

(1991) 01 MAD CK 0091

In the Madras High Court

Case No : T.C. No"s. 606 and 690 of 1981 (Revision No"s. 298 and 339 of 1981)

Ammani Appalam Depot

APPELLANT

Vs

State of Tamil Nadu

RESPONDENT

Date of Decision : 09-01-1991

Acts Referred:

Citation : (1991) 01 MAD CK 0091

Hon'ble Judges : P.S. Mishra, J;Govindasamy, J

Bench : Division Bench

Advocate : V.P.A. Abdul Hakeem, for the Appellant; Haja Naziruddin, Government Advocate (Taxes), for the Respondent

Judgement

P.S. Mishra, J.—The assessee/petitioner has questioned the validity of the orders imposing tax under entry 103 of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959, on its product appalam on the ground that it is not a substantial food and that even if it be so, it was not sold in packets as required under the said entry.

2. Entry 103 which has since undergone several amendments read as it applied to the assessment year 1978-79 as follows :

"(i) Biscuits

(ii) Toffees

(iii) Chocolates

(iv) Confectionery

(v) Butter

(vi) Ghee

(vii) Cheese, and

(viii) Food including preparations of vegetables, fruits, milk, cereals, flour, starch,

birds" eggs, meat and meat offals, animal blood, fish crustaceans and molluscs, which -

(a) are tinned, canned, bottled or packed;

(b) are sold under any brand name registered under the the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958); and

(c) do not fall under item 24."

This was, however, amended on and from October 10, 1979 and until further amended it stood as,

"(i) Biscuits

(ii) Toffees

(iii) Chocolates

(iv) Confectionery

(v) Butter

(vi) Ghee

(vii) Cheese, and

(viii) Food including preparations of vegetables, fruits, milk, cereals, flour, starch, birds" eggs, meat and meat offals, animal blood, fish crustaceans and molluscs, which -

(a) are sold under any brand name registered under the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958); and

(b) do not fall under item 24."

By a further amendment on and from July 1, 1983 it reads,

"(i) Biscuits

(ii) Toffees

(iii) Chocolates

(iv) Confectionery

(v) Butter

(vi) Ghee

(vii) Cheese

(viii) Milk foods including milk powder

(ix) Condensed milk, and

(x) Food including preparations of vegetables, fruits, milk, cereals, flour, starch,

birds" eggs, meat and meat offals, animal blood, fish crustaceans and molluscs, which -

(a) are sold under any brand name registered under the Trade and Merchandise Marks Act, 1958 (Central Act 43 of 1958)."

3. In Tax Case (Revision) No. 606 of 1981 therefore the entry as it existed prior to October 10, 1979, alone applied and in Tax Case (Revision) No. 690 of 1981, which relates to the assessment year 1979-80, both entries prior to October 10, 1979 and subsequent thereto until amended on and from July 1, 1983, applied.

4. We are not required in this case to make any detailed study of the nature of appalam, whether it is a food or not. A Division Bench of this Court in *Krishnan v. State of Tamil Nadu* [1983] 52 STC 183 has held :

"It is not in dispute that appalams are made out of blackgram flour. Thus, the goods fall within item 103(vii) as preparations out of cereals. We do not see any error of law in the judgment of the Tribunal."

Learned counsel for the petitioner, however, has tried to persuade us to hold that only because appalam is prepared out of blackgram flour, it should not be held to be covered by the expression "food" in the entry aforequoted as no doubt used by many as an eatable, it does not satisfy the meaning of food. He has placed reliance upon a judgment of this Court in *State of Tamil Nadu v. A. K. Sundaram* [1983] 54 STC 82 in which a Bench of this Court while considering whether arrow-root powder would fall under the meaning of "food", said :

"Normally, the dictionary meaning of food is something taken into the system to maintain life and growth and to supply nourishment. We do not think that in that sense arrow-root powder sold by the assessee can be taken to be an article of food. As has been pointed out by the Tribunal, even if arrow-root is a vegetable, every product of vegetable cannot be taken to be an item of food. If every product of vegetable is taken as food, then even turmeric powder has to be taken as food, which is obviously untenable."

5. Drawing an analogy thus from the facts that when arrow-root is admittedly a vegetable, when sold in the powder form is excluded from the definition of "food" or the definition of "preparation of vegetables", appalam, which hardly satisfied the requirement of a food in the sense that it in no way helps to maintain life and growth and in no way gives any nourishment, should also be excluded. We are afraid, we cannot subscribe to this approach. Food is a food. Its quality may vary depending upon the items or ingredients which are found present in it which supply nourishment, may be negligible, yet, appalam which is the product of a pulse would contain some such ingredients which in combination with other items of food would supply nourishment. Turmeric power and arrow-root powder are not usually taken as a part of the food for the reason that they are used either for medicinal purposes or to add aroma. While this Court's view with respect to arrow-root powder thus may be sustained, it will not in any manner conflict with

the view expressed by this Court with respect to appalam. We are therefore of the opinion that there will be no error if appalam is taxed as a food item under entry 103 of the First Schedule to the Tamil Nadu General Sales Tax Act.

6. The words "tinned, canned, bottled or packed" in the entry which existed prior to October 10, 1979, however, cannot be extended to a testing for which a better preservation and/or protection from contamination, canning, bottling or packing would require. A taxing statute cannot be viewed with reference to tests which are applied to statutes which are made for the purpose of health care, etc. Whereas a watertight packing, canning and bottling may be relevant for the purposes of a law made for health care, a person who has not been making a watertight packing cannot be heard to say that because his packing is not watertight, therefore, his product will not be subjected to tax under entry 103. All that the law required to attract entry 103 rate of tax at the relevant time was to see whether the food product was sold in packets or not. It is not in dispute in the instant proceedings that the appalam was sold by the petitioner in packets. Thus packing is admitted. Such a packing is watertight or not is not relevant for the realisation of tax. However, for any tax after October 10, 1979, the products were not required to be sold in tins, cans, bottles or packings for the purpose of the rate of tax under entry 103. We find therefore no error committed by the assessing authorities in imposing tax at the rate as under entry 103 of the First Schedule to the Act. The two revision petitions carry no merit. Accordingly they are dismissed. No costs.

7. Petitions dismissed.