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**ALLAHABAD HIGH COURT (LUCKNOW BENCH)**

SINGLE BENCH

M/S. HAMDARD (WAQF) LABORATORIES AND CENTRE AND OTHERS  
— Appellant

Vs.

STATE OF U.P. AND OTHERS — Respondent

( Before : Shri Narayan Shukla, J. )

Writ Petition No. 5466 (M/S) of 2006

Decided on : 30-10-2013

**A. Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 2(c) read with Schedule I, Item 15 — "Specified Industry" — Meaning of "Processing" — Levy of Cess Tax — Unani and Ayurvedic medicine manufacturing unit — Whether covered under "processing of animal or vegetable products industry" — Petitioner's argument that medicinal herbs are not agricultural products and their processes are not covered by Item 15 — Court's reliance on precedents stating that "end product" determines industry nature, not raw material — Appellate Committee's definition of "manufacturing process" from Factories Act, 1948 and Webster's dictionary — Evidence of water usage in herbal extraction (steaming), boiling, washing, and cleaning — Pollution reports indicating discharge of polluted water — Conclusion that manufacturing process involves "processing" of vegetable products. (Paras 3, 4, 6, 9, 10, 11, 15, 16, 18)**

**B. Water (Prevention and Control of Pollution) Cess Act, 1977 — Section 3 read with Schedule II — Water Consumption for Cess Assessment — Inclusion of "bottle washing" and "floor washing" as part of "processing" — Appellate Committee's finding that even washing steps contribute to pollution and are part of the overall manufacturing process — Water pollution problems arising**

**from washing equipment and factory floors leading to discharge of substantial effluent — Petitioner's admission that pollution occurred from bottle and floor washing — Upholding of cess levy on the basis that water consumed for processing leads to pollution. (Paras 8, 11, 14, 15, 16, 18)**

**C. Statutory Interpretation — purposive interpretation of statute — Relevance of "end product" vs. "raw material" in determining industry classification — Earlier Division Bench and Full Bench decisions holding that final products, as understood in common parlance, determine the nature of the industry for tax purposes — Application of this principle to Cess Act, 1977 — The manufactured Unani and Ayurvedic medicines, derived from vegetable extracts, categorize the petitioner's activity as "processing of vegetable products." (Paras 7, 8, 9, 12, 18)**

### **Counsel for Appearing Parties**

*S/Sri S.M.K. Chaudhary, Senior Advocate and Vaibhav Pandey, Advocate, for the Appellant;  
Sri Sudhir Pandey, Advocate, for the Respondent*

### **JUDGMENT**

**Shri Narayan Shukla, J.**—Heard Mr. S.M.K. Chaudhary, learned Senior Advocate assisted by Mr Vaibhav Pandey, learned counsel for the petitioner as well as Mr. Sudhir Pandey, learned counsel for the respondents.

2. The petitioners have assailed the orders dated 27.3.1993 (Annexures 1 and 2), passed by the Cess Appellate Committee, Lucknow in different Cess Appeals whereby it has been held that petitioners' Industry is covered under Item No. 15 of Schedule 1 of the Water (Prevention and Control of Pollution) Act 1974 and, therefore, they are liable to pay the cess tax.

3. Learned counsel for the petitioners submitted that the petitioners' factory has been manufacturing Unani and Ayurvedic medicines and health product for the last so many years and said process involves the extract from the herbs and medicinal plants which are mixed with other ingredients, namely, sugar and natural colour to make concentrate. The syrup concentrate is then further diluted with processed water and further bottled in continuous bottling machine. Thereafter the bottles are packed and dispatched to the markets.

4. It is stated that the petitioners are not specified industries as is defined under Section 2 (C) of the Cess Act. They say that Section 2 (C) defines "specified industries" which means any industry specified in schedule 1. In 1980 the Cess Officer of the U.P. Water Pollution Control Board, Lucknow issued a notice to the petitioner. The petitioner replied it submitting therein that none of the raw materials is covered under item no. 15 of the

schedule 1 of the Cess Act. Therefore, the petitioners are not liable to be cessed under the Act. However, in 1992 the petitioner received two assessment orders in connection of the factories by which opposite party no. 2 imposed the cess of Rs.36818. 40 and Rs.78260.70 for the factory nos. B-1 and B-2 respectively. Again the petitioner submitted reply of this demand but he further received cess order. Then the petitioner challenged the orders of assessment regarding imposition of cess under the Cess Act before this Court through W.P. No. 441 (MB) of 1993. Since in the meantime, the petitioners had also filed the appeal against the cess order, keeping in view the pendency of appeal, this Court directed the parties to appear before the appellate authority with the direction to the appellate authority to dispose of the appeal within not later than two months from the date of order. The petitioners were also directed to deposit the said amount, subject to the result of the appeals. Following the order of this Court the parties appeared before the appellate authority, who decided the appeal by means of orders impugned (Annexure no. 1 and 2 to the writ petition).

5. Learned counsel for the petitioners submitted that the appellate authority has failed to appreciate the provisions of the Cess Act correctly and further also misinterpreted the reports submitted by the petitioners which were approved by the U.P. Pollution Control Board. The petitioners' stand from very beginning has been that its industry is not covered under the schedule 1 of the Cess Act. Therefore, the whole proceeding is without jurisdiction.

6. Learned counsel for the petitioners submitted that opposite party no. 3 has wrongly held that the petitioner's factory itself processes vegetable products including agricultural products and further processes herbs such as extraction of juice and in the process the herbs are thrown away, but basis character of the herbs does not change. Hence the industry can not be termed as the industry processing under item no. 15. It is further submitted that medicinal herbs and plants cannot be equated with the final products produced by the petitioner. Moreover, medicinal plants and herbs also are not agricultural products for the simple reason that they are not cultivated and herbs and plants are products of spontaneous growth in jungle and therefore it can be termed as forest products. Accordingly the processing as understood in agricultural food product industries, is an action, operation or method of treatment applying it to do something. The petitioners are only manufacturing Unani and Ayurvedic medicines out of medicinal herbs and floor washing. The U.P. Pollution Control Board also approved the said report.

In support of his submission, learned counsel for the petitioners also cited a decision of the Division Bench of this court rendered in the case of **Civil Misc. Writ Petition No.1898 of 1982 (M/s. Geep Industrial Syndicate Ltd. v. The Cess Officer, U.P. and others.)**

7. In the aforesaid case the Division Bench of this Court has held that it is not the raw material or the ingredients used by any industry in manufacturing process but it is the final products that is relevant for the purpose of tax under the Act.

8. In the light of the aforesaid proposition laid down by the Division Bench of this Court, the learned counsel for the petitioner submitted that admittedly the pollutants were due to utensils washing and flour washing. In the process of such washing if water is polluted because use of chemicals in washing such process that cannot be treated as contemplated under item nos. 3 and 4 of the schedule 2. The process whereby water gets polluted in item nos. 3 and 4 refers to the processing of the item as mentioned in schedule 1. Thus, he submitted that the word "processing" in the schedule 2 should be read in the context of schedule 1 and that too in view of the aforesaid judgment.

9. Learned counsel for the petitioner further placed reliance upon a decision of another judgment of Full Bench of Court rendered in the case of **Indian Telephone Industry Ltd. Naini, Allahabad v. Cess Appellate Committee and another in Civil Misc. W.P. No. 9634 of 1989**. In this case also the Full Bench of this Court held that it is not the raw material or ingredients used by the industry that would determine the nature of industry. It is the end product as understood in common parlance that would be the decisive factor in coming to the conclusion about the nature of industry.

10. Per contra the learned counsel for the respondents submitted that petitioner's industry is producing Unani and Ayurvedic drugs in forms of tablets, solids, powder and liquids etc. In producing aforesaid it uses the chemicals. He also mentioned the name of products as under;

Pachnole Namak Sulamani, Lavar Bhaskar, Hamdard Manjan, Salopladi Churan, Namak Jalinus, Safi, Masturin, Sarbat Faulad, Bablex, Kulzum, Saduri Sarbat Iksir Khas, Joshina, Sinkara, N.B. Tonic, Hamdard Gripwater and Sarbat Rooh Afza.

11. These products are covered under the drugs and pharmaceuticals. The petitioners themselves have obtained permission from the Directorate General of Technical Development (drugs and pharmaceuticals) Udyog Bhavan, New Delhi and their names are recorded in the VII Edition of Hand Book of Indigenous Manufactures of the chemicals. The chemicals used by the petitioner are industrial alcohol, organic dyes and other organic and inorganic chemicals. The principle raw materials used for manufacturing of the above products are sugar, herbal drugs salts, fruits juices. The herbal drugs are extract of herbal plants by chemical process or by steaming or powdering of the herbal plants with grinder etc. which amounts to a process of manufacture of Unani and Ayurvedic drugs and syrup. Industries are mainly covered under item 15 as well as under item 7 of the schedule 1 framed under Section 2 (c) of the Cess Act. It is further stated that the petitioners themselves have disclosed that they extract herbal drugs by steaming or by producing the herbal drugs by grinder. In this process of extraction through steam they use water. The petitioners have been following the cess return for the use of water in their industry regularly. The water discharged by the industry was sampled out and analysed by the laboratory and it was found that discharge of the water of the factory was highly polluted. The answering respondents have also brought on record the analysis report which itself

proves that chemicals and waters are used in extraction and preparation of drugs. Thus, it is stated by the respondents that petitioners' industries are well covered under the Cess Act. Therefore, the cess has rightly been assessed.

12. Learned counsel for the respondents further submitted that the Court should adopt the purposive interpretation of the statute so that the provisions of the Act may be given effect to in its appropriate manner. In support of his submission he also cited some decisions. However, since aforesaid proposition of law is not disputed, I do not feel it appropriate to burden this judgment with the discussion of those judgments.

13. To determine the controversy the relevant provisions of the Cess Act are necessary to be quoted herein under;

The Water (Prevention and Control of Pollution) Cess Act, 1977

Section 2 defines

(a).....

(b).....

(c)" specified industry" means any industry specified in Schedule 1.

Section 3. Levy and collection of cess

(1)There shall be levied and collected a case for the purpose of the Water (Prevention and control of pollution) Act 1974, 96 of 1974) and utilisation thereunder.

(2) The cess under sub-section (1) shall be payable by-

(a) every person carrying or any specified industry; and

(b) every local authority,

and shall be calculated on the basis of water consumed by such person or local authority, as the case may be , for any of the purposes specified in column (1) of Schedule II, at such rate, not exceeding the rate specified in the corresponding entry in column (2) thereof, as the Central Government may, by notification in the Official Gazette, from time to time.

2-A. Where any person carrying on any specified industry or any local authority consuming water for domestic purpose liable to pay cess fails to comply with any of the provisions of Section 25 of the Water ( Prevention and Control of Pollution) Act, 1974 (6 of 1974) or an of the standards laid so down by the Central Government under the Environment (Protection) Act, 1986 cess shall be notwithstanding anything contained in sub-section (2) of this section, calculated and payable at such rate, not exceeding the rate specified in column (3) of Schedule II, as the Central Government may, by notification in the Official Gazette from time to time specify.

(3) Where any local authority supplies water to any person carrying on any specified industry or to any other local authority and such person or other local authority is liable to pay cess under sub-section (2) or sub-section (2 A) in respect of the water so supplied, then, notwithstanding anything contained in that sub-section, the local authority first mentioned shall not be liable to pay such cess in respect of such water. "

#### Schedules I

1. Ferrous metallurgical industry.
2. Non-ferrous metallurgical industry
3. Mining Industry
4. Ore processing industry
5. Petroleum industry
6. Petro Chemical industry,
7. Chemical industry,
8. Ceramic industry,
9. Cement Industry,
10. Textile industry (including cotton synthetic and semi synthetic fibers manufactured from these fibers.)
11. Paper industry
12. Fertilizer industry
13. Coal (including coke) industry.
14. Power (Thermal, Diesel and Hydel) generating industries.
15. Processing of animal or vegetables products industry including processing of milk meat, hides and skins all agricultural products and their waste.
16. Engineering Industry

#### Schedule II

|                                     |                                |  |
|-------------------------------------|--------------------------------|--|
| Purpose for which water is consumed | Maximum Rate under section (2) | Maximum rate under sub-section (2A) of |
|-------------------------------------|--------------------------------|--|

## section 3

## section 3

(1)

(2)

(3)

1. Industrial cooling, spraying in mine pits or boiler feeds

One and a half paise per litre

Two and one-fourth paise per kilo litre.

2. Domestic purpose

Two paise per kilo litre

Three paise per kilo litre.

3. Processing whereby water gets polluted and the pollutants are biodegradable and are Toxic.

Four paise per kilo litre

Seven and a half paise per kilo litre.

Processing whereby water gets polluted and the pollutants are not easily biodegradable and toxic.

Five paise per kilo litre

Nine and a half paise per kilo litre.

14. Upon perusal of the orders impugned I find that the petitioners filed flow diagram before the appellate committee which establishes that the water was being used in processing B-1 Unit of the Industry into boiling pan and completion tank and further into washing machine. Similarly in B-2 Unit the water was being used in herbal extraction through steam processing in syrup preparation pan. The petitioner also furnished 266 types of raw materials. The petitioner also relied upon the report of Dr. B.K. Guha, an eminent scientist which states that raw materials used in the industry are mostly non toxic in nature. Some very specific herbs have unique quality of medicinal value. But these chemicals under no circumstances are allowed to be wasted and discharged out because of the high value of the product. Hence no specific precaution or treatment facility is required for the system. It further states that extraction process however required frequent cleaning of vessels as well as regular floor cleaning leading to the discharge of substantial amount of effluent. Further small stream of water is caused by the various condense to streams of water which are not always recycled because of the possible contamination.

15. Thus as per feasibility report the water pollution problem arises mostly from the washing step of various equipments as well as shop, floor of the factory processing areas. The appellate committee has held that manufacturing process itself shows that no water is discharged as process effluent. The appellate committee further recorded that Law officer of the petitioner/appellant conceded that pollution is caused only due to bottle washing and

floor washing. Further he submitted that floor and bottle washing are not part of the process in the industrial activity of making syrup and unani medicines. Cess has been levied upon the petitioner for the consumption of water for the purposes shown in the schedule II of the Cess Act. The samples of trade effluent collected from the petitioner's industry had been analysed and the effluent had been found polluted. The appellate committee also considered the question whether bottle washing and flour washing should be termed as part and parcel of the processing in the appellant industry. Since the word 'processing' is not defined under the Cess Act nor in the Water Act, 1974, the committee borrowed the definition of word "manufacturing process" from the Factories Act which is defined in Section 2(k) of the Factories Act, which defines as under,

1. Section 2 (k) "manufacturing process" means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal.

The word 'Process' has been defined in Webster's dictionary as follows,

"To subject to some special process or treatment, to subject (especially raw materials) to a process of manufacture, development or preparation for the market, etc. to convert into marketable form as livestock by slaughtering, grain by milling, cotton by spinning, milk by pasturing fruits and vegetables by sorting and repacking"

16. On the basis of the aforesaid discussion, I am of the view that the appellate committee has rightly held that petitioners consumed water for the purpose of processing whereby water gets polluted. In item no. 15 of the Schedule I of the Act the main function to cover the industry under the term 'specified industry' as defined under Section 2 (C) of the Act is processing. Here in the present case petitioner- industry is involved in extracting the herbal drugs by chemical process or steaming.

17. A book named as "Industrial Safety and Pollution Control Hand Book" in its chapter 27 at page 483 in Annexure III under heading Minimal National Standards of Pharmaceuticals manufacturing and formulation industry it was held that considerable amount of pollutant may generate from extraction of herbs and raw materials. Waste waters are generated from washing before extraction which may contribute grit of organic impurities. The acidic and alkaline effluents are waste water's discharged from certain processes.

18. The products of the petitioners-industries which are named as Pachnole Namak Sulamani, Lavar Bhaskar, Hamdard Manjan, Salopladi Churan, Namak Jalinus, Safi, Masturin, Sarbat Faulad, Bablex, Kulzum, Saduri Sarbat Iksir Khas, Joshina, Sinkara, N.B. Tonic, Hamdard Gripwater and Sarbat Rooh Afza are based on vegetable's extracts. Therefore, petitioner's activity is obviously a processing activity which terms it under item 15 of the Schedule II as specified industry. Hence the petitioners are liable to pay the cess tax. The orders passed by the appellate committee are upheld.

19. Accordingly the writ petition stands dismissed.