

RAJASTHAN TAX BOARD, AJMER

Appeal No. 1646/2007/Bundi

M/s Bunge India (Pvt.) Limited,
(Formerly known as Geepee Ceval Proteins &
Investment Pvt. Ltd.) P.O. Ramganj Balaji. BundiAppellant.

Vs.

1. Commissioner of Industries (Member Secretary),
State level Screening Committee,
udyog Bhawan, Tilak marg, Jaipur
2. Commissioner Commercial Taxes Rajasthan,
kar Bhawan, JaipurRespondent

D. B.

Shri Manohar Puri, Member

Shri Ishwari Lal Verma, Member

Present ::

Shri M. L. Patodi, Advocate for Appellant

Shri Anil Pokharna,

Deputy Government Advocate for Respondent

Date of Judgment : January 18th, 2016

JUDGMENT

1. The present appeal has been filed before the Rajasthan Tax Board (herein after referred to as, "**the Board**") under section 83 of the Rajasthan Value Added Tax Act, 2003 against the order of the State Level Screening Committee (herein after referred to as "**SLSC**") dated 08/06/2007 by the appellant company, M/s Bunge India Pvt. Ltd., (registered formerly under the name and style of Ms. Geepee Ceval Proteins & Investments Pvt. Ltd. under the Companies Act, 1956,) and registered under the Rajasthan Sales Tax Act, 1994 (here in after referred to as "**The Act**") was engaged in the business of manufacturing and trading of deoiled cake, solvent/crude oil, edible refined oil, vanaspati, gums, all kinds of sludges, deodistillate acid oil, fatty acid, etc., in the State of Rajasthan.

2. The brief facts of the case are that appellant has challenged the order of the State Level Screening Committee (herein after referred to as "**SLSC**") dated 08/06/2007 whereby the appellant's case for grant of benefit from payment of sales tax in respect of the sales made by its expanded unit was found not eligible and rejected in its meeting



Contd.....2

08.06.2007. It was held that the State Government had as per notification no. F.4(4)FD/Tax Divn/99-143 dated 26/03/1999 declared that processing of unrefined oil to refined oil shall not be treated as manufacturing activity for the propose of Act; it was further clarified, vide Notification dated 30/09/2000, that this would however not be applicable to the dealers availing benefit of exemption from payment of sales tax during the remaining period of their unexhausted quantum of benefit sanctioned under Rajasthan Sales Tax Incentive Scheme 1989/1998. Commercial Taxes Officer, Circle Anti-Evasion-I, Kota, made out that though the original unit of the company had been beneficiary of exemption from payment of tax under the Sales Tax Incentive Scheme 1989 on and till the date when the aforesaid clarification notification dated 30/09/2000 was issued which also confirmed the position of the original unit as being entitled for continuance of benefit of exemption from payment of tax for its remaining running period until August 24,2002, yet the expanded unit could not claim benefit under the Sales Tax Incentive scheme, the earlier notification dated March 26,1999 notwithstanding.

3. In this perspective, the SLSC decided that purpose of the notification dated 30/09/2000 was to clarify that the units which had already been sanctioned benefit of Sales Tax Incentive Scheme 1989/1998 would continue to avail benefit of exemption from payment of tax to the extent eligible till their remaining period under these schemes, and ruled out grant of any new tax exemption benefits to both new and expanded units, on principle that the processing of the unrefined oil into refined oil was not a manufacturing activity under the provisions of the Act and applicable to the aforesaid notification dated 26/03/1999. As a result, the SLSC accepted review application of the Assessing Authority and held that the expansion unit of the appellant company was not eligible for Sales Tax benefit in regard to its sales.

4. The brief facts of the impugned appeal are as follows:



4-7-1992

Contd.....3

4(a) history of appellant's litigation.

(1) The appellant submitted an application on 10/01/2003 to the SLSC for grant of benefit from payment of sales tax under Rajasthan Sales Tax/CST Exemption Scheme, 1998 on its expansion and diversification of unit.

(2) The SLSC in its meeting dated 09/06/2003 sanctioned exemption from tax of Rs. 1281.05 lacs under the exemption scheme, 1998 vide order no. F.5/Acct/7(446)/STE/98 dated 01/07/2003 with effect from 09/06/2003 for a period of 11 years on the basis of expansion and diversification for the item Vanaspati, Gums, all kind of sludges, and Deoiled cake, edible refined oil manufactured by the unit issued by the Commissioner of industries(Member Secretary), Jaipur.

(3) Appellant requested the SLSC to clarify the position of availability of tax exemption on the point of refined oil being manufactured from the degummed oil. SLSC in its meeting dated 15/12/2003 considered the facts of the case and decided that edible refined oil manufactured from degummed oil may be allowed to the appellant for Sales Tax exemption under the scheme 1998.

(4) The appellant filed appeal no. 1066/2003 before the Board against the order of the SLSC dated 09/06/2003 on the disallowed items amounting to Rs.188.30 lacs of fixed capital investment. Rajasthan Tax Board Ajmer decided the said appeal on 13/08/2004 on the issue of disallowance of items of fixed capital investments and remanded case to SLSC for re-examination and to decide in accordance with the provisions of the Exemption Scheme, 1998.

4(b) Facts details of CTO Anti-Evasion-I, Kota.

(1) CTO Anti-Evasion-I Kota meanwhile filed an appeal before the Board, against the SLSC order dated 15/12/2003 vide appeal no. 1146/04/Bundi. The Board, decided the appeal no. 1146/04 on 06/12/2006 that if pending review application filed by the CTO, Anti-Evasion-I, Kota is disposed of by the SLSC then this appeal will automatically become infructuous. SLSC should decide review application after hearing both the parties within 90 days



Contd.....4

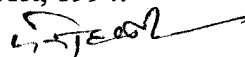
4(c) The order of SLSC dated 08/06/2007 giving rise to this appeal is as under.

SLSC was informed that RTB has vide its order dated 05.12.2006 directed the SLSC to decide the review application dated 10.06.2004 after hearing the C.T.O., Anti-Evasion-I, Kota and the representative of the Unit.

Representative of the Unit did not turn up for personal hearing although intimation about the meeting had been communicated to the Unit. The SLSC discussed the case keeping in view the facts mentioned in the agenda note.

SLSC noted that vide Notification No. F.4(4)FD/Tax Divn/99-143 dated 26.03.1999 the State Government had notified that processing of unrefined oil to refined oil shall not be treated as manufacturing activity for the purpose of the RST Act, 1994. Thereafter, vide notification dated 30.09.2000 the State Government had clarified that this shall not be applicable in respect of dealers availing benefit of Sales Tax Incentive Scheme 1989/1998 for the remaining period of their entitlement under these schemes. C.T.O., Anti Evasion-I, Kota has argued that the original unit of the company was availing benefit under the Sales Tax Incentive Scheme 1989 on 30.09.2000 and in terms of the notification dated 30.09.2000 and, therefore, benefit under the Sales Tax Incentive Scheme cannot be given to the expanded unit notwithstanding the notification dated 30.09.2000.

The matter was discussed in detail and the SLSC was of the unanimous opinion that the intention of the notification dated 30.09.2000 was only to clarify that those units which had already been sanctioned benefit of Sales Tax Incentive Scheme 1989/1998 would continue to avail of the sanctioned benefits for the remaining period of their entitlement under these schemes. However, in view of the notification dated 26.03.1999 the SLSC could not sanctioned any fresh benefits to any Unit, either new or expanded, because processing of unrefined oil to refined oil was not treated as manufacturing activity for the purposes of the RST Act, 1994.



Contd.....5

Keeping in view the above mentioned position, the committee accepted the review application of C.T.O., Anti-Evasion-I, Kota and decided that Unit is not eligible for Sales Tax benefit in respect of the expanded Unit.

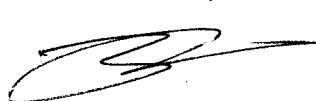
5. Arguing for the appellant, learned counsel Mr. M.L. Patodi pleaded that:

The SLSC erred in deciding the review application without providing a personal hearing to the appellant, because the notice in form of a letter issued on May 6, 2007 was received by the Appellant Company on June 14, 2007 fixing the date of hearing in the matter on June 8, 2007. Therefore, the appellant company was prevented by sufficient reason from attending the hearing in the case scheduled on 08/06/2007. The appellant also informed the Director of Industries cum Member Secretary, SLSC about the date of receipt of notice on 14/06/2007 before they informed the decision in the case by letter dated 07/07/2007. Thus, the order of the SLSC was against the provisions of law and the principles of natural justice.

6. The SLSC wrongly entertained the review application of the CTO, Anti-Evasion-I, Kota who was not the Assessing Authority of the appellant company, because the Eligibility Certificate under the Scheme was issued by the CTO, Bundi. Therefore, the application filed by the CTO, Anti-Evasion-I, Kota was without authority of law and should have been rejected.

7. As per Clause 7(a) of the Scheme of 1998 the application filed under Clause 7(a) was to be decided within 90 days from the date of receipt of the order whereas the application, in this case, was decided after 3 years, therefore, the order passed by the SLSC is without jurisdiction and against the provisions contained in the Scheme.

8. The application for Review was filed on 12/06/2004 before the Member Secretary, SLSC whereas the original sanction was granted in the meeting of the SLSC dated 09/06/2003 and exemption on edible refined oil was granted in the said meeting. On the basis of the decision of the SLSC, the Eligibility Certificate was granted by the



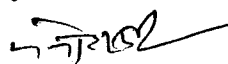
Contd.....6

CTO, Bundi on 15/07/2003 and the exemption on sale of edible refined oil was allowed. Therefore, the review application filed by the CTO, Anti-Evasion-I, Kota was beyond the time prescribed under Clause 7(a) of the Sales Tax Exemption Scheme, 1998. Hence, review order passed on the basis of time barred application should be quashed.

9. The Appellant Company was availing the benefit of exemption on sale of refined edible oil w.e.f. 09/06/2003 and clarification on 15/12/2003 and the exemption on sale of refined oil was allowed by the SLSC after discussions applying their mind. Commissioner, Commercial Taxes, Jaipur was also present in the meeting and, therefore, on the basis of change of opinion the order of the SLSC cannot be reviewed under the garb of Clause 7((a) of the Scheme of 1998 after lapse of 3 years.

10. The activity of refining of oil is covered in the definition of manufacture as mentioned above and, therefore, the exemption granted by the SLSC in the meeting dated 09/06/2003 and further clarification in the meeting of the SLSC dated 15/12/2003 was in accordance with the law and the Appellant Company was entitled for exemption on sale of edible refined oil manufactured from crude/degummed oil.

11. The exemption on sale of edible refined oil was granted by the SLSC w.e.f. 09/06/2003 which cannot be withdrawn retrospectively. The Review application was decided in the SLSC meeting dated 08/06/2007 and communicated vide letter dated 07/07/2007 and same was received on 14/07/2007. The Appellant Company has availed the benefit of exemption on sale of refined edible oil on the basis of the exemption granted by the SLSC and has not charged the tax from the customers, therefore, the exemption, already granted, cannot be withdrawn retrospectively. Hence order passed by the SLSC is without the authority of law and should be set aside. Following judgment in support of arguments were submitted by the learned counsel.


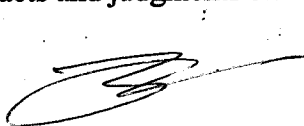


Contd.....7

- (a) (1999) 113 STC Page 361 (RTT), Commissioner, Commercial Taxes, Rajasthan and another Vs. Kandhari & Kandhari Pvt. Ltd. And another.
- (b) 38 Tax Up-Date Page 131 (Rajasthan High Court), Commissioner, Commercial Taxes, Rajasthan and another Vs. Rajasthan Taxation Tribunal & Others.
- (c) (1998)110 STC Page 109 (M.P. High Court), Kitchen Aid Vs. State M.P. and others.
- (d) (2003)131 STC Page 290 (Calcutta High Court), Commissioner of Commercial Taxes Vs. West Bengal Taxation Tribunal.
- (e) (2000) 119 STC Page 14 (SC), Birla Jute and Industries Ltd. Vs. State of M.P. and others.
- (f) (2005)142 STC Page 76 (S.C.), Vadilal Chemicals Ltd. Vs. State of Andhra Pradesh and others.
- (g) (1997) 104 STC Page4 (S.C.), Commissioner of Sales Tax Vs. Solar Primer P. Ltd. SLP (Civil No. 16215 of 1996).
- (h) (1997) 104 STC Page 2 (S.C.), Commissioner of Sales Tax Vs. Elopice Paper Converter SLP (Civil No. 16087 of 1990).
- (i) (2007)10 VST Page 630 (S.C.), Pondicherry State Cooperative Consumer Federation Ltd. Vs. Union Territory of Pondicherry.
- (j) (1998) 111 STC Page 188 (S.C.), B.P.O. Oil Mills Ltd. Vs. Sales Tax Tribunal and others.

12. Shri Anil Pokharna, the learned departmental representative, argued in support of the impugned order and made submission in the course of hearing that the word 'may' used in the clarification dated 15/12/2003 do not confer any right to the appellant to avail benefit of tax exemption which is not allowable under the law.

13. We have considered the submissions from both the sides and perused the records. We now proceed to dispose off the case in the light of facts and judgments cited before us:



Contd.....8

14. In this appeal question to be decided is whether the appellant is entitle to avail sales tax exemption on expanded unit after the amendment made in section 2(27) RST Act, 1994 by which processing of unrefined oil to refined oil shall not be treated as manufacturing activity for the purposes of this Act ?

15. Undisputed facts of the case are as under. The State Government vide notification no. F.4(4) FD/TaxDivn/99-143 dated 26/03/1999 notified that processing of unrefined oil to refined oil shall not be treated as manufacturing activity for the purposes of RST Act, 1994. The State Government vide notification dated 30/09/2000 further clarified that this shall not be applicable in respect of the dealers availing benefit of Sales Tax Incentive Scheme 1989/1998 for the remaining period of their entitlement under these schemes. The benefit of Tax exemption under the scheme is available to the industrial units who manufactures the eligible goods.

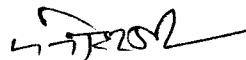
Notification No. F.4(20)FD/Tax Div/2000-399 dated 30.9.2000 is as under :

S.O.229.- In exercise of the powers conferred by S.2(27), RST Act, 1994, the State Govt. being of the opinion that it is expedient in the public interest to do so, hereby makes the following amendment in this department notfn No. F.4(4)FD/Tax Div/99-143 dated 26.3.99 [S.No.1223 - processing of unrefined oil to refined oil not a manufacturing activity], namely :-

Amendment.- In the said notfn, after the existing expression "for the purposes of this Act." appearing at the end, the following expression shall be added :-

"However, this shall not be applicable in respect of the dealers availing benefit of Sales Tax Incentive/Exemption/Deferment under the Schemes of 1989/1998 [S. Nos. 763-766, 1131 and 1132 - Printed in Part III of the Book - 2000 Edition], for the remaining period of their entitlement under these schemes."

Notification No. F.4(4)FD/Tax Div/99-143 dated 26.3.99 is as under :



Contd.....9

S.O.440.- In exercise of the powers conferred by S.2(27), RST Act, 1994, the State Govt. being of the opinion that it is expedient in the public interest to do so, hereby notifies that **processing of unrefined oil to refined oil** shall not be treated as manufacturing activity for the purposes of this Act. [However, this shall not be applicable in respect of the dealers availing benefit of sales tax incentive/exemption/deferment under the schemes of 1989/1998, for the remaining period of their entitlement under these schemes.]

Notification No. F.14(8)FD/Tax Divn/98 dated 7.4.1998 is as under :

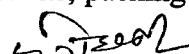
S.O.11.- In exercise of the powers conferred by S.15, RST Act, 1994, and S.8(5), CST Act, the State Govt. being of the opinion that it is expedient in the public interest to do so, hereby notifies the **"The Rajasthan Sales Tax/Central Sales Tax Exemption Scheme for Industries, 1998"** (hereinafter referred to as the Exemption Scheme or this Scheme), and exempt the industrial units from payment of tax on the intra-State sales/inter-State sales of the goods and by-products manufactured by them within the State, including the waste items derived therefrom and the packing material used therewith, in the manner, to the extent and for the period as specified in this notification.

16. We have gone through the judgments relied upon by the learned counsel for the appellant and in our view, the aforesaid judgments are distinguishable to the facts and circumstances of the present case.

17. Honourable Kerala High Court in the matter **K. Premerajan v. State of Kerala (2008) 14 VST page 202** has held accordingly :



"(iii) That the case of District Level Committee was a case of want of jurisdiction and not one of irregular assumption of jurisdiction. Under the notification the District Level Committee was authorised to determine whether a particular industry manufacturing a particular commodity was eligible for exemption from payment of tax under the Act or not. The negative list of industries appended to the notification would specifically provide that certain industrial units manufacturing items such as biscuits, cement paints, packing cases, tea chests,



 Contd.....10

plywood, etc., shall not be eligible for the concessions under the notification. Therefore, the District Level Committee while considering the application filed by the petitioner's industrial unit claiming exemption from payment of sales tax on the manufacture and sale of plywoods did not have jurisdiction to entertain such an application. Therefore, it could be said that this was a case of District Level Committee lacking jurisdiction and not one of irregular assumption of jurisdiction. The order passed by the District Level Committee in regard to plywood was one without jurisdiction and a nullity in the eye of law and therefore the assessing authority was justified in passing the assessment orders for the assessment years 1997-98 and 1998-99 in levying tax under the Act on the sale of plywoods both under the Kerala General Sales Tax and the Central Sales Tax Acts."

"It is true that an eligibility certificate issued by the competent authority as per Notification S.R.O. No. 1729 of 1993 will continue to be in force till it is legally cancelled and that in the ordinary course such cancellation have only prospective operation. On the other hand if the eligibility certificate is obtained by a dealer by fraud or collusion, it vitiates the entire proceedings. Similarly if the authority issues an eligibility certificate without jurisdiction then also such eligibility certificate will be infirm and non est. In the instant case, it must be noted that the appellants claimed before the Industries Department as well as before the competent authority under the notification that their product is mineral water. In fact, the product which is produced by the appellants is not mineral water at all and that is the reason why they have changed the name of the product when standards have been prescribed for mineral water in the Prevention of Food Adulteration Act and the Rules. From this it is clear that though the product is named as 'mineral water' it is not mineral water and by the use of the name mineral water the appellants were trying to mislead the authorities for the purpose of getting



  **Contd.....11**

exemption. In other words the appellants had given the name 'mineral water' without the product being mineral water. According to us, this mis-representation on the part of the appellants vitiates the entire proceedings and consequently the appellants cannot get the benefit of the eligibility certificate erroneously issued."

The issue that falls for our consideration is whether the assessing authority was justified in completing the assessments for the assessment years in question, by ignoring the orders passed by the District Level Committee, which had declared that the assessee is entitled for exemption from payment of sales tax on the sale of plywoods, both intra and interstate sales. To answer this issue, it may be useful to notice pertinent observations made by learned authors H.W.R. Wade and C.F. Forsyth in their book on administrative law. On the topic, "Jurisdiction and nullity", it is stated :

"An act which is for any reason in excess of power (ultra vires) is often described as being 'outside jurisdiction'. 'Jurisdiction', in this context, means simply 'power', though sometimes it bears the slightly narrower sense of 'power of decide', e.g., as applied to statutory tribunals. It is a word to which the courts have given different meanings in different contexts, and with which they have created a certain amount of confusion. But this cannot be explained intelligibly except in the particular contexts where difficulties have been made. Nor should the difficulties be exaggerated. For general purposes 'jurisdiction' may be translated as 'power' with very little risk of inaccuracy.

Any administrative act or order which is ultra vires or outside jurisdiction is void in law, i.e., deprived of legal effect. This is because in order to be valid it needs statutory authorisation, and if it is not within the powers given by the Act, it has no legal leg to stand on. The court will then quash it or declare it to be unlawful or prohibit any action to enforce it. The terminology here depends to some extent on the remedy granted.

  Contd.....12


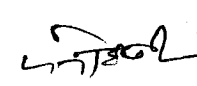
'Quashing' is used in connection with the remedy of certiorari. A declaratory judgment is an alternative remedy with similar effect; it declares the offending act to be a nullity in law. Prohibition of execution may be an order of prohibition (a prerogative remedy) or an injunction. But these technicalities make no difference to the legal result; an act found to be outside jurisdiction (ultra vires) is void and a nullity, being destitute of the statutory authority without which it is nothing.

Once the court has declared that some administrative act is legally a nullity, the situation is as if nothing had happened. In this way the unlawful act or decision may be replaced by a lawful one. If a compulsory purchase order is quashed as being ultra vires, there is nothing to prevent another order being made in respect of the same land, provided that it is done lawfully. Thus a public authority or Tribunal is often given locus poenitentiae and is able to correct an error by starting afresh-something which it might otherwise be unable to do."

The expression "jurisdiction" came up for consideration before the apex court in the case of Official Trustee v. Sachindra Nath Chatterjee AIR 1969 SC 823, Union of India v. Tarachand Gupta & Bros [1971] 1 SCC 486 and Hari Prasad Mulshanker Trivedi v. V.B. Raju [1974] 3 SCC 415.

In re. Sachindra Nath Chatterjee's case AIR 1969 SC 823 the apex court held :

"Before a court can be held to have jurisdiction to decide a particular matter it must not only have jurisdiction to try the suit brought but must also have the authority to pass the order sought for. It is not sufficient that it has some jurisdiction in relation to the subject-matter of the suit. Its jurisdiction must include the power to hear and decide the questions at issue, the authority to hear and decide the particular controversy that has arisen between the parties."

  Contd.....13

In re. **Tarachand Gupta & Bros' case [1971] 1 SCC 486** the Supreme Court has observed :

".....The word 'jurisdiction' has both a narrow and a wider meaning. In the sense of the former, it means the authority to embark upon an enquiry; in the sense of the latter it is used in several aspects, one of such aspects being that the decision of the Tribunal is ion non-compliance with the provisions of the Act. Accordingly, a determination by a Tribunal of a question other than the one which the statute directs it to decide would be a decision not under the provisions of the Imports and Exports Control Act, 1947 and therefore, in excess of its jurisdiction."

In re. **Hari Prasad Mulshanker Trivedi's case [1974] 3 SCC 415**, the Supreme Court has stated :

"Though the dividing line between lack of jurisdiction or power and erroneous exercise of it has become thin, the distinction between the two has not been completely wiped out. It is true that there is difficulty in formulating an exhaustive rule to tell when there is lack of power and when there is an erroneous exercise of it. The difficulty has arisen because the word 'jurisdiction; is an expression which is used in a variety of senses and takes its colour from its context. Whereas the 'pure' theory of jurisdiction would reduce jurisdictional control to a vanishing point, the adoption of a narrower meaning might result in a more useful legal concept even though the formal structure of law may lose something of its logical symmentry..."

The present case is a case of want of jurisdiction and not one of irregular assumption of jurisdiction. We say so for the reason, that under the notification the District Level Committee is authorised to determine, whether a particular industry manufacturing a particular commodity is eligible for exemption from payment of tax under the Act or not. The negative list of industries is appended to the notification would specifically provide that certain industrial units manufacturing items such as biscuits, cement paints, packing cases, tea chests, plywood, etc.,



 Contd.....14

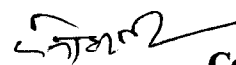

shall not be eligible for the concessions under the notification. Therefore, the District Level Committee while considering the application filed by the petitioner's industrial unit claiming exemption from payment of sales tax on the manufacture and sale of plywoods did not have jurisdiction to entertain such an application. Therefore, it can safely be said that this is a case of District Level Committee having want of jurisdiction and not one of irregular assumption of jurisdiction. Therefore, the order passed by the District Level Committee in regard to plywood is one without jurisdiction and therefore, a nullity in the eye of law and therefore, the assessing authority was justified in passing the assessment orders for the assessment years 1997-98 and 1998-99 in levying tax under the Act on the sale of plywoods both under the KGST and CST Acts."

18. The State Government exercising the powers conferred vide notification no. F.14(8) FD/Tax Divn/98 dated 7.4.1998 under section 15 of RST Act, 1994, and section 8(5) of the CST Act notified the "The Rajasthan Sales Tax/Central Sales Tax exemption scheme for industries, 1998" and gave exemption to the industrial units from payment of tax on the intra-state sales/inter-state sales of the goods and by-products manufactured by them with in state in the manner, to the extent and for the period as specified in the notification.

19. The state government by the notification no. F.4(4) FD/Tax Div/99-143 dated 26/03/1999, notified that processing of unrefined oil to refined oil shall not be treated as manufacturing activity for the purposes of this Act.

20. Appellant's expanded unit was engaged in processing of unrefined oil to refined oil. It is the case that the activity was excluded as manufacturing activity by notification no. F.4(4)FD/Tax Div/99-143 dated 26/03/1999.

21. The SLSC in its meeting dated 09/06/2003, decided to sanction benefit from the date of sanction of eligibility to the appellant under the "The Rajasthan Sales Tax/Central Sales Tax exemption scheme for industries, 1998" on the basis of expansion for edible refined oil manufactured by the appellant.



Contd.....15

22. That the case of SLSC here is a case of want of jurisdiction. Under the notification the SLSC was authorized only to determine whether a particular industry manufacturing a particular commodity was eligible for exemption from payment of tax under the Act, or not.

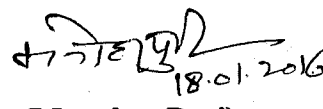
23. Applying the principles decided by the Honourable Supreme Court in the matter of **Sachindra Nath Chatterjee's case AIR 1969 SC 823; Tarachand Gupta & Bros' case [1971] 1 SCC 486, Hari Prasad Mulshanker Trivedi's case [1974] 3 SCC 415** and by honourable Kerala high court in the matter of **K. Premerajan v. State of Kerala (2008) 14 VST page 202**, we hold that the notification dated 26/03/1999, specifically excluded the processing of unrefined oil to refined oil as a manufacturing activity. Therefore the SLSC while considering the application filed on 10.01.2003 by the appellant claiming exemption from payment of sales tax on the manufacture of refined oil did not have jurisdiction to entertain such an application. Therefore, it was a case of the SLSC lacking jurisdiction. When jurisdiction was not available to the SLSC to decide the impugned aforesaid issue, the order passed by the SLSC on 09/06/2003, was without jurisdiction and a nullity in the eye of law. If the authority issued an eligibility certificate without jurisdiction, such eligibility certificate was infirm and non est. All the arguments made by counsel of appellant lose their force.

24. We further hold that appellant is not exempt from payment of tax on intrastate sales/interstate sales with effect from 09/06/2003 and consequently tax is recoverable in accordance with law.

25. We, therefore, disallow the appeal and confirm the decision of SLSC taken in its meeting dated 08/06/2007.

26. Order pronounced.


(Ishwari Lal Verma)
Member


(Manohar Puri)
Member