Supreme Court of India
State Of A.P vs Modern Proteins Ltd on 26 April, 1994
Equivalent citations: 1994 SCC, Supl. (2) 496 JT 1994 (3) 431
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
STATE OF A.P.

Vs.

RESPONDENT:
MODERN PROTEINS LTD.

DATE OF JUDGMENT26/04/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC Supl. (2) 496 JT 1994 (3) 431
1994 SCALE (2)699

ACT:

HEADNOTE:

JUDGMENT:

The Judgment of the Court was delivered by K. RAMASWAMY, J.- A common question oflaw relating to assessment of two assessment years, namely, 1977-78 and1982-83 made under the Andhra Pradesh General Sales Tax Act (6 of 1957), for short "the Act" and the Central Sales Tax Act, for short the 'CST Act' arises for decision. The respondent having its factory at Kurnool in A.P. is a dealer under the Act, in groundnut, defiled cake, edible protein flour and other products. After decortication and passing through expellers of the groundnut seeds, groundnut oil and groundnut oil cakes are obtained. The groundnut oil cake again is subjected to the process in the solvent in which "food hexane" is sprayed to obtain solvent groundnut oil and groundnut deoiled cake. The deoiled cake is then granuled by grinding and the end product which is "groundnut protein flour" is again subjected to heat and steam treatment under controlled and regulated conditions to ensure removal of solvent and brought into a uniform composition. Colouring or flavouring agents are added to this flour so as to conform to the requirements mentioned in the Fifth Schedule to the Solvent Extracted Oil, Deoiled Meal and Edible Flour (Control) Order, 1967 for short 'the Order'

issued under Section 3 of the Essential Commodities Act.

2.For the assessment year 1977-78, the CTO, Kurnool determined the tax liability in respect of the respondent's net turnover under CST at 4 per cent on groundnut protein flour. On appeal the Assistant Commissioner concluded that it is deoiled cake within Entry 29 of the First Schedule to the Act, exigible to sales tax at 1 per cent at the point of first sale in the State. The Deputy Commissioner exercising suo motu power under Section 20(2) and Section 9(2) of the Act revised the appellate order and held that the groundnut protein flour is not deoiled cake and affirmed the order of the CTO. On further revision to the STAT the tribunal upheld the order of the Deputy Commissioner. In revision to the High Court, the Division Bench by the impugned order, TRC No. 40 of 1982 dated 26-6-1984 held that the deoiled groundnut cake can be both edible as well as inedible and in either case it would fall under Entry 29. It is immaterial whether the groundnut cake is in small pieces in shape or big flat cake pieces. The groundnut flour is not different and distinct commercial product from the deoiled groundnut cake. Therefore, it is exigible to sales tax under Entry 29 of Schedule 1.

3.The question, therefore, is whether groundnut protein flour is a deoiled cake within Entry 29 of Schedule 1 of the Act. The process of manufacture and the resultant product has already been stated. Its substance bears reiteration that groundnut seeds obtained after the process of decortication are of a high grade quality, rich in proteins but free from harmful materials processed in the expeller and the outcome is groundnut oil and groundnut oil cake. The groundnut oil cake again is pressed through the solvent in which "food hexane"

is sprayed resultantly groundnut oil and groundnut deoiled cakes are obtained. The deoiled groundnut cake again is granuled by grinding and is subjected to heat and steam treatment under controlled and regulated condition to ensure removal of solvent and brought into a uniform composition. Colouring or flavouring agents are added to this flour which is named as groundnut protein flour. This is edible flour fit for human consumption. The groundnut cake and deoiled cake are animal feed. This will be apparent from the order which regulates not only the production but also sale by licence and the products should conform to the standards prescribed in the respective schedules. Rule 2(b) defines "deoiled meal" (instead of naming as cake) to mean the residual material left over when oil is extracted by a solvent from any oil-bearing material while "edible flour" is defined in Rule 2(c) to mean the ground material prepared from deoiled meal which is derived from oil cake obtained either by single pressing of good quality edible oilseeds or as a result of direct extraction of oil from such oilseeds. Rule 3 regulates their production by a licence and Rule 9 regulates sale thereof. Sub-rule (5) of Rule 9 provides that no person shall manufacture, stock for sale, or sell or offer for sale deoiled meal unless in the case of meal intended for use as livestock feed, such deoiled meal conforms to the standards of quality for the appropriate deoiled meal specified in the Fourth Schedule. Similarly sub-rule (6) of Rule 9 is with regard to edible groundnut flour. Clause (iv) therein provides that "the edible flour" conforms to the standards of quality specified in the Fifth Schedule. The quality, content and the percentage of the respective deoiled meal and edible groundnut flour have been prescribed in Schedule 4 and Schedule 5 respectively, the details of which are not necessary to specify in this judgment, since across the bar there is no dispute regarding the differences enumerated therein. But the controversy raised across the bar and also

found acceptable to the High Court in favour of the assessee, is that as per the analyst's report deoiled cake and groundnut protein flour bear some of the common ingredients and contents, whether in edible or in non-edible form it remains the same substance and that therefore, the groundnut protein flour is exigible to sales tax under Entry 29 of Schedule 1. The contention of Shri Sitaramiah, learned Senior Counsel for the appellant is that deoiled cake is a distinct commodity meant for animal feed while groundnut protein flour admittedly is meant for human consumption. The price for the former is Rs 1077 per metric ton while for the latter it is Rs 2500 per metric ton. Food Corporation of India, to whom the assessee had sold the groundnut protein flour, placed orders only as a groundnut protein flour known in the commercial parlance. It is a distinct commodity fit for human consumption. Admittedly it was sold by the assessee for human consumption at a higher price treating it as distinct from deoiled cake which was also sold by the assessee for animal feed at Rs 1077 per metric ton. Thus the two commodities are known in the commercial parlance as different and distinct commercial commodities. Deoiled cake, thereby, is different and groundnut protein flour is altogether another commodity from deoiled cake which does not fall within Entry 29 of the First Schedule. Shri Harish Salve, the learned Senior Counsel for the respondent on the other hand contended that generic entry "deoiled cake" is exigible to tax under Entry 29, be it edible or non-edible meant for human consumption or animal feed so long as it conforms to the generic descriptive entry. It bears no relevance whether it is used for human consumption or animal feed. In other words, the user test in the commercial parlance, bears little relevance. The process of extracting groundnut oil cake from expeller and by solvent process removal of the oil and to make the deoiled cake in big size and thereafter making it into small cakes; the small cake granuled into pieces down the steam, is a continuous process and the commodity remained the same without indicating any separate process. Therefore, groundnut protein flour whether is oiled or deoiled, whether in bulk or small pieces, whether granuled or remained in small pieces make no difference for eligibility to tax. He gave the illustrations of breweries, textiles, petrochemicals and glassware as examples. To appreciate the contentions pragmatically we called upon the assessee to produce the samples of deoiled cakes and groundnut protein flour and gave time till Thursday, i.e., 14-4-1992. Even till today, i.e., Saturday, i.e., April 16 they were not produced. We also indicated to the counsel that non-production may lead us to draw an adverse inference.

4.Having given our anxious and careful consideration and thought to the respective contentions, we are of a considered view that the argument of Shri Salve, though attractive, does not command itself for acceptance. Sales tax law is intended to tax sale or supply of different commercial commodities and not to tax the production or manufacture of particular substance out of which the commodities may have been made. As soon as a separate commercial commodity comes into existence or emerges from the production or manufacture, it becomes a separately taxable entity or goods for the purpose of sales tax. When commercial goods without change of their identity as such goods are merely subjected to some processing or finishing or are merely joined together, they remain commercially known as same goods, cannot be taxed again in a series of sales, so long as they retain their identity as goods of a particular original type. In Ganesh Trading Co. v. State of Haryana' this Court considering whether the rice after dehusking remains to be paddy or whether liable to sales tax as rice, it was held that it is true that rice was produced out of paddy but it is not true to say that paddy continued to be paddy even after dehusking. It had changed its identity. Rice is not known as paddy.

It is misnomer to call rice as paddy. They are two different things in ordinary parlance. Hence quite clearly when paddy is dehusked and rice produced, there has been a change in the identity of the goods. Accordingly it was taxed as rice. In State of Kamataka v. B. Raghurama Shetty2 this Court considering the same question gave an illustration whether wheat flour be called wheat and considered the distinction from the economic perspective. This Court laid the test that in the manufacturing, the wheat is converted into flour and thereafter the flour is utilised to manufacture bread. The wheat produced by the farmer was converted by the miller into flour and the baker used the flour to make bread out of it. Thus wheat and flour were consumed to manufacture bread. In Rajasthan Roller Flour Mills Assn. v. State of Rajasthan' this Court considering whether flour, maida and suji derived from wheat are not 'wheat' within the meaning of Section 14 of the CST Act held that flour, maida and suji are different and distinct goods from wheat. In other words, flour, maida and suji 1 (1974) 3 SCC 620: 1974 SCC (Tax) 100: (1973) 32 STC 623 2 (1981) 2 SCC 564: 1981 SCC (Tax) 134: (1981) 47 STC 369 3 1994 Supp (1) SCC 413 are not declared goods. Though flour, maida and suji are derived from wheat but they are not wheat. In Hindustan Aluminium Corpn. Ltd. v. State of Up.4 this Court was to consider whether metal takes within its ambit the fabricated forms of metal "all kinds of metals" including minerals, ores, metals, alloys and sheets. This Court held that metal was used under Section 3-A(2) of the U.P. Sales Tax Act, 1948 in its primary sense, i.e, in the form in which it is marketable as the primary commodity and that the primary form and the forms fabricated from the primary form constitute two distinct commodities marketable as such and must be regarded as different commercial commodities. In Atul Glass Industries (P) Ltd. v. Collector of Central Excise5 the entry in the schedule to the Excise Act came up for consideration. The question was whether "glass" includes "glass mirror" or glassware in the schedule of the Excise Act. This Court applied the functional test and held that the original glass sheet as a result of the process through which it undergoes a complete transformation takes place when it emerges as a glass mirror is completely different from the original glass sheet. It was, therefore, held that a glass mirror cannot be regarded as a glassware. In Dy. CST v. Coco Fibres6 the question was whether coconut fibre is a separate entity from the coconut husk. This Court laid the test thus: (SCC p. 292, para 4) "The essential point to remember is that something is brought into existence which is different from that of the original, existing in the sense that the thing produced is by itself a commercial commodity and is capable as such of being sold or supplied. It is not necessary that the stuff or the material or the original article must lose its character or identity or it should become transformed in basic and essential properties."

The test is whether the article which comes into being must be commercially different from the one from which it is made or manufactured. In that case it was held that coconut fibre is a separate entity from coconut husk in commercial parlance. In State of TN. v. P.L. Malhotra7 this Court held that the purpose of enumeration in a statute dealing with sales tax at a single point in a series of sales would, very naturally, be to indicate the types of goods each of which would constitute a separate class for a series of sales. Otherwise, the listing itself loses all meaning and would be without any purpose behind it. It was held that "iron and steel" when converted into steel rounds, flats, angles and bars are separately taxable entities for the purpose of sales tax, each of them form a separate species in each series of sales although they may all belong to the genus 'iron and steel'. In G.R. Kulkami v. State8 Hidayatullah, C.J. (as he then was) speaking on behalf of the Division Bench of the Madhya Pradesh High Court considered the question whether breaking boulders into stone is

manufacture within the meaning of Section 2(1) of the M.P. Sales Tax Act. It was held that after quarrying if an attempt is made to break them (stone), may be by manual labour, into sizes for sales or gitti, the stone is shaped into an object of a different size.

4 (1981) 3 SCC 578: 1981 SCC (Tax) 280: (1981) 48 STC 411 5(1986) 3 SCC 480: 1986 SCC (Tax) 620: (1986) 63 STC 322 6 1992 Supp (1) SCC 290: (1991) 80 STC 249 7(1976) 1 SCC 834: 1976 SCC (Tax) 102: (1976) 37 STC 319, 324 8 (1957) 8 STC 294 "[T]he word 'manufacture' has got various shades of meanings. There may be manufacture of a complicated object like the super-

constellation, or there might be manufacture of a simple object like a toy kite. When they are broken into metal or gitti there is some process, manual though it may be, for the purpose of shaping the stones into another marketable commodity."

Accordingly it was held that stone making is a new article exigible to sales tax.

5.In Dunlop India Ltd. v. Union of India9 this Court, dealing with levy of customs duty on "V.P. Latex", was called upon to consider the classification of the goods for the purpose of levy of customs duty, whether "raw rubber". Vinyl Pyridine Latex was an essential component to manufacture lyres. This Court held that it is not for the court to consider under which item a particular item falls but it be left to the authorities to consider it. A condition of an article is a material factor for classification. In that context this Court pointed out that the test of "end use" is irrelevant. Far from helping the assessee it is consistent with the view this Court expressed in the aforestated cases. This Court said that in interpreting the meaning of an entry the acceptation by the trade and popular meaning should commend itself to the authority. How the people in the trade and commerce understand the meaning in the course of trade is relevant. When an article is classified and put under a particular entry it is not appropriate for the court to question it. In Porritts & Spencer (Asia) Ltd. v. State of Haryana10 the entry 'textiles' for the purpose of Punjab General Sales Tax Act, 1948 in Item 30 of Schedule 'B', whether 'Dryer felts' are textiles. In the context whether they are exempt from sales tax, this Court considered the scope of textiles and held (SCR at p. 549 F & G: SCC pp. 85-86, para 5) that textiles need not be of any particular size or strength or weight. It may be in small pieces or in big rolls. It may be weak or strong, light or heavy, bleached or dyed, according to the requirement of the purchaser. The use to which it may be put is also immaterial and does not bear on its character as a textile. This Court in Hindustan Aluminium Corpn. Ltd 4 considered this ratio and held that the ratio therein would not apply to sales tax and common parlance principle is to be applied. Equally the word petrochemical which includes yarn or nylon as a finishing product from petrochemical decided in CIT v. Nirlon Synthetic Fibre and Chemicals Ltd.11 bears no relevance on the facts of this case. The case of Krishna Chander Dutta (Spice) Pvt. Ltd. v. CTO12 also does not help the assessee. In the notification issued for the purpose of sales tax it included both black pepper and black pepper powder. Consequently, this Court while considering that both black pepper as well as black pepper powder is used as a commercial product, the levy of separate tax was held illegal. The case of Telangana Steel Industries Ltd. v. State of A.P. 13 also is of no assistance to the assessee. In that case also this Court referred to Modern Candle Works v. Commissioner of Taxes", wherein Saikia, C.J. and Hansaria, J., as they were 9 (1976) 2 SCC 241: (1976) 2 SCR 98 10 (1979) 1 SCC 82: 1979 SCC (Tax) 38 11 (1981) 3 SCC 152: (1980) 130 ITR 14 12 1994 Supp (2) SCC 265 : (1994) 1 Scale 71 1 13

1994 Supp (2) SCC 259 :(1994) 1 Scale 894 14 (1988) 71 STC 362 then, considered the decisions involving edible articles and non-edible articles. The High Court of Assam held that whether "there has been addition of external agents thereby making it a commodity different; and distinct and whether there has been a process of transformation of such a nature and extent as to have resulted in the production of a new article as commonly understood in the market where it is dealt with". When these tests have been satisfied, the court held that the commodity was exigible to sales tax. If the commodity did not result in a new article, the nature, duration and transformation of the original commodity would be immaterial. In Telangana Steel case" whether iron wires are separate commercial goods from wire rods from which they were produced, this Court did not decide that question but however concluded that the notification did not allow taxing of the same commodity at a series of sales but only at a single point for sales tax. In that view this Court held that the levy of sales tax at more than one stage on same goods was illegal.

6.It is true that the analyst's report in this appeal does indicate that both deoiled cake and groundnut protein flour contain common properties but the use and purpose being different and distinct, they cannot be considered to be the same commodity. The groundnut protein flour is an edible protein food for human consumption and is a different commercially marketable entity and thereby is distinct from deoiled cake for animal feed though obtained in the course of same process at different stages. Both emerge into different and distinct commodities commercially known in the common parlance for distinct and different use. Thereby groundnut protein flour did not remain part of the genus i.e. deoiled cake but became a new and different entity known in the commercial parlance. Accordingly it is exigible to CST at the relevant time at 4 per cent. The appeals, therefore, are allowed. The order of the High Court is set aside and that of the Deputy Commissioner and CTO and STAT are confirmed, but in the circumstances parties are directed to bear their own costs.