CASE NO.:
Appeal (civil) 852 of 2007

PETITIONER:
Commnr. Sales Tax, U.P

RESPONDENT:
M/s. Bharat Bone Mill

DATE OF JUDGMENT: 20/02/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T
(Arising out of SLP(C) No. 25232/2004)

S.B. Sinha, J.

Leave granted.

Whether a 'crushed bone' can be treated to be 'fertilizer' is the question involved in this appeal arising out of a judgment and order dated 20.10.2003 passed by a learned Single Judge of the Allahabad High Court in Sales Tax Revision No. 1570 of 1990 whereby and whereunder the revision petition filed by the appellant herein was dismissed.

Respondent herein is engaged in manufacture of crushed bone. It runs a bone mill for the above-mentioned purpose.

The question as to whether crushed bone-meal would come within the definition of the term "fertilizer" must be considered having regard to some notifications issued by the State of Uttar Pradesh from time to time. By a notification dated 16.07.1956, 'Fertilizers' other than 'Chemical Fertilizers' were exempted from payment of sales tax by the State in exercise of its powers conferred upon it under the U.P. Sales Tax Act, 1948. However, by reason of a notification dated 10.3.1970, 'Chemical Fertilizers' were also brought within the purview of exemption from payment of sales tax. By a notification dated 31.03.1976 a taxing entry was introduced in the Schedule appended to the notification dated 15.11.1971 in terms whereof sale of 'bone to consumer' was exigible to sales tax of 6 per cent. Yet, in terms of 7.09.1981, the Schedule appended to the said Act was amended; the relevant entries being 8 and 10 read as under:-

"Sl. No.	Description of goods	Point of tax	Rate of Tax
8.	Bones	Sale to consumer	6%
10.	Chemical fertilizers	M or I	5% "

It is in the aforementioned context, the question as to whether 'crushed bone' would answer the description of 'fertilizer' or not is required to be considered. We may notice that the High Court in view of some decisions rendered by the Tribunal as also a decision of the learned Single Judge of the M.P. High Court in Commissioner of Sales Tax, Madhya Pradesh v. Sagar Bone Mills, Sagar : No. 1 [18 STC 338] opined that 'crushed bone' would come within the purview of 'fertilizer'. Reference was also made to a decision of a learned Single Judge of the said Court in CST v. Crusher and Fertilizer Company [1985 UPTC 905].

Mr. Kavin Gulati, learned counsel appearing on behalf of the appellant, would submit that the High Court committed a serious error in arriving at the said conclusion relying on or on the basis of the decisions of the M.P. High Court in Sagar Bone Mills (supra) and the Allahabad High Court in Crusher and Fertilizer Company (supra).

In Sagar Bone Mills (supra), the Madhya Pradesh High Court stated the law, thus:

"\005It cannot be denied that bone-meal or crushed bones are "bones of animals" which include powdered bones. The three entries referred to earlier must be read harmoniously, and, so read, their effect is clearly to impose sales tax on bones of animals which include crushed bones and bone-meal.

4. In coming to the conclusion that the question whether crushed bone or bone-meal manufactured by the assessee was "fertilizer" for the purpose of the Sales Tax Acts should be determined with reference to the definition of "fertilizer" given in the Fertilizer (Control) Order, 1957, the Sales Tax Tribunal altogether overlooked the settled rules of construction about the meaning of words used in different statutes. It is firmly settled that the interpretation or definition clause occurring in a statute can be used only for the purpose of interpreting words appearing in that statute and not for the purpose of interpreting words appearing in other statutes. To take a word bearing a peculiar meaning in a particular Act and to clothe that word with the same meaning when found in different context in a different Act is a fallacious process of interpretation. The Tribunal was, therefore, not justified in pressing into service the definition of "fertilizer" given in the Fertilizer (Control) Order, 1957-a statutory provision, the scope and object of which is altogether different from the Sales Tax Act. The Tribunal was, therefore, in error in remanding the matter to the Sales Tax Officer for a fresh decision after determining whether the produce manufactured by the assessee was or was not a "fertilizer" according to the definition of that term given in the Fertilizer (Control) Order, 1957."

The said view was approved by a Full Bench of the said Court in The Ratlam Bone & Fertilizer Co. v. The State of Madhya Pradesh and Another [35 STC 132].

In Yasin Bone Mills v. State of U.P. and Another [46 STC 112 : 1980 UPTC 450], the Allahabad High Court considered a report of the Directorate of Marketing and Inspection, Ministry of Food and Agriculture, Government of India, in terms whereof four products were obtained from bones known as: (1) Bones sinews, (2) Crushed bones, (3) Bone grits, and (4) Bone meal. The characteristics of the said four products from bones are said to be different. The learned Judges also referred to the Standard Cyclopedia of Modern Agriculture, wherein a distinction had been drawn between 'bone meal' and 'crushed bone', on the basis whereof it was opined :

" 6. As noted above in the instant case the assessee is dealing in crushed bones and not bone-meal. The distinction between the two-commodities is quite clear on the basis of the information contained in the report of the Directorate of Marketing and Inspection, Ministry of Food and Agriculture, Government of India and the Standard Cyclopaedia of Modern Agriculture referred to above. It is not possible, therefore, to hold that crushed bones are fertilisers. Apart from this the assessee himself does not appear to have been making sales of crushed bones as fertilisers. This commodity is not sold by the assessee in the country and the turnover of the years under consideration goes to show that almost the whole of it was in the form of exports to foreign countries. As noted above crushed bones are meant for use as raw material in the manufacture of glue and gelatine, the

industries which have not developed to any appreciable extent in India and, hence, this commodity has to be exported to countries outside India."

Therein reliance was placed on the opinions of some experts to establish 'crushed bone' and 'fertilizers'. The Court, however, found the report of the Directorate of Marketing and Inspection more creditworthy, opining that bone-meal and not crushed bones can be treated as fertilizers.

Moreover, it is well-known that the question as to whether a commodity would be exigible to sales tax or not must be considered having regard to its identity in common law parlance. If, applying the said test, it is to be borne in mind that if one commodity is not ordinarily known as another commodity; normally, the provisions of taxing statute in respect of former commodity which comes within the purview of the taxing statute would be allowed to operate. In any event, such a question must be determined having regard to the expert opinion in the field. We have noticed hereinabove the difference between 'bone meal' and 'crushed bone'. Different utilities of the said items has also been noticed by the Allahabad High Court itself. The High Court or for that matter, the Tribunal did not have the advantage of opinion of the expert to the effect as to whether crushed bones can be used only for the purpose of fertilizer or whether crushed bones are sold to the farmers for use thereof only as fertilizer.

For the reasons aforementioned, we set aside the orders of the Assessing Authorities including that of the High Court. However, we intend to leave the question open for subsequent cases, if any.

There is another aspect of the matter, notice whereof must be taken by us, viz., the Assessing Authority proceeded to determine the taxability in view of the decisions, as were prevailing. It sought to rectify its order keeping in view the subsequent decisions. The question which arose for consideration before the Tribunal was as to whether the Assessing Authority could pass such an order having regard to the power of rectification in terms of Section 22 of the Act.

This aspect of the matter has been considered in The Income \026 Tax Officer, Alwaye v. The Asok Textiles Ltd., Alwaye [(1961) 3 SCR 236] wherein it was held that the provisions for rectification of "mistakes apparent on the record" cannot be equated with a power of a civil court to review its own order as envisaged under Order XLVII Rule 1 of the Code of Civil Procedure stating:

"The learned Judges of the High Court seem to have fallen into an error in equating the language and scope of s. 35 of the Act with that of O.47, r.1, Civil Procedure Code. The language of the two is different because according to s. 35 of the Act which provides for rectification of mistakes the power is given to the various income-tax authorities within four years from the date of any assessment passed by them to rectify any mistake "apparent from the record" and in the Civil Procedure Code the words are "an error apparent on the face of the record" and the two provisions do not mean the same thing."

The appeal is allowed with the aforementioned observations. No costs.