SARASWATI SUGAR MILLS

v.

HARYANA STATE BOARD AND ORS.

OCTOBER 22, 1991

[A.M. AHMADI AND V. RAMASWAMI, JJ.]

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

Sections 2(c), 3 and Schedule I, Entry 15—'Processing of animal or vegetable product industry'—Sugar manufacturing industry—Whether covered by Entry 15, Schedule I—Sugar Cane—Whether a Vegetable.

Interpretation of Statutes:

Construction of words and meaning to be given— Normally depends on the nature, scope and purpose of statute.

Words and Phrases: "Vegetable", "Processing"—Meaning of.

Section 3 of the Water (Prevention of Pollution and Control) Cess Act, 1977 provided that water cess was payable by every person carrying on any specified industry and every local authority, for the purposes of the Water (Prevention and Control of Pollution) Act, 1974. "Specified industry" was defined in the Act meaning any industry specified in Schedule I. There were 15 items under Schedule I, including "processing of animal or vegetable products industry", under Entry 15.

The question for consideration in the batch of appeals, writ petitions and transferred cases arising out of the notices issued by the concerned assessing authorities demanding water cess from the sugar manufacturers was whether sugar manufacturing industry fell under Entry 15 of Schedule I of the Water (Prevention and Control of Pollution) Cess Act, 1977.

Disposing of the appeals, writ petitions and transferred cases, this Court,

HELD: 1. In the context in which the word 'vegetable' is used in Entry 15, Schedule I of the Water (Prevention and Control of Pollution) Cess Act, 1977, 'vegetable product' means product of or made of or out of

A vegetable. 'Vegetables' as understood in common parlance are not products of manufacture unless it is said that agriculture is an industry for certain purposes and vegetables are products of that industry. In order to bring an industry within any of the entries in Schedule I it has to be seen what is the end product produced by that industry. Sugarcane is not a B vegetable though it may be an agricultural product. If the botanic meaning of vegetable as referring to any and every kind of plant life is to be given then some of the industries listed in Schedule I like Paper Industry and Textile Industry and even Chemical Industry which are covered by other entries could also be brought within Entry 15. The word 'vegetable' in the context does not attract the botanic meaning. The sugar manufacturing C industry does not, therefore, come within Entry 15 of Schedule I of the Cess Act. Consequently, the manufacture of alcohol from molasses, which is a by product of manufacture of sugar, could not be considered to be an industry within Entry 15 of Schedule I. [534 C-E, F]

D 2.1 The word 'vegetable' has been defined in many ways. From the botanic point of view 'vegetable' may include any plant but in common parlance it is understood as referred to edible plants or parts of edible plants. Unless the botanical meaning is given to the word 'vegetable' it is not possible to conclude sugarcane as vegetable. [528 C]

E 2.2 Pollution Act may be a regulating Act, but Cess Act is a fiscal enactment. Therefore, the Court has to look merely at what is clearly said. There is no room for any intendment and no room for bringing within the provision of the Cess Act anything by implication. [533 E,F]

State of West Bengal & Ors. v. *Washi Ahmed Etc.* AIR 1977 SC 1638; F *Member-Secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution* v. *Andhra Pradesh Rayons Ltd. and others,* [1989] 1 SCC 44, *M/s Motipur Zamindary Co. (P) Ltd.* v. *The State of Bihar,* [1962] Suppl. 1 SCR 498 and *Rajasthan State Electricity Board* v. *The Cess Appellate Committee & Anr.,* JT 1990 4 SC 123, referred to.

G *World Book, Concise Oxford Dictionary,* 3rd Ed. p. 1365, *Webster's International Dictionary and Encyclopaedia Brittannica,* Vol. 23, referred to.

2.3 Construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the H statute in which it is occurring and to the fitness of the matter to the

statute. The meaning given to the same word occurring in a social security measure or a regulating enactment may not be apposite or appropriate when the same word is interpreted with reference to a taxing state. The Cess Act is a fiscal enactment. [534 B]

3.1. Processing of vegetable products industry is normally understood in the sense that it relates to processing of vegetables, which even after processing retain its character as vegetable. [530 H,531A]

3.2 Processing as generally understood in marine, agricultural and food products industries is an action, operation or method of treatment applying it to something. It is refining, development, preparation or converting of material especially that in a raw state into marketable form. In manufacture something is brought into existence, which is different from that originally existed in the sense that the thing produced is by itself a commercially different commodity, whereas in the case of processing it is not necessary to produce a commercially different article. [531 C,D]

3.3 Processing essentially effectuates a change in form, cantour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something. [533 A,B]

CST **v.** *A.R. Aladin,* **AIR 1964 Guj. 27.** *Addl. CIT* **v.** *Farrukhabad Cold, Storage,* **[1977] 2 ITJ 202;** *Union of India* **v.** *Delhi Cloth and General Mills,* **AIR 1963 SC 79 and** *Corn Products Refining Co.* **v.** *Federal Trade Commission,* **CCA.7. 144 F.2d 211, referred to.**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4289 of 1991 etc. etc.

From the Judgment and Order dated 25.8.1989 of the Punjab & Haryana High Court in Civil Writ Petition No. 2635 of 1989.

Soli J. Sorabjee, Krishnamurthy Iyer, Bishamber Lal Khanna, H.K. Puri, Ms. Geetanjali Mohan, Ms. A.K. Verma, P.R. Ramasesh, Mahabir Singh, R. Mohan and Ayyam Perumal for the appearing parties.

The Judgment of the Court was delivered by

V. RAMASWAMI, J. Leave granted in all Special Leave Petitions.

A In this batch of civil appeals, writ petition and transferred case, a common question of law arises as to whether the industries which manufacture sugar from sugar cane are covered by Entry 15 of Schedule I to the Water (Prevention and Control of Pollution Cess Act, 1977 (Central Act 36 of 1977) (hereinafter called the 'Cess Act').

B Originally the Water (Prevention and Control of Pollution Act), 1974 (hereinafter called the Act) was enacted by the Parliament under Article 252 of the Constitution with a view to control the pollution of rivers and streams which has assumed considerable importance and urgency in recent years as a result of increasing industrialisation and urbanisation. The Act is intended to ensure that the domestic and industrial affluence are not allowed to be discharged into water coarses without adequate treatment. This Act is now in force in almost all States and in all Union Territories. The Act provides for the constitution of a Central Board by the Central Government and State Boards by the State Governments concerned for the prevention and control of water pollution. There are also certain provisions relating to constitution of joint boards the details of which need not detain us. The Act sets out in detail the functions and powers of these Boards. Chapter VI of the Act requires the Central Government and the State Governments to provide funds to the Central Board and the State Boards respectively for implementing the provisions of the Act. The Cess Act 36 of 1977 provides for levy of cess on water consumed by persons carrying on certain industries and by the local authorities with a view to augment the resources of the Central Board and the State Boards constituted for the prevention and control of water pollution. Section 3 of the Cess Act which may be termed as the charging section states that "there shall be levied and collected a cess for the purposes of the Water (Prevention and Control of Pollution) Act, 1974 and utilisation thereunder". The cess is payable by every person carrying on any specified industry and every local authority and is 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 I of Schedule II to the Act, at such rate not exceeding the rates specified in the corresponding Entry in column II thereof as the Central Government may by notification in the Official Gazette from time to time, specify. "Specified industry" is defined in the Act as meaning any industry specified in Schedule I. There are 15 entries in Schedule I and they read as follows:

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SCHEDULE I

(See Section 2(c))

1. Ferrous metallurgical industry.

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2. Non-ferrous metallurgical industry. A

3. Mining industry.

4. Ore processing industry.

5. Petroleum industry. B

6. Petro-chemical industry.

7. Chemical industry.

8. Ceramic industry. C

9. Cement industry.

10. Textile industry.

11. Paper industry.

12. Fertilizer industry. D

13. Coal (including coke) industry.

14. Power (thermal and diesel) generating industry.

15. Processing of animal or vegetable products industry. E

The concerned assessing authorities have in all the cases under consideration issued notices demanding water cess from the sugar manufacturers on the ground that this industry falls under item 15 "processing of animal or vegetable products industry". The Punjab and Haryana High Court and the Allahabad High Court have taken the view that the sugar F manufacturing industries would come within Entry 15 as "processing vegetable products industry". On the other hand the Andhra Pradesh High Court and Patna High Court have taken the view that sugar manufacturing industries would not come within Entry 15 of the 1st Schedule. A writ petition which was filed in the High Court of Karnataka, Bangalore, by one of the sugar mills in Karnataka raising similar question has been withdrawn G to this Court in transfer petition No. 276 of 1984 to be dealt with along with other appeals raising identical question. Similarly another writ petition has been withdrawn from the Allahabad High Court in Transfer Petition No. 277 of 1984 to be dealt with along with this group of cases.

The object of the Act is to control the water pollution and to ensure H

A that industrial affluents are not allowed to be discharged into the water coarses without adequate treatment. The Cess Act is not an enactment to regulate and control pollution but a fiscal measure to raise revenue for augmenting the resources of the Pollution Control Boards. The levy and collection of cess provided under the Cess Act is on water consumed by persons carrying on the industries specified in the Schedule. The Cess is levied on the person carrying on the specified industry. The question is
B whether industries manufacturing sugar is covered by Entry 15 that is "processing of vegetable product industry".

From the botanic point of view 'vegetable' may include any plant but in common parlance it is understood as referring to edible plants or parts of edible plants. The word 'vegetable' has been defined in many ways. In
C the World Book it is defined as follows:

> "In the usual sense, the word vegetable is applied to those plants whose leaves, stalks, roots or tubers are used for food, such as lettuce, asparagus, cabbage, beet and turnip. It also includes several plants whose fruits are the edible portions, as
D peas, beans, melons and tomatoes."

In the Concise Oxford Dictionary, 3rd Ed. p. 1365, it is defined as:

> "Plant, esp. herbaceous plant, used for culinary purposes or for feeding cattle, e.g. cabbage, potato, turnip bean."

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Again in Webster's International Dictionary, vegetable is defined as:

> "A plant used or cultivated for food for man or domestic animals, as the cabbage, turnip, potato, bean, dandelion, etc., also the edible part of such a plant, as prepared for market or
F the table. Vegetables and fruits are sometimes loosely distinguished by the used need of cooking the former or the use of man, while the latter may be eaten raw; but the distinction often fails, as in the case of quinces, barberries, and other fruits, and lettuce, celery, and other vegetable. Tomatoes if cooked are vegetables, if eaten raw are fruit."

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In the Encyclopaedie Britannica, vol. 23, 'vegetable' is defined as:

> "A general term used as an adjective in referring to any kind of plant life or plant product, viz. 'vegetable matter'. More commonly and specifically, in common language, the word is used

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> as a noun in referring to those generally herbaceous plants or any parts of such plants as are eaten by man. The edible portions of many plants considered as vegetables are in a botanical sense, fruits. The common distinction between fruits and vegetables is often indefinite and confusing, since it is based generally on how the plant or plant part is used rather than on what it is."

This Court in *State of West Bengal & Ors.* v. *Washi Ahmed etc.*, AIR 1977 SC 1638 with reference to the meaning of the word 'vegetable' in Item (6) of Schedule I to the Bengal Finance (Sales Tax) Act, 1941 held:

> "That the word 'vegetable' in Item (6) of Schedule I to the Act must be construed as understood in common parlance and it must be given its popular sense meaning 'that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it' and so construed, it denotes those classes of vegetables which are grown in a kitchen garden or in a farm and are used for the table."

The interpretation of one of the entries in Schedule I to the Cess Act came up for consideration in *Member-Secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution* v. *Andhra Pradesh Rayons Ltd. and others*, [1989] 1 SCC 44. The question for consideration was whether manufacturing of rayon grade pulp a base material for manufacturing of synthetics or manmade fabrics is an industry as mentioned in Schedule I to the Cess Act. It was held:

> "Whether a particular industry is an industry as covered in Schedule I of the Act, it has to be judged normally by what that industry produces mainly. Every industry carries out multifarious activities to reach its goal through various multifarious methods. Whether a particular industry falls within the realm of taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business."

This Court also observed:

> "It has to be borne in mind that this Act with which we are concerned is an Act imposing liability for cess. The Act is fiscal in nature. The Act must, therefore, be strictly construed in order to find out whether a liability is fastened on a particular

industry. The subject is not to be taxed without clear words for that purpose, and also that every Act of Parliament must be read according to its natural construction of words. See the observations In Re. *Nicklethwait*, 1985 (11) Ex. 452, 456. Also see the observations in *Tenant* v. *Smith* 1892 AC 150 and Lord Halsbury's observations at page 154. See also the observations of Lord Simonds in *St. Aubyn* v. *A.G.* 1951 (2) All. ER, 473, 485. Justice Rowlatt of England said a long time ago, that in a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to tax. Nothing is to be read in, nothing is to be implied. One has to look fairly at the language used. See the observations in *Cape Brandy Syndicate* v. *IRC*, [1921] 1 KB 64, 71. This Court has also reiterated the same view in *Gursahai Saigal* v. *CIT*, [1963] 3 SCR 892, *CIT* v. *Mr. P. Firm, Muar*, [1965] 1 SCR 815 *Controller of Estate duty* v. *Kantilal Trikamlal*, [1976] 4 SCC 643.

The question as to what is covered must be found out from the language according to its natural meaning fairly and squarely read. See the observations in *IRC* v. *Duke of Westminster*, ([1963] AC 1, 24) and of this Court in *A.V. Fernandez* v. *State of Kerala* [1957] SCR 837. Justice Krishna Iyer of this Court in *Martand Dairy & Farm* v. *Union of India* [1975] 4 SCC 313 has observed that taxing consideration may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrain, interpretation must prevail."

This Court considered the question as to whether sugarcane is green vegetable with reference to an exemption given under Sales Tax Enactment in the decision in *M/s. Motipur Zamindary Co. (P) Ltd.* v. *The State of Bihar* [1962] Supp. 1 SCR 498. This Court quoted with the approval a passage from the judgment of the Nagpur High Court in *Madhya Pradesh Pan Merchants Association* v. *State of Madhya Pradesh* (1956 (7) S.T.C. 99) wherein it was held "the word vegetable in taxing statutes is to be understood as in common parlance that is denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table". It was further held that sugarcane is normally considered to be a grass specie and it would not fall within the definition of words green vegetable.

The use of the word processing is also significant. Processing of

vegetable products industry are normally understood in the sense they relate processing of vegetables which even after processing retain its character as vegetable.

Processing: Section 3(1), Marine Product Export Development Authority Act, 1972 defines processing in relation to marine products, as including the preservation of such products as canning, freezing, drying, salting, smoking, peeling or filleting or any other method of processing which the authority made by notification in the Gazette of India, specified in this behalf. Section 2(g) of the Agricultural and Processed Food Products Export Development Authority Act, 1985 defines processing in relation to scheduled products as including the process of preservation of such products such as canning, freezing, drying, salting, smoking, peeling or filleting and any other methods of processing which the authority made by notification in the official Gazette specified in this behalf. Thus processing as generally understood in marine, agricultural and food products industries is an action, operation or method of treatment applying it to something. It is refining, development, preparation or converting of material especially that in a raw state into marketable form. It would be interesting to note that this Act contains a Schedule of "the agricultural or processed food products" which are to be governed by the Act which reads as follows:

THE SCHEDULE

(See Section 2(i))

1. Fruits, vegetables and their products.

2. Meat and meat products.

3. Poultry and poultry products.

4. Dairy products.

5. Confectionary, biscuits and bakery products.

6. Honey, jaggery and sugar products.

7. Cocoa and its products, chocolates of all kinds.

8. Alcoholic and non-alcoholic beverages.

9. Cereal products.

10. Cashewnuts, groundnuts, peanuts and walnuts.

11. Pickles, chutneys and papads.

12. Guar Gum.

13. Floriculture and floriculture products.

14. Herbal and medicinal plants.

In *CST* v. *A.R. Alladin*, AIR 1964 Guj. 27 the expression "who processes any goods" in the Bombay Sales Tax was held to refer to the subjecting of any goods to a treatment or process. In *Addl. CIT* v. *Farrukhabad Cold Storage*, 1977 (2) ITJ 202 held that processing of goods means that the goods must be adopted for a particular use. The variety of acts performed in respect of goods or their subjection to a process need not be such as may lead to the production of any new article. The act of subjecting goods to a particular temperature for a long period of time as in cold storage amounts to processing of goods. On the other hand manufacture is a transformation of an article which is commercially different from the one which is converted. The essence of manufacture is the change of one object to another for the purpose of making it marketable. In *Union of India* v. *Delhi Cloth and General Mills*, AIR 1963 SC 79 this Court pointed out:

> "The word 'manufacture' used as a verb is generally understood to mean as bringing into existence a new substance and does not mean 'merely' to produce some change in a substance, however minor in consequence, the change may be."

In the same decision the following passage from the Permanent Edition of Words and Phrases from an American Judgment was quoted with approval:

> "Manufacture implies a change but every change is not manufacture, and yet every change of an article is the result of treatment, labour and manipulation. But something more is necessary and there must be transformation, a new and different article must emerges having a distinctive name, character or use."

The essential point thus is that in manufacture something is brought into existence which is different from that originally existed in the sense that the thing produced is by itself a commercially different commodity

whereas in the case of processing it is not necessary to produce a commercially different article. A

Processing essentially effectuates a change in form, contour, physical appearance or chemical combination or otherwise by artificial or natural means and in its more complicated form involves progressive action in performing, producing or making something. Vide *Corn Products Refining Co.* v. *Federal Trade Commission,* CCA. 7, 144 F.2d 211. B

In the decisions under appeal, the Allahabad High Court held that sugar mills will come within the meaning of 'processing vegetable products industry' in Entry 15 on the ground that the word 'vegetable' has been used in opposition to the expression 'animal' and that it could not be given the meaning of vegetables which are kept on the dining tables for dinner purposes, and it has a wider amplitude. It was further of the view that in interpreting the word 'vegetable' one has to keep in mind the object for which the Cess Act was made. The learned Judges then stated that sugar industry is one of the main source of causing water pollution and since the object of the Pollution Act and the Cess Act were intended to control water pollution and since the entries are to be given a wider meaning sugar industry would be covered by the Act. C D

The Punjab & Haryana High Court also took a similar line of reasoning and said that 'vegetable products' essentially mean what belongs to the plant kingdom as opposed to the animal kingdom. In another words the word 'vegetable' has been used in contra-distinction to the word 'animal'. Though the learned Judges were not prepared to hold that sugar cane is vegetable, the word 'product' gives a definite colour, meaning thereby all that belongs to the world of plants would come within the entry. E

We are unable to appreciate the reasonings of the learned judges. Pollution Act may be a regulating Act but Cess Act is a fiscal enactment, as is held by this Court in *Member Secretary, Andhra Pradesh State Board for Prevention and Control of Water Pollution* v. *Andhra Pradesh Rayons Ltd. and Others* (supra) and *Rajasthan State Electricity Board* v. *The Cess Appellate Committee & Anr.*, JT 1990 (4) SC 123. Therefore we have to look merely at what is clearly said. There is no room for any intendment and there is no room for bringing within the provision of the Act anything by implication. Unless we give the botanical meaning to the word 'vegetable' it is not possible to conclude sugar cane as vegetable. F G

The Patna High Court in Civil Writ Jurisdiction Case Nos. 4413 of 1981 and 2346 of 1983 *M/s Champaran Sugar Co. Ltd.* v. *State of Bihar &* H

A *Ors.* held that sugar manufacturing industry would not fall under Entry 15 of Schedule I. The Andhra Pradesh High Court also seems to be as the same view and it had dismissed a Writ Petition without a speaking order.

Construction of words and the meaning to be given for such words shall normally depend on the nature, scope and purpose of the statute in which it is occurring and to the fitness of the matter to the statute. The B meaning given to the same word occurring in a social security measure or a regulating enactment may not be apposite or appropriate when the same word is interpreted with reference to a taxing statute. The Cess Act is a fiscal enactment. In the context in which the word 'vegetable' is used in Entry 15 'vegetable product' means product of or made of or out of C vegetable. 'Vegetables' as understood in common parlance are not products of manufacture unless we say that agriculture is an industry for certain purposes and vegetables are products of that industry. In order to bring an industry within any of the entires in Schedule I it has to be seen what is the end product produced by that industry. Sugar cane is not a vegetable though it may be an agricultural product. If the botanic meaning D of vegetable as referring to any and every kind of plant life is to be given then some of the industries listed in Schedule I like Paper Industry and Textile Industry and even chemical industry which are covered by other entries could also be brought within Entry 15. The word vegetable in the context does not attract the botanic meaning. The sugar manufacturing industry do not, therefore, come within Entry 15 of Schedule I of the Cess Act.

E In Civil Appeal (arising out of Special Leave Petition No. 814 of 1990) the appellant is Haryana Distillery who purchases molasses which is a by-product of the manufacture of sugar and manufactures alchohol. Manufacture of alchohol was held by the High Court to come within Entry 15 of Schedule I as processing agricultural product industry. We have held already that the industry manufacturing sugar itself is not an industry F within the meaning of Entry 15 and a *fortiori* the manufacture of alcohol from molasses could not be considered to be an industry within Entry 15 of Schedule I.

In the result we allow Civil Appeals (arising out of SLP Nos. 15828 of 1989, 7496 of 1989, 778, 814, 830, 1286, 1433 of 1990 and SLP No.---------- G of 1991 entitled *Upper Doab Sugar Mills Ltd & Anr.* v. *Union of India & Ors.* Writ Petition No. 77 of 1990, and Transfer Case (C) Nos. 6 of 1986 & 91 of 1989 and dismiss Civil Appeals (arising out of SLP Nos. 9558-62 of 1988) and the Rule Nisi is made absolute.

N.P.V. Appeals disposed of.