(1981) 01 DEL CK 0010

In the Delhi High Court

Case No : Sales Tax Reference No. 11 of 1977

Commissioner of Sales Tax, Delhi — APPELLANT

Vs

Pop Corn. — RESPONDENT

Date of Decision : 15-01-1981

Acts Referred:

Citation : (1982) 49 STC 36

Hon'ble Judges : S. Ranganathan, J;Leila Seth, J

Bench : Division Bench

Judgement

Leila Seth, J.—This reference u/s 21(1) of the Bengal Finance (Sales Tax) Act, 1941, read with section 45(1) of the Delhi Sales Tax Act, 1975, has been drawn up at the instance of the Commissioner of Sales Tax. The question referred for our opinion is :

"Whether, on the facts and in the circumstances of the case, the learned Financial Commissioner was justified in holding that stapled polythene bags in which the pop corn was sold by the dealer are not sealed containers as mentioned in entry No. 1 of the Second Schedule appended to the Bengal Finance (Sales Tax) Act, 1941 ?"

2. The assessment year with which we are concerned is 1968-69. The respondent M/s. Pop Corn was a registered dealer. It sold pop corn in polythene bags after stapling the said polythene bags. The only point in issue is, whether the respondent was entitled to claim exemption from tax under entry No. 1 of the Second Schedule appended to the Bengal Finance (Sales Tax) Act, 1941. The said entry reads as follows :

"All cereals and pulses including all forms of rice (except when sold in sealed containers)."

3. The contention of the respondent was that the stapled polythene bags containing the pop corn were not sealed containers and it was entitled to the

exemption. The Additional Commissioner did not accept this contention.

4. The respondent filed a revision petition before the Financial Commissioner. According to the Financial Commissioner, it was obvious that sealing was done to make the food-stuff or raw material airtight, so as to prolong the life of the product; further that such goods are packed in sealed tins, bottles or like containers so as to transport the finished products to places other than the manufacturing or producing areas. However, in the present case, the evidence indicated that the stapling was loose and the bags were not airtight. The stapling only prevented the corns from falling out easily, but did not render them fit for transportation or long preservation of the products. As such, he held that these stapled bags were not sealed containers.

5. The learned counsel for the Commissioner of Sales Tax submits that the decision of the Financial Commissioner is erroneous. He has cited two decisions in this connection. The first is Commissioner of Sales Tax, U.P. Vs. G.G. Industries, Agra, . In that case, the Supreme Court was dealing with a case of chocolates, lollipops, etc., being sold by the confectioner in cardboard boxes closed by the use of cellophane paper to protect the contents from being affected by the atmosphere. The court, relying on the definition of the word "sealed", as extracted from the Oxford English Dictionary, held that the confectionery was sold in sealed containers. Its opinion was that "sealed container" means a container which is "so closed that access (to the contents) is impossible without breaking the fastening".

6. From this decision, it is apparent that if the food-stuff can be got at without breaking the fastening then the container would not be considered as a sealed container.

7. The next case is Commissioner of Sales Tax v. National Chikki Mart [1977] 39 STC 447. The respondent-firm was selling chikki in polythene bags which were heat-sealed. The Bombay High Court held that as the chikki could only be got at after breaking the polythene bag at some place, it was a sealed container. It was immaterial that this could be done with bare hands or fingers and that no instrument or knife was required.

8. In the present case, the finding of the Financial Commissioner is that the stapling was loose. A polythene bag containing pop corns loosely stapled was produced before us as an example of the type of stapling that had been done by this dealer during the relevant period. Mr. Chawla, for the Commissioner of Sales Tax, does not dispute this sample, but submits that normally a person would break the stapling even in such a case in order to extract the pop corn easily.

9. Mr. Chawla may be correct and it is probable that a person greedily anxious to get at the contents would break the staples to do so, yet it is possible to get at the pop corn without breaking the staples.

10. As such, in the facts and circumstances of this case, we feel that the stapled

polythene bags are not sealed containers, especially as the Supreme Court in Commissioner of Sales Tax, U.P. Vs. G.G. Industries, Agra, held that access should be impossible without breaking the fastening.

11. In the result, the answer to the question is in the affirmative and in favor of the respondent-dealer. The respondent will be entitled to costs. Counsel''s fee Rs. 150.

12. Reference answered in the affirmative.

