(2013) 11 GAU CK 0016

In the Gauhati High Court

Case No : W.P. (C) No. 2127 of 2004 and W.A. Nos. 600 of 2005, 263 of 2010 and 216 of 2010

Assam Seeds Corpn. Ltd. APPELLANT

Vs

State of Assam RESPONDENT

Date of Decision : 14-11-2013

Acts Referred:

Citation : (2014) 1 GLD 659

Hon'ble Judges : K. Sreedhar Rao, J;B.D. Agarwal, J

Bench : Division Bench

Judgement

Sreedhar Rao, J.—The appellant is a dealer in the Assam Seeds Corporation selling seeds to the farmers for sowing and for germination purpose. In that regard, the appellant had to take required certificate from the competent authority under the Seeds Act for the purpose of marketing to the agriculturists to ensure that substandard seeds are not sold. The certified seeds, admittedly, in this case are not treated with preservative chemicals. The certified seeds in question could be used for sowing and as well for edible purpose. For the assessment periods 1994-95 to 2001-2002, the sales tax department has demanded the sales-tax on the certified seeds. It is the contention of the appellant that the seeds in question come within entry 6 of schedule I of the Assam General Sales Tax Act and as such they are exempt from sales-tax. The learned single-Judge has found that the certified seeds in question are subject to levy or sales-tax. Hence this appeal.

2. Entries 6 and 48 of schedule-I of the Assam General Sales Tax Act, read as follows:

6. Cereals in all its forms.--Except when sold as cooked food (or when sold in packed containers).

48. Pulses in all forms.--Except when sold in cooked, fried or processed form).

3. The counsel for the respondent has relied on the decision of the Karnataka

High Court in S.V. Halavapalli and Sons and Others Vs. Commissioner of Commercial Taxes and Others, and the decision of the Patna High Court in Spic Phi Seeds Ltd. and Others Vs. State of Bihar and Others ; to contend that the certified seeds are not exempt from the sales-tax.

4. Dr. A.K. Saraf, learned senior counsel for the appellant, has relied on the observations of the Supreme Court in State of Rajasthan, etc. Vs. Rajasthan Agricultural Input Dealers Association, etc., ; and in para 7, the following observations are made:

It is undoubtedly true that food-grains per se could be used as seeds for being sown and achieving germination, but in that form they retain the dual utility of being food-grains as well as seeds. By process of coating and applying insecticides, other chemicals and poisonous substances to the food-grain meant to be utilised as seeds, one of its basic character, i.e., its consumption as food by human beings or animals or for extraction for the like purpose, gets irretrievably lost and such processed seeds become a commodity distinct from food-grains as commonly understood. That distinction was borne in mind by the High Court in allowing the writ petition of the respondents, and in our view rightly.

To contend that the seeds which are treated with chemicals will not be fit for human consumption and have no edibility value but seeds which are not treated with chemicals whether sold as a seed for sowing or for consumption will be a cereal and would be exempt from the sale-tax.

5. Entry 6 is a comprehensive entry: it shows cereals in its all forms; it does not make a distinction whether the cereal treated chemically is used only for sowing purpose. The "exception" to the entry prior to 7.10.1999 is only to the effect that when it is sold as a cooked food, exemption does not apply to.

6. Entry 48 deals with pulses in all forms; similarly, when sold in cooked food or a processed form. Here again, the entry does not make a distinction whether the pulses treated with chemicals or non-edible in nature.

7. Phrase "in all forms" in respect of entries 6 and 48, exempts all cereals and pulses unless it is in a cooked form. With effect from the 7th October, 1999, an amendment was effected. The amended portion reads as follows: "or when sold in packed containers". The first part of the "exception" does not give exemption when it is sold as cooked food, but the second part deals with sale in a packed container. The word "container" in the Oxford English dictionary is explained as follows : "container"-n. an object for holding or transporting something, a large standard-sized metal box for the transport of goods by road, rail, sea, or air". The meaning of the word "container" would necessarily indicate that it should be a metal box or a wooden hard-board or a cardboard box. The cereals packed in sachets would not come within the meaning of "packed container" envisaged in the exception. In the present case it is not the contention that the certified seeds are in the containers as envisaged for transportation by road, rail, sea, or air. Therefore the certified seeds in question do not attract the exception. Hence the

appellant is entitled to exemption by virtue of entries 6 and 48 of schedule-I of the Assam General Sales Tax Act, 1993. The decision cited by the respondent has no application to the facts of the case. Accordingly the writ petition and the writ appeals are allowed. The assessments are set aside.

