

State of Karnataka and anr. Vs. Sangam Solvent Textiles Ltd.

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Court : Karnataka

Decided On : Jun-03-2004

Reported in : ILR2004KAR3246; [2004]137STC231(Kar)

Judge : H.L. Dattu and ;A.C. Kabbin, JJ.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 23

Appeal No. : S.T.R.P. Nos. 62/2000 and 65-69/2000

Appellant : State of Karnataka and anr.

Respondent : Sangam Solvent Textiles Ltd.

Advocate for Def. : G. Rabinathan, Adv.

Advocate for Pet/Ap. : B. Anand, GA

Judgement :

ORDER

H.L. Dattu, J.

1. The facts pleaded and the questions of law raised in these revision petitions are common. Therefore, they are clubbed together, heard and disposed of by this common order.

2. At the outset, we intend to place on record the submission made by Sri Anand, learned Govt. Advocate that he would be confining these Revision Petitions only in so far as the orders made by the Tribunal in S.T.A. Nos. 122/1998, 123/1998 and 1145/1998.

3. The assessee aggrieved by the orders passed by the Joint Commissioner of Commercial Taxes (Appeals), Dharwad Division, Hubli(First Appellate Authority) had filed the second appeal before the Karnataka Appellate Tribunal, Bangalore, in Appeal Nos. 120/ 1998, 121/1998, 122/1998, 123/1998, 1145/1998 and 1146/1998.

4. The primary question that was canvassed by the appellant before the Tribunal was, rice bran oil, solvent sun-flower oil and de-oiled rice bran are edible oils. Therefore, they are eligible for payment of tax under Central Sales Tax Act at the reduced rate, in view of the Government notification dated 31.03.1993 issued under Section 8(5) of the CST Act. The Tribunal while accepting the contention canvassed, by its cryptic order has stated as under:

'S.T.A No 122/98 (C.S.T) 1993-94: Here in this case, the main contention of the appellant is that rice bran oil grade-I and sunflower oil which is sold to refinery is nothing but edible oil and as per the Government Notification No. FD:68 CSL : 93(IV) dated 31.3.1993 are to be taxed at concessional rate of 1%. However, the AA has levied tax on this oil (edible grade oil) at 3% without C-Forms. The only question is though the C-forms were produced at the appellate authority stage, he did not consider these C-forms. Now, the appellant has filed xerox copies of the entire C-forms to claim reduced rate of tax, the same has to be accepted. The AA is directed to accept the C-forms and levy reduced rate of tax on the rice bran oil grade-I and sunflower oil which is sold to refinery as it is nothing but edible oil. This is in accordance with the Government order and the judgement of the High Court of Karnataka in case of Vashista Solvent Oil Pvt. Ltd, v. State of Karnataka (W.P No. 17546/97 and 21484/ 96.) Hence, we direct the AA to accept all the C-forms and levy the concessional rate of tax. The appellate authority's order in this case also is quashed and nullified.

18. STA NO. 123/98 (C.S.T) 1994-95: The point involved in this appeal are similar as those involved in Appeal No. 122/98. Here also the AA is directed to accept the C-forms and modify his assessment order by levying tax at the reduced rate of tax.

19. STA No. 1145/98 (C.S.T) 1995-96: The appellant has submitted before the Tribunal in this appeal that he is manufacturing both edible grade rice bran oil and non-edible grade rice bran oil. He has submitted that these rice bran oils are liable to be taxed at 1% covered by C-forms, which the lower authorities have not done so. The appellant has relied upon the Full Bench decision of the Tribunal in STA No. 779/92 and 780/ 92 dated 28.10.1997.'

5. The Tribunal by the aforesaid order has concluded, that the solvent rice bran oil, solvent sun-flower oil and de-oiled rice bran are edible oil. While coming to this conclusion, the Tribunal has squarely relied upon the observations made by a learned Single Judge of this Court in the case of VASHISTA SOLVENT OILS PVT. LTD. v. DY. COMMISSIONER OF COMMERCIAL TAXES (ASSTS.), TUMKUR AND ANR., (2001) 121 STC 492. In the said decision, the learned Judge has observed as under:

'Edible oil is a genus which has both the species, viz, refined and non-refined beside the hydrogenated oil. The legislature has not contemplated any difference while specifying the edible oil in part E in the Second Schedule between refined and non-refined and some rate of tax continues from April 1, 1988 for both the species. Thus, it can be considered that in popular sense the edible oil would include refined oil as well as non-refined oil. The Control Order 1977 also covers within the sweep of edible oil all those oils which are used directly for human consumption or which could be used after processing. The Karnataka Sales Tax Act has not defined edible oil and even if the definition, in common parlance, is taken into consideration, then, it is the oil produced from a particular seed which is considered as edible oil. While extracting oil from the oil seed, different process of extractions are employed. Some percentage of impurity always remains even in the oil which is obtained by process other than the solvent extract process. The basic character of the oil which is obtained from crushing/expeller from the seed as well as the oil obtained from the oil cake remains the same except to the extent

of impurity. The solvent extracted oil cannot be considered as not falling within the proper category of edible oil. Solvent extracted oil is liable to be taxed under entry 1, Part E of the Second Schedule to the [Karnataka Sales Tax Act, 1957](#).'

6. The Revenue aggrieved by the aforesaid order, had carried the matter in appeal before the Division Bench of this Court. The appeal came to be rejected on the ground that, the appellant had not complied with the office objections inspite of granting sufficient time.

7. In these revision petitions the questions of law raised for consideration and decision of this Court are:

' I. Whether the solvent rice bran oil, solvent sunflower oil and de-oiled rice bran are edible as held by the Tribunal?

II. Merely because by way of a subsequent process through a sophisticated machinery and chemical composition the solvent rice bran oil and other products of the respondent is made edible, whether the Assessing Authority is required to treat such oil as edible oil for the purpose of levying tax under the CST Act?

8. Before we advert, to the questions of law raised by the revenue for consideration and decision, the first question that requires to be answered by us is the parameters of revisional jurisdiction of this Court under Section 23 of the Act, Section 23 reads thus:

23. Revision by High Court in certain cases:

(i) Within one hundred and twenty days from the date on which an order under Sub-section (4) or Section (6) or Sub-Section (6-A) of Section 22 was communicated to him, the appellant or the respondent may prefer a petition to the High court against the order on the ground that the Appellate Tribunal has either failed to decide or decided erroneously any question of law.'

9. Section 23 of the Karnataka Sales Tax Act (for short 'the Act') provides for revision by the High Court in certain cases. The appellant or respondent in the appeal, if they are aggrieved by the orders made by the Appellate Tribunal, may

file a revision petition before this Court, on the ground that the Appellate Tribunal has either failed to decide or decided erroneously the question of law. The question for consideration is as to what is the meaning of the expression 'has either failed to decide or decided erroneously any question of law? 'Whether a revision petition would lie against an order passed by the Appellate Tribunal following the law laid down by this Court? This question does present some difficulty. But in view of the circumstances we shall presently set out, we will not be justified in examining the correctness of the conclusion reached by the Tribunal.

The power of revision is conferred on this Court by the legislature to interfere with the orders made by the Appellate Tribunal only under two circumstances. Firstly, if the Tribunal has failed to decide any question of law and secondly, if the Tribunal has decided erroneously any question of law. The High Court will not interfere in a revision petition with the finding of fact recorded by the Tribunal. What is question of law is a vexed question . It is not possible to give any precise meaning to the expression ' question of law'. Pithily, it can be said what is not mixed question of fact and law and what is not question of fact is a question of law. Whether any question of law would arise in a particular case would depend on facts and circumstances of each case.

10. In the present case, the question before the Tribunal was, whether solvent rice bran oil and solvent sun-flower oil and de-oiled rice bran are edible oil. The Tribunal while answering the question of law raised before it, has faithfully followed the observation made by a learned Single Judge of this Court which has become final in view of the dismissal of the appeals filed by the revenue before a Division Bench of this Court. In such circumstances the Appellate Tribunal had no other alternatives except to follow the judgment rendered in Vashista Solvent Oils Pvt. Ltd's case-121 STC 492. No question of law therefore arise from the impugned order of the Appellate Tribunal on this point. It is not the case of the revision petitioners before this Court, that the decision of the Tribunal relying on the decision of this Court is either contrary to the facts of the case or the question of law decided in the said case.

11. The Tribunal while answering, as we have already noticed, has just followed the law laid down by this Court in Vashista Solvent Oils Pvt. Ltd's case; and in our opinion, it is expected of the Tribunal to follow the decisions rendered by the Superior Courts . If that is so, in our opinion, it cannot be said that the Tribunal has failed to decide or has erroneously decided the question of law.

12. In view of the above, in our opinion , no question of law would arise for consideration of this Court. In that view of the matter, interference with the order made by the Tribunal is not called for.

13. Accordingly, the Revision Petitions are rejected. Ordered accordingly.

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