**(1980) 02 AHC CK 0062**

**In the Allahabad High Court**

**Case No :** S.T.R. No. 1117 of 1978

Commissioner of Sales Tax APPELLANT

Vs

Quality Ice Cream Co. RESPONDENT

**Date of Decision :** 29-02-1980

**Acts Referred:**

Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)
Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)
Uttar Pradesh Sales Tax Act, 1948 — Section 11(3)

**Citation :** (1982) 49 STC 301

**Hon'ble Judges :** R.R. Rastogi, J

**Bench :** Single Bench

**Final Decision :** Allowed

## Judgement

R.R. Rastogi, J.—This is the Commissioner''s application in revision u/s 11(3) of the U.P. Sales Tax Act. The respondent-assessee deals in ice cream, etc. The assessing officer accepted the book version of the assessee for the assessment year 1973-74 but treating ice-cream as cooked food levied tax at 3? per cent. The appellate authority took the same view but the revising authority being of the opinion that ice-cream is a milk product, and its turnover was exempt from sales tax declared the assessee as non-taxable.

2. I agree with the learned revising authority that ice-cream is a milk product and it is to be treated exempt from sales tax under Notification No. ST-911/X dated 31st March, 1956 (see Commissioner, Sales Tax, U.P. v. Kwality Restaurant 1979 UPTC 1298). However, with effect from 1st December, 1973, because of Notification No. ST-II-6628/X-1012-1972 dated 1st December, 1973, which was issued u/s 3-A(2) of the Act, the goods mentioned in the schedule to that notification have been brought to tax and at serial No. 17 the description of goods includes ice-cream. It is as under :

Hot and cold drinks, ice-cream, kulfi, milk shake, lassi, beverages, squashes or sharbat, when served to customers.

3. And the rate of tax is 3? per cent. According to the learned standing counsel, therefore, from 1st December, 1973, tax was liable to be levied at 3? per cent on the turnover in respect of ice-cream. The learned counsel for the assessee, on the other hand, contends that this notification has not superseded the earlier Notification No. ST-911/X dated 31st March, 1956, which exempted milk products. I do not find that there is much substance in this contention because this notification of 1st December, 1973, is "in supersession of all previous notifications in so far as they relate to the goods mentioned in column II of the schedule to this notification". It would be taken, therefore, that in respect of the goods mentioned in the schedule to this notification all the previous notifications stand superseded. Ice-cream is one of such goods which had been made liable to tax under this notification. Hence, the turnover in respect of ice-cream with effect from 1st December, 1973, will be liable to tax.

4. The revision is hence allowed with costs which is assessed at Rs. 200.

 