
(2011) 03 SC CK 0097

In the Supreme Court Of India

Case No : Civil Appeal No. 2558 of 2011 (Arising out of SLP (C) No. 11358 of 2008) , Civil Appeal No. 2559 of 2011 (Arising out of SLP (C) No. 15883 of 2008) , Civil Appeal No. 2561 of 2011 (Arising out of SLP (C) No. 27432 of 2008) , Civil Appeal No. 2562 of 2011

Commercial Taxes Officer

APPELLANT

Vs

Jalani Enterprises

RESPONDENT

Date of Decision : 17-03-2011

Acts Referred:

Citation : (2012) AIRSCW 536 : (2011) 186 ECR 130 : (2011) 266 ELT 289 : (2011) 4 JT 507 : (2011) 3 SCALE 609 : (2011) 4 SCC 386 : (2011) 39 VST 421

Hon'ble Judges : Mukundakam Sharma, J;Anil R. Dave, J

Bench : Division Bench

Advocate : Abhishek Gupta, Milind Kumar and Jatinder Kumar Bhatia, for the Appellant; Puneet Jain, Trishna Moha, Sushil Kumar Jain and H.K. Puri, for the Respondent

Final Decision : Disposed Of

Judgement

Mukundakam Sharma, J.—Leave granted.

2. Since the issues involved in these appeals are identical, we propose to dispose of all these appeals by this common judgment and Order.

3. In appeals arising out of SLP (C) Nos. 11358 of 2008 and 15883 of 2008 the issue which falls for our consideration is as to whether Jaljira which is a product manufactured by the Respondent herein is only an appetizer and is not a masala and therefore liable to sales tax at the rate of 10% and not 16%. In appeals arising out of SLP (C) Nos. 27432 of 2008 and 27433 of 2008 a similar question arises for consideration that as to whether Jaljira and similar other products are not Masala and therefore they are liable to be assessed to sales tax at the rate of 10% and not 16%.

4. In order to decide the aforesaid issues some factual aspects are required to be

mentioned. The Respondent firm is a manufacturer and seller of Jaljira and some other products but in the present appeals we are concerned only with the product called Jaljira. The Respondent deposited sales tax at the rate of 10; assuming that Jaljira is not a Masala and hence taxable at the general rate of 10% as residuary entry 199, which reads as under:

199. General rate, that is all goods that are not covered by S. No. 1 - 198. 10%

5. The counsel appearing for the Appellant submitted that the Respondent is liable to pay sales tax at the rate of 16% on the product manufactured by it and the assessing officer was justified in treating the Respondent liable to pay sales tax at the rate of 16%.

6. On examining the entire matter it appears that a Notification being notification dated 26.03.1999 was issued by the State Government, which was to the following effect:

Sr. No.

Detail of Goods

Tax Rate

Xxxxxx

xxxxxx

Xxxxxx

119

All kinds of eatables & non alcoholic potable liquids such as fruit syrups, distilled juices, jams [chatni, murabbas], fruit juice, dry milk power, drink concentrates of all types and forms, essence, concentrates, corn flaks and wheat flakes, custard powder, baking powder, ice-cream powder and packed masala.

12%

Subsequently another notification being notification dated 29.03.2001 was issued by the State Government to the following effect:

Sr. No.

Detail of Goods

Tax Rate

Xxxxxx

xxxxxx

xxxxxx

82

Dry Fruits, Supari, Kirana items, Masala (different from packed masala) such as Mirch, Dhanai, Saunf, Methi, Ajwain, Sua, Halsdi, Kathodi, Amchur, Elaichi, Jeera (cumin seed)

4%

184

All kinds of eatables & non alcoholic potable liquids such as fruit syrups, distilled juices, jams [chatni, murabbas], fruit juice, dry milk power, drink concentrate of all types and forms, essence, concentrates, corn flaks and wheat flakes, custard powder, baking powder, ice-cream powder and packed masala.

16%

Subsequent thereto also a notification was issued by the Appellant herein on 22.03.2002 making the same effective from the date of its issuance, wherein Entry 80 includes the following:

Sr. No.

Detail of Goods

Tax Rate

80

Dry Fruits, Supari, Kirana items, Masala ([when sold in unmixed form, whether lose or in polyethylene packs]) like Mirchi, Dhaniya, sonf, methi, ajwain, suwa, haldi, kathodi, amchoor and asalia, jeera (cumin seed)

4%

Whereas Entry 186 includes the following:

Sr. No.

Detail of Goods

Tax Rate

186

All kinds of eatables & non-alcoholic potable liquids such as fruit syrups, distilled juices, jams [chatni, murabbas], fruit juices, drink concentrates of all types and forms, essences, concentrates, corn flaks and wheat flakes, custard powder, baking powder, ice-cream powder and [multi-ingredient packed masala].

16%

A letter dated 12.11.2001 was issued by the Deputy Secretary, Finance Department, Tax Division, Government of Rajasthan to the Commissioner, Commercial Taxes Deptt, Rajasthan, Jaipur, which reads as follows:

...I am to state that "Packed Masala" used in entry number 184 means, a Masala where two or more ingredients are mixed and sold in packed conditions. Spices sold singly will continue to be taxed as per entry number 82....

7. In the backdrop of the aforesaid facts, an assessment order was passed by the assessing officer so far as Respondent is concerned. In the said assessment order it is sated that the Respondent has shown its product Jaljira, which is manufactured by it, as liable to sales tax at the general rate of 10%. The officer, however, referred to the contents of the notification dated 29.03.2001 holding that jaljira is a masala and the same falls in the category of packed masala and therefore liable to be taxed at the rate of 16% as mentioned under Entry No. 184 of rate notification.

8. On examining the entire matter the assessing officer held that Jaljira manufactured by the Assessee is spice, which is sold in different types of packing due to which it would come within the category of packed masala for which tax rate is 16%.

9. The Respondent itself has described Jaljira as spice on the packed containers of Jaljira marketed by it. The officer also referred to the application dated 07.07.1984 filed by the proprietor of the Respondent firm for registration under Rajasthan Sales Tax Act as well as under the Central Sales Tax Act. In both the applications it is sated as follows:

Manufacturing of food products, mix Masala, Aurvedic Medicines, all types of Medicines, Medicated - Non Medicated food for sale.

10. There are other materials also which are referred to by the officer on record indicating that the Assessee itself described the product Jaljira as Masala. That is how the product is described in the bill books of sale, even for the assessment year 2001-2002.

11. Placing reliance on all those facts the assessing officer held that the product manufactured by the Assessee known and called as jaljira is a Masala falling under Entry 184. It is also undisputed fact in the present case that except for the assessment year 2001-2002 with which we are concerned, the Respondent Assessee is paying sales tax for subsequent assessment years for jaljira at the rate of 16% in view of the notification dated 22.03.2002 wherein it categorically sated that multi-ingredient packed masala would carry taxable rate of 16% in view of entry No. 186. The assessing officer has specifically stated that jaljira is multi-ingredient packed masala and therefore Respondent is liable to pay sales tax on the manufactured Jaljira at the rate of 16%. But the submission of the Respondent is that for the assessment year in question, the said notification dated 22.03.2002 being not applicable and the earlier notification being applicable, rate of sales tax at the rate of 10% for the same is only payable.

12. Being aggrieved by the aforesaid order passed by the assessing officer, the Respondent preferred an appeal before the Deputy Commissioner (Appeals)

Commercial Taxes, Ajmer challenging the order passed by the Commercial Tax Officer, Special Circle-II, Jodhpur. The Deputy Commissioner (Appeals) by his order dated 01.08.2005 held that Jaljira is not a Masala and therefore tax levied at general rate of 10% was justified and he set aside the demand raised by the Assessing Authority.

13. Appellant filed two appeals before the Rajasthan Tax Board, Ajmer challenging the aforesaid order of Deputy Commissioner (Appeals), Ajmer. The Rajasthan Tax Board, Ajmer by its common order dated 11.12.2002 set aside the order dated 01.08.2005 passed by the Deputy Commissioner (Appeals) and restored the orders passed by the Assessing Authority.

14. Being aggrieved by the said order the Respondent herein filed a Revision Petition before the Rajasthan High Court which came to be allowed by the High Court under the impugned judgment and order. Feeling aggrieved the Appellant filed the present appeals on which we heard learned Counsel appearing for the parties and also perused the records.

15. In the impugned judgment and order passed by the High Court it was held that Jaljira cannot be termed as a Masala in itself, but it is a mixture of masalas and other materials, which can be used for digestion. The High Court therefore held that Jaljira is nothing but edible preparation ready for use either directly or after dissolving in water for human consumption and as it is not used as additional constituent in any food substance, therefore, it cannot be termed as packed masala. The aforesaid findings were arrived at by the High Court after referring to the contents of Jaljira shown to be as follows:

Sr. No.

Name of Item

Percentage

1.

Salt

40%

2.

Kala Namak

1%

3.

Nimbu Ka Sat (Citric Acid)

8%

4.

Sonth

10%

5.

Kalimirch

10%

6.

Pudina

10%

7.

Hing

1%

8.

Jira

18%

9.

Lalmirch

2%

According to the High Court Jaljira would therefore fall in the residuary clause and therefore tax should be levied at the rate of 10% and not 16%.

16. The aforesaid findings of the High Court are challenged before us by the Appellant. The counsel appearing for the Appellant had taken us through all the documents on record. He submitted that Respondent has itself shown the product manufactured by it Jaljira as Packed Masala and therefore the assessing officer was justified in treating the Respondent liable to pay sales tax at the rate of 16%.

17. Each one of the contents of the product referred to above and relied upon by the High Court would indicate that most of the items used in the manufacture of Jaljira are nothing else but spices. They are grinded and mixed. When spices are grinded and mixed, it gives rise to a new product, which is a mixed masala. Different ingredients are used in preparation of Masala after grinding and mixing several ingredients and when they are so grinded they lose their own identity and character and a new product separately known to the commercial world comes into existence. Sales tax is levied on sale of commercial commodities, therefore, individual spices could be termed as different commercial commodities. When they are grinded and mixed they give rise to a separate

commercial commodity altogether which could be taxed separately. It is settled law that when one particular item is covered by one specified entry, then the Revenue is not permitted to travel to the residuary entry. If from the records it is established that the product in question could be brought under a specific entry then there is no reason to take resort to the residuary entry. There is no doubt that Jaljira is a drink. The contents of Jaljira is put into water and taken as digestive drink but when we look into the manner and method of preparation of the product Jaljira, we find that it is a mixture of different spices after grinding and mixing. Therefore, it is nothing but a Masala packed into packets of different nature/quantity and sold to the consumers. It would, therefore, for all practical purposes would come within the Entry No. 184 and it cannot be said that it would come under the residuary entry as held by the High Court.

18. The clarificatory letter dated 12.11.2001 which was issued by the Deputy Secretary, Finance Department, Tax Division, Government of Rajasthan is also placed on record which specifically states that "Packed Masala" used in entry number 184 means, a Masala where two or more ingredients are mixed and sold in packed conditions. The said letter is in the nature of clarification of entry number 184 with which we are concerned. Although the said letter is an inter departmental communication, the revenue authorities, namely, the Appellant is governed and bound by the aforesaid letter although the said letter may not have been circulated to the Respondent but it cannot be said that clarification given by the Department cannot be made use of for interpreting the entry in the notification.

19. Even otherwise, in our considered opinion the entries in the notification by themselves are quite clear to include the product in question within the ambit and parameters of the expression packed masala and therefore the assessing officer was justified in demanding sales tax from the Respondent at the rate of 16; holding that the product manufactured by the Respondent falls within the category of items included in Entry No. 184.

20. Therefore, appeals arising out of SLP (C) Nos. 11358 of 2008, 15883 of 2008, 27432 of 2008 and 27433 of 2008 are allowed and the judgment and order passed by the High Court is set aside. The order dated 15.03.2004 passed by the Tax Assessment Officer is restored.

21. Having held thus, we may now examine the facts of the appeal arising out of SLP (C) Nos. 4304 of 2009. In this appeal, we are concerned with the two financial years, namely, financial years of 1999-2000 and 2001-2002. The aforesaid discussion and the findings and the conclusions arrived at would also be applicable so far the products of the Respondent herein are concerned but except for product like Idli Mix and Dosa Mix.

22. Other products of the Assessee such as Aachar Masala, Jaljeera powder, Anar Masala, Methi Chatani, Pudina, Lehsoon Chatni, Chat Masala, Kitchen Masala, Mangodi Masala, Sambhar Masala, Dal Masala, Kasuri Methi, Heena Powder,

Shikkai Powder, Lahsoon powder, must be held to be Masala packed falling under Entry No. 184 of the notification dated 29.03.2001.

23. So far as Masala and other products are concerned the same principle would apply but at the same time Idli Mix and Dosa Mix cannot be said to be Masala and therefore the same would be excluded from being assessed for the purpose of sales tax assessment as 'masala'.

24. In view of the above, appeal arising out of SLP (C) No. 4304 of 2009 is also allowed and the judgment and order passed by the High Court is set aside. The order passed by the Tax Assessment Officer is restored.