

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2924 OF 2009
(Arising out of SLP(C) No.1447 of 2008)

COMMISSIONER OF COMMERCIAL TAXES & ORS.

...APPELLANT (S)

VERSUS

SUPREME OIL INDUSTRIES LTD. & ANR.

...RESPONDENT(S)

ORDER

Leave granted.

In 1994, Government of West Bengal introduced an incentive scheme known as West Bengal Industrial Promotion (Assistance to Industrial Units) Scheme, 1994, (hereinafter referred to as the said 'Scheme'). The Scheme provided for financial assistance to Industrial Units manufacturing goods enumerated in 'Schedule A' to the Scheme. That Schedule contains "Edible Rice Bran Oil" as one of the Items which made the claim for assistance admissible under the Scheme. Respondent No. 1 is a registered dealer under West Bengal Sales Tax Act, 1994.

Respondent No. 1 made an application in Form-I claiming assistance under the said Scheme in respect of periods mentioned in Synopsis-B. Respondent No. 1 claimed that "Rice Bran Oil Raw Grade-I" manufactured by it formed part of "Edible Rice Bran Oil" and as such it was entitled to ninety per cent refund in respect of tax collected on sale in terms of the said Scheme. The dispute ultimately came before the High Court by way of Writ Petition as the Special Secretary, Finance Department, Government of West Bengal, rejected all the applications made by respondent No. 1 herein holding that "Rice Bran Oil

Grade-I, manufactured by respondent No. 1 herein was not “Edible Rice Bran Oil” as the manufactured product required further processing before it became fit for human consumption. The learned Single Judge set aside the order of the Special Secretary and directed the matter to be heard de novo in accordance with law. The view earlier taken by the Special Secretary came to be re-iterated vide Order dated 16th September, 2002 which made respondent No. 1 herein to move the High Court in Writ Petition No. 2170 of 2002, which came to be dismissed. The dismissal of the writ petition was reversed by the Division Bench of the High Court vide the impugned judgment, hence this Civil Appeal is filed by the Department.

Apart from the reasons given by the Division Bench, we find that the Scheme 1994 came to be enacted in view of the fact that 16 Units manufacturing Rice Brand Oil of Raw Grade-I in the State of West Bengal were facing acute financial problems and in order to alleviate those financial problems the State decided to give financial assistance for the very existence of the Units set up prior to 1994. In this connection we may point out that in this case we are concerned with three categories of Rice Bran Oil. The first category is Rice Bran Oil of Raw Grade-I which goes into the manufacture of vanaspati. The second category is Rice Bran Oil of Raw Grade-II not fit for human consumption. It goes in industrial uses. The third category is Rice Bran Oil Refined Grade which is fit for direct human consumption, as such. On enquiries we were informed that there is no Unit in the State of West Bengal which was in the manufacture of Rice Bran Oil of Refined Grade in 1994 when the Scheme stood enacted. Since, we are concerned with the incentive Scheme, we have to give weightage to the object behind enactment of 1994 Scheme. The object appears to be to give incentive to those Units set up prior of 1994 which were in the manufacture of Rice Brand Oil of Raw Grade-I alone. We have been taken through number of enactments, namely, Food Adulteration Act, Essential Commodities Act and the

material indicating how the trade perceives Rice Brand Oil of Raw Grade-I and we find that the said product is perceived by the trade as Edible Oil.

For the afore-stated reasons, we find no error in the impugned judgment of the Division Bench of the Calcutta High Court. However, before concluding, we would like to point out one important aspect. Out of 16 Units, Supreme Oil Industries Limited is the only Unit which entered into litigation in 2002 under the Financial Assistance Scheme. We are informed that there is one more Unit which had instituted proceedings in the High Court vide Writ Petition No. 672 of 2005. We are specifically making it clear that the benefit of refund would be admissible to Supreme Oil Industries Limited in the sum of Rs.73,00,000/- (Rupees seventy three lacs) which the State/Competent Authority shall refund within a period of six months. It is made clear that if the amount is not refunded within stipulated time, then interest will become payable by the State at 9 per cent per annum on expiry of the period of six months.

As regards the the pending Writ Petition No. 672 of 2005, we leave it to the High Court to consider moulding of the relief after examining the delay, if any, on the part of the assessee in moving the High Court. We express no opinion in that regard. However, we make it clear that none of the other Units will be entitled to claim refund/adjustment on the basis of our order passed today, as they have not asserted their right to refund in the Court of Law all these years.

The civil appeal is disposed of accordingly with no order as to costs.

.....J.
[S.H. KAPADIA]

New Delhi,

.....J

April 29, 2009

[AFTAB ALAM]



ITEM NO.1

COURT NO.4

SECTION III

**S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S**

Petition(s) for Special Leave to Appeal (Civil) No(s).1447/2008

**(From the judgment and order dated 04/04/2007 in APO No. 439/2004
of The HIGH COURT OF CALCUTTA)**

COMMISSIONER OF COMMERCIAL TAXES & ORS.

Petitioner(s)

VERSUS

SUPREME OIL INDUSTRIES LTD. & ANR.

Respondent(s)

(With prayer for interim relief)(For orders)

Date: 29/04/2009 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA

HON'BLE MR. JUSTICE AFTAB ALAM

For Petitioner(s) Mr. Rakesh Dwivedi, Sr.Adv.

Mr. Avijit Bhattacharjee,Adv.

Mr. Bikas Kar Gupta, Adv.

Mr. Shantanu Krishna, Adv.

For Respondent(s) Mr. S.K. Bagaria, Sr.Adv.

Mr. Rana Mukherjee, Adv.

Mr. Siddharth Gautam, Adv.

Mr. Goodwill Indeevar,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

The appeal is disposed of with no order as to costs.

**(S. Thapar)
PS to Registrar**

**(Madhu Saxena)
Court Master**

The signed order is placed on the file.

