M/S Ravi Prakash Refineries (P) Ltd vs State Of Karnataka on 3 May, 2016

Equivalent citations: AIR 2016 SUPREME COURT 2564, 2016 (12) SCC 193, 2016 (3) AKR 194, AIR 2016 SC (CIVIL) 1906, (2016) 5 MAD LJ 328, (2016) 3 JCR 208 (SC), (2016) 5 SCALE 200, 2016 (4) KCCR SN 365 (SC)

Author: Dipak Misra

Bench: Shiva Kirti Singh, Dipak Misra

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.4760 OF 2016
(Arising out of S.L.P.(C) No. 21015 of 2012)

M/S RAVI PRAKASH REFINERIES (P) LTD.	.. APPELLANT(S)	

VERSUS

STATE OF KARNATAKA	.. RESPONDENT(S)	

J U D G M E N T

DIPAK MISRA, J.

Delay condoned.

2. Leave granted.

3. The assessee-appellant is engaged in the manufacturing of refined edible oil by solvent extraction process and refining along with trading in edible oil and oil-cake. For the assessment year ending 31-3-2003 the assessee had filed Revised Annual Return in Form 4, declaring the Gross Taxable

Turnovers at Rs.19,76,37,615-00 and Rs.1,60,93,055-00 respectively.

4. As the factual narration would show the appellant sold Sunflower De- oiled Cake (SF DOC) and several other goods in the course of inter-State trade and commerce and in the course of the said transaction the appellant produced 'C' Forms obtained from the dealers in inter-State sales. The assessee had admitted the liability of tax at 2 per cent on the sale of SF DOC in the course of inter-State trade and commerce. The Deputy Commissioner of Commercial Taxes (Assessment) Chitradurga, the assessing authority, had passed an order of assessment under Section 9(2) of the Central Sales Tax Act, 1956 (for brevity, 'the CST Act') on 29th January, 2005, whereby it had expressed the view that a sum of Rs.4,75,68,764/- was subjected to tax at 2 per cent. The assessing officer had granted the benefit on production of 'C' Form in terms of the Notification No.FD 119 CSL 2002 (2) dated 31st May, 2002.

5. After the order of assessment was passed, the succeeding assessing officer formed an opinion that there was an escapement of tax due to the reason that the inter-State sales of SF DOC was actually liable to tax at 4 per cent and not at 2 per cent, which had been erroneously adopted by the earlier assessing authority. Following the principles of natural justice, he levied the tax at 4 per cent on the inter-State sales of SF DOC.

6. The aforesaid order was called in question in an appeal before the Joint Commissioner of Commercial Taxes (Appeals), Davansere Division, Davangere under Section 20(5) read with Section 9 (2) of the CST Act. The Appellate Authority noted the submissions advanced on behalf of the assessee as well as the revenue and thereafter referred to Section 12-A of the Karnataka Sales Tax Act, 1957 (for short, 'KST Act') and referred to the decisions in the cases of Nagaraja Overseals Traders vs. The State of Mysore,[1] Mahaveer Drug House vs. ACCT Gandhinagar, Bangalore,[2] State of Andhra Pradesh vs. Ampro Food Products,[3] Giridharial Co. vs. State of Andhra Pradesh,[4] C. Sathiragu and Sons vs. State of Andhra Pradesh,[5] Somani Brothers vs. State of Bihar,[6] Eureka Forbes vs. State of Bihar[7] and came to hold that the change of opinion could not have been a ground for reopening of assessment in exercise of power under Section 12-A of the KST Act and, accordingly, set aside the order of re-assessment.

7. Though the assessee succeeded, yet it preferred an appeal, being STA No.425 of 2006 before the Karnataka Appellate Tribunal, Bangalore (for short, 'the tribunal'), as the first Appellate Authority had not expressed any opinion with regard to rate of tax on oil-cake and de-oiled cake. It was contended before the Tribunal that the oil cake and de-oiled cake as per the commercial parlance are one and the same and, therefore, the rate of tax has to be at 2 per cent and not 4 per cent. The tribunal after noting the submissions referred to the schedule in the notification and the decision in M/s Sterling Foods vs. State of Karnataka,[8] State of Karnataka vs. M/s Goa Granites[9], M/s Habeeb Protiens and Fats Extracts, Hiriyur, Chitradurga District vs. Commissioner of Commercial Taxes, Bangalore and Anr.[10] and came to hold as under :

> “Thus, we hold that the expression 'oil cake in sl. No. 6 of the CST Notification No. FD 119 CSL 2002(2) dated 31.5.2002 would include also de- oiled cake and that therefore the reassessment order passed by the AA under CST Act, 1956 for the year

> 2002-03 in so far as it concerned levy of CST at 4% on inter-State Sales of sunflower de-oiled cake covered by C Forms by denying the benefit of reduction in the rate of CST to 2% granted in the Notification dated 31.05.2002 is liable to be held unsustainable and set aside.
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> ....
>
> Consequential to the decision taken by us as above, the appellate order of the learned FAA is liable for modification accordingly. As regards the reassessment order set aside by the learned FAA on the basis of lay that reassessment is not permissible by change of pinion, which is supported by the several case laws cited in the appellate order itself, it need to be placed on record that Hon'ble Supreme Court of India has reiterated the said legal position that reopening of an assessment by change of opinion is not permissible in the recent judgment rendered in the case of M/s Binani Industries Ltd. Vs. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore and others (2007) 6 VST 783."

8. On the aforesaid analysis, the tribunal issued the following directions:

> "(i) Reassessment order passed by the DCCT (Transition), Chitradurga under CST Act, 1956 for the year 2002-03 in respect of rate of CST levied at 4% on the turnover of Rs.4,75,68,764 relating to inter-State sales of sunflower de-oiled cake covered by C Forms is modified to 2% allowing the benefit of reduction in the rate of CST to 2% granted in the Notification No.FD 119 CSL 2002 (2) dated 31-5-2002.
>
> (ii) The appellate order passed by the FAA in CST AP 27/2005-06 dated 20-4-

2006 shall stand modified accordingly.

(iii) Directions are issued that the AA shall accordingly issue revised demand notice."

9. The aforesaid order of tribunal was assailed before the High Court in Revision Petition being STRP No. 32 of 2009. Be it noted, the High Court had formulated the following two substantial questions of law:-

> (i) Whether, on the facts and in circumstances of the case, can it be held that the order dated 12.7.2007 passed by the Karnataka Appellate Tribunal in STA 425/2006 allowing the appeal is correct and in accordance with law?
>
> (ii) Whether on the fact and in circumstances of the case, can it be held that the Appellate Tribunal was right in law in ignoring that under the KST Act in the Second Schedule in serial No.1 of Part O, oil cake and de-oiled cake are listed under two separate sub-headings as two different commodities?

10. After deliberating on the aforesaid two questions, the High Court referred to the provisions of the KST Act and the Notification issued under Section 8(5) of the CST Act, distinguished the decisions placed reliance upon by the first Appellate Authority and the tribunal as well as the decision rendered by this Court in M/s Sterling Foods (supra) and came to hold that there is distinction between oil cake and de-oiled cake and they are two different commodities and not one and the same. Elaborating the discussion, the Division Bench held thus:-

> "The contention that the commodities will have to be understood in common parlance as understood by a common man is even harder to accept. What a common man understands need not necessarily mean what is understood in accordance with law. In the instant case, the framers of the schedule were aware of the distinction between oil cake and de-oiled case. Accordingly, they have treated it as two different commodities. Therefore, to hold that the view of a common man has to necessarily over ride the view of the Legislature is difficult to accept. The Distinction in law has been made which requires to be followed. Oil cake and de-oiled case cannot stand extended to de-oiled cake. The impact of the notification reducing the tax impact was every well known when the benefit was granted. A notification has to be strictly construed. The Court cannot read into the notification what is not there. The notification is clear and unambiguous. Any attempt to read it otherwise is not only uncalled for but would amount to redrafting the notification." Being of this view, it answered the two questions that were framed by it in favour of the Revenue and against the Assessee. The said judgment and order is the subject matter of challenge in this appeal by special leave.

11. We have heard Shri Dhruv Mehta, learned senior counsel along with Ms. Anupama, learned counsel for the appellant and Shri Basava Prabhu S. Patil, learned senior counsel along with Shri V.N. Raghupathy, learned counsel for the State.

12. First, we shall take up the issue pertaining to Section 12-A of the KST Act. Section 12-A(1) which is relevant for the present purpose is extracted below:

> "12-A. Assessment of escaped turnover-(1) If the assessing authority has reason to believe that the whole or any part of the turnover of a dealer in respect of any period has escaped assessment to tax or has been under- assessed or has been assessed at a rate lower than the rate at which it is assessable under this Act or any deductions or exemptions have been wrongly allowed in respect thereof, the assessing authority may, notwithstanding the fact that the whole or part of such escaped turnover was already before the said authority at the time of the original assessment or re-assessment but subject to the provisions of subsection (2), at any time within a period of [eight years] from the expiry of the year to which the tax relates, proceed to assess or re-assess to the best of its judgment the tax payable by the dealer in respect of such turnover after issuing a notice to the dealer and after making such enquiry as it may consider necessary."

13. On a perusal of the aforesaid provision, it is limpid that it permits re-opening of an assessment on the ground that if the assessee has been assessed at a rate lower than the rate at which it is assessable under Act. The rate of tax is four per cent. The assessee had filed the return and the 'C' Forms claiming the benefit of the Notification dated 31.05.2002 in respect of inter-State sale of oil-cakes. The assessing officer had accepted the 'C' Forms on verification and granted the benefit. The assessing officer on a proper security has accept the 'C' Forms on the basis of which reduced rate of tax was claimed. The assessment was reopened as there was no escapement of tax due in respect of inter-State sale in respect of SF DOC.

14. Mr. Dhruv Mehta, learned senior counsel for the appellant, would submit that once an assessment order was framed on all the material available on record and the rate of tax was accepted, the view expressed by the 1st appellate authority which had got the stamp of affirmance by the tribunal should be accepted to be correct more for the reason the revenue had not challenged the order of assessment and that apart the High Court has not appositely dealt with it. He would place heavy reliance on the pronouncement in M/s. Binani Industries Limited v. Assistant Commissioner of Commercial Taxes, VI Circle, Bangalore[11].

15. It is submitted by Mr. Basava Prabhu S. Patil, learned senior counsel, that claiming of benefit on production of 'C' Forms had nothing to do with the nature of product that was sold. Learned senior counsel would contend that the first Appellate Authority, as well as the tribunal, has been erroneously guided that there has been change of opinion. Learned senior counsel has submitted that the words "reason to believe" have to be expansively understood to import a meaning to the provision, for when the assessment has taken place at a rate lower than the rate at which the turnover of a dealer is assessable, there can be reopening of assessment.

16. First, we shall proceed to consider the acceptability of the opinion expressed by the High Court. The Government of Karnataka in exercise of its powers conferred by Section 8 (5) of the CST Act, issued Notification No.119 FD 119 CSL 2002(2) dated 31.05.2002 granting reduction in the rate of central sales tax payable on inter-State sales of goods specified in Serial Nos.1 to 11 of the notification, subject to the condition that the Dealer produces declarations in Forms 'C' obtained from the registered Dealers/Government to whom the goods are sold. Be it noted oil cake is one of the goods specified in serial No. 6 of the notification. Submission of Mr. Mehta, learned senior counsel is that the High Court has clearly erred in law by distinguishing the facts and by opining that the judgment in the case of M/s Habeeb Protiens (supra) is not a decision in issue and an obiter. In the case of M/s Sterling Foods (supra), the question that arose for consideration was whether shrimps, prawns and lobsters subjected to processing like cutting of heads and tails, peeling, deveining, cleaning and freezing ceased to be the same commodity and became a different commodity for the purpose of the Central Sales Tax Act. The Court posed the question whether they still go under the description of shrims, prawns and lobsters or in other words, shrimps, prawns and lobsters would mean only raw shrimps, prawns and lobsters as caught from the sea or they also include process and frozen shrimps, prawns and lobsters. After referring to the various provisions and placing reliance on the decision in Dy. CST vs. Pio Food Packers[12] the Court held as under:-

> ".....when the State Legislature excluded processed or frozen shrimps, prawns and lobsters from the ambit and coverage of Entry 13a, its object obviously was that the last purchases of processed or frozen shrimps, prawns and lobsters in the State should not be exigible to State Sales Tax under Entry 13a. The State Legislature was not at all concerned with the question as to whether processed or frozen shrimps, prawns and lobsters are commercially the same commodity as raw shrimps, prawns and lobsters or are a different commodity and merely because the State Legislature made a distinction between the two for the purpose of determining exigibility to State Sales Tax, it cannot be said that in commercial parlance or according to popular sense, processed or frozen shrimps, prawns and lobsters are recognised as different commodity distinct from raw shrimps, prawns and lobsters. The question whether raw shrimps, prawns and lobsters after suffering processing retain their original character or identity or become a new commodity has to be determined not on the basis of a distinction made by the State Legislature for the purpose of exigibility to State Sales Tax because even where the commodity is the same in the eyes of the persons dealing in it the State Legislature may make a classification for determining liability to sales tax. This question, for the purpose of the Central Sales Tax Act, has to be determined on the basis of what is commonly known or recognised in commercial parlance. If in commercial parlance and according to what is understood in the trade by the dealer and the consumer, processed or frozen shrimps, prawns and lobsters retain their original character and identity as shrimps, prawns and lobsters and do not become a new distinct commodity and are as much 'shrimps, prawns and lobsters', as raw shrimps, prawns and lobsters, sub-section (3) of section 5 of the Central Sales Tax Act would be attracted and if with a view to fulfilling the existing contracts for export, the assessee purchases raw shrimps, prawns and lobsters and processes and freezes them, such purchases of raw shrimps, prawns and lobsters would be deemed to be in course of export so as to be exempt from liability to State Sales Tax."

17. Relying on the said passage, it is contended by Mr. Mehta that when identity of the goods on the basis of commercial parlance is similar, the High Court would have been well advised to follow the principles set out in the aforesaid decision and should not have been guided by the concept of enumeration in the Notification. In essence, the submission is that there is no distinction between the oil cake and the de-oiled cake and both should be perceived as one in commercial parlance. Thus, the emphasis is on the commercial parlance test. To bolster the said stand, reliance has been placed on M/s Habeeb Protiens case, wherein the Division Bench of the High Court of Karnataka has drawn a distinction between sunflower oil cake and groundnut oil cake on the one hand and de-oiled sunflower cake and groundnut oil cake on the other. The aforesaid analysis made in the said judgment should not detain us long, for Mr. Patil learned senior counsel for the State has brought to our notice a recent decision of this Court in the case of Agricultural Produce Market Committee vs. Biotor Industries Limited and Anr.[13] . In the said case, the two-Judge Bench had posed five questions and the question pertinent for our purpose reads thus:-

> "13.4 Whether the Division Bench is justified in recording the finding on the second issue (see para 7, above at p.737 c-d) in connection with LPA NO. 195 of 2006 that the respondent concern is not liable to pay any market fee on the de-oiled cakes sold by it which are stated to be the by-product in the course of manufacturing castor oil which is not one of the items enumerated in the Schedule to the Act and the notification issued by the Directorate?"

18. Dealing with the distinction between the oil-cake and the de-oiled cake, the Court referred to the process and quoted from the findings referred by the learned Single Judge. Though the said decision was rendered in the backdrop of Gujarat Agricultural Produce Markets Act, 1963 to levy of market fee, it is absolutely distinctly perceptible from the judgment that the Court has arrived at a definite conclusion that there is a distinction between the oil-cake and de-oiled cake and they are two different commercial products. Thus, when the difference has been drawn by this Court, the assessee herein cannot be allowed to advance a plea that the said test should not be applied, but the commercial parlance test should be adopted to determine the said goods for the purposes of Central Sales Tax Act. To have a complete picture, we may refer to the Notification dated 31.05.2002. The relevant part of it reads as follows :

> "In exercise of the powers conferred by sub-Section (5) of Section 8 of the Central Sales Tax, 1956 (Central Act 74 of 1956), the Government of Karnataka, being satisfied that it is necessary so to do in the public interest, hereby directs that which effect from the First day of June, 2002, the tax payable by a dealer under Section 8 of the said Act on the sale of goods specified below, made in the course of inter-State trade or commerce, to a registered dealer or the Government shall be calculated at the rate of two per cent subject to production of declaration in Form 'C' or certificate in Form 'D' duly filed and signed by the registered dealer or the Government to whom the said goods are sold:-
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> 1. Cotton Yarn
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> 2. Bicycles
>
> 3. Chemical fertilizers and chemical fertilizer mixtures
>
> 4. Edible oil-refined and non-refined
>
> 5. Khandasari Sugar
>
> 6. Liquid Glucose, Dextrine, Maixe Starch, gluten, grits, maize, husk, oil cake, corn steep liquor, dextrose, corn oil, maixe hydrol and maize germs."

19. From the said Notification, it is evident that the competent authority while exercising power under sub-section (5) of Section 8 of the CST Act, has kept the reduction of tax qua de-oiled cake from the purview of Notification and has only provided oil cake to be taxed at the reduced rate of

tax. In view of the fact that the goods have distinct and different identity which also get recognition from the Notification, we are obliged to hold that the High Court has correctly distinguished the authority in M/s Sterling Foods (supra) and we unhesitatingly agree with the same.

20. Though we have agreed with the said conclusion of the High Court, yet the fact remains that the assessing authority had expressed the opinion with regard to the rate of tax on the de-oiled cake while scrutinizing 'C' Forms which is an expression of opinion on the available materials brought on record and, therefore, the first appellate authority as well as the tribunal was justified in concurring with the said order. It is worthy to note that the revenue had not challenged the order passed by the Joint Commissioner. The High Court has not expressed any opinion on this score. Considering the cumulative effect of the facts and law we have stated, we have not an iota of doubt in our mind that there should not have been reopening of assessment. However, the finding recorded by the High Court overturning the view of the tribunal that oil-cake and de-oiled cake are the same product and, therefore, both are liable to reduced rate of tax despite the notification only mentions oil-cake, is not defensible.

21. Consequently, the appeal filed by the assessee is allowed in part. The finding of the High Court as regards oil-cake and de-oiled cake being different products as per the notification dated 31st May, 2002 is correct. However, the assessee shall reap the benefit of initial assessment as the same could not have been reopened. In the facts of the case, there shall be no order as to costs.

….....J.
[DIPAK MISRA]

….....J.
[SHIVA KIRTI SINGH]

NEW DELHI,

MAY 03, 2016.

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[1] JJ STC 315
[2] [1994] 93 STC 51 (Kar)
[3] 96 STC 618
[4] 97 STC 442
[5] 111 STC 703
[6] 99 STC 47
[7] 119 STC 460
[8] (1986) 63 STC 239
[9] 2007 (5) VST 434 (Kar)
[10] 2005 (58) Kar.L.J. 155
[11] (2007) 6 VST 783
[12] 1980 Supp. SCC 174
[13] (2014) 3 SCC 732