# M/S. B. Oil Mills Ltd vs Sales Tax Tribunal & Ors on 3 September, 1998

## Equivalent citations: AIR 1998 SUPREME COURT 3055, 1998 (6) SCC 577, 1998 AIR SCW 2915, 1998 ALL. L. J. 2161, 1999 BRLJ 219, 1998 (2) UPTC 1020, 1998 (7) ADSC 24, (1998) 6 JT 210 (SC), 1998 ( ) STI 71, 1998 UPTC 2 1020, 1998 ADSC 7 24, 1998 (6) JT 210, (1998) 78 ECR 497, (1998) 5 SCALE 135, (1998) 7 SUPREME 170, (1998) 111 STC 188, (1999) 115 STC 458, 1998 UPTC 1 296

## Author: M.K. Mukherjee

## Bench: S.P.Bharucha, M.K. Mukherjee, G.T. Nanavati

PETITIONER:
M/S. B. OIL MILLS LTD.

Vs.

RESPONDENT:
SALES TAX TRIBUNAL & ORS.

DATE OF JUDGMENT: 03/09/1998

BENCH:
S.P.BHARUCHA, M.K. MUKHERJEE, G.T. NANAVATI.

ACT:

HEADNOTE:

JUDGMENT:

J U D G E M E N T M.K. MUKHERJEE, J.

The appellant carries on business in manufacture and sale of oils at Agra in the State of Uttar Pradesh (U.P.). As a part of their business they purchase crude oil of different varieties, such as linseed-oil, castor-oil, mustard-oil and, after refining, sell as refined oil. The refinement is brought about by first treating the oil with alkali to remove the acid contents, then bleaching it with

absorbent cotton or activated carbon and lastly deodorising it with steam.

To ascertain whether they were liable to pay tax on the sale of refined oil as they had already paid tax for purchase of the crude oil and, if so, what would be the rate thereof, the appellant approached the Commissioner of Sales Tax, U.P. Invoking the provisions of Section 35 of the U.P. Trade Tax Act, 1948 ('Act' for short). By his order dated June 19, 1985, the Commissioner held that the appellant was liable to pay sales tax notwithstanding the fact that they had paid tax on the purchase of the crude oil and that the rate of tax would be 4%. Assailing the order of the Commissioner the appellant preferred an appeal before the Sales Tax Tribunal which was dismissed. They then approached the Allahabad High Court by filing a petition under Article 226 of the Constitution of India which was also dismissed. Hence this appeal by special leave. Mr. Swarup, the learned counsel appearing for the appellant, firstly submitted that they were not liable to pay tax on the sale of refined oil for even after refinement it continues to retain its basic character as oil. According to Mr. Swarup, mere processing of the crude oil for its conversion to refined oil, cannot be said to be 'manufacture' of new goods so as to make the appellant liable for tax thereupon under Section 3(3)(b)(iii) of the Act. In support of his contention he relied upon the judgements of this Court in MS. Tungabhadra Industries Ltd. V. The Commercial Tax Officer, Kurnool (1961) 2 SCC 141, MS. Sterling Foods V. State of Karnataka & Anr. [(1986) 3 SCC 4691 and State of Maharashtra V. M./s. Shiv Datt & sons and Ors. (1993 supp. (1) SCC 2221."

In response Mr. Misra, appearing for the respondent-State, submitted that the appellant was liable to pay tax on the refined oil inasmuch the meaning of the word 'manufacture' in Section 2(e-1) of the Act clearly envisages any sort of processing. Therefore, he contended, the question whether the crude oil maintained its character as oil even after refinement was redundant.

Under section 2(e-I) of the Act 'manufacture' means producing, making, mining, collecting, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods; but does not include such manufacture or manufacturing processes as may be prescribed. Section 3 of the Act, so far as it is relevant for our purposes reads as under:

> 3, Liability to tax under the Act. (1) Subject to the provisions of this Act, every dealer shall, for each assessment years, pay a tax at the rates provided by or under Section 3-A or Section 3-D on his turnover of sales or purchases or both, as the case may be which shall be determined in such manner as may be prescribed.
>
> (2) No dealer shall, except as otherwise provided in Section 18, be liable to tax under sub-section (I) if, during the assessment years, the aggregate of his turnover of-
>
> (a).....
>
> (b).....
>
> (c).....

(d).....

3. Nothing in sub-section (2) shall apply in respect of-

(a).....

(b) the sale by a dealer of -

(i).....

(ii) goods purchased or imported by furnishing and declaration or certificate prescribed under any provision of this Act; and

(iii) goods manufactured by him by using the goods referred to in sub-clause (I) or subclause (ii).

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When the provisions of the above Section are read in juxtaposition with the definition of the word 'manufacture' it is abundantly clear that a dealer will be liable to pay tax on sale of any goods he manufactures by processing the goods he purchased by complying with the requirements of clause (ii) above.

The word 'processing' has, however, not been defined under the Act but it has been the subject matter of interpretation by this Court in various cases including that of CHOWGULE & CO. PVT. LTD. & ANR. V. UNION OF INDIA & Ors. [1981) 1 SCC 653]. Taking a cue from the definition of the word 'process' in Webster Dictionary, this Court observed therein that 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. The nature and extent of processing may vary from case to case; in one case the processing may be slight and in another it may be extensive; but in each process suffered the commodity would experience a change. This Court further observed that whatever be the means employed for carrying out the processing operation, it is the effect of the operation on the commodity that is material for the purpose of determining whether the operation constitutes processing. Viewed in the context of the above meaning given to the word 'processing' by this Court there cannot be any manner of doubt that the nature and extent of the process to which the crude oil is subjected to make it refined oil brings the latter within the meaning of the expression goods manufactured' in Section 3(3)(b)(iii) of the Act so as to make the appellant liable to pay tax on its sale. Coming now to the decisions relied upon by Mr. Swarup, we find that none of them has any manner of application to the facts of the instant case. In TUNGABHADRA INDUSTRIES (Supra) the sole question that came up for consideration was whether consequent upon its conversion to hydrogenated oil by Improving its quality ground nut oil lost its identity. In answering this question in the negative this court held that refined groundnut oil (hydrogenated oil) continues to be

groundnut oil notwithstanding that such oil does not possess the characteristic colour, or taste, odor etc. of the raw groundnut oil. Indeed, the controversy in that case centered round the interpretation of the expression 'groundnut oil' appearing in Madras General Sales Tax (Turnover and Assessment) Rules, 1939. Neither the expression 'manufacture' nor the expression 'processing' directly came up for interpretation in that case. In Sterling Foods (supra) the question that arose for determination was whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, divining, cleaning and freezing cease to be the same commodity and become a different commodity within the meaning of section 5 of the Central Sales Act, 1956. In answering the above question this Court applied the 'commercial parlance' test and relying upon its earlier judgment in Dy. C.S.T. Vs. Pio Food Packers [(1980) 3 SCR 1271] held that processed shrimps, prawns and lobsters are not a new and distinct commodity but they retain the same character as the original shrimps, prawns and lobsters even after the processing. This case is of no assistance to the appellant for unlike the above commodity, the crude oil does not at all retain its earlier character after processing. In Shiv Datt and Sons (supra) the question was whether the dealer was entitled to the concession provided in Section 8 of the Bombay Sales Tax Act, 1959 of such part of their turnover as represented the resale of batteries purchased by them from a registered dealer. Interpreting the meaning of the word 'resale' under Section 2(26), and the word 'manufacture' in that Act and the nature of process applied by the dealer before their sale, this Court held that basically speaking the goods purchased by the dealer from the manufacturers as well as the goods sold by the former are one and the same for nothing was done to the goods afresh which had not been done already. The above case also does not come in aid of the appellant: firstly, because it considered the definition of 'manufacture' (which, of course, is identical with its definition under the Act) in the context of 'resale' of goods as defined in that Act and secondly, because of the nature and extent of the process which the crude oil undergoes to radically change itself to marketable refined oil.

The other contention raised by Mr. Swarup was that they had purchased the crude oil after payment of tax and hence they cannot be made liable to pay tax again for its sale. This contention has to be stated only to be rejected for the Act expressly provides imposition of multistage taxation under clauses (ii) and (iii) of Section 3(3)(0 of the Act.

For the foregoing discussion the appeal fails and is hereby dismissed. There will be no order as to costs.