
(1996) 04 MAD CK 0025
In the Madras High Court
Case No : Tax Case No. 66 of 1996

City Distributors	Vs	APPELLANT
State of Pondicherry		RESPONDENT

Date of Decision : 24-04-1996

Acts Referred:

Pondicherry General Sales Tax Act, 1967 — Section 3(1)

Citation : (1996) 04 MAD CK 0025

Hon'ble Judges : N.V. Balasubramanian, J;K.A. Thanikkachalam, J

Bench : Division Bench

Judgement

Thanikkachalam, J.—The assessee is City Distributors dealing in pan masala and cutlery items at FF-7, Krishna Vasan Building, 147, A.

Madam Street, Pondicherry. For the assessment year 1972-73 the assessee claimed exemption on a turnover of Rs. 29,05,400, since the sales

turnover of zarda is exempted from sales tax as per Schedule III, item 25 to the Pondicherry General Sales Tax Act, 1967. The assessee is selling

zarda in the name Parag Zarda. According to the assessing officer, parag zarda is taxable at 3.5 per cent - single point - u/s 3(1) of the

Pondicherry General Sales Tax Act. Hence the exemption claimed was not granted and the sales turnover of parag zarda was taxed at 3.5 per cent single point.

2. Aggrieved, the assessee filed an appeal before the Appellate Assistant Commissioner. The Appellate Assistant Commissioner accepted the

contention put forward by the assessee that zarda is exempted under entry No. 25 in Schedule III to the Act 6 of 1967 and accordingly deleted

the addition. On a perusal of the order passed by the Appellate Assistant Commissioner, the Secretary to the Government in-charge of the

Commercial Tax Department by exercising his power u/s 37 of the Act came to the conclusion that the order passed by the Appellate Assistant

Commissioner is erroneous and prejudicial to the interest of Revenue. Accordingly he issued the notice to the assessee.

3. After hearing the learned counsel for the assessee and the departmental representative, the Secretary to the Government came to the conclusion

that the Appellate Commissioner was not correct in deleting the addition made by the assessing officer with regard to the sales turnover of zarda,

since according to the Secretary to the Government zarda is not exempted under item 25 of Schedule III of the Act. Accordingly, the Secretary to

the Government set aside the order passed by the Appellate Assistant Commissioner in deleting the addition with regard to the sales turnover of

zarda and directed the assessing authority to assess the sale turnover relating to zarda as originally done by the assessing authority. It is against this

order the assessee is in appeal before us.

4. Learned counsel for the appellant, Mr. N. Inbarajan appearing for the assessee submitted before us as under : Entry No. 25 in Schedule III to

the Act clearly exempts tobacco and all its products. Zarda is made out of tobacco. Therefore, zarda would include tobacco and all its products as

stated under entry 25. Learned Secretary to the Government in order to come to the conclusion that zarda is different from tobacco and all its

products relied on a decision of the Orissa High Court in [1990] 76 STC 319 in the case of Parimala Agencies v. State of Orissa. The decision of

the Orissa High Court was rendered while interpreting a notification issued by the Orissa Government stating that zarda is different from tobacco

and all its products and thereby denied the exemption as granted originally by the Orissa Sales Tax Act. Therefore, according to learned counsel

for the assessee, the Secretary to the Government was not correct in holding that in the present case also zarda is different from tobacco and all its

products. Learned counsel further pointed out that item 25 in Schedule III to the Act, is in pari materia with item 2 in Schedule III to the Act where

also tobacco and all its products were exempted from tax. Learned counsel also relied on a decision in [1988] 68 STC 92 in the case of State of

Orissa v. Radheshyam Gudakhu Factory wherein the Supreme Court while considering serial No. 35 of Schedule to Orissa Sales Tax Act was of

the view that gudakhu is a product which falls within the exemption covered by serial No. 35 of the Schedule to the Orissa Sales Tax Act, 1947

and the dealer is exempted from sales tax under that Act as well as the Central Sales Tax Act, 1956, for the period from July 1, 1967 to March

31, 1968. Relying upon the decision of the Andhra Pradesh High Court in [1967] 19 STC 412 in the case of J. Shamdas v. State of Andhra

Pradesh, learned counsel for the assessee submitted that zarda was not exigible to sales tax by virtue of item 7 of Schedule 5 of the Andhra

Pradesh General Sales Tax Act, 1957. Therefore, according to learned counsel, inasmuch as the exemption granted to the sales turnover of zarda

was not taken away by introducing any amendment to item 25 of Schedule III to the Act, it cannot be said that sales turnover of zarda is taxable.

Therefore, learned counsel for the assessee submitted that there is no ground for the Secretary to the Government to come to the conclusion that

the order passed by the Appellate Assistant Commissioner in granting exemption to the sales turnover of zarda in view of entry 25 of Schedule III

of the Act is erroneous and prejudicial to the interest of the Revenue. Accordingly it was submitted that the order passed by the Secretary to the

Government is liable to be set aside.

5. On the other hand, learned Government Pleader, Pondicherry, submitted that in order to understand the meaning of the words "tobacco and all

its products" one must follow the meaning attributable by a common man in common parlance. Scientific meaning for the words tobacco and all its

products need not be attributable while interpreting the taxing statute. According to the learned Government Pleader, zarda is entirely different from

tobacco and all its products. Therefore, it was submitted that the assessing officer was correct in taxing the sales turnover of zarda at 3.5 per cent

single point. According to the learned Government Pleader, the Appellate Assistant Commissioner was not correct in deleting the addition made by

the assessing officer. It was further submitted that in view of the decision of the Orissa High Court in [1990] 76 STC 319 (Parimala Agencies v.

State of Orissa), the order passed by the Secretary to the Government is in order and hence no interference is called for.

6. We have heard learned counsel for the assessee as well as the Government Pleader appearing for the Pondicherry Government. The fact

remains that the assessee is a dealer in zarda under the trade name of parag zarda. Before the assessing officer the assessee claimed exemption with regard to the sales turnover of zarda as per entry 25 in Schedule III to the Act. The Appellate Assistant Commissioner, on a plain reading of entry 25 in Schedule III to the Act, rightly came to the conclusion that zarda is nothing but tobacco and all its products. In fact, zarda was made out of tobacco with other ingredients. Zarda is chewable tobacco powder. Therefore, the Appellate Assistant Commissioner in view of entry 25 of Schedule III to the Act, deleted the addition made by the assessing officer with regard to the sales turnover of zarda. However, the Secretary to the Government was of the view that zarda is a different product unconnected with tobacco and all its products and, therefore, it is taxable u/s 3(1) of the Act. Therefore, he came to the conclusion that the order passed by the Appellate Assistant Commissioner in deleting the addition made by the assessing officer is erroneous and prejudicial to the interest of the Revenue. In order to come to this conclusion the Secretary to the Government strongly relied on a decision of the Orissa High Court in [1990] 76 STC 319 in the case of Parimala Agencies v. State of Orissa. According to the facts arising in that case the assessee was a registered dealer under the provisions of the Orissa Sales Tax Act, 1947, amongst other articles it deals with Amrit Surti zarda. The assessee treated Amrit Surti zarda as tax-free having the view that the said zarda is nothing but genuine tobacco which is tax-free. The sales tax authority, however, did not accept the contention of the petitioner and assessed Amrit Surti zarda do sales tax for the assessment years 1974-75, 1975-76, 1976-77 and 1977-78. Ultimately the Sales Tax Tribunal held that the assessment of Amrit Surti zarda to sales tax is correct. In these circumstances, the assessee filed the writ petition contending that Amrit Surti zarda is nothing but chewable tobacco and hence the said zarda should be exempted from sales tax. The assessee further contended that treating zarda as different from chewing tobacco is illegal and hence the notification dated February 5, 1968 and the notification of 1976 are illegal and ought to be quashed. In view of Notification No. 3604-CTA-38/67-F dated February 5, 1968 a new serial number 5-A was inserted and as per that serial number chewing tobacco, gudakhu, pan masala, gundi, zarda and snuff were assessed to sales tax at the rate of 3 per cent. Thus, all these commodities

were made taxable. So also in the Notification No. 3609-CTA-38/67-F dated February 5, 1968, there was a further amendment to serial No.

35(2) as under :

Tobacco and all its products other than chewing tobacco, gudakhu, pan masala, gundi, zarda and snuff.

7. Thus tobacco and all its products were made tax-free and the other commodities including chewing tobacco and zarda were made taxable.

Again by Notification No. 16925-CTA-46/68 (Pt)-F dated May 14, 1968, the words ""chewing tobacco"" were deleted from serial No. 35 and as

a result of that chewing tobacco was made tax-free. This position continued till 1976. By another Notification S.R.O. 1206/76 dated December 3,

1976 entry No. 40-A was inserted and gudakhu, gundi, zarda, snuff and pan masala with mixture of tobacco were made taxable at the rate of 4

per cent and as per entry No. 40-A tobacco and all its products other than gudakhu, pan masala, gundi, zarda and snuff were made tax-free. The

short point for consideration in that case is that Amrit Surti zarda is chewing tobacco and whether the taxability of Amrit Surti zarda in one entry of

the Schedule is legal when the chewing tobacco has been made tax-free under a different entry. While considering this aspect the Orissa High

Court held as under :

Although tobacco and all its products were made tax-free by notification dated December 30, 1957, the exclusion of chewing tobacco, gudakhu,

pan masala, gundi, zarda and snuff from the ambit of the exemption entry, and the subsequent deletion of chewing tobacco so as to bring it within

the ambit of exemption by notifications dated February 5, 1968, and May 14, 1968 respectively, was within the competence of the State

Government. Similarly notification dated December 3, 1976, under which the rate of tax on gudakhu, gundi, zarda, snuff and pan masala was

raised from 3 per cent to 4 per cent was valid. Therefore, even though under the original assessment the sales tax on chewing tobacco was

exempted from tax but by subsequent notification the assessing authority was directed to levy tax on chewing tobacco also by withdrawing the

exemption granted in the parent Act.

8. It is under these circumstances the above said decision was rendered by the Orissa High Court.

9. But, according to the facts arising in the present case, entry No. 25 of Schedule III to the Act exempts tobacco and all its products. But, there is no specific notification as in the decision cited supra withdrawing the exemption granted under the parent Act. Under such circumstances, the

Secretary to the Government of the State should not have entertained any impression that the order passed by the Appellate Assistant

Commissioner in accordance with the provisions of the Act prevailing on that date is erroneous and prejudicial to the interests of the Revenue.

10. According to the facts arising in the present case, zarda sold was in the nature of brown bits smelling tobacco and other flavours. The moisture

content is 13.77 per cent and silver foil content is 0.75 per cent. Nicotine content is stated to be 2.36 per cent. Thus it was stated that the zarda

dealt with by the assessee herein would come under entry No. 25 wherein it is stated that tobacco and all its products are exempt from tax.

11. The Andhra Pradesh High Court in [1967] 19 STC 412 in the case of Shamdas v. State of Andhra Pradesh had occasion to consider item 7 in

Schedule 5 to the Andhra Pradesh General Sales Tax Act, 1957. The assessee was dealing in chewing tobacco. The assessee objected to the levy

of tax on zarda on the ground that zarda is a tobacco product and it falls under item 7 of Schedule 5 of the said Act. The Commercial Tax Officer

did not accept that contention. The matter was carried in appeal to the Assistant Commissioner of Commercial Taxes, who held that as zarda

manufactured by the assessee had not suffered additional excise duty, the levy of sales tax was justified. He accordingly dismissed the appeal. The

assessee then took up the matter to the Sales Tax Appellate Tribunal. The Tribunal also dismissed appeal filed by the assessee. On revision before

the High Court, the assessee submitted that the facts beyond dispute are that zarda according to its dictionary meaning and in common parlance is

nothing but a variety of chewing tobacco. The chemical analysis of the two brands of zarda indicates that there is 86.2 per cent of tobacco in one

brand and 87.8 per cent in the other - the other contents being moisture, essential oil and silver in minute quantity. Having regard to the substantial

percentage of tobacco contents, zarda can certainly be held to be a tobacco products. On these facts the assessee submitted that the sale turnover

of zarda is exempt from tax in view of item 7 of Schedule 5 to the Andhra Pradesh General Sales Tax Act. On these facts the Andhra Pradesh

High Court held that tobacco has not been defined in the Andhra Pradesh General Sales Tax Act, 1957, nor is there any indication that it has to be

construed in accordance with the definitions given in other enactments. Zarda according to its dictionary meaning and in common parlance is

nothing but a variety of chewing tobacco. Even taking into consideration the historical background which resulted in the issuing of the notification

dated December 13, 1957 and zarda was a commodity on which additional duty of excise was not imposed in accordance with the Additional

Duties of Excise (Goods of Special Importance) Act, 1957, the operation of the exemption granted by the notification was unaffected by the

proviso to the notification. Therefore, zarda was not exigible to sales tax by virtue of item 7 of Schedule 5 of the Andhra Pradesh General Sales

Tax Act, 1957.

12. So also the Supreme Court in *State of Orissa v. Radheshyam Gudakhu Factory* [1988] 68 STC 92, while considering serial No. 35 in the

Schedule to the Orissa Sales Tax Act held that gudakhu is a product of tobacco and although a major part of molasses and other constituents are

added to the tobacco the essential and effective ingredient remains tobacco and therefore gudakhu is known as a product of tobacco in common

parlance. Gudakhu is a product which falls within the exemption covered by S. No. 35 of the Schedule to the Orissa Sales Tax Act, 1947 and the

dealer is exempt from sales tax under that Act as well as the Central Sales Tax Act, 1956, for the period from July 1, 1967 to March 31, 1968.

13. Likewise, the Orissa High Court while rendering its decision in *Jagabandhu Roul v. State of Orissa* [1970] 26 STC 234 in view of section 6 of

the Orissa Sales Tax Act and the notification dated December 30, 1957, held that although mitha meant sweets, gundi contains only a small

percentage of tobacco, it is tobacco product on account of its effectiveness on a particular class of consumers who are accustomed to take it and

therefore falls under entry 35 in Notification No. 33925 CTA130/57-F dated December 30, 1957. It was further held that a taxing statute must be

clear and precise in its incidence of taxation - if any of the provisions is ambiguous the doubts must be resolved in favour of the subject. Again it

was held that on account of the absence of definition of the expression "tobacco products" it is difficult to hold that preparations of tobacco cannot

be said to be tobacco products. According to the facts arising in the present case, parag zarda dealt with by the assessee contains 98.95 per cent

tobacco and the rest of the ingredients are only to make the tobacco chewable with fragrance. As we have already seen the exemption granted

under the parent Act as stated in item 25 of Schedule III to the Act has not been taken away by any notification by the Pondicherry Government

as has been done in the above cited cases. In such circumstances, when the tax is leviable under the Act, it is for the authorities to follow strictly the

provisions contained therein. It is not possible for the authorities below to interpret the statute to give a different meaning to the statute other than

what was stated therein. Under entry No. 25 of Schedule III to the Act tobacco and all its products are exempted from levy of sales tax. We have

already shown that the goods sold by the assessee contained nearly 99 per cent made out of tobacco. Therefore, parag zarda would definitely

come within the purview of tobacco and all its products. Thus considering the facts arising in this case in the light of various judicial

pronouncements cited supra, we are of the opinion that the Secretary to the Government was not correct in exercising the jurisdiction u/s 37 of the

Pondicherry General Sales Tax Act, inasmuch as the order passed by the Appellate Assistant Commissioner is strictly in accordance with the

provisions contained in the said Act. In fact, the interpretation given by the Secretary to Government is out of context and we cannot read

something which is not in the statute book. In view of the foregoing discussions we set aside the order passed by the Secretary to the Government

in Order No. 1/96/DC dated January 29, 1996 and restore the order passed by the Appellate Assistant Commissioner in exempting the sales

turnover of parag zarda by the assessee.

14. In the result, the order passed by the Secretary to the Government is set aside and the appeal is allowed. There will be no order as to costs.

15. Appeal allowed.