifications are now approved and effected:

Ref. No. of Entitlement Certificate issued	As per Certificate of Entitlement	Now revised/ Modified As per Addenda dt.21/12/1999 by Sicom Ltd.
1) Page No.3	1) Milk & Milk Products viz. Desi Ghee & Whole Milk/skimmed milk powder, butter, case-in and Cheese and cheese spread, Dairy whitener Whey protein protein powder and lactose powder-3,00,000 ltrs. Per day	Milk and Milk Products viz., Desi Ghee and Whole milk/skimmed milk powder, casein, cheese and cheese spread, dairy whitener whey protein powder, lactose powder, other dairy products like Infant food, malted milk food, pancer, khoa, cheese powder, yoghurt (Plain/Flavoured), dairy desserts and sweets, butter oil, and food ingredients like Bakery Mix, Ice cream mix, etc 90 lac ltrs p.m.
Page No.3 Required	2) Milk-5 NP Vitamin and Vegetable Oil, Chemicals, Consumable Stores Packing Materials	Milk 5 NP, Vitamin and Vegetable Oil, Fuel, Chemicals, consumables stores, packing material, Milk Powder, Butter and Butter Oil

The above modification is considered effective from 11/01/1996 passed on the addenda to the Eligibility Certificate"

6. Section 41C would be relevant to be considered. The same reads thus:

"41C. Cancellation of Certificate of Entitlement.

(1) Notwithstanding anything contained in this Act, or in any judgment, decree or order of any Court or Tribunal to the contrary, the Certificate of Entitlement issued in favour of an Eligible Unit by the Commissioner in respect of any Package Scheme of Incentives-

(a) shall be deemed to have been automatically cancelled on the date on which-

(i) the cumulative quantum of benefits received by such unit-

(A) being a Small Scale Industrial unit governed by the 1979 Scheme of Incentives as calculated from the 1st October 1995 exceeds, the approved gross fixed capital investment of such Unit at the time of grant of the Eligibility certificate or

(B) not being an unit referred to in entry (A) above, exceeds at any time, whether before or after, the date of commencement of Maharashtra Tax Laws (Levy, Amendment and Validation) Act, 1995, the monetary ceiling as provided in the relevant Package Scheme of Incentives.

(ii) the period for which a certificate of Entitlement was granted to an Eligible Unit, expires; or

(iii) the Certificate of Registration granted to an Eligible unit has been cancelled.

(b) shall be cancelled by the Commissioner, after giving the Eligible Unit an opportunity of being heard, if it is noticed that the grant of Certificate of Entitlement is inconsistent with any of the provisions of this Act, rules or notifications framed or issued under the Act or any of the relevant Package Scheme of Incentives.

(2) On an from the date of such cancellation, such unit shall cease to be eligible to claim any exemption from payment of tax under entry 136 or as the case may be under entry E-3 of the schedule to the notification issued under Section 41 and such unit shall surrender to the Commissioner, the Certificate of Entitlement, together with all declarations in Form 'BC' within fifteen days from the date of such cancellation."

7. Perusal of the said provision manifests that on and from the date of cancellation of entitlement certificate the unit shall cease to be eligible for exemption from the payment of tax. The procedure is also laid down for cancellation of the entitlement certificate. 41C (1) (b) lays down that the certificate of entitlement if is inconsistent with any of the provisions of this Act, rules or notification issued under the Act or any of the relevant package scheme of incentive shall be cancelled by the Commissioner after giving the eligible unit an opportunity of being heard. There is no dispute among the parties that the entitlement certificate of the respondent/unit is not cancelled and was in force at all material time.

8. The entitlement certificate is also issued under the package incentive scheme. The Assessing officer may not override the said entitlement

certificate. The entitlement certificate has been issued by the Authority as constituted. If the contention of the Revenue is accepted then it would result in the Assessing Officer overriding the entitlement certificate which is not permissible. So long as the entitlement certificate is in force it would not be permissible for the Assessing Officer to override the said entitlement certificate. It is only the Authority under the statute, who can decide about the validity of the entitlement certificate. The said jurisdiction does not vest with the Assessing Officer. The Assessing Officer will be bound by the entitlement certificate issued to the eligible unit. In case the Commissioner finds that the grant of certificate of entitlement is inconsistent with the provisions of any Act, rules or notification or the relevant package scheme of incentive then it is the Commissioner who is entitled to take action with regard to the entitlement certificate.

9. In view of the fact that the entitlement certificate is in force and as long as the entitlement certificate is in operation, the Petitioner would be entitled for exemption benefits qua the activity referred to in the entitlement certificate. The issue referred is answered accordingly and in favour of the assessee.

(G. S. KULKARNI, J.) **(S.V. GANGAPURWALA,J.)**