

CASE NO.:
Appeal (civil) 2522 of 2007

PETITIONER:
M/s. Noorie Manure Mill, Sambhal

RESPONDENT:
Commissioner, Trade Tax, U.P.

DATE OF JUDGMENT: 15/05/2007

BENCH:
S.B. Sinha & Markandey Katju

JUDGMENT:
J U D G M E N T

WITH
CIVIL APPEAL NO. 2522 of 2007
[Arising out of S.L.P. (C) No. 12061 of 2006]
WITH
CIVIL APPEAL NO. 2523 OF 2007
[Arising out of S.L.P. (C) No. 19593 of 2006]
WITH
CIVIL APPEAL NO. 2524 OF 2007
[Arising out of S.L.P. (C) No. 19858 of 2006]

S.B. SINHA, J.

1. Leave granted.

2. 'Horn' and 'hoof' in common parlance do not come within the definition of 'bone'. Horns and hooves whether can be used as fertilizer or crushed bone within the meaning of various notifications issued by the State of U.P. under the U.P. Trade Tax Act is the question involved in this case.

3. Appellants herein are dealers in crushed bones as also crushed horn and hoof. It is registered under the Central Sales Tax Act as also the U.P. Trade Tax Act.

4. Horn and hoof, on the one hand, and bone or crushed bones, on the other, used to be treated differently by the State. In a notification issued by the State on or about 7.9.1981, 'bones' were subjected to sales tax at the rate of 6%; the taxing event being sale to the consumer. By a notification dated 30.9.1982, it was declared that no tax was to be paid on sale or purchase of bones but the same did not include crushed bones. The said notification dated 7.9.1981 was amended to include 'crushed bone' against entry No. 8 which, as noticed hereinbefore, mentioned 'bone'. By a notification dated 31.1.1985, however, bone including horn and hoof but not including crushed bones were exempted from payment of tax. We may, however, notice that yet again by a notification dated 12.9.1986, the following item was substituted in place of the original item No. 32 which reads as under:-

Sl. No.
Description of Goods
Rate of Tax

1
2
3

32
Horn combs and all other articles made from horn

5. Indisputably, fertilizer is exempted from payment of trade tax. The question as to whether crushed bones when sold to the farmers for use as fertilizer despite the aforementioned notifications would be exigible to trade tax or not came up for consideration before this Court in Commissioner, Sales Tax v M/s. Bharat Bone Mill [(2007) 3 SCALE 383]. Therein the effect of the aforementioned exemption notifications had not been gone into as this Court's attention had not been drawn thereto. This Court opined:-

"11. 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 different 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."

The said question was left open for subsequent cases.

6. In one of the cases, namely, Commissioner, Trade Tax, U.P. Lucknow v M/s Noori Manthor Mill, Muradabad Road Sabal, the Tribunal has arrived at the finding of fact

".....Because on the crushed bones there is a tax liability at the rate of 6 percent but against the crushed bones, no description of horns and bones has been made that is to say that the purpose of the government is to charge tax on the crushed bones and not to charge tax on the crushed bones and horns. This was also pleaded by the learned counsel that the crushed horns and Hooves are used as manufacture (sic). And it cannot be put to any other use. The department has not led any such evidence which may conclude that the crushed horns and hubes (sic) are used for any other purpose than the manure and that the manure is a tax free commodity....."

7. In the appeals which were preferred thereagainst, the High Court, however by reason of the impugned judgment dated 7.2.2006 held as under:-

"...Bones including Horn and Hoof is exempted but crushed bones has been excluded and made taxable. When horns and hoofs are included in the bones then in the exclusion part also crushed bone include crushed Horn and Hoof. In common parlance also, Horns and Hoofs are considered as Bones. Thus inclusion of Horns and Hoofs in Bones in the notification appears to be clarificatory only. Since crushed bone is excluded from the entry "Bone including Horn and Hoof", in my view the crushed horns and hoofs being crushed bones are also deemed to be excluded. Tribunal has also committed an error in treating crushed Horns and

Hoofs as fertilizer. In the case of M/s. Hindustan Bone Mills Pvt. Ltd. Versus Commissioner of Trade Tax reported in 2005 UPTC 885 this Court held that crushed bone is not a fertilizer. In this view of the matter, the order of the Tribunal is liable to be set aside and the appeal filed by the Commissioner of Trade Tax before the Tribunal is liable to be allowed."

8. Following the said judgment, the High Court refused to interfere with the direction of the Tribunal for pre-deposit of 25% of the disputed amount of tax in the cases involving the other two appeals before us.

9. Mr. Dhruv Agarwal, learned counsel appearing on behalf of the appellant would submit that crushed horn and hoof being neither bone nor crushed bone, despite its mention in one of the exemption notifications, it does not lose its character to be sold as fertilizer and the High Court, therefore, was not correct in its view.

10. The High Court, in our opinion, committed a serious error in opining that crushed bone would also include crushed horn and hoof. It went on to hold that horns and hooves are considered as bone in common parlance and its inclusion in the notification 'appeared to be a clarificatory one'. In absence of any definition of the term in the statute, the meaning thereof as understood in common parlance for the purpose of imposition of tax should be assigned. Animal horn and hoof cannot be a part of animal bone even in common parlance. The High Court, therefore, in our opinion clearly fell in error in arriving at the aforementioned conclusion.

11. We, however, cannot also agree with the finding of the Tribunal that crushed horn and hoof are used only as manure. No expert evidence has been obtained in that behalf. Even otherwise, in view of the notification dated 12.9.1986, the said conclusion does not appear to be correct as combs and other articles are made out of horn.

12. We, therefore, are of the opinion that the interest of justice would be met if the impugned judgments are set aside and the matter is remitted back to the Tribunal for consideration of the matter afresh on merits. It will be open to the parties to adduce additional evidence before it. The direction of the Tribunal to deposit 25% of the disputed amount of tax is also directed to be waived. These appeals are allowed with the aforementioned observations and directions. In the facts and circumstances of this case, however, there shall be no order as to costs.