(1980) 11 DEL CK 0008

In the Delhi High Court

Case No : Sales Tax References No''s. 4 and 5 of 1976

Commissioner of Sales Tax APPELLANT

Vs

Devi Chaat Bhandar RESPONDENT

Date of Decision : 25-11-1980

Acts Referred:

Citation : (1981) 48 STC 51

Hon'ble Judges : N.N. Goswamy, J;D.K. Kapur, J

Bench : Division Bench

Judgement

Kapur, J.—This sales tax reference is concerned with a dealer whose business is the preparation and sale of halwai preparations and chaat, etc. For the period 1972-73, the dealer was assessed by orders dated 31st October, 1974; the chaat preparations were taxed at the rate of five per cent as against the halwai''s preparations at two per cent. On appeal to the Appellate Assistant Commissioner, Sales Tax, it was contended that by virtue of the notification dated 16th August, 1962, articles ordinarily prepared by the halwais dealing exclusively in such articles were taxable at the rate of two per cent and chaat was a preparation ordinarily prepared by halwais. The contention was not accepted.

2. A revision petition to the Commissioner of Sales Tax also failed. On a second revision, the First Additional District Judge, Delhi, held that the type of preparations made by the dealer showed that he was dealing exclusively in halwai preparations. The assessed was, Therefore, held to be a halwai and taxable in respect of all his preparations at the rate of two per cent. The present reference at the instance of the Commissioner of Sales Tax has resulted in the following question being referred to this Court :

"(i) Whether, on the facts and in the circumstances of the case, Notification No. F. 4(34)/61-Fin. (E) dated 16th August, 1962 (annexure B), is applicable to the dealer.

(ii) Whether, on the facts and in the circumstances of the case, the learned

Additional District Judge was correct in directing that the tax on the taxable turnover of the dealer for the year 1972-73 should be calculated at 2 per cent and not at 5 per cent."

3. The questions show that they are concerned with the notification and the question whether chaat preparations are halwai preparations. The notification in question states that in the interest of the general public, it is expedient reduce the rate of tax in respect of articles ordinarily prepared by halwais dealing exclusively in such articles, when sold by them. The operative words of the notification are :

"..... from the first day of October, 1962, the tax in respect of the taxable turnover of ''articles ordinarily prepared by halwais dealing exclusively in such articles, when sold by them'', shall be levied at the reduced rate of two naye paise in the rupee."

4. The effect of the notification is twofold. If there is a halwai, who deals exclusively in articles ordinarily prepared by halwais, then the rate is two per cent for the entire sale. If there is a halwai who also deals in other articles, then the reduction does not apply. The crucial question in this case, Therefore, is whether the chaat preparations made by the assessed-dealer are also halwai preparations. If they are not, then the entire turnover is subject to the ordinary rate of tax. If the chaat preparations are also halwai preparations, then the entire taxable turnover is to be taxed at the lower rate.

5. The Additional District Judge dealt with this question in the following words :

"According to the material available, he was engaged in selling chaat comprising papri, dahi, chatni, aalu-tikkis, bhaturas, chhola, aalu, samosa and gole-gappas. The point for consideration is as to whether a person who is engaged in the manufacture and sale of such articles can be a halwai, or not. The term halwai has not been defined in the Act or the Rules or the notification itself. We are, Therefore, left to take commonsense meaning of the term. It is a matter of common knowledge that halwais are persons who prepare a variety of items such as sweets, namkeens, puris, pakoras, etc. Even a person who is engaged in the sale of milk, curd and butter-millk is also known as a halwai. There would be some person who are found dealing in all these items and still others who would be dealing in a particular item or items. To my mind, the mere fact that a person who deals in only one or two items out of items ordinarily prepared by halwais cannot be denied the denied the status of halwai. On this view, the assessed must be held to be a halwai."

6. On analysing the question we have faced the same difficulty as was faced by the learned Additional District Judge. There is no satisfactory definition of halwai. It may be said that a person is a halwai if he prepares halwa, or it may be said a person is a halwai if he deals in milk products and sweetmeats. We have found from dictionaries that we have consulted that the term "halwai" is equivalent, according to those dictionaries, to a person who prepares confectionery, i.e.,

sweetmeats. On the other hand, experience shows that articles like samosa and salted products like dal biji, etc., are also normally prepared and sold by halwais and nobody else. The term halwai being somewhat indefinite makes it difficult to correctly define what are products which are exclusively sold by halwais. According to what is stated in the quotation above, the product of the dealer consists of chaat made of papri, dahi, chatni, aalu-tikki, etc. It would appear that these articles can be prepared by non-halwais also. But, the question we have to find is whether a person who sells only these articles and other halwai preparations can be said to be dealing in articles which are not ordinarily prepared by halwai. At the same time, it may be noticed that the notification reduced the rate of sales tax in the interest of the general public. It a halwai has to charge a higher rate of sales tax on chaat, then he necessarily has to charge higher rate of sales tax on all his other preparations which cannot be in the interest of the general public. In this view of the matter and keeping in view the indefiniteness or inaccuracy of the term halwai it would appear that chaat may also be described to be an article ordinarily prepared by a halwai; it appears commonly to be an article which is ordinarily available at halwai''s shops.

7. The learned counsel for the dealer has emphasised that a large number of cases have been decided by the Additional District Judge taking this wider view. He refers to the case of Nand Lal Om Prakash, decided on 13the March, 1968, wherein it was held that bhaturas, aloos and chholas were not different from puris, namkeens and pakoras and were, Therefore, taxable at the lower rate normally being prepared by halwais. The Assistant Commissioner, Sales Tax, held in the case of Ganga Sahai Shiv Charan Dass on 20th February, 1969, that potato chops (alu ki tikiya) was also a halwai''s preparation. In the case of Trilochan Singh, decided on 17th March, 1970, by the Additional District Judge, it was held that dahi bhala, dahi pakori, etc., were also halwai preparations .It was also contented that in previous years, the assessed, we are now dealing with, has been assessed as a halwai at the lower rate of tax without any objection.

8. Keeping in view the circumstances of this case, we agree that chaat preparations of the dealer can be treated as preparations ordinarily prepared by halwais.

9. We would accordingly answer the two question referred to us as follows : We would answer the first question in the affirmative holding that the notification does apply and the second question also in the affirmative holding that the Additional District Judge had correctly held that the taxable turnover was subject to tax at the rate of two per cent and not five per cent. We would, however, leave the parties to bear their own costs as the case is not covered by any previously reported decision.

10. Reference answered accordingly.

