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Court : Rajasthan

Decided On : May-11-1981

Reported in : 1981WLN346

Judge : S.N. Deedwania, J.

Appeal No. : S.B. Civil Writ Petition No. 236/74

Appellant : Rajasthan Ice and Cold Storage

Respondent : The State of Rajasthan and ors.

Disposition : Petition allowed

Judgement :

S.N. Deedwania, J.

1. This writ petition under Article 226 of the Constitution is filed in the following circumstances:

2. The petitioner is a registered partnership firm inter alia carrying on the business of cold storage in the name and style of Rajasthan Ice & Cold Storage with its registered office at Moti Chowk, Jodhpur. The petitioner has one power connection for the supply of electricity vide Account No. 23/1/2 Service No. 8082. Respondent No. 2 is supplier within the definition of Clause (b) of Section 2 of the Rajasthan Electricity (Duty) Act, 1962 and is governed by the said Act and the Rajasthan

Electricity (Duty) Rules, 1962 (hereinafter referred to as 'the Act and the Rules' respectively). The following notification No. F.9(2) E & T/62/I dated March 26. 1962 was issued under the Rajasthan Electricity (Duty) Bill, 1962--

In pursuance of Sub-clause 3 of Clause 3 of the Rajasthan Electricity (Duty) Bill, 1962 read with the declaration inserted therein under Section 3 of the Rajasthan Provisional Collection of Taxes Act 1958 (Rajasthan Act 23 of 1958), the State Government being of the opinion that it is expedient in public interest to do so, hereby exempts from tax the consumed--

(1) by a consumer in any industry, in the manufacture, production: processing of repair of goods; and

(2) by or in respect of any mine as defined in the Indian Mines Act, 1923 (Central Act of 1923);

Subject, however, to the condition that the exemption hereby granted shall not be applicable to energy consumed in respect of any premises used for commercial or residential purposes,

The State Government also issued another notification No. F.9(2) E&T;/62/IT dated March 26, 1962 fixing electricity duty at the rate of 3 n. p. per unit, it reads as under:-

In pursuance of Clause 3 of the Rajasthan Electricity (Duty) Bill, 1962 read with the declaration inserted therein under the Rajasthan Provisional Collection of Taxes Act 1958 (Rajasthan Act 23 of 1958) the State Government hereby fixes 3 n. p. per Unit as the rate at which the elecricity duty shall be computed.

In superssession of the aforesaid notification, the State Government issued the following notification No. F.9(6) FD (R&T;) 63, dated March 2, 1963 reducing the electricity duty from 3 n. p. per unit--

In exercise of the powers conferred by Sub-section (3) of Section 3 of the Rajasthan Electricity (Duty) Act, 1962 (Rajasthan Act 12 of 1962) and in supersession of Excise and Taxation Department Notification No. F.9(2) E&T;/62/I

dated the 26th March, 1962, the State Government being of the opinion that it is expedient in public interest to do so, hereby remits the electricity duty on the energy consumed in Electro-Chemical Industries and in Electric Furnances of Electrothermal Industries and reduces such duty on the energy consumed in other industries in the manufacture production, processing or repair of goods from 3 n. p. per unit to one Naiya Paisa per unit.

The petitioner was being charged electricity duty at the rate of 1 n. p. per unit Another notification No. F.16(15) F.D./RT/14 Pt. file dated November 1, 1966 was issued to the following effect:-

In exercise of the powers conferred by Section 3 of the Rajasthan Electricity (Duty) Act, 1962 (Rajasthan Act 12 of 1962) and in supersession of Government Notification No. F.9(2) E&T;/62/II dated March 26; 1972 and No. 9(6) F.D./RT/63 dated March 2, 1963. the State Government being of the opinion that it is expedient in public interest to do so, hereby fixes with immediate effect, five paisa per unit as the rate at which the electricity duty shall be computed and subject to the conditions laid down in the hethird proviso to t said section--

(a) remits, with immediate affect, the electricity duty on the energy consumed (i) in electro-chemical industries, and (ii) in elecro-furnaces of electrothermal industries.

(b) remits with effect on as from the 1st November, 1964, the electricity duty an energy consumed by or in respect of any Municipal Board or Council or Panchayat or Panchayat Samiti or other authority for the purpose of or in respect of public street lighting; and

(c) reduces with immediate effect such duty on the energy consumed in industries, other than those mentioned in (a) above in the manufacture, production, processing or repair of goods, to one paisa per unit.

Respondent No. 4 incharge of the supplies sent a bill dated March 12, 1973 to the petitioner by which he charged arrears to the tune of Rs. 2618.40 for the period 1971-72 being the difference of electricity duty at the rate of 5 n. p. per unit and one paisa per unit already paid. On query by the petitioner, he was orally informed

by respondent No.2 that duty at the rate of 5 n.p. per unit was claimed under instructions of the Commissioner Commercial Taxes, Rajasthan. The petitioner deposited the amount through cheque No, 89510 dated March 27, 1973 drawn on the State Bank of Bikaner and Jaipur. Sojatigate Branch, Jodhpur and also sent a protest letter No. RICS 159/1973 dated March 28, 1973. The petitioner also sent a written representation dated April 1, 1973 to the Executive Engineer (D-III), further representations were made to the Director of Industries, Rajasthan and the Chairman, Rajasthan State Electricity Board and also to the Secretary to the Government, Industries Department, Rajasthan. The petitioner did not receive any reply from the respondents of his various representations. The petitioner received another bill No. 90149 dated November 28, 1973 for Rs. 15490.12 being the difference of arrears of the electricity duty for the period from 1.11.1965 to April 1973. The petitioner again made a representation on 12.12.1973 to the Superintending Engineer, Rajasthan State Electricity Board, Jodhpur. The petitioner received bill No. 027 for the month of December, 1973, which included the arrears of electricity duty charged vide bill dated November 28, 1973 (Ex. III), in this bill, the electricity duty for the month of December, 1973 was charged at the rate of 5 n. p. per unit.

3. It is further alleged that the petitioner is doing the business of Cold Storage where potatoes, fruits and other goods by means of refrigeration are kept at different temparature to preserve them from decay. The cold storage is a process of refrigaration apply to commodities such as perishable fruits, vegetables and milk to prevent their speedy decay.

4. The petitioner is also an industry. The claim of the respondents to charge the electricity duty at the the rate of 5 n. p. per unit is challenged inter alia on the ground that the petitioner is a consumer engaged in an industry in processing to prevent decay of easily perishable commodities like fruits, vegetables and milk. The petitioner, therefore, can not charge electricity duty exceeding at the rate of 1 n. p. per unit. He is entitled to relief provided under Clause (c) of the notification dated November 1, 1969.

5. The dispute as to the rate of the electricity duty ought to have been referred to the Commercial Taxes Officer under rule 11 of the Rules of 1970. The Commissioner Commercial Taxes Department had no authority or jurisdiction to pass an order in this regard. The following reliefs are claimed:

(i) That a writ of prohibition or any other suitable writ, order or direction be issued prohibiting the respondents from recovering the past as well as future electricity duty from the petitioner at the rate of five paisa per unit for the power supply to the petitioner and direct them to recover the electricity duty at the rate of one paisa per unit as usual.

(ii) That a writ of mandamus or any other suitable writ direction or order be issued directing the respondents to withdraw their bills Annexure 3 and 4 dated November 28, 1973 and December 26, 1973, respectively.

(iii) That a writ of mandamus or any other suitable writ, order or direction be issued quashing the aunexure 3 and 4.

(iv) That alternatively a direction be issued to the respondents No, 2 and 4 to get the dispute decided by an independent Commercial Taxes Officer in accordance with law.

(v) That it may be declared that the petitioner is an industry and is entitled to be charged electricity duty at the rate of one paisa per unit of the Electricity duty under the notification dated November 1, 1965.

(vi) That the respondents No. 2 to 4 be directed to refund the amount already paid by the petitioner under protest in this behalf.

(viii) That any other appropriate writ, order or direction be issued in favaur of the petitioner granting appropriate relief in the facts and circumstances of the case.

(viii) Costs of the petition be awarded to the petitioner from the respondents.

6. The writ petition is opposed by the respondents and in its reply, the State Government took the stand that a Cold Storage is not an industry as it does not manufacture, produce, process or repair goods. In short, the petitioner is not an

industry within the meaning of notification dated March 2, 1963 or November 1, 1965. Moreover, the commodity is not subjected to an operation whereby it suffers a change. The petitioner is not entitled to be charged electricity duty at the rate of one paisa per unit as it is not an industry for processing, goods as there is no physical or chemical change in. the goods and, therefore, its case is not covered by notifications dated March 2, 1963 and November 1, 1965, The writ petition is not maintainable as the petitioner had not availed of alternative remedy before the Commercial Taxes Authority. In short, the objections raised by the respondents are:

1. The petitioner is not an industry.

2. It is not industry engaged in processing of goods.

3. The writ petition is not maintainable because of the existence of alternative remedies.

7. I have heard the learned counsel for the parties and perused the record of case carefully.

8. At the out set, it may be stated that the controversies in this case are fully covered by the decision of this Court in Mowad Sheet Garh v. The State of Rajasthan 1980 RLW 461. As I am in full agreement with the said decision, I will only briefly notice the arguments advanced before us.

9. As regards the submission that the petitioner had an alternate remedy to refer the dispute to the Commercial Taxes Officer, I am not inclined to agree with it. The petitioner was paying electricity duty at the rate of 1 n. p. per unit for fairly long time. If the Electricity Board wanted to charge the duty at the rate of 5 n. p. per unit, it would have been proper and fair for it to raise a dispute and refer it to the Commercial, Taxes Officer. However, the petitioner was straight away served with a demand, at the rate of 5 n. p. per unit not only for the current month, but was also served with a demand of large arrears. The writ petition is pending for the last seven years. I am, therefore of the view that it is not a fit case where the case of the petitioner can be thrown away on this ground. More over, the alternative

remedy would have been of little efficency because the Commissioner, Commercial Taxes has already expressed his view in favour, of the Electricity Board. It was thus observed in the case of Mewad Sheet Garh (supra)

I am inclined to exercise the direction in favour of the petitioner an account of the fact that more than seven years have been passed. It would be highly unjust to drive the petitioners to avail the alternative remedy and to give the matter further lease of life. It would be fair and just that the controversy was settled by this court and controversy is only with regard to the interpretation of the expression 'processing' of goods? On facts, there is no dispute between the parties that the goods are preserved in the cold storage by the petitioners.

I am also not inclined to agree that the petitioner engaged in the erection of cold storage is not an industry. It was thus observed, in the said, authority and I am in full agreement with these observations:-

Shri Bhandari next contended, though only faintly, that cold storage is not an industry. It may be stated that this argument has been advanced only for the sake of argument. Shri Bhandari submitted that said storage is only a storing house and the petitioners also do job work by storing goods of others and the labour employed at the cold storage is also less. These factors, in my opinion would not in any case was a fact to consider a cold storage as industry. The word 'Industry' in its ordinary, sense, is a word of vide connotation and it includes any trade or business.

On the question of the word 'process', it was thus held in the said authority:-

The meaning of the expression, 'processing of goods' in my opinion cannot be different in common parlance than in ordinary literal meaning and it is that meaning which appears to be accepted even by the common man. Even if in common parlance it is understood that 'processing of goods' means goods whereby some change is brought about by subjecting it to some process, still thewords have to be given meaning in the context of the legislative intent as found expressed in the notification as well as in proviso (3) to s 3 of the-Act. It is significant to note that electricity duty has been reduced wherte energy is

consumed in any industry in the manufacture, production & even in repairs of goods & admittedly also where goods have been processed bringing about some change. The question is where in any industry any process is adopted for preservation of goods and energy is consumed in that process is that excluded from the purview of the proviso (3) to Section 3 of the Act and consequently from the purview of the Notification. In my humble opinion such cannot be the intention of the proviso (3) to Section 3 and the Notification. It is the public interest which is the consideration for issuance of Notification by the State Government and is the public interest which weighed with the legislature empowering the State Government to issue Notification It is in the public interest that the food-stuffs may be preserved and may be made available to the community at cheaper rates. In this context, in my opinion, it can be said that proviso (3) to Section 3 of the Act covers cases where goods do not undergo any change and still have been subjected to process.

10. It is argued by the learned counsel for the respondents that the view expressed in this authority is no longer tenable in view of law enunciated in the case of Chowgule & Co. Pvt. Ltd. & another v. Union of India and Ors. 1981 (47) S.T.C. 124 wherein, their Lordships of the Supreme Court has observed--

The word 'processing' in section 8(3)(b) of the Central Sales Tax Act, 1956, and rule 13 of the Central Sales Tax (Registration and Turnover) Rules, 1957, has not been defined in the Act and it must be interpreted according to its plain natural meaning. Where any commodity is subjected to a process or treatment with a view to its 'development or preparation for the market'. It would amount to processing of the commodity within the meaning of section 8(3)(b) and Rule 13. The nature and extent of processing may vary from case to case. In one case the processing may be a light and in another it may be extensive; but with each process suffered, the commodity would experience a change. Whenever 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. The question is not whether there is manual application of energy or there is application mechanical force. Whatever be the means employed for the purpose of carrying out the operation, it is the effect of the

operation on the commodity that is material for the purpose of determining whether the operation constitutes processing.

The question before me, therefore, is whether as a result of the operation of refrigeration applied to vegetables, fruits or milk, they undergo a change.

11. It is argued by the learned counsel for the respondents that these commodities or goods do not undergo any change. Potatoes are sold in the market as potatoes, even after, they are stored in the cold storage. In other words, the operation of refrigeration applied to potatoes in a cold storage does not bring about a change in it. As a result of operation of refrigeration applied to the vegetables and fruits etc, in the cold storage, it could not be said that they undergo a change and hence this operation would not amount to processing of these commodities. I have considered the argument carefully. In a cold storage fresh foods, vegetables and fruits etc. are preserved for a considerable period by subjecting them to as low a temperature as possible without causing damage to them by freezing. Storage of these commodities at temperatures of about 2'C preserve them in good condition for consider able periods. The reason is that all decay organisms are slowed down when the commodities are preserved at a temperature near freezing point. In other words, refrigeration condition preserve commodities for longer periods by retarding action of enzymes and miscro organisms. Therefore, it is futile to argue that when the commodities are kept in cold storage they do not undergo any change. Their property of speedy decay is retarded to a great extent and their temperature in lowered and in this sense, these commodities or goods undergo a change. This process enables a seller to make available to a market, such commodities even in off season. They are made available to the purchaser for considerably longer periods and also their shipment is possible to distant markets. I am, therefore, of the view that in cold storage commodities or goods undergo a change as a result of operation of refrigeration and, therefore, it is an industry engaged in processing goods within the meaning of the aforesaid notification dated November 1, 1965. The expression 'cold storage' is thus defined in Webster's Third New International Dictionary (unabridged volume 1966) page 443 as follows:

Storage especially of food in a place kept cold often by refrigeration for preservation purposes.

In Commissioner of Income-tax v. Radha Nagar Cold Storage (P) Ltd. 1980 (18) CTR (Cal.) 156 the question was whether the Company could be said to be a company, which is mainly engaged in processing of goods within the ambit of explanation of section 6 (d) of the Finance Act, 1958. It was thus held:

Explanation:Fox the purposes of this clause, a company shall be deemed to be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, if the income attributable to any one or more of the aforesaid activities included in its total income of the previous year (as computed before making any deduction under Chapter VI-A of the II Act) is not less then fifty one per cent of such total income.

The act of cold storage appears to us to be an act whereby foods or products stored in the cold storage are prevented from their natural decay. The potatoes which are kept in the cold storage are preserved in the original state and their normal decay is prevented. That, in our opinion, would be processing the goods, that is to say, preservation applying a method to the goods whereby the goods are prevented from taking its normal course Therefore, looking from a bread point of view in the light of the definition provided in the several dictionaries to which we have referred, it appears to us, that in the context of the present statute which has used the expression 'processing' in contradiction or differently from the expression 'manufacture' the assessee company was engaged in the act of processing the goods in terms of the Finance Act at the relevant time. This view which we have taken finds support in the Bench decision of the Allahabad High Court in the case of Addl. CIT, Kanpur v. Farrukhabad Cold Storage (P) Ltd. where the Division Bench of the Allahabad High Court has referred to the various relevant authorities and observed that if an article like potatoes in the present cases were kept under refrigeration, their decay was prevented. The temperature in the cold storage, admittedly, was regulated by the use of machinery. Thus, the mere fact that the potatoes themselves, which were kept in the said storage, did not undergo any

transformation and remained static, did not by itself mean that they were not subjected to any process at all during the period of storage. Processing of goods need not lead to manufacture of a new article. The Allahabad High Court held that they came within the definition of section 2(7)(d)of the Finance Act of 1966 and 1967 and as such the assessee company Was an industrial company. The expression used there was similar to the expression with which we are concerned. We are in respectful agreement with the reasoning of Divisional Bench of the Allahabad High Court in the aforesaid decision.

I may not refer to the case of Addl. Commissioner of Income-tax, Kanpur v. Farrukhabad Cold Storage (P) Ltd. 107 ITR 815 on which, their Lordship to the Calcutta High Court have relied upoh.

12. It is also pertinent to note in the case of Chaugule, & Co. Pvt. Ltd. and another (supra), the question before the. High Court was with regard to Section 2(7)(d) of the Finaqce Act, 1966-1967.

13. Hon'ble Jain, J, in the case of Mewad Sheet Garh (supra) was of the opinion that the words have to be given meaning in the context of the legislative intent & was further of the view that Sub-Section (3) Section 3 of Act would even cover those cases where goods do not undergo any change. This view perhaps can not be said to be over-ruled by their Lordships of the Supreme Court in the case of Chougule & Co. Pvt. Ltd. (supra), as the question before their Lordships of the Supreme Court Was not regarding the meaning of word 'process' under the Rajasthan Electricity (Ditty) Act, 1962. However, no useful purpose would be served in going into the controversy of the effect of the law enunciated by the Supreme, Court, in the case of Chougule & Co. Pvt. Ltd. (supra) on the view taken in Mewad Sheet Garh's case (supra), as regards the expression 'processing of goods' because I have held that during the operation of cold storage, the commodities or goods do undergo a change. Therefore, it could not be said that the commodities or the goods are not subjected to a process during cold storage.

14. In the result, the writ petition is accepted and it is declared that the petitioner is an industry engaged in the processing of goods within the meaning of the aforesaid notification dated November 1, 1965. Respondents are prohibited from

recovering the past as wall as future electricity duty at the rate of 5 n. p. per unit from the petitioner for the power supply to him and they shall recover the electricity duty at the rate of 1 n. p. per unit only. The respondents shall further withdraw their bills (Annx. 3 and 4)dated November 28, 1973 and December 28, 1973 respectively and refund the excess amount deposited by the petitioner.

15. No order as to costs is made in the circumstances of the case.

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