(1979) 01 AHC CK 0055

In the Allahabad High Court

Case No : S.T.R. No. 29 of 1976

Commissioner of Sales Tax — APPELLANT

Vs

Hira Ice Candy — RESPONDENT

Date of Decision : 17-01-1979

Acts Referred:

Citation : (1979) 44 STC 158

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

Bench : Single Bench

Final Decision : Allowed

Judgement

C.S.P. Singh, J.—This reference is being treated as a revision in view of Section 20(6-A) of U.P. Ordinance No. 27 of 1978.

2. The assessee was a manufacturer of ice-candy and used to sell the same to hawkers, who thereafter effected retail sales. The accounts of the assessee were not accepted and the estimate of his turnover made. This turnover of ice-candy was taxed at the rate applicable for unclassified commodities. The appeal filed by the assessee was partly allowed, inasmuch as the estimated turnover was reduced. The rate of tax on this turnover was however maintained. The revising authority taking the view that ice-candy was cooked food, taxed it at the rate of 2 per cent.

3. The process by which ice-candy is manufactured has not been set out by any of the authorities probably on the ground that the method is widely known. Ice-candy is manufactured by adding sweetening agents and colour to ice. The ice is then put in convenient small shapes and supplied in freezing boxes for sale. The question is as to whether ice-candy should be treated as an unclassified item or as cooked food or confectionery. By Notification No. ST-3612/X--900(21)-69 dated 1st July, 1969, cooked food was made taxable at all points of sale at the rate of 00.02 per rupee. By item No. 5 of the same notification, sweetmeats and confectionery other than those sold in sealed and tinned containers were made

taxable at all points of sale at the rate of 00.03 per rupee.

4. The question that has to be considered is as to whether ice-candy falls within the category of cooked food or confectionery. The entries in this notification have come out for interpretation on a number of occasions. It will be convenient to refer to the latest decision of this Court. In the case of Commissioner of Sales Tax, U.P. v. Jassu Ram Bakery Dealer, Meerut 1976 U.P.T.C. 584 the question arose as to whether biscuits came within the category of cooked food. The Bench referred to the Hindi version of the notification in which the words used were pakaya hua bhojan. Taking the view that pakaya hua bhojan was food that was generally taken at the time of meal, viz., breakfast, lunch or dinner, it was held that biscuits did not answer the description of pakaya hua bhojan although they were manufactured by the application of heat. Consideration for treating ice-candy as an article different from cooked food is stronger. Ice-candy is manufactured by a freezing process and not by the application of heat, and neither is generally taken at the time of meals.

5. It cannot also be treated as confectionery for in the case of Annapurna Biscuit (Mfg.) Co., Kanpur v. State of Uttar Pradesh 1974 U.P.T.C. 620 confectionery has been held to comprise articles in which the main ingredient is sugar, although, other articles may be added for enhancing its taste. It thus comprises essentially only those articles which are commonly called sweetmeats. The main ingredient in the ice-candy is ice and not sugar and, in common parlance, is not treated as sweetmeats (mithai). In view of these considerations, ice-candy does not fall either in the category of cooked food or confectionery. As there is no other notification under which it is included, it has to be taxed as an unclassified item.

6. The revision is accordingly allowed, and the order of the Judge (Revisions), Sales Tax, as regards the rate of tax, is set aside. The revision should be decided afresh on this point in accordance with law and the observations made in this judgment. A copy of this judgment will be sent to the revising authority u/s 11(8) of the Act. As none has appeared on behalf of the assessee, there shall be no order as to costs.

