IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.07.2017

+ **W.P.(C) 7211/2016**

NARELA FOOD PROCESSING INDUSTRIES WELFARE ASSOCIATION (REGD.) ..... Petitioner

Versus

GOVT. OF NCT OF DELHI AND ORS. ..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr S. Khan and Mr Gurpratap Singh.

For the Respondents : Mr Sanjoy Ghose and Ms Pratishtha Vij for R-1 & R-5.
Ms Monika Arora, Mr Kushal Kumar and Mr Harsh Ahuja for R-6/Nr.DMC.
Ms Eshita Baruah and Mr Gaurang Kanth for R-7.
Mr Alok Kumar and Mr Abhishek Paruthi for EPCA.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner - a registered society formed with the object of promoting welfare of food processing industries - has filed the present petition under Article 226 of the Constitution of India. The question that falls for consideration in this petition is, whether 'pulses' fall within the scope of the term 'grains' as used in the context of foodstuffs? The import of this would determine whether the vehicles carrying pulses are exempt from the levy of Environment Compensation Charge (hereafter 'ECC').

2. By virtue of an order dated 09.10.2015 passed by the Supreme Court in ***IA No.365/2015 in IA No.345 in W.P.(C) 13029/1985*** captioned as '***M. C. Mehta v. Union of India & Ors***.', the Supreme Court directed that ECC ought to be imposed by the Government of NCT at the rates as indicated in the said order. However, the Court had also directed that ECC shall not be imposed on *"(a) passenger vehicles and ambulances (b) on vehicles carrying essential commodities, that is, food stuffs and oil tankers"*.

3. In compliance with the aforesaid order, the Department of Environment, GNCTD issued a notification dated 20.10.2015, levying ECC on light and heavy duty commercial vehicles. The opening paragraph of the said notification is relevant and is quoted below:

> "**F.No. 10(13)/Env/2015/6167-6189.**- In compliance with the order dated 9.10.2015 of Hon'ble Supreme Court in Interlocutory Application No. 345 of 2015 & No. 365 of 2015 in Writ Petition (Civil) No. 13029/1985, the Government of NCT of Delhi hereby levies Environment Compensation Charge (ECC) on the light and heavy duty commercial vehicles on the following rates :
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> (i) Category 2 (light duty vehicles etc.) and category 3 (2 axle trucks) Rs. 700/-
>
> (ii) Category 4 (3 axle trucks) and category 5 (4 axle trucks and above) Rs. 1300/-
>
> However, this charge shall not be imposed on following;
>
> (a) Passenger vehicles and ambulances
>
> (b) On vehicles carrying essential commodities, that is, food stuffs and oil tankers."

4. Thereafter, a meeting was held between the officials of Environment Pollution (Prevention and Control) Authority, Transport

Department GNCTD, Municipal Corporation, Traffic Police and others on 21.10.2015 wherein, it was decided that clause (b) of the notification dated 20.10.2015, by virtue of which vehicles carrying essential commodities: food stuffs and oil tankers were exempt from the levy of ECC, would mean "*the vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products*". The Notification dated 30.10.2015 (being Notification no. F.1(13)/Env/2-15/6345-6372), specifying the change above, reads as under and is set out below:-

"**DEPARTMENT OF ENVIRONMENT**

NOTIFICATION

Delhi, the 30th October, 2015

No. F.1(13)/Env/2015/6345-6372.- In the meeting taken by Enviroment Pollution (Prevention and Control) Authority (EPCA) with Transport Deptt. GNCTD, Municipal Corporation, Traffic Police & Others on 21.10.2015, it has been decided to exempt the vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products from levy of the Environment Compensation Charges.

As such, the last sentence of first para of the Notification No. F.1-(13)/Env/2-15/6167-6189 Dated 20.10.2015 issued in compliance of the order dated 9.10.2015 of Hon'ble Supreme Court in Interlocutory Application No. 345 of 2015 & No. 365 of 2015 in Writ Petition (Civil) No. 13029/1985 "(b) On vehicles carrying essential commodities, that is, food stufs and oil tankers" will be taken to mean "(b) the vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products".

Dr. ANIL KUMAR, Spl. Secy.(Environment)"

5. Subsequently, another Notification dated 15.02.2016 was issued whereby the earlier Notification dated 30.10.2015 was amended to also

exempt vehicles carrying eggs and ice, from the levy of ECC. The relevant extract of the said notification is as under:-

> "Therefore, the second para of the Notification No.F.10(13) Env/2015/6345-6372 dated 30.10.2015 issued in compliance to the order dated 9.10.2015 of Hon'ble Supreme in Interlocutory Application No.345/2015 and No.365 of 2015 in Writ Petition (Civil) No.13029/1985 "The Vehicles carrying raw vegetables, fruits, grains, milk and tankers carrying petroleum products" shall be taken to mean "the vehicles carrying raw vegetables, fruits, grains, milk, egg, ice that is to be used as food item and tankers carrying petroleum products."

6. The petitioner is aggrieved as the toll collecting agencies are also collecting ECC from vehicles carrying pulses. The learned counsel for the petitioner has drawn the attention of this Court to a letter dated 16.03.2016 issued by the toll collecting agency, which reads as under:-

> "Under notification No.F10(13) Env/2015/1049-1072 dated 15.02.2016 the pulses are not exempted from levy of ECC. ECC (NGT) is imposed on pulses."

7. The petitioner made several representations. However, it is stated that the same were not responded to and, therefore, the petitioner filed a writ petition (W.P.(C) 3761/2016). The said writ petition was disposed of by this Court by an order dated 02.05.2016 directing the respondents therein to consider the said petition as a representation. In compliance with the aforesaid order, a meeting was held by different departments of the Government of NCT on 17.05.2016 and the petitioner's counsel was also heard. The petitioner, thereafter, received a communication dated 30.05.2016 issued by Special Commissioner, Transport, which indicates

that the Government of NCT had sent a list of 22 commodities to be covered under the expression ‘essential food stuffs’ and had requested that the vehicles carrying the same be exempt from the imposition of ECC.

8. The Additional Commissioner, (F&S), Government of NCT also sent another letter dated 01.07.2016 to the Secretary, Environment Department, GNCTD pointing out that under the Essential Commodities Act, 1955, "*food stuffs, including edible oil-seeds & oils*" were essential commodities. And, by a notification dated 16.06.2003, the notification dated 15.05.2002 was amended and the words "*and edible oils*" was substituted by *"edible oils, pulses, gur, wheat products (namely maida rava, suji, aala, resultant atta and bran) and hyrdrogenated vegetable oil or vanaspati".* He requested that definition of food stuffs under the Essential Commodities Act, 1955 be considered while deciding the controversy raised by the petitioner.

Submissions

9. Mr S Khan, the learned counsel for the petitioner limited his contentions to canvassing that pulses are food grains. He submitted that both cereals and pulses falls in the category of grains. He also handed over a print out from one of the internet sites, which indicated that grains could be categorized into five groups, namely, cereal grains, pseudo-cereals, pulses, whole grains and oil seeds. He also relied on the decision of the Supreme Court in ***M/s Hiralal Rattanlal Etc. v. State of U.P. & Anr. Etc.: 1973 AIR 1034*** and on the strength of the said decision contended that even split or processed food grains including pulses fell within the scope of Section 3-D of the United Provinces Sales Tax Act, 1948 as amended by the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1970.

10. Mr Sanjoy Ghose opposed the present petition principally on two grounds; first, he submitted that the present petition was not maintainable since the Supreme Court was still in seisin of W.P.(C) 13029/1985 and, the appropriate forum to raise any dispute regarding the notifications would be the Supreme Court. Second, he submitted that the expression 'food grains' is used interchangeably and the term 'grains' would not include pulses. He submitted that schedule to the Delhi Agricultural Produce Marketing (Regulation) Act, 1998 lists out the following categories:-

> "IV Cereals –
>
> 1. Bajra
> 2. Barley
> 3. Inferior millets, for example, swank, kodra kangni etc.
> 4. Jowar
> 5. Maize
> 6. Oats
> 7. Paddy (husked and unhusked)
> 8. Wheat (husked and unhusked)"

He submitted that since the term 'grains' is used interchangeably and, therefore, the same does not include pulses.

Reasoning and Conclusion

11. The contention that the present petition is not maintainable is not persuasive. There is no controversy that the notifications, which the petitioner calls upon this Court to consider, have been issued in compliance with the directions issued by the Supreme Court. The limited question pressed by the petitioner is, whether in terms of the notifications, vehicles carrying pulses are exempt from paying ECC. Mr Ghose is correct in his

submission that the matter relating to levy of ECC is a subject matter before the Supreme Court in W.P.(C) 13029/1985. However, the question involved is not the levy of ECC but merely the interpretation of the notification issued by the Government of NCT. Thus, the petition would be maintainable.

12. Now coming to the principal issue, the question whether pulses are included in the word 'grains' has to be interpreted in the context of the order dated 09.10.2015 passed by the Supreme Court, as by virtue of the said order, it is apparent that the vehicles carrying food stuffs included in the definition of essential commodities would be exempt from ECC.

13. The Essential Commodities Act, 1955 was enacted in the interest of general public, for the control of production, supply and distribution of, and trade and commerce, in certain commodities. Section 2(a) of the said Act (as enacted) defined essential commodity which in terms of sub-clause (v) included "*foodstuffs, including edible oil-seeds and oils*". The said Act was amended in 2006 and Section 2(a) was deleted. Simultaneously, Section 2A was introduced by virtue of which essential commodity was defined to mean commodities included in the schedule to the Act. The schedule to the Act also includes "*foodstuffs, including edible oilseeds and oils*" and thus, for the purposes of the Essential Commodities Act, 1955, 'foodstuffs' continued to be considered as essential commodity.

14. Undisputedly, pulses fell within the scope of essential commodities for the purposes of the said Act. By a notification dated 15.02.2002, the Removal of (Licensing Requirements, Stock Limits and Movement Restrictions) on Specified Foodstuffs Order, 2002 was notified under the said Act and by virtue thereof, dealers were free to buy, stock, sell,

transport, distribute any quantity of wheat, paddy/rice, coarse grains, sugar, edible oilseeds and edible oils and, the dealers no longer required any licence under any order issued under the Essential Commodities Act, 1955. The aforesaid order was amended by virtue of the Removal of (Licensing Requirements, Stock Limits and Movement Restrictions) on Specified Foodstuffs (Amendment) Order, 2003 and, pulses, gur, wheat products (namely maida, rava, suji, atta, resultant atta and bran) and hydrogenated vegetable oil or vanaspati were included and consequently, the aforesaid items were excluded from the ambit of licensing control under the Essential Commodities Act, 1955. It is thus indisputable that pulses were included as an essential commodity, falling within the scope of the word ‘foodstuffs’.

15. Thus, pulses would clearly fall within the definition of foodstuffs as included in the notification dated 20.10.2015. As mentioned above, the notification dated 20.10.2015 was subsequently, clarified/amended by the notification dated 30.10.2015. It was made explicit that vehicles carrying raw vegetables, fruits, grains and milk would be exempt from ECC. Essential commodities other than those specified under the notification dated 30.10.2015, even though falling within the broad definition of the word ‘foodstuffs’, stood excluded. However, there is no reason to limit the scope of the word ‘grains’ to exclude any essential commodity falling within that classification. The word ‘grains’ in the context of food stuffs would obviously imply ‘food grains’ and the said term plainly includes pulses.

16. The fundamental flaw in Mr Ghose’s contention is that it proceeds on an assumption that if cereals are food grains, pulses are not. In terms of logic, this is akin to a fallacy of "illicit major": a formal fallacy in

categorical syllogism that arises because a major term is undistributed in the major premise but distributed in the conclusion (All A are B; no C are A; therefore, no C are B). For example, all Dogs are mammals; no cats are dogs; therefore, no cat is a mammal.

17. Whilst, it is correct that cereals are food grains, however, that does not mean that pulses are not. Food grains, is a larger group and would include both cereals and pulses.

18. There is no basis to assume that the expression 'food grains' are synonymous to cereals. The schedule to the Delhi Agricultural Produce Marketing (Regulations) Act, 1998 defines cereals and pulses separately. The said schedule does not define food grains and thus the reliance placed on the said schedule is wholly misplaced.

19. There are several enactments which include pulses in the definition of food grains. For instance, Section 3-D of the United Provinces Sales Tax Act, as amended by the Uttar Pradesh Sales Tax (Amendment and Validation) Act, 1970, provides for levy of tax on purchase of food grains (including cereals and pulses). The term 'food grains' as is commonly understood includes pulses. The Government of India also treats pulses as a part of food grains in the data published in this regard. On the website of the Government of India - data.gov.in, the statistics pertaining to the "*Agricultural production of different food grains from year 2003 to 2014 at all India level*" includes data pertaining to production of pulses.

20. Therefore, in terms of the Notification dated 30.10.2015 as amended by Notification dated 15.02.2016, vehicles carrying pulses would not be subject to levy of ECC.

21. The writ petition and the pending application are disposed of with the aforesaid clarifications.

VIBHU BAKHRU, J

JULY 17, 2017
MK/RK