
(2004) 04 AHC CK 0009

In the Allahabad High Court

Case No : Sales Tax Revision No's. 1444 and 1445 of 1990

Commissioner of Sales Tax

APPELLANT

Vs

Melrose Biscuit Co.

RESPONDENT

Date of Decision : 26-04-2004

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 4

Citation : (2006) 146 STC 701

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—The dealer opposite-party deals in the manufacture and sale of bread, biscuits, "namkeens", etc. The dispute in these two revisions relates to the assessment years 1982-83 and 1983-84. The following common question of law has been raised by the Commissioner of Sales Tax in the above revisions:

Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal was legally justified to dismiss the appeal of the Commissioner, Sales Tax, U.P. and partly allow the appeal of the assessee by holding that the salted preparation of maida termed as kachri by the assessee was covered by Notification No. ST-2-5788 dated September 7, 1981 and, therefore, exempt from tax though kachri has been held to be a preparation from rice by the honourable High Court in the case of Kasturi Lal & Sons v. Commissioner of Sales Tax 1987 UPTC 1298 whereas in the present case the impugned commodity was prepared out of maida which is altogether different commodity like potato chips ?

2. Heard the counsel for the parties and perused the record. In both these revisions the dispute is whether the commodity which is called "kachri" by the dealer-opposite party is, in fact, a "kachri" within the meaning of Notification No. 5788 dated September 7, 1981 and is liable to be exempted from the payment of sales tax or the commodity is a "namkeen" and is liable to be taxed as such.

3. The assessing authority has found that the "kachri" is ordinarily prepared from rice. Admittedly the commodity in question which has been called as "kachri" by the dealer-opposite party has been prepared out of maida. The said commodity is used after frying with oil in the frying pan. The argument of the assessee that the since the produce in question is used after frying in oil is, therefore, "kachri" has not been accepted by the assessing authority on the ground that it is preparation of maida. The tax was imposed treating it as unclassified item. The first appellate authority has held that the product in question is "namkeen" as it was treated as "namkeen" in the earlier assessment years and as such it cannot be treated as unclassified item and modified the assessment order accordingly. The Tribunal has held that generally the word "kachri" is used with respect to such eatable item which are eaten after frying and is crisp. Ordinarily "kachri" is made from rice but due to new advancement different kinds of kachries are being manufactured. Therefore product though prepared out of maida is kachri. It has also observed that in the registration application by way of amendment the dealer-opposite party has mentioned that he will manufacture kachri (namkeen) which means that registration was applied for kachri and not only for "namkeen". This order is under challenge in the revisions. At this stage it is relevant to have the wordings of the Notification No. 5788 dated September 7, 1981.

In exercise of the powers under Clause (a) of Section 4 of the U.P. Sales Tax Act, 1948 (U.P. Act No. XV of 1948), the Governor is pleased to order that, with effect from September 7, 1981, no tax under the said Act shall be payable on the sale or purchase of the following goods:

1. Flowers, flower seeds, seedlings, plants and seeds of kakri, kheera, kharbooza and tarbooz.

2. Sewaiyan, bari, mungaauri, papar and kachri.

4. The said notification has been issued u/s 4(a) of the U.P. Sales Tax Act, 1948. This section empowers the State Government to grant exemption on the sale or purchase of water, milk, salts, newspaper, motor spirit, diesel oil or alcohol or notified goods which the State Government may notify. A bare perusal of the aforesaid notification shows that under Clause (2) of the notification sewaiyan, bari, mungaauri, papar and kachri have been exempted from payment of sale or purchase tax by the State Government in exercise of power u/s 4(a) of the Act.

5. Kachri has not been defined anywhere either in the Act or in the notification.

6. The settled principle of interpretation of taxing statute is that the items in taxing statute must be construed in the sense in which they are sold by the dealer and purchased by the consumer. The operation of a notification has to be judged not by the object which the rule-making authority had in mind but by the words which it has employed to effectuate the legislative intents. The words or expressions used in a notification must be construed in the sense in which they are understood by the trade and by the consumer and not by what is understood by the department. There is no ambiguity as regards the word "kachri" is

concerned. All the authorities below including the Tribunal have observed that "kachri" is ordinarily made from rice. It is another thing that now with the advancement it can be made of maida. In the case of *Kasturi Lal & Sons v. Commissioner of Sales Tax 1987 UPTC 1298* it was held, interpreting notification in question that "kachri" is preparation of rice. The relevant portion of the said judgment is quoted below:

Finding of the Tribunal is that "kachri" is a preparation of rice. I quite agree with the Tribunal because in common parlance, "kachri" is one which is prepared out of rice and, therefore, potato chips cannot be exempted even under notification dated September 7, 1981.

7. The court was examining the question as to whether potato chips can be included in the definition of "kachri" or not. It was answered that potato chips are not "kachri". In the case in hand the dealer-opposite party has submitted that since the produce in question is used after frying in oil, therefore, it is "kachri". If this reasoning would have been correct, it is a matter of common knowledge that the potato chips are also fried with oil in frying pan and would have been treated as "kachri". Therefore, this part of the argument that the product in question is fried with oil in frying pan and therefore has to be treated as "kachri", cannot be accepted in view of the aforesaid judgment of *Kasturi Lal & Sons 1987 UPTC 1298*.

8. The dealer-opposite party was claiming benefit of the exemption notification issued u/s 4(a) of the Act. The burden was upon it to prove that the produce in question is treated in common parlance as "kachri". The Tribunal was very much influenced by the fact that the dealer in the sale vouchers has mentioned the product as "kachri" and that in the registration certificate, the registration was sought by way of amendments for the purpose of manufacture of "kachri" (namkeen). To my mind these circumstances are wholly irrelevant and should not have been taken into account as they are in the nature of self-serving statement.

9. In view of the above the product in question cannot be called kachri. It is not covered by the aforesaid notification in view of the fact that kachri as generally understood is a preparation of rice. I find sufficient force in the argument of the learned Standing Counsel that since the product in question has been prepared out of maida is not understood in common parlance as "kachri" and was rightly taxed as "namkeen" by the first appellate authority.

10. In the result both the revisions are allowed to the extent indicated above and the order of the Tribunal is set aside accordingly.