courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 12/09/2026

(1979) 07 AHC CK 0008

In the Allahabad High Court

Case No : S.T.R. No. 615, 616 and 617 of 1978

Commissioner of Sales Tax APPELLANT

Vs

Kwality Restaurant RESPONDENT

Date of Decision : 10-07-1979

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11, 4

Citation : (1980) 45 STC 486

Hon'ble Judges : R.M. Sahai, J

Bench : Single Bench

Advocate : S.N. Darbari, for the Respondent

Final Decision : Dismissed

Judgement

R.M. Sahai, J.—These are three revisions u/s 11 of the U.P. Sales Tax Act, in respect of the assessment years 1969-70, 1970-71 and 1971-72 filed by the Commissioner of Sales Tax challenging the legality of the view taken by the Additional Judge (Revisions) that ice-cream is milk product.

2. Section 4 of the U.P. Sales Tax Act exempts milk amongst other things from payment of tax. It also empowers the State Government to exempt any other goods by notification issued from time to time. In exercise of this power the State Government issued Notification No. ST-911/X dated 31st March, 1956, exempting certain goods. One of the goods exempted is milk and milk products. The entry reads as under:

10. Milk and milk products such as chhena, dahi, khoa, butter and cream but excluding (1) products sold in sealed containers; and (2) sweetmeats.

3. The first question is what is meant by milk product. It has not been defined in the Act or the rules. In common parlance a thing is said to be a product of a particular commodity if it is made out of it or from it. There may be little difficulty in respect of things produced out of commodity either naturally or manually. For instance chhena, dahi, etc., are things which are produced out of

milk and they can easily be taken to be milk products. The difficulty may, however, arise in items prepared from anything. For instance sweetmeat is not made out of milk but made from it. Whether such a commodity can also be said to be product? In a taxing statute it depends on the intention discerned from the language of the notification. A bare look at the notification leaves no scope for controversy that the expanse of the entry is very wide. By the first part it explains that things like chhena, dahi, butter, which have a different commercial connotation than milk are intended to be included in milk product. The words "such as" are illustrative and not exhaustive. It is only indicative of the legislative intent to extend the exemption to all things which can be said to be produced out of milk. Each of these items is however produced out of milk. And anything produced out of milk is undoubtedly milk product. That it also includes product prepared from milk is clarified by the latter part of the notification, which excludes sweetmeat sold in sealed containers from the purview of the notification. In other words, sweetmeat sold otherwise is included in milk product. Sweetmeat is not prepared out of milk but from it. It is thus clear that the notification exempts milk products which are not only produced out of milk but also from it.

4. Having ascertained the intention of the notification it may now be examined if ice-cream can be considered to be milk product. The ingredients and process of manufacturing ice-cream is described in Encyclopaedia Britannica (Vol. 11, 1973 Edition) thus:

Ingredients -- ...good-quality vanilla ice cream contains about 80 percent by weight of cream and milk products and 15 per cent sweeteners.... Cream, milk, milk solids-not-fat, sugar and sometimes egg yolks form the basis of all ice cream.... Manufacturing -- Pasteurization in the manufacturing process and homogenization and automatically controlled freezing contribute to the quality of ice cream. Homogenization blends the fat globules with the milk solids-not-fat to help form a stable emulsion and aids development of a smoother texture by retarding churning of the fat globules in the freezer. Automatic control of the whipping process produces ice cream of uniform consistency, the whipping, which incorporates air, being necessary to produce a palatable product.... The mix for ice cream contains all the ingredients except the fruits, nuts or other special flavouring. The mix is pasteurized and homogenized and then cooled rapidly to not more than -- 40?F.

5. The basic ingredients of ice-cream are milk and its products and the only process involved is cooling the mixture so that it becomes hard. As ice-cream is prepared from milk and contains nothing but milk it is milk product as described in the notification. Lassi is prepared from dahi (curd), a milk product, and yet in the Dina Nath Lassiwala''s case [1971] 28 S.T.C. 173, lassi was held to be a milk product. In Kwality Ice Cream Co. v. Sales Tax Officer [1974] 34 S.T.C. 396, the High Court of Delhi held that ice-cream is a milk product. In Dayal Singh Kulfiwale, Aminabad Park, Lucknow v., Commissioner of Sales Tax 1970 U.P.T.C.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-sales-tax-appellant…

732, it was held by this Court that kulfi is a milk product. It is thus clear that ice-cream being a milk product was exempt from sales tax and the revising authority rightly excluded the turnover and directed the assessing authority to reframe the order.

6. In the result, these revisions fail and are dismissed. The question of law raised by the Commissioner of Sales Tax is decided by saying that ice-cream, being a milk product, is exempt from sales tax. The assessee shall be entitled to its costs, which are assessed at Rs. 200; one set only.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/commissioner-of-sales-tax-appellant…