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Court : Kolkata

Decided On : Aug-22-1974

Reported in : 1978(2)ELT53(Cal)

Judge : S.K. Dutta and ;N.C. Roy, JJ.

Acts : Central Excises Act, 1944; ;Finance Act, 1956; ;Finance (Amendment) Act, 1960

Appeal No. : Appeal from original order Nos. 146 and 147/66

Appellant : Bharat Devi Oil Mill and ors.

Respondent : inspector of Central Excise

Disposition : Appeal dismissed

Judgement :

S.K. Dutta J.

1. These two appeals are against judgment and orders of Banerjee J. dated March 30, 1965 in C. R. Nos. 46W, 469W and 470W/62 heared analogously and covered by one judgment whereby the Rules were discharged. F.M.A. No. 146/66 is arising from C.R. 464W/62 while R.M.A. 147/66 is from C.R. 470W/62. There is no dispute that the common question of fact and law are involved in these two appeals and they are heard together and covered by this judgment. The only point

for consideration is whether mustard oil comes within the ambit of Item 13 in first schedule to the Central Excises and Salt Act, 1944. This Item was introduced by the Finance Act of 1956 and is to the following effect .

'Vegetable Non-essential Oil all sorts, in or in relation to the manufacture of which any process is ordinarily carried on with the aid of power.'

2. The petitioners had been manufacturers of mustard oil by aid of power at the material time and with the introduction of the above item, they had to take out a licence for manufacture of mustard oil which according to the authorities became subject to excise duty at the rate of Rs. 75 per ton, thereafter increased from time to time. In the Finance Act, 1960, this item was renumbered as item No. 12. The petitioners and their association did not accept mustard oil as coming within the ambit of them No. 23 or later on Item 12 and were continuously making representation against the imposition which according to them was without authority of law. The excise duty continued til prior to March 1, 1963 when it was discontinued. Petitioners failing to obtain relief moved this Court in constitutional writ jurisdiction for Writs commanding the respondents not to levy or realise excise duty on mustard oil under the Central Excises and Salt Act, 1944. The grounds urged were the 'Vegetable non-essential oil all sorts' did not include mustard oil and those terms were to vague to include any specific kind of vegetable oil. On this petition the above rules were issued.

3. The respondents opposed, the Rule by filing an affidavit-in-opposition denying that Itern 23 or Item 12 did not include mustard oil or that the words 'Vegetable non-essential oils' were vagee as alleged. The assessments were thus legal and valid and it was contended that the petitioners were not entitled to any relief. Reference was made to various authorities in support and subsequently clarification was given by a press note which is as follows :

4. The petitions filed an affidavit-in-reply reiterating their allegation and contentions made in the petition.

5. The petitioners made the points before Banerjee J.

(i) mustard oil was not non-essential oil but a highly essential cooking medium in many parts of India, so that it was riot vegetable non-essential oil.

(ii) Vegetable non-essential oil was vague and indefinite and in-capable of being applied to mustard oil without more.

(iii) Taxing statute must be guided by its language and if such language was doubtful, interpretation must be made in favour of assessce.

6. The learned Judge found that essential oil is a well known expression in chemical technology. It meant ethereal, volatile or essential oils so called because they represented quintessence of the order and flavour of the botanical different in composition and proportions from fatty or fixed oils (Enyclopaedia of Chemical Technology Vol. 9/569)

7. It was further stated on the authorities that from mustard oil both velastic or essential (known as volatile) or fixed or fatty oil may be produced, the percentage in fixed oil being ever 30 percent while percentage of volatile oil is less than one per cent Wealth of India published by Council of Scientific and Industrial Research 1948). The method of extruction of essential oil and fixcd oil from mustard seeds are different-fixed oil can be isolated by expression of Seeds in hydrolic process while volatue oil can be isolated from seeds by submitting pressed cake to formation (Gaenber's book of essential Oils.).

8. The learned Judge held that all vegetable oils which, are nut essential oils are non-essential oils. Mustard oil is not essential oil and accordingly was rightly classified as non-essential oil though it may be an essential cooking medium. Accordingly the definition is not vague. In view of this there was no scope for an interpretation for the benefit of the petitioners and in the view that was taken, Rules, were discharged. These appeals are against this decision.

9. Mr. Hafipade Saha, learned Advocate for the appalicants contended that since essential vegetable oil was to be under stood as a chemical terminology, non-essential oil has no significance or meaning, he was farther contended that interpretation by the people in general is what is to be taken into account and also

what appears from a reference to authorities. There was thus Vagueness in the description as non-essential oil which can never be used as description of physical and chemical properties. Further the user of mustard oil should have been taken into account which was an essential commodity. He further submitted that issuance of the press note would indicate that there was vagueness in the description. For these reasons it was submitted that the learned Judge was in error in holding that mustard oil was within the ambit of Item 2,3 and later on Item 12 of the First Schedule to the said Act.

10. Compact Edition of Oxford English Dictionary Vol. 1 1971, page 72 describes oils as follows:

'The oil constitute a very large of natural substances of animal, vegetable or mineral origin. They are divided into three classes :

Fatty or fixed oils or animal 01 vegetable origin which (in common with facts) are chemically triglyeerides of fatty acide and produce a permanent greasy stain on paper etc. There are sub-divided into diying oils which by exposure to air absorth oxygen and thicken into varnishes, or non-drying oil, which by exposure ferment and becomes rencid, but they ate used as lubricates and illuminates, in making soap and for various other purposes.

Essential or volatile oils chiefly or vegetable (some time of animal) origin which are aerid and limped and from the characteristic odioriforous principles of plants etc. Chemically they are hydrocarbons or mixtures of hydrocarbon with resins etc., they are extensively used in medicine and perfumery and in some cases in the arts.

Mineral oils which are chemically mixture of hydrocarbon and are used chiefly as illuminates.''

11. Even in the shorter Oxford Dictionary we shall find the defini-tion of oil and its classifications as stated above. There dictionaries are no technical tractises but they are dictionary meant for ordinary use of people. The classifications of oil in three classes accordingly appears to be clear obvious even in common parlence.

It appears there from that essential oil or volatile oil are a separate class from tatty or fixed oil and are different from fatty, fixed oil of animal or vegetable origin. The definition given in Item 23 as vegetable non-essential oil thus means the vegetable oils classified as class one above, the mineral oils being outside our purview. That being the position on the definition of oil given in the given in the ordinary dictionary, it is obvious that vegetable non-essential oil will mean oil which is not included within its definition as essential or volatile oil. Accordingly and for reasons given by the learned Judge we are of opinion that there is no vagueness in the definition-as contended by the petitioners. The learned Judge was correct in holding that mustard oil was rightly included within the ambit of Item 23 and later on Item 12 in the First Schedule to the said Act and-extensive use of mustard oil will hot make it essential oil which has a technical meaning. The rules were rightly oil which has a technical meaning. The rules were rightly discharged in the circumstance.

12. The appeals fail and are dismissed. There will be no order as to costs. All interim orders are vacated.