2024:BHC-AS:29357

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10278 OF 2012

Maharashtra State Electricity Distribution Company Ltd ...Petitioner

Versus

Jindal Drugs Limited And Anr. ...Respondents

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Mr.Sumeet Palsudesai i/b M.V. Kini & Co. for the Petitioner.

Mr.Chetan A. Alai with Mr.A. Shirsath with Ms.Rama Somani and Mr.Bhushan S. Bhadgale for Respondent No.1.

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CORAM : AVINASH G. GHAROTE, J.
DATE : 25th JULY, 2024

P.C.:

1. Heard Mr.Palsudesai, the learned counsel for the petitioner and Mr.Alai, the learned counsel for the respondent No.1. Respondent No.2 is the Appellate Authority and is a formal respondent. On 23.07.2024, I have recorded the following position between the parties :

> "1. The petition questions the order dated 10.04.2012 by the Appellate Authority under the Electricity Act, 2003 (Page-27) which holds that an activity of relabelling of the products, which is claimed to be carried out by the respondents would amount to a manufacturing activity.

> 2. The learned counsel for the petitioner submits that the activity of the relabelling of products cannot be held to be a manufacturing activity, considering that the supply of electricity is under Category LT-V, which would indicate that electricity has to be necessarily used for a process, which indicates manufacturing.
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> 3. Mr. Chetan Alai, learned counsel for the respondent No.1 does not dispute, that the activity which was carried out on 25.02.2010 the date on which the inspection took place was relabelling of products. In order to substantiate the claim that this would be construed as a manufacture activity, since he relies upon the definition of the word 'manufacture' as contained in Section 2(f)(iii) of the Central Excise Act, 1944.
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> 4. Learned counsel for the petitioner seeks a day's time, to place on record the Circular, which defines what is meant by Category LT-V."

2. Today learned counsel for the petitioner, invites my attention, to the communication dated 30.09.2010 (page 42) by which, the respondent No.1 was asked to submit various documents, including the list of machineries, which it claimed was being used for the manufacturing process, to substantiate the claim of respondent No.1 that it was undertaking a manufacturing process in the premises in question on account of

which it is contended that industrial tariff would be leviable. He submits, in response to this communication, no reply was tendered by the respondent No.1. He further invites my attention to the spot inspection report (page 28). It is contended that this report, not having been challenged, is binding upon respondent No.1. He therefore, submits that the finding by the Appellate Authority (page 27) that the activity being carried out by respondent No.1 was a manufacturing activity cannot be sustained on account of which the impugned order of the Appellate Authority, is liable to be quashed and set aside.

3. Mr.Alai, the learned counsel for the respondent No.1 consumer, while supporting the impugned order, relies upon the decision, by the Customs, Excise and Service Tax Appellate Tribunal, Mumbai in Exercise Appeal No.89077 of 2013, decided on 10.06.2024 to contend, that the activity of leballing and re-labelling has been held to be a manufacturing activity, which decision, has been affirmed by the Hon'ble Apex Court in Civil Appeal No.1121 of 2016, ***Commissioner of Central Excise, Belapur, vs. Jindal Drugs Limited*** decided on 30.04.2024 and therefore, the activity which was being done by respondent No.1

of labelling and re-labelling products, has to be termed as manufacturing activity making it eligible for industrial tariff categorization.

4. Insofar as the plea regarding ***Commissioner of Central Excise, Belapur, vs. Jindal Drugs Limited*** (supra) is concerned, it is material to note that it is a decision rendered under the Central Excise Tariff Act, 1985 in which a deeming fiction has been created by virtue of Note 3 of Chapter 18 of the Central Excise Manual to the effect that in relation to products of this chapter, labelling or re-labelling of containers or repacking from bulk packs to retail packs or adoption of any other treatment to render the product marketable to the consumer, has been stated to amount to manufacture. It is in the light of this deemed fiction that the activity of labelling and re-labelling has been held to be manufacturing activity.

5. In the instant case, the deeming fiction created by Note 3 of Chapter 18 of the Central Excise Tariff Act, cannot be made applicable, to the activity being carried out by the respondent No.1 for the purpose of categorization of the electricity tariff regime as such a deeming fiction does not exist in

the Electricity Act. Under the Electricity Act, though the word "manufacture" has not been defined, the same has to take its colour, from what is understood by the expression 'manufacture', as is understood in the normal parlance, which would mean a manufacturing activity, which would entail conversion of raw material into a fresh product, by the use of machines, powered by electricity.

6. It is therefore, apparent, that the work of labelling and re-labelling of a product cannot be held to be an activity, which would fall under the expression, 'manufacture' as is understood, as to its user for the purpose of the Electricity Act.

7. The impugned order dated 10.04.2024, merely relies upon, the definition of the term "manufacture" as is used in Chapter 18 of the Central Excise Manual and therefore, cannot be said to be correct. An industrial tariff, in terms of the supply of electricity, would not be applicable to the activities of labelling-relabelling, packaging–repackaging of goods, considering the Commercial Circular No.175 dated 05.09.2012 in terms of which Industrial Categorization is to a manufacturing activity. I therefore, find that the impugned order dated 10.04.2012 passed

by the respondent No.2 cannot be sustained, and is hereby quashed and set aside and the Appeal is allowed. No costs.

(AVINASH G. GHAROTE, J.)