

(1974) 09 AHC CK 0015

In the Allahabad High Court

Case No : Sales Tax Reference No. 673 of 1972

Commissioner of Sales Tax

APPELLANT

Vs

Sunhari Lal Jain

RESPONDENT

Date of Decision : 26-09-1974

Acts Referred:

Citation : (1975) 35 STC 425

Hon'ble Judges : Satish Chandra, J;K.N. Seth, J

Bench : Division Bench

Advocate : None, for the Respondent

Judgement

K.N. Seth, J.—M/s. Sunhari Lal Jain, a dealer in tea, betels, cold drinks, etc., was assessed to sales tax for the year 1967-68 on net sales of Rs. 18,000, Rs. 12,000, tea and cold drinks and Rs. 6,000 dressed betels. In appeal the assessment order was confirmed. The assessee filed a revision and the main contention, with which we are concerned in this reference, was that tea was cooked food and the sale of tea being below the taxable limit was exempt from tax. This contention found favour with the Additional Judge (Revisions). At the instance of the Commissioner, Sales Tax, the Additional Judge (Revisions), Sales Tax, has referred the following question for the opinion of this court:

Whether, under the circumstances and on the facts of the case, hot tea is cooked food ?

2. The Additional Judge (Revisions), Sales Tax, held tea as cooked food relying on the decision of Commissioner of Sales Tax, M. P. v. India Coffee Workers' Co-operative Society Ltd. 1970 25 S.T.C. 43 The question before the Madhya Pradesh High Court was whether sale by the assessee of the various items like hot and cold coffee, ice-cream, mutton and vegetable cutlets, etc., constitute sale of "a meal". The relevant entry in the Madhya Pradesh Act relating to goods exempted from tax was "cooked food other than-(a) pastries, (b) a meal the charge of which exceeds rupees two, (c) sweetmeats". According to this entry,

sale of cooked food was exempt from tax, but if the cooked food constituted "a meal", the charge of which exceeded rupees two, its sale was not exempt from tax. It was admitted that the articles sold by the assessee were cooked food and the only question before the court was whether the sale of those articles constituted "a meal". The word "meal" was not defined in the Act. The court took the view that in such a situation the expression "a meal" must be understood in the sense it has in common parlance and in its popular meaning as understood by people who sold and served meals and in that sense "meal" must be interpreted to mean "food one takes at regular times of the day at a breakfast, dinner, supper, etc." On that interpretation it was held that the articles sold by the assessee did not constitute sale of any "meal" and the sales of cooked food were exempt from tax.

3. On behalf of the State reliance was placed upon the decision of *Motilal Laxmidas and Company v. State of Bombay* 1961 2 S.T.C. 153. In that case item No. 10 to the schedule annexed to the original Bombay Sales Tax Act, 1946, the words "cooked food" were followed by the word "eaten". The Tribunal held that the word "eaten" was not applied to drinks, but to solid food which was capable of being masticated and swallowed. The use of the word "eaten" indicated that the item was intended to cover only solid food. Subsequently an amendment was made in the item and the word "eaten" was substituted by the word "consumed".

4. These cases are of little assistance in interpreting the words "cooked food" occurring in the notification issued under the U. P. Sales Tax Act, where cooked food need not constitute "a meal" as required under the Madhya Pradesh Act and are not followed by the word "eaten" or "consumed" as in the Bombay Act.

5. The expression "cooked food" is not defined in the U. P. Sales Tax Act or the Rules framed thereunder and being a word of every day use it must be construed in its popular sense meaning that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it. Viewed in that sense hot tea must be regarded as a beverage and not food.

6. In New International Dictionary "food" is defined as:

Material consisting of carbohydrates, fats, proteins, and supplementary substances (as minerals, vitamins) that is taken or absorbed into the body of an organism in order to sustain growth, repair, and all vital processes and to furnish energy for all activity of the organism.

7. According to Chambers's 20th Edition Dictionary "food" means "what one feeds on ; that which, being digested, nourishes the body ; whatever sustains or promotes growth". Interpreted in its primary sense "food" must be a thing taken into the system as nourishment and not merely as a stimulant. It would be straining the meaning of the word "food" to make it apply to tea which is used primarily as a stimulant. Tea is never taken for the purpose of nourishment and, therefore, cannot be included in the term "food".

8. Our answer to the question referred is that hot tea is not cooked food. As no one has appeared on behalf of the assessee, there is no order as to costs.