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ITEM NO.3

COURT NO.1

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.2445 OF 2005

MORINDA COOPERATIVE SUGAR MILLS LTD.

Appellant (s)

VERSUS

COMMNR. OF INCOME TAX, CHANDIGARH

Respondent(s)

(With office report)

With Civil Appeal No.2576 of 2012

Civil Appeal No.2577 of 2012

Civil Appeal No.2578 of 2012

Civil Appeal No.2579 of 2012

Civil Appeal No.2580 of 2012

Civil Appeal No.2581 of 2012

Civil Appeal No.2582 of 2012

Civil Appeal No.2583 of 2012

Civil Appeal No.2617 of 2012

Civil Appeal No.2584 of 2012

Civil Appeal No.2585 of 2012

Civil Appeal No.2586 of 2012

Civil Appeal No.3602 of 2012

Civil Appeal No.7019 of 2012 @ S.L.P. (C) No.16134 of 2012

(With appln(s) for c/delay in filing SLP and office report)

Date: 26/09/2012 These Appeal was called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE MADAN B. LOKUR

For Appellant(s) Mr. Badri Prasad Singh,Adv.

Mr. M.R. Sharma,Adv.

Mr. Sunil Mukhi,Adv.

Mr. R.P. Bhatt,Sr.Adv.

Mr. Arijit Prasad,Adv. (Argued by)

Mr. Rahul Kaushik,Adv.

Mr. Vikas Malhotra,Adv.

Ms. Rashmi Malhotra,Adv.

Ms. Gargi Khanna,Adv.

Mr. Neeraj,Adv.

Mr. F.A. Ayyubi,Adv.

Ms. Anil Katiyar,Adv.

for Mr. B.V. Balaram Das,Adv.

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For Respondent(s) Mr. R.P. Bhatt,Sr.Adv.

Mr. Arijit Prasad,Adv. (Argued by)

Mr. Rahul Kaushik,Adv.

Mr. Vikas Malhotra,Adv.

Ms. Rashmi Malhotra,Adv.

Ms. Gargi Khanna,Adv.

Mr. Neeraj,Adv.

Mr. F.A. Ayyubi,Adv.

Ms. Anil Katiyar,Adv.

for Mr. B.V. Balaram Das,Adv.

Mr. Harish N. Salve, Sr. Adv.
Ms. Arna Das, Adv.
Mr. Sunil Mukhi, Adv.
Mr. Rameshwar Prasad Goyal, Adv.

Mr. Narender Hooda, Sr. Adv.
Mr. S.K. Mukhi, Adv.
Mr. Alok Sangwan, Adv.

UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel on both sides.

Delay condoned.

Leave granted.

These civil appeals are disposed of with no order as to costs.

[T.I. Rajput] [Indu Satija]
A.R.-cum-P.S. Court Master

[Signed order is placed on the file]

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2445 OF 2005

Morinda Cooperative Sugar Mills Ltd. ...Appellant(s)

Versus

Commissioner of Income Tax, Chandigarh ...Respondent(s)

With Civil Appeal No.2576 of 2012, Civil Appeal No.2577 of 2012, Civil Appeal No.2578 of 2012, Civil Appeal No.2579 of 2012, Civil Appeal No.2580 of 2012, Civil Appeal No.2581 of 2012, Civil Appeal No.2582 of 2012, Civil Appeal No.2583 of 2012, Civil Appeal No.2617 of 2012, Civil Appeal No.2584 of 2012, Civil Appeal No.2585 of 2012, Civil Appeal No.2586 of 2012, Civil Appeal No.3602 of 2012 and Civil Appeal No. 7019/2012 @ S.L.P. (C) No.16134 of 2012

O R D E R

Heard learned counsel on both sides.

Delay condoned.

Leave granted.

In this batch of fifteen civil appeals, Civil Appeal No.2445 of 2005 is filed by the assessee and all other appeals are filed by the Department.

The assessee(s) is a Cooperative Sugar Mill. The assessee(s) buys sugarcane grown by its Members. It undertakes a particular operation whose outcome is a final product in the form of sugar. The question is, whether the final product [sugar] would make the assessee(s) entitled to claim the benefit of Section 80P(2)(a)(iii) of the Income Tax Act, 1961, in respect

of marketing of the agricultural produce grown by its Members?

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The crucial issue is, whether at the time of marketing of sugar, the same could be treated to retain the character of agricultural produce [sugarcane] grown by members of the Society or does it represent an independent commercial commodity which no longer has the character of agricultural produce? In short, the controversy is, whether the operation undertaken by the assessee(s) constitutes 'manufacture'?

According to the assessee, the process undertaken is not a 'manufacture'. Broadly, according to the assessee, sugar [also called 'sucrose'] is synthesized by the sugarcane plant from water and atmospheric carbon dioxide by the method of photosynthesis. Sugarcane, according to the assessee, is produced in the agriculture fields. In the sugar factory, after juice is extracted from the sugarcane, it is boiled. Microscopic crystals coalesce together to form macroscopic crystals and molasses. This, according to the assessee, does not constitute 'manufacture'. In this connection, reliance is placed on the opinion given by the Technical Advisor at the request of National Federation of Cooperative Sugar Factories Limited. [See Page 205 of Civil Appeal No.2580 of 2012].

According to the Department, the above operation/activity constitutes 'manufacture'. In this connection, the Department has placed reliance on Paragraph 10 of the judgment of this Court in the case of Commissioner of Income Tax vs. Oracle Software India Limited, reported in [2010] 320 I.T.R. 546, wherein this Court has observed as follows:

"The terms 'manufacture' implies a change, but every change is not a manufacture, despite the fact that every change in an article is the result of a treatment of labour and manipulation. However, this test of manufacture needs to be seen in the context of the above process. If an operation/process renders a commodity or article fit for use for which it is otherwise not fit, the operation/process falls within the meaning of the word 'manufacture'."

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The above test has to be applied and adjudicated on case to case basis. It depends on the type of product which ultimately emerges from a given operation. In our view, this aspect has not been examined by the Courts below.

For the above reasons, we remit these cases back to the Commissioner of Income Tax [Appeals] ['CIT(A)', for short] to re-examine the matter. The CIT(A) would give an opportunity to the assessee(s) to put-forth the opinion of an independent expert who shall not be from the Society or Federation. A copy of the written opinion shall be given to the Department. The Department would be free to engage its own expert who, in turn, will give his opinion. The parties are given liberty to cross-examine the experts. Accordingly, the CIT(A) would decide these cases and ascertain whether the operation undertaken by the assessee is or is not 'manufacture'.

This Court has repeatedly told the Department that, in all such cases, they should have a panel of experts who may be engaged in appropriate cases so that the cases need not be remitted.

We do not express any opinion on the merits of the case. We give liberty to the advocates on both sides to cite appropriate judgments of this Court which have laid down the test as to when an operation becomes 'manufacture'. We have laid down the test in one of the cases, namely, Oracle Software India Limited [supra].

Accordingly, these civil appeals are disposed of with no order as to costs.

.....CJI.

[S.H. KAPADIA]

.....J.

[MADAN B. LOKUR]

New Delhi,

September 26, 2012.
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