
(1988) 08 RAJ CK 0052

In the Rajasthan High Court

Case No : Sales Tax Revision No. 159 of 1988

Assistant Commercial Taxes Officer

APPELLANT

Vs

Shanker Namkin Bhandar

RESPONDENT

Date of Decision : 10-08-1988

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 15

Citation : (1989) 73 STC 252

Hon'ble Judges : S.C. Agrawal, J

Bench : Single Bench

Advocate : G.S. Bapna, for the Appellant;

Judgement

S.C. Agrawal, J.—This is a revision u/s 15 of the Rajasthan Sales Tax Act, 1954 (hereinafter referred to as "the Act") as amended by the Rajasthan Sales Tax (Amendment) Act, 1984. The following two questions arise for consideration in this revision :

1. Whether, under the facts and circumstances of the case, the assessee is entitled for exemption under Notification No. F. 5(31)FD/CT/ 72-16 dated 28th July, 1972 although he has employed servants for preparation of namkins, etc.

2. Whether, under the facts and circumstances of the case, the fried and salted groundnut remains the same commodity, i.e., oil-seed.

2. The non-applicant, M/s. Shanker Namkin Bhandar (hereinafter referred to as "the assessee") is a partnership firm and owns a Namkin Bhandar. By notification dated 28th July, 1972, issued in pursuance of the third proviso to Sub-section (1) of Section 3 of the Act the State Government prescribed that for the purpose of Clause (c) of Sub-section (1) of Section 3 the limit in respect of dealers dealing exclusively in deshi-sweetmeats and namkins prepared by themselves shall be Rs. 50,000. In relation to the assessment year 1973-74, it was claimed that the assessee was not liable to be assessed for the sales tax for the reason that the turnover of the assessee was less than Rs. 50,000 and that the namkins sold by

the assessee were prepared by the assessee. In respect of the assessment year 1974-75, the assessee claimed exemption from the sales tax on the ground that salted and fried groundnuts sold by the assessee were oil-seeds which were exempt from tax and turnover in respect of sales of salted and fried groundnuts by the assessee could not be taxed. The assessing authority held that the namkin products sold by the assessee were prepared by the servants and employees of the assessee and not by the assessee personally and the assessee was not entitled to claim exemption from tax under notification dated 28th July, 1972. The assessing authority also held that salted and fried groundnuts could not be regarded as oil-seeds, since on frying the character of groundnut was changed completely. On appeal the Deputy Commissioner upheld the findings of the assessing authority on both these issues. The single Member of the Board of Revenue, in revision accepted the revision and held that the turnover of the assessee for the year 1973-74 could not be taxed in view of the notification dated 28th July, 1972. The learned Member of the Board of Revenue also held that the oil-seeds as defined in the notification dated 9th March, 1960 are not confined to groundnuts when used as oil-seeds but cover groundnuts in whatever form they may be available and that groundnut after having been fried and salted does not lose its original character and, therefore, sales of salted and fried groundnuts could not be taxed. The said view of the learned single Member was affirmed by the Division Bench of the Board of Revenue in Special Appeal. The learned Members constituting the Division Bench of the Board of Revenue held that halwai normally deal in a wide range of products and considering the physical constraints, cooking schedule, business routine, sitting hours and other relevant factors, it is difficult to conceive of a situation where a halwai can personally prepare all the products before sitting at the sale counter and that some help is required for the various operations involved and that the word "prepared" in the notification dated 28th July, 1972 does not mean cooked or prepared personally. The learned Members of the Board of Revenue were also of the view that groundnut is a rich source of edible oil and being an oil-seed it enjoys the benefit of tax exemption at par with other oil-seeds and that by the process of frying flavour of groundnut seed naturally changes but unless the relevant entry is specifically amended to exclude such varieties of groundnuts from the category of oil-seeds it will be difficult to withhold the benefit of tax exemption. Feeling aggrieved by the said decision of the Division Bench of the Board of Revenue the applicant filed a reference application u/s 15(1) of the Act as it stood at the relevant time and the Board of Revenue referred the two questions mentioned above for the opinion of this Court. The said reference is now being treated and disposed of as a revision in view of the provisions contained in Section 13(10) of the Rajasthan Sales Tax (Amendment) Act, 1984.

3. For the first question it is necessary to construe the words "desi-sweetmeats and namkins prepared by themselves" in notification dated 28th July, 1972 whereby the exemption limit of turnover under Clause (c) of Sub-section (1) of Section 3 of the Rajasthan Sales Tax Act was raised to Rs. 50,000 in respect of

dealers dealing exclusively in deshi-sweet-meats and namkins prepared by themselves. Do the words "prepared by themselves" mean prepared by the assessee himself and preparation of the saleable articles by the assessee with the help of employees would be excluded? In my view the learned Members of the Board of Revenue have rightly held that the words "prepared by themselves" cannot be construed to mean "cooked or prepared personally" and that the said words would cover within their ambit the articles prepared by the assessee with the help of employees. In this context the learned Members of the Board of Revenue have compared the language used in notification dated 28th July, 1972 with the language used in the notification in respect of soap which says "soap when sold by a person making the soap himself, or by any other member of his family, provided that the maker does not use power at any stage in making the soap and does not employ said labour". This shows that whenever it was intended to confine the preparation by the assessee himself and to exclude preparations made with the help of employees specific words to that effect have been used. The absence of such specific words in the notification dated 28th July, 1972 indicates that the said notification does not exclude from its ambit deshi-sweet and namkins prepared by the assessee with the assistance of persons employed by him. The first question, therefore, must be decided against the Revenue and in favour of the assessee.

4. As regards the second question, it is not disputed that groundnut is an oil-seed and it is exempt from sales tax. The question for consideration is as to whether groundnut which is fried and salted can be regarded as oil-seeds and is, therefore, entitled to exemption from tax. The law is well-settled that in the matter of taxation the expressions used by the legislature must be construed not in a technical sense but must be construed as understood in common parlance, i.e., in the popular sense, which people conversant with the subject-matter with which the statute is dealing would attribute to it. [See *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*,

5. The same view was expressed in *Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh*, In that case the Supreme Court has referred to the decision of a Canadian Court in *His Majesty the King v. Planters Nut and Chocolate Company Limited* (1951) CLR (Ex) 122 wherein the question was whether salted peanuts and cashew-nuts fell within the category of either fruits or vegetables under the Excise Tax Act, 1927 and it was held that what constitutes a fruit or vegetable within the meaning of Excise Tax Act is what would ordinarily in matter of commerce in Canada be included therein and not what would be a botanist's conception of the subject-matter.

6. In *Deputy Commissioner of Commercial Taxes v. R. Kuppuswamy Chettiar* [1976] 38 STC 587, a Division Bench of the Madras High Court has held that in order to be an oil-seed, the test to be applied is whether the commodity is generally used for the manufacture of oil. It is only those commodities which are in commercial circles dealt with as oil-seeds that are covered by the entry and

not every seed from which by some process or other, oil could be extracted. In that case the learned Judges held that when the groundnut kernel is fried, the germinating property in the groundnut kernel is lost and most of the oil content, if not all, is also lost and in commercial parlance also, fried groundnut is not dealt with as an oil-seed and, therefore, fried groundnut kernel could not be treated as an oil-seed.

7. In *Dewan Chand Chaman Lal v. State of Punjab* [1977] 39 STC 75, a Division Bench of the Punjab and Haryana High Court was required to deal with the question whether parched groundnuts could be considered as oil-seeds. The learned Judges observed that in order to qualify as parched groundnuts, groundnuts are subjected to a mechanical process resulting in loss of considerable moisture and some volatile oil. Raw groundnuts which are not generally eaten as such are made edible for direct consumption by parching and even the taste is a little different and the price is much higher and that no one would dream of using parched groundnuts for extracting oil. The learned Judges have held that parched groundnuts were not known in common parlance as oil-seeds used principally for the extraction of oil and, therefore, parched groundnuts did not fall within the expression "oil-seeds".

8. In my view the aforesaid decisions are applicable to the present case and for the same reasons it can be said that no one would dream of using salted and fried groundnuts for extracting oil because in the process of frying of groundnuts there is loss of oil content and further the salted and fried groundnuts are much more expensive and no one uses them for the purpose of extracting oil and in common parlance salted and fried groundnuts cannot be said to be oil-seeds used principally for the extraction of oil. The learned Members of the Board of Revenue were, therefore, not right in holding that fried and salted groundnuts are oil-seeds and the sales of fried and salted groundnuts by the assessee were entitled to exemption to tax. Question No. 2 is, therefore, decided in favour of the Revenue and against the assessee and it is held that the fried and salted groundnuts cannot be regarded as oil-seeds and sales of fried and salted groundnuts are not entitled to exemption from tax.

9. The revision is partly allowed to the extent indicated above. The assessing authority will take necessary steps to rectify the assessments in accordance with this order. There will be no order as to costs.