

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 1252 OF 2001

Commissioner of Sales Tax, U.P.

Appellant (s)

VERSUS

S/S/ Mool Chand Ram Prasad

Respondent(s)

(With office report)

Date: 22/03/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE LOKESHWAR SINGH PANTA

For Appellant(s)

Mr. R.G.Padia, Sr. Adv.

Mr. Rajeev Dubey, Adv.

Mr. Punit Dutt Tyagi, Adv.

For Respondent(s)

RR-Ex-Parte

UPON hearing the counsel the Court made the following

O R D E R

The Appeal is allowed. Parties shall bear their own costs.

(PARVEEN KR. CHAWLA)

(KANWAL SINGH)

Court Master

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1252 OF 2001

Commissioner of SalesTax, U.P.

..Appellant(s)

VERSUS

S/S/ Mool Chand Ram Prasad

.Respondent(s)

O R D E R

This appeal, by grant of special leave, has been filed by the Commissioner of Sales Tax, Lucknow, U.P. (for short 'the appellant') against the impugned final order of the High Court of Judicature at Allahabad in Sales Tax Revision No. 799 of 1979 dated 17th April, 1979 whereby the High Court has dismissed the revision petition filed by the appellant.

Respondent in spite of service is not present and proceeded ex-parte.

Brief facts giving rise to the present controversy are:

The dispute in the present case relates to the year 1966-67.

Respondent-assessee, hereinafter referred to as 'the respondent', is a dealer in Foodgrains, Cement, Kerosene Oil etc. The account books of the respondent were accepted but the Assessing Officer did not allow tax exemption on purchase of rice for Rs.31,278.44. Similarly, the Assessing Officer did not allow tax exemption to the respondent on the purchase of broken dal worth Rs.8,71,474.13. The Assessing Officer also fixed the turnover of imported kerosene oil at Rs.1,47,898.43.

Aggrieved against the aforesaid order of the Assessing Officer, respondent filed an appeal. In appeal the order passed by the assessing authority was confirmed. Respondent thereafter filed a Revision Application No. 986 of 1978 before the Additional Revising Authority, Sales Tax, Kanpur. The Revising Authority accepted the revision and set aside the orders passed by the appellate authority and assessing authority and remanded the case back for reassessment in accordance with law and in the light of the observations made in the order of revising authority.

Appellant, being aggrieved, filed a Sales Tax Revision No. 799 of 1979 in the High Court. The High Court relying upon a decision of a Single Judge in the case of M/s Gouti Bandhu vs. Commissioner of Sales Tax, U.P. reported in 1978 U.P.T.C. 707 in S.T.R. No. 52 of 1977 held that Explanation II to Section 3-D of the U.P.Sales Tax Act, 1948 (for short 'the Act') ceased to be on the statute book

in view of the subsequent amendments and was not applicable to the present case and, therefore, the distinction between the split and processed foodgrains and the unsplit and unprocessed foodgrains no longer existed. Contention of the respondent that he was not liable to pay tax on the broken dal purchased by him from the dal mills on the ground that dal mills had already paid tax on the unbroken dal from which the broken dal was produced was accepted and revision was as dismissed.

Legislative history:

In the case of Tilok Chand Prasan Kumar vs. The Sales Tax Officer,

Hathras, District Aligarh reported in 25 STC 118, the High Court of Allahabad

considered the question 'as to whether Arhar Dal purchased by Dal Mills and

converted into broken down Dal was a commodity different from Arhar Dal'. It was

held that dehusking, cleaning and breaking down of the Dal or grain does not bring

into existence a new commercial commodity.

Purchase tax was being levied under Section 3-D of the Act and after

this decision the Legislature stepped in to resolve the controversy in favour of the

State by adding an Explanation with retrospective effect to Section 3-D by

amending the Act by U.P.Sales Tax (Amendment and Validation) Act, 1970

(U.P.Act No. 2 of 1970). The said Explanation-II reads as under:

"Explanation II: For the purposes of this sub-section split or processed foodgrains, such as in the form of dal

shall be deemed to be different from unsplit or unprocessed foodgrains, and accordingly, nothing in this sub-section shall be construed to prevent the imposition, levy or collection of the tax in respect of the first purchase of split or processed foodgrains merely because tax has been imposed, levied or collected earlier in respect of the first purchase of those foodgrains in their unsplit or unprocessed form."

In view of this amendment, when the case of processed Dal came up for consideration before the High Court again in 1972, a Division Bench of the Allahabad High Court in the case of Prakash Trading Company vs. Commissioner of Sales Tax, U.P. reported in 30 STC 345 held that processed Dal was different from unprocessed Dal purchased by Dal Mills and, therefore, purchase tax could be levied on the first purchase of each of such commodities.

A four Judge Bench of this Court in the case of M/s Hiralal Rattanlal etc.etc. vs. State of U.P. and Another etc. etc. reported in (1973) 1 SCC 216

upheld the vires of aforesaid Explanation II by observing thus:

"16. Now coming to point No.3, there is no justification for the contention that the Legislature has usurped any judicial power. The Legislature has not purported either directly or by necessary implication to overrule the decision of the Allahabad High Court in Tilok Chand Prasan Kumar's case (supra). On the other hand it has accepted that decision as correct; but has sought to

remove the basis of that decision by retrospectively changing the law. This Court has pointed out in several cases the distinction between the encroachment on the judicial power and the nullification of the effect of a judicial decision by changing the law retrospectively. The former is outside the competence of the Legislature but the latter is within its permissible limits. From the statement of objects and reasons, it appears that in the Principal Act, the legislative intent was not clearly brought out. By means of the Amending Act the Legislature wanted to make clear its intent."

If Explanation II, as introduced by the 1970 Amending Act, to Section 3-

D stood as it was, there was hardly any room for controversy. However
, the

explanations to Section 3-D were amended by three subsequent amendments: (i)

Act No. 11 of 1972; (ii) Act No. 17 of 1974 and (iii) Act No. 23 of 1976.

Section 6(c) of the Amending Act 11 of 1972 reads:

"(c) at the end, the following Explanation shall be inserted and be deemed always to have been inserted, namely:

Explanation-- For the purposes of this Act, the following goods shall be deemed to be different from each other, namely--

(a) Khandsari molasses including sheera-sayar, sheera galawat, and sheera salawat;

(b) rab, including rab-sayar, rab-galawat and rab salawat;

(c) gur-lauta and gur-raskat;

and accordingly, nothing in this section shall be construed to prevent the imposition, levy or collection of

tax under section 3-A in respect of any one of the said goods merely because tax has been imposed, levied or collected under this section in respect of any other of them, or vice-versa."

After this amendment Act No. 17 of 1974 again amended Section 3-D.

Section 2 of the Amending Act of 1974 runs as under:

"2..Amendment of Section 3-D of U.P.Act XV of 1948-- In section 3-D of the Uttar Pradesh Sales Tax Act, 1948 (hereinafter referred to as the principal Act), in sub-section (1), at the end the following Explanation shall be inserted and be deemed to have been inserted with effect from the first day of October, 1964, namely:

"Explanation - For determining the turnover liable to tax under clause (b), the amounts for which goods are purchased by one registered dealer from another registered dealer shall be deducted from his gross turnover only if the purchase in question is proved not to be the first purchase."

After this, Act was again amended by U.P.Act No. 23 of 1976, Section 3-

D was again amended. Section 3 of Amending Act recites as under:

"3. Amendment of section 3-D-- In Section 3-D of the principal Act, in sub-section (1), the existing Explanation shall be renumbered as Explanation I and thereafter the following Explanation II shall be inserted and be deemed always to have been inserted, namely:--

Explanation II-- For the purposes of this sub-section, in

relation to purchases of foodgrains in pursuance of any order made under section 3 of the Essential Commodities Act, 1955 (Act 10 of 1955) or under rule 114 of the Defence and Internal Security of India Rules, 1971 including any purchases in excess of the levy share, the purchases first made by a dealer from the State Government or its purchasing agent shall be the first purchase of such foodgrains and the tax shall accordingly be levied at that point on such dealer."

The learned Single Judge in M/s Gouti Bandhu's case (supra) after considering the amendments brought about in Section 3-D by the Amending Act of 1970; Act No. 11 of 1972; Act No. 17 of 1974; and Act No. 23 of 1976 observed in para 7 & 8:

"7. If one were to read amendments effected by Act No. 11 of 1972 and Act No. 17 of 1974, which have already been extracted above, it might have been

possible to take the view that these amending Acts did not impinge on Explanation I and Explanation II in Section 3-D as existing in 1972, for the amending sections only direct that an Explanation be added at the end of section 3-D (1) without making any reference to Explanation I and Explanation II, which were already there on the statute book. Section 3 of the Act No. 23 of 1976 however dispels such a view. The reason being that it numbers the Explanation added by the earlier Amending Acts as Explanation I, and adds another Explanation numbering it as Explanation II, with retrospective effect. If the intention of the Legislature, while passing the two earlier Amending Acts, had been

to preserve Explanation I and Explanation II as found in section 3-D at the time when the amendments were made, section 3 of Act No. 23 of 1976 would not have directed that the existing Explanation should be numbered as Explanation I and a new Explanation set out in that Act should be numbered as Explanation II. It is not possible to take the view that the Legislature intended that there should be two Explanations, both having the same number. The intention appears to be that the Amending Acts of 1972 and 1974 died away with the earlier Explanations occurring at the end of Section 3-D(1), and Act No. 23 of 1976 numbered the single Explanation in Section 3-D as Explanation I, and added a new Explanation with retrospective effect. As the amendment is retrospective, the matter has got to be decided by referring to the Explanations as now exist. It hardly admits of dispute that while deciding a reference a Court can take notice of an amendment to the law which is retrospective in nature. [See Commissioner of Sales Tax U.P. v. Bijli Cotton Mills Hathras, U.P., 15 STC 656].

8. Now, the Explanations as now stand do not throw any light on the controversy as to whether the processed foodgrains should be treated different from the foodgrains from which it is obtained after processing. This being so, the decision given in Tilok Chand's case, 25 STC 118 covers the controversy. It was pointed out that the principle laid down in Tilok Chand's case, 25 STC 118 should not be applied as in the present case as there is a finding by the Judge (Revisions) that

dehusked barley is a commercially different commodity from barley. The Judge (Revisions) has given this conclusion solely by holding that dehusked barley was a commercially different commodity from barley as it was obtained after processing barley by a machine. In Tilok

Chand's case, 25 STC 118 it has been held that dehusking by a machine will not bring into existence a new commodity. As a result it is not possible to distinguish Tilok Chand's case, 25 STC 118 on this principle."

and came to the conclusion that Explanation II added by the Amending Act, 1970

ceased to be on the statute book and, therefore, the law laid down in Tilok

Chand's case (supra) by the Division Bench of the High Court to the effect that

dehusking by machines would not bring into existence a new commodity would become operative.

The Single Judge in the impugned order, although aware of the order of the Division Bench of the High Court in Prakash Trading Company's case (supra) and of the decision of this Court in M/s Hiralal Rattanlal etc.etc. (supra) held that in view of the decision in M/s Gouti Bandhu's case reported in 1978 UPTC 707, the Explanation II added by the Amending Act, 1970 ceased to be on the statute book and, therefore, cannot be applicable to the facts of the case.

Counsel for the appellant has brought to our notice that in order to

remove the basis of the judgment in M/s Gouti Bandhu's case (supra), the State

Legislature has passed The Uttar Pradesh Sales Tax (Amendment & Validation)

Act, 1980 [U.P. Act No. 2 of 1980] and thus re-introducing Explanation II which

had been introduced by the Amending Act, 1970 with retrospective effect. Section

4 of the Amending Act of 1980 reads as under:

"4. Amendment of Section 3-D-- In Section 3-D of the

principal Act, the existing Explanation, at the end, shall be numbered as 'Explanation-I' and thereafter the following Explanation shall be inserted, namely:

" Explanation II-- For the purposes of assessment relating to any period commencing on October 1, 1964 and ending with November 14, 1971, split or processed foodgrains, cereals or pulses shall be deemed to be different from unsplit or unprocessed foodgrains, cereals or pulses and, accordingly, nothing in this section shall be construed to prevent imposition, levy or collection of tax in respect of the first purchase relating to such period, of split or processed foodgrains, cereals or pulses merely because tax has been imposed, levied or collected earlier in respect of such foodgrains, cereals or pulses in their unsplit or unprocessed form."

with In view of the re-induction of Explanation II to Section 3-D retrospective effect by the State Legislature by The Uttar Pradesh Sales Tax (Amendment & Validation) Act, 1980 [U.P. Act No. 2 of 1980], the split and processed foodgrains would now be different from unsplit and unprocessed foodgrains and the respondent would be liable to pay purchase/sales tax on the split dal purchased by him from the dal mills in the State of U.P. although the mills had already paid the tax on the unsplit and unprocessed dal from which broken dal purchased by the respondent was produced.

order For the reasons stated above, this appeal is accepted and the under appeal is set aside. Parties shall bear their own costs.

.....J.

[ASHOK BHAN]

NEW DELHI;J.

MARCH 22, 2006 [LOKESHWAR SINGH PANTA]