(1978) 02 AHC CK 0061

In the Allahabad High Court

Case No : S.T.R. No. 320 of 1972

COMMISSIONER OF SALES TAX — APPELLANT

Vs

BANSILAL BHASIN. — RESPONDENT

Date of Decision : 03-02-1978

Acts Referred:

Citation : (1978) 7 CTR 228

Hon'ble Judges : C. S. P. Singh, J

Bench : Division Bench

Final Decision : Disposed Off

Judgement

C. S. P. Singh, J. - This is a reference at the instance of the Commissioner of Sales Tax. The question referred is :

"Whether on the facts and in the circumstances of the case Ilaichidana sold by the assessee firm would be liable to tax under the provisions of the U.P. Sales Tax Act ?".

2. M/s. Bansi Lal Bhasin carried on the business of sale of Ilaichidana. It disclosed a turnover of Rs. 48,321/-which was enhanced to Rs. 55,000/- by the Sale Tax Officer. It was contended by the dealer before the Sales Tax Officer that Ilaichidana was not taxable, as it was nothing but sugar. This contention was not accepted by the Sales Tax Officer on the ground that although Ilaichidana was manufactured from sugar, its form was changed and it became a different commodity. On appeal, the turnover returned by the assessee was accepted, but the contention that Ilaichidana was sugar was repelled. The Revising Authority, however, held on the basis of the Supreme Court decision in State of Gujarat vs. Shakkarwala Brothers, that Ilaichidana was nothing but a lump of sugar, and as such was not taxable.

3. Sugar is exempted from tax under notification No. St. 4064/X-950 (4)-58 dated November 25, 1958. Sugar is defined in the notification as follows :

"Sugar containing more than 90 per cent of sucrose but excluding khandsari sugar, sugar candy, batasha, cooked food confectionery and sweetmeats".

4. Thus, in order to get exemption from tax all that is required is that the commodity concerned should be such sugar as contains more than 90 per cent sucrose, and is not one which is excluded under the notification. There is no finding that Ilaichidana falls within any of the categories specifically excluded under the notification. It is also not disputed that it contains more than 90 per cent of sucrose and is manufactured from sugar. The Judge Revisions has given a finding that it does not contain cardamom (Ilaichi). This being so, it will come within the expression of the word sugar as used in the notification, and the mere fact that it is not in crystal form will not alter its nature. We accordingly answer the question in the negative against the Department and in favour of the assessee. As none has appeared in favour of the assessee, there will be no order as to costs. Counsel fee is assessed at Rs. 100/-.

