

(1974) 10 AHC CK 0020

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6409 of 1973

Annapurna Biscuit (Mfg.) Co. and Another

APPELLANT

Vs

The State of U.P. and Another

RESPONDENT

Date of Decision : 08-10-1974

Acts Referred:

Citation : (1975) 35 STC 127

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Advocate : R.R. Agarwal and Bhartji Agarwal, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.N. Seth, J.—The petitioners carry on business of manufacture and sale of biscuits at Kanpur. By notifications dated 1st July, 1968, and 18th August, 1967, issued under the U. P. Sales Tax Act, cooked food, including sweetmeats and confectionery, other than sold in sealed or tinned containers, were made liable to sales tax at the rate of two per cent. For the assessment years 1966-67 and 1967-68 the petitioners were assessed to sales tax on the turnover of biscuits at the rate of two per cent treating the item as cooked food. On 1st July, 1969, a notification u/s 3-A of the Act was issued under which sweetmeats and confectionery, when sold in sealed or tinned containers, were made liable to tax at six per cent while sweetmeats and confectionery sold otherwise than in sealed or tinned containers, were liable to tax at three per cent. Cooked food sold in any form continued to be taxed at the rate of two per cent. Subsequently by a notification dated 15th November, 1971, issued u/s 3-A of the Act, the rate of tax on sweetmeats and confectionery other than those sold in sealed or tinned containers, was enhanced to three and a half per cent. The petitioners alleged that their customers objected to the payment of tax at the enhanced rate as envisaged in the aforesaid notification. It was asserted that biscuit could not be treated as confectionery. The petitioners wrote a letter to the Sales Tax Officer

concerned seeking clarification regarding the rate at which they should collect tax from their customers. It was also pointed out that in the case of Annapurna Trading Company for the assessment year 1969-70 the Assistant Commissioner (Judicial), Sales Tax, Varanasi, held that biscuits are cooked food and are liable to tax at the rate of two per cent. The Sales Tax Officer informed the petitioners that they were liable to be taxed at the rate of three and a half per cent on the turnover of loose biscuits and at the rate of six per cent on the turnover of biscuits sold in sealed or tinned containers. Through this petition the petitioners have challenged the view taken by the taxing authority.

2. The question with which we are concerned is whether biscuit can be said to be confectionery. The history of confectionery industry indicates that it developed with the cultivation of sugarcane. Many kinds of sweetmeats and candy were made by moulding sugar, nuts and fruits of various kinds into fanciful forms. One of the main ingredients used for manufacturing confectionery is sugar. Confectionery is essentially a sweetmeat. In certain preparations, to the sweet base are added chocolate, fruits, nuts and peanuts, eggs, milk products, flavours and colours. In certain other preparations, like cakes and pastries, wheat flour (maida) and sugar form the main ingredients to which other items are added. Biscuit, on the other hand, is a kind of dry bread in which sugar is an almost insignificant ingredient. In salted biscuits sugar is not at all used.

3. The word "confectionery" has not been defined in the Act. In such a situation the word must be construed in its popular sense, i. e., the sense which the people conversant with the subject-matter with which the statute is dealing would attribute to it. The correct principle of construing the meaning of entries mentioned in a taxing Act like the Sales Tax Act is to find out to what transaction, its language, according to its natural meaning, fairly and squarely hits and not to assume what was intended to be done. It must be seen whether the tax is expressly and unambiguously imposed. What is relevant is not the dictionary meaning but how the entries are understood in common parlance specially in commercial circles. Applying that principle of construction we find it difficult to hold that biscuit would be included in the item "confectionery".

4. The distinction between "confectionery" and "biscuit" was considered in Parry and Co. Ltd. Vs. Perry and Co., , a case under the Trade Marks Act, and it was held that the essential characteristic of biscuit is different from that of confectionery and it cannot be said that biscuit and confectionery are identical though there can be fancy biscuits in which confectionery can be put on the top. In common parlance and in trade circles also a distinction is always drawn between biscuit and articles which are called "confectionery". In our opinion the rate of tax applicable to confectionery cannot be applied to biscuits.

5. In the result the petition is allowed. The respondents are directed not to assess the petitioners with regard to the turnover of biscuits at the rate applicable to confectionery. In the circumstances of the case we make no order as to costs.