**(1980) 10 MP CK 0006**

**In the Madhya Pradesh High Court**

**Case No :** Miscellaneous Civil Case No. 70 of 1977

Commissioner of Sales Tax APPELLANT

Vs

Regal Dairy RESPONDENT

**Date of Decision :** 07-10-1980

**Acts Referred:**
Madhya Pradesh General Sales Tax Act, 1958 — Section 44(1)

**Citation :** (1980) 10 MP CK 0006

**Hon'ble Judges :** K.N. Shukla, J;G.G.Sohani, J

**Bench :** Division Bench

**Advocate :** S.R. Joshi, for the Appellant; G.M. Chaphekar, for the Respondent

## Judgement

G.G. Sohani, J.—By this reference u/s 44(1) of the M.P. General Sales Tax Act, 1958 (hereinafter called the Act), the Board of Revenue has referred the following question of law to this Court for its opinion:

Whether, under the facts and circumstances of the case, ''mawa'' is cooked food and covefed by entry No. 8 of Part I of Schedule II?

2. The material facts giving rise to this reference briefly are as follows: The non-applicant deals in mawa, ghee, and oilcakes and is a "dealer" under the Act. During the assessment proceedings for the year 1969-70, the contention of the assessee was that "mawa" was a "cooked food" and hence was liable to be taxed at the rate of two per cent. This contention was, however, rejected by the assessing authority which held that mawa could not be considered as "cooked food". On appeal, the Appellate Assistant Commissioner held that mawa is used as an ingredient for preparation of other sweets and could not be considered as "cooked food" within the meaning of that expression in entry 8 of Part I of Schedule II to the Act. At the instance of the department, the Board has referred the aforesaid questionof law to this Court of its opinion.

3. The learned Government Advocate, relying upon the decision reported in Commissioner of Sales Tax v. Shri Ballabhdas Ishwardas [1968] 21 S.T.C. 309,

 

contended that "cooked food" meant those things which one ate at regular times of the day at breakfast, dinner or supper. But it is significant to note that the entry, which came up for consideration before this Court in Commissioner of Sales Tax v. Shri Ballabhdas Ishwardas [1968] 21 S.T.C. 309, wac couched in a different form than the entry with which we have to deal. In the instant case, the entry in question is as follows:

Cooked food including sweetmeats and mishri, batasha 2 per cent. and chironji but excluding cakes, pastries, biscuits, Chocolates, toffees, lozenges and peppermint drops.

Mishri, batasha and chironji are, by the aforesaid entry, included in the expression "cooked food". Similarly, biscuits, chocolates, toffees, lozenges and peppermint drops are excluded, which shows that but for this exclusion those items would otherwise have been covered by the expression "cooked food". It is thus clear that the entry in question is meant to cover those articles which are made fit for eating by a heating process as boiling, roasting or baking. In Santosh Kumar Ghosh v. Commercial Tax Officer [1965] 16 S.T.C. 931, the Calcutta High Court held that "chhana", which is prepared by boiling milk and adding lactic or citric acid to it, is "cooked food". In our opinion, therefore, the Board is right in holding that mawa is cooked food and is covered by entry 8 of Part I of Schedule II to the Act.

4. Our answer to the question referred to us is, therefore, in the affirmative and in favour of the assessee. In the circumstances of the case, the parties shall bear their own costs of this reference.

 