

B\223Item NO.IA
(For judgment)

Court No.7

SECTION XIV

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

C.A.No.3169/2009 @ SLP(C)NO.5861/2007

JAI BHAGWAN OIL & FLOUR MILLS

Appellant (s)

VERSUS

UNION OF INDIA & ORS.

Respondent (s)

Date : 04/05/2009 The matter was called on for Judgment today.

For Appellant (s) Mr. Senthil Jagadeesan, Adv.

For Respondent (s) Mr. V. Ramasubramanian, Adv.

M/s. Corporate Law Group

Mrs. Anil Katiyar, Adv.

Hon'ble Mr. Justice R.V. Raveendran pronounced the judgment of
the Bench comprising His Lordship and Hon'ble Mr. Justice Harjit Singh Bedi.

Leave granted.

The appeal is allowed in terms of the signed judgment.

(Pawan Kumar)
Court Master
(signed reportable judgment is placed on the file)

Court Master

(M.S. Negi)

Reportable

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.3169 OF 2009
[Arising out of SLP(C) No.5861/2007]

Jai Bhagwan Oil & Flour Mills

... Appellant

Vs.

Union of India & Ors.

... Respondents

JUDGMENT

R.V.RAVEENDRAN, J.

Leave granted. Heard counsel.

2. By notification dated 23.7.1971 the Government of India formulated a 'Transport Subsidy Scheme' for grant of subsidy on the transport of raw materials and finished goods to and from certain selected areas with a view to promote growth of industries in such areas. Clause 6 contains the details of the Scheme. Sub-clause (i) thereof provided that "a transport subsidy will be given to the industrial units located in selected areas in respect of raw materials which are brought into and finished goods which are taken out of such areas." Sub-clause (iv) specified the north-eastern region including the State of Assam as one of the selected areas to which the scheme was made applicable. Sub-clause (xii) required the State Government to set up a Committee consisting of Director of Industries, a representative of the State Industries Department, a representative of the State Finance Department, and a nominee of the Central Government (Ministry of Industrial Development), to scrutinize and settle all claims for transport subsidy arising in the State. The said Committee was required to call upon the applicants for subsidy, to provide proof of raw materials imported into the State and finished goods exported out of the State by their industrial units, to decide their eligibility for transport subsidy. The Committee was also required to scrutinize and settle the claims in the manner indicated in the scheme. The words 'industrial unit', 'raw material' and 'finished goods' were defined in sub-clauses (a), (h) and (i) of clause (4) of the scheme, as follows :-

"(a) 'Industrial Unit' means an industrial unit where a manufacturing programme is carried on.

(h) 'Raw material' means any raw material actually required and used by an industrial unit in its manufacturing programme as approved by the Government of India and/or by the Government of State/Union Territory in which the industrial unit is located."

(i) 'Finished goods' means the goods actually produced by an industrial unit in accordance with the manufacturing programme approved by the Government of India and/or the Government of the State/union Territory in which the industrial unit is located."

3. The appellant claimed that it has its industrial unit at Tinsukia, Assam; that it was engaged in the manufacturing activity of crushing mustard seeds and producing two distinct products namely mustard oil and oil cake, as finished goods; and that it was registered under the transport subsidy scheme, after verification as

provided in the Scheme. It was also claimed that crushing of mustard seeds yielded 30-34% mustard oil and 60-64% oil cake, each product having a separate identity and different markets.

4. The appellant made several claims for grant of transport subsidy in respect of raw materials, oil cake and oil, from time to time. According to appellant, after giving credit to Rs.5,88,421/- released as subsidy, the amount due towards subsidy claim till August, 1993, was Rs.58,44,531/-. As there was inordinate delay in settling the claims, the appellant filed a writ petition in the year 1996, seeking a direction for release of the said transport subsidy amount. The said writ petition was disposed of on 15.5.1996 with a direction to scrutinize appellant's claim and if found eligible, disburse the amount. The State Government scrutinized and recommended to the Government of India, the release of Rs.58,44,531 as transport subsidy to the appellant. On 18.6.1997, the Government of India sanctioned and released Rs.44,14,922 as transport subsidy as against the recommended claim of Rs.58,44,531. On 14.7.1997 the Government of India issued a clarification that the transport subsidy under the said scheme would not be applicable in regard to oil cake as it was only a by product. Aggrieved by the disallowance of transport subsidy for oil cake, appellant filed another writ petition (C.R. No.376/1997) for release of subsidy in respect of oil cake, as sanctioned by the State Level Committee. A learned Single Judge of the Guwahati High Court by order dated 4.10.1982 rejected the writ petition. The writ appeal filed by the appellant was also dismissed on 27.10.2008. The said order is challenged in this appeal.

5. The learned Single Judge and the Division Bench have held that the term 'finished goods' used in the Scheme would not include oil cake, which was only a by-product or waste produced while manufacturing mustard oil; and transport subsidy was available only in regard to the finished product intended to be produced by the process of manufacture, which in this case was mustard oil. The High Court held that 'finished goods' refers to goods produced in an industrial unit by a process of manufacture and "manufacture" means production of an item distinct and different from the raw material, having a separate identity; and that the appellant had failed to place before the court necessary material to explain (i) the process and technology in the manufacture of oil cake; (ii) the composition of the oil cake; (iii) the purpose and use of oil cake; and (iv) the product name in the market and the marketability of oil cake as a finished goods. The High Court held that in the absence of such material, it

will not be possible to decide whether 'oil cake' was a 'finished goods' for the purpose of the Scheme, or merely the residuary waste generated as a by-product while producing mustard oil as the finished goods.

6. We are of the considered view that the learned single Judge and the Division Bench missed the real issue. The question was not whether oil cake was a by-product or not. There are several manufacturing processes which yield or produce more than one finished product or manufactured item. When considering whether the 'finished goods' is a marketable product, distinct and different from the raw material from which it is produced, the fact that the finished goods is the main product, or is a parallel main product or is a by-product of the manufacturing process, may not make any difference. The question to be considered is whether oil cake can be said to be a 'finished goods' produced by an industrial unit in accordance with its manufacturing programme approved by the state government.

7. The object of the Transport Subsidy Scheme is not augmentation of revenue, by levy and collection of tax or duty. The object of the Scheme is to improve trade and commerce between the remote parts of the country with other parts, so as to bring about economic development of remote backward regions. This was sought to be achieved by the Scheme, by making it feasible and attractive to industrial entrepreneurs to start and run industries in remote parts, by giving them a level playing field so that they could compete with their counterparts in central (non-remote) areas. The huge transportation cost for getting the raw materials to the industrial unit and finished goods to the existing market outside the side, was making it unviable for industries in remote parts of the country to compete with industries in central areas. Therefore, industrial units in remote areas were extended the benefit of subsidized transportation. For industrial units in Assam and other north-eastern States, the benefit was given in the form of a subsidy in respect of a percentage of the cost of transportation between a point in central area (Siliguri in West Bengal) and the actual location of the industrial unit in the remote area, so that the industry could become competitive and economically viable. So when the Scheme refers to finished goods coming out of or being exported from the State (remote area), it refers to any goods manufactured or produced by an industrial unit in the State in accordance with the manufacturing programme approved by the central government and/or the state government. So long as the goods coming out is something

identifiable, something which has undergone a process of manufacture, something which is marketable and tradable as a commodity, something that is completely different and distinct from raw material as a product, something that was intended to be a definite product of manufacture by the industrial unit, the product had to be considered as 'finished goods' from the industrial unit. Any goods which goes in as a raw material required/used in the manufacturing programme of an industrial unit situated in a notified remote area, or any finished goods that is produced in the industrial unit situated in such area and exported out of the State, was eligible for the transport subsidy under the scheme.

8. The scheme itself specifically defines 'finished goods' as goods actually produced by an industrial unit in accordance with the manufacturing programme as approved by the Central Government and/or the Government of the State where the industrial unit is located. Two certificates issued by the State Government (District Industries Centre, Dibrugarh) dated 13.11.1987 and 28.8.1992 clearly state that oil cake was produced by the appellant's industrial unit in accordance with its manufacturing programme from 1984 and the appellant's industrial unit was engaged in the production of two products - mustard oil and oil cake. It was further certified that the appellant was capable of manufacturing, with its existing machinery, 1440 MT of mustard oil and 2880 MT of oil cake. Further, the State Level Committee formed under the scheme and the State Government have consistently opined that oil cake was finished goods, entitled to transport subsidy. Until the Central Government gave a clarification on 14.7.1997 stating that oil cake should not be treated as a finished goods for the purpose of subsidy, the State Level Committee, State Government as also the Central Government had proceeded on the basis that oil cake was finished goods eligible for transport subsidy. It is not disputed that the transport subsidy had been sanctioned and disbursed in regard to oil cake produced by other industrial units in the notified remote areas. The position was explained in the following communication dated 7.2.2005 from the Government of Assam (Directorate of Industries & Commerce) to the Ministry of Commerce and Industry, Government of India:

"Government of Assam agrees to the fact that in crushing of mustard seeds oil cake is a finished product as it constitutes 64% whereas mustard oil percentage is 32% (4% loss in manufacturing process). If oil cake is not considered eligible for transport subsidy the oil mills/mustard seed crushing units will not be economically viable and the purpose of the transport subsidy scheme will be defeated as the units located in Assam will not be able to compete with similar units located outside north eastern region. Accordingly State Level Committees at different

dates/meetings approved the claims for import of Mustard Seeds (RM) and export of oil cake as finished product as eligible for transport subsidy."

(emphasis supplied)

9. In spite of the above, the High Court denied the benefit on the ground that the appellant had failed to place relevant material to establish the process/technology of manufacture, the composition and product name, and purpose, use and marketability of the oil cake, so as to recognize it as a 'finished goods'. What is contained in reference works/technical Journals, or well known in trade/industrial circles, need not be established by independent 'evidence'. It is well known that oil cake is the coarse solid residue obtained when oil is extracted from various types of oil seeds like peanuts, soyabeans, linseed, mustard, sesame and sunflower seeds. Oil cake is produced not only in oil mills/industries, but also in village level Ghans. The standard preservation/detoxification procedure for oil cakes is sun-drying, controlled mechanical heating or by chemical processing. Oil cake is rich in proteins and minerals and commonly used as cattle feed and poultry feed. Oil cake containing toxic elements (as for example oil cake from castor beans) is used as fertilizer. Oil cake has a wide ready market. It is bulk-purchased by cattle/poultry feed manufacturers who grind it and mix it with other feed articles to make cattle/poultry feed. Farmers and owners of cattle/poultry purchase it in retail, break it or grind it and feed them to cattle/poultry, with or without additives. It is also used as boiler fuel in some areas. Serious research is in progress to make it fit for human consumption. The name, method of manufacture, uses and marketability are well known in trade, industrial, agricultural and village circles. When any reference book can authenticate these facts within common knowledge, the High Court was not justified in rejecting the claim on the ground that special evidence in regard to these aspects was not placed.

10. The true test to ascertain whether a process is a manufacturing process producing a new and distinct article is whether the article produced is regarded in the trade, by those who deal in it, as a marketable product distinct in identity from the commodity/raw material involved in the manufacture. (See Deputy Commissioner of Sales Tax (Law), Ernakulam v. Pio Food Packers - 1980 Supp. (1) SCC 174 and Sterling Foods v. State of Karnataka - 1986 (3) SCC 469). When mustard oil and oil cake are produced from mustard seeds, it is a process of manufacture. It is certainly not a mere process of cleaning, repairing, reconditioning, recycling or assembling. A new marketable article distinct from the raw material, emerges when

oil cake is produced from oil seeds. In this context, we may refer to the century old decision in Dean Linseed Oil Co. v. United States [78 (1897) Federal Reporter 467] relating to availment of customs duty drawback. A provision of a Tariff Act provided that where imported materials, on which duties have been paid, are used in the manufacture or production of articles in the United States, there shall be allowed on the exportation of such articles, a drawback equal in amount to the duties paid on the material used, less one per centum of such duties. The issue before the American court was whether production of oil cake from linseed, by separation of linseed into linseed oil and oil cake, was manufacture entitled to the benefit of duty drawback.

The court answered the question by the following brief but classic analysis: ".....the linseed was not oil cake, and did not contain oil cake, as such. The linseed had to be treated, and from this treatment the linseed oil was produced as one thing, and this oil cake as another thing. The oil cake was made from the linseed, and was a new article of manufacture." We may also refer to the decision in Devi Das Gopal Krishnan v. State of Punjab [1967 (3) SCR 557], where this Court negated the contention that when oil is extracted from oil seeds, oil was produced and not manufactured. This Court held that 'when oil is produced out of the seeds, the process certainly transforms raw material into a different article for use'. What is stated about oil produced from oil seeds, will apply equally to the other product of the manufacturing process, namely oil cake.

11. There can therefore be no doubt that when mustard seeds are subjected to the process of extraction whereby mustard oil and oil cake are produced, the process involves manufacture of mustard oil as also the manufacture of oil cake. Oil cake is a distinct and different entity from mustard seeds and it has a separate name, character and use different from mustard seed. Oil cake is not a waste to be thrown away, but a valuable product with a distinct name, character, use and marketability. There can thus be no doubt that the oil cake was a finished goods eligible for transport subsidy, until it was specifically excluded by the central government in the year 1997. We are not however concerned with the validity or correctness of such exclusion from 1997, in this case.

12. We therefore allow this appeal, set aside the orders of the Division Bench and single judge of the High Court and allow the writ petition before the High Court by declaring that oil cake is 'finished goods' for the purpose of transport subsidy scheme and consequently the appellant was entitled to the subsidy. Respondents are directed to verify and release the subsidy amount due to the appellant in regard to oil

cake exported out of the State. Compliance within six months.

.....J.
(R V Raveendran)

New Delhi;
May 4, 2009.

.....J.
(Harjit Singh Bedi)