(1976) 10 RAJ CK 0006

In the Rajasthan High Court

Case No : Sales Tax Case No''s. 111, 112, 113 and 114 of 1975

Assistant Commercial Taxes Officer APPELLANT

Vs

Azad Bakery and Another RESPONDENT

Date of Decision : 19-10-1976

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 3(1)(a)

Citation : (1976) WLN 539

Hon'ble Judges : M.L. Jain, J;A.P. Sen, J

Bench : Division Bench

Judgement

A.P. Sen, J.—These four reference applications filed by the Assistant Commercial Taxes Officer, Ward ''C'' Ajmer raise a common question and therefore, they are being disposed of by this common order.

2. The non-petitioners to each of these cases is a bakery engaged in manufacturing and selling breads and biscuits and their turnover exceeds Rs. 6,000/- but is less than Rs. 15,000/-.

3. According to the Revenue, these dealers fell within Section 3(1)(a) end not u/s 3(1)(c) of the Rajasthan Sales Tax Act, 1954. The relevant portion of Section 3(1) as it steed at the relevant time, is as follows:

3. Incidence of taxation - (1) Subject to the provisions of this Act, every dealer whose turnover in the previous year in respect of sales or supplies of goods exceeds-

(a) in the case of a dealer who imports goods, of manufactures any goods other than cooked food (or deals in cereals and pulses in any of their forms), Rs. 5,000/-.

(b) .... (c) in the case of a dealer not falling in Clause (a) or Clause (b).... Rs. 15,000/- shall be liable to pay tax under this Act on his taxable turnover.

The decision of these applications turns on the construction of words ''cooked fond'' appearing in Clause 3(1)(a), The question is whether or not biscuits re cocked food. The Board of Revenue has held that both bread and biscuits are cocked food. Learned Counsel for the Revenue, however, did not press the question regarding bread but contended that biscuits are not "cooked food". He relies on the decision of the M.P. High Court in Commissioner of Sales Tax v. Ballabhdas Ishwardas (1968) 21 S.T.C. 309 Dixit, C.J. delivering the judgment of the Court observed:

Now, when one talks of "food" or "cooked food" what one means is that which one takes into the system to maintain life and growth, to supply ailment or nourishment. In a wide sense food would no doubt include everything that is eatable. But in common parlance "cocked food" means those things which one eats at regular times of the day at breakfast dinner or supper. Biscuit is no doubt a kind of food if the term is understood in a very wide sense. There process of baking involved in the manufacture of biscuits is no doubt a form of cooking. Bu it is not "cooked food"'' which one takes at meat hours. Biscuits can be eaten alone or as adjunct to other food. But no one would normally dream of living on biscuits only day in and out without getting diseases flowing from malnutrition and under nourishment. No one who goes to a hotel or restaurant for a meal and asks for cooked food, will accept biscuits In cur opinion, the term "cocked food" med in Entry No. 41 cannot be read in wide sense so as to include everything made fit for eating by application of heat, as by boiling, baking, roasting, broiling etc. The term is confined to those cooked things which one generally takes at regular meal hours It is no doubt true that the entry treats "pastries" as cooked food when it specifically provides for exclusion of pastries firm its scope But this artificial exclusion of pastries from cooked food cannot afford any justification for including in ''"cooked food" that which is not "cooked food" as understood in common parlance.

With great respect, we find no reason why the term "cooked food" be confined to only articles of food served as meals which are generally taken at regular meal hours. Even on the reasoning of the learned Judges, biscuits should be regarded as "cooked toed" as at times they are served at break text in the richer classes. It is a matter of common knowledge that among the poor class of people biscuits may form the meal of a child.

4. The decision of the Madhya Pradesh High Court in Commissioner of Sales Tax v. Ballabhdas Isbwardas is further distinguishable, because the learned Judges in that care were dealing with Entry No, 41 relating to cooked food which was an exempted article. Here, the same construction may not prevail. Section 3 of the Rajasthan Sales Tax Act is the charging section and at classifies different classes of dealers by whom the tax is payable. u/s 3(1)(a) dealers, who manufactures or sells floods other than cooked food having a taxable turnover exceeding Rs. 6,000/- come within the mischief of the section. Section 3(1)(c) refers to dealers who are not covered by Section 3(1)(a) and have a turnover exceeding Rs. 15,000/-. There can be co doubt that biscuits constitute cooked food as they are

cooked in an oven through the application of heat. Now, it can hardly be disputed that the biscuits are an article of food. They are also cocked by a process of baking. The Oxford English Dictionary gives the meaning of the word ''Biscuit'' as ''a kind of crisp dry bread more or less hard, prepared generally in thin flour cakes. The essential ingredients are flour and water, or milk, without leaven Webster''s Third New International Dictionary gives the meaning of Biscuit of "twice cooked bread " According to the Oxford English Dictionary "cocked" in relating to an article of food means "the article of food prepared by heat for eating." All these tests are fulfilled in the case of both bread and biscuits. That they are so is clear from the Commissioner''s instructions relating to bread contained in Notification No. 16,38 Tax/CCT/67/127. Jaipur, dated 27th September, 1967, which reads as under:

Doubts have been expressed by some assessing authorities whether Bead is a cooked food and as such the dealers (manufacturer) exclusively dealing in Bread and having turnover of and upto Rs. 16,000/- are not liable to Registration and Payment of Tax?

The matter has been examined and it is clarified that baking or preparation of breed is manufacturing of cooked food. A dealer exclusively engaged in preparation of bread will therefore be deemed to be a person dealing in cooked food. Limits of turnover in such cases, will have to be taken accordingly.

5. Learned Counsel for the Revenue, however, contends that the Commissioner''s circular does not have the force of law There is no dispute with the proposition that the circular has no statutory force but it certainly provides extraneous aid to construction being contemporaneo exposition. When the Commissioner of Commercial Taxes who is a principal executive authority charged with the duty of administering the Act and has the power u/s 12A of the Act to decide a disputed question as to whether or not any tax is payable in respect of a particular sale or purchase, puts a certain construction which is being acted upon for nearly a decade, there is no reason for us to depart from the construction placed by him. The Revenue must be consistent in its approach, if process of baking is the test then biscuits are undoubtedly cooked food.

6. The order of the Board does cot, in our opinion, give rise to a question of law because the answer to the question is self evident, vide Commissioner of Income Tax, Punjab Vs. Chander Bhan Harbhajan Lal, .

7. These applications u/s 15(3A) of the Rajas than Sales Tax Act, 1954, are therefore, rejected.

