
(2003) 08 AHC CK 0166

In the Allahabad High Court

Case No : S.T.R. No's. 1011 and 1013 of 1990 and 974 and 975 of 1991

Commissioner, Sales Tax

APPELLANT

Vs

Gulati and Co.

RESPONDENT

Date of Decision : 21-08-2003

Acts Referred:

Citation : (2005) 140 STC 179

Hon'ble Judges : Prakash Krishna, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Prakash Krishna, J.—In these four revisions Commissioner of Sales Tax has raised following questions of law :

"Whether, on the facts and in the circumstances of the case, the Sales Tax Tribunal was legally justified to hold that food colour and essences were taxable as foodstuffs or products under Notification No. ST-II-7218/X-6(43)-77 dated September 30, 1977 ?"

2. The factual scenario of these revisions is almost undisputed. The dispute relates to the assessment years 1979-80, 1981-82, 1982-83 and 1983-84. The Tribunal by order under revision has concluded that food colour and essences were taxable as foodstuffs or product under the aforesaid notification. Reliance was placed upon the judgment of this Court reported in Anchor Sweet Products v. Commissioner of Sales Tax 1979 UPTC 1290. In that case it was held by this Court that "gulab jamun mix" sold by the assessee would be "foodstuffs".

3. The assessee-opposite party is dealer of various items such as empty bottles, biscuits, acrylic yarn, scents, wool, etc. In these revisions I am not concerned with any other items except food colour and essences.

4. At this stage it is necessary to get relevant entry No. 56 of the aforesaid Notification No. 7218 dated September 30, 1977.

"56. Milk powder, condensed milk, baby milk, baby food and all other foodstuffs or products, whether used as such or after mixing them with any other foodstuffs or beverage, when sold in sealed or tinned containers, taxable at point of "M" or "I" at the rate of 5 per cent."

The aforesaid entry was reiterated in the subsequent notification No. 5785 dated September 7, 1981. The rate of tax was changed from 5 per cent to 6 per cent.

5. Food or foodstuffs or product have not been defined under the U.P. Sales Tax Act. Food as defined in Webster's Encyclopaedic Unabridged Dictionary, 1989 Edition at page 552 has the following meaning :

"(1) Any nourishing substance, i.e., eaten or otherwise taken into the body to sustain life, provide energy, promote growth, etc.

(2) More or less solid nourishment, as distinguished from liquid.

(3) A particular kind of solid nourishment ; breakfast food.

(4) Whatever supplies nourishment to organisms, plant food, dog food.

(5) Anything serving for consumption or use....."

Foodstuff has been defined in the above dictionary as "substance of material used as food".

6. In the case of The State of Bombay Vs. Virkumar Gulabchand Shah, in paragraphs 11 and 12 Supreme Court has quoted the meaning of foodstuffs from Oxford English Dictionary, which defines "foodstuff" as under :

"That which is taken into the system to maintain life and growth and to supply waste of tissue."

In the aforesaid case justice Fazl Ali has observed in connection with the issue as to whether "turmeric" is foodstuff or not, is not entirely free from difficulty. In one sense, everything which enters into the composition of food so as to make it palatable may be described as "foodstuff" but that word is commonly used with reference to those articles which are eaten for their nutritive value and which form the principal ingredients of cooked or uncooked meal such as rice, meat, fish, milk, bread, and butter, etc.

7. Besides, Bose, J., in that very case has observed that so far "food" is concerned it can be used in wide as well as in narrow sense and is much dependent upon the context and background. His Lordship has quoted two English judgments to show that "tea" was considered as not an article of food in one case under the Statute which was designed to prohibit hoarding of food while different view was taken under a different statute which was given a few months later and the different view was taken that "tea" is article of food under the statute, which empowered the Food Controller to regulate "food supply of the company" and supply and consumption and production of food under certain Defence of Realm Regulations.

8. It will be seen from the above definition that "foodstuff" has no special meaning of its own. It merely carries us back to the definition of "food" because "foodstuff is anything which is used as "food".

9. One sense everything which enters into the composition of food so as to make it palatable may be described as "foodstuff but the word is commonly used only with reference to those articles which are eaten for their nutritive value and which forms principal ingredient of cooked or uncooked meal, such meal, rice, fish, bread and butter, etc.

10. In the case of Commissioner of Sales Tax v. S.B. Brothers 1973 UPTC 120, a question arose before the Supreme Court under the provisions of the U.P. Sales Tax Act as to whether "food colour" and "essences" are taxable within the Notification No. ST-905/X dated March 31, 1956 under following two items :

(1) Dyes and colours and compositions thereof

(2) Scents and perfumes.

11. The Supreme Court has observed that while interpreting entries of taxing statute, dictionary cannot serve safe guide in constituting the word. The dictionary gives all different shades of meaning attributable to the word referred but that is hardly helpful in solving the problem. "Food colour" and "syrup essences" being themselves known article of common use and are eatable goods whereas "dyes" and chemical composition thereof and "scent" and "perfumes" do not connote that they are eatable goods. Therefore, it was concluded that "food colour" and "syrup essences" are to be interpreted as popularly understood by the people as edible item and thus were not covered by the entry of, "Dyes" and "Chemical composition thereof and "scents and perfumes".

12. "Food colour" and "essences" are not edible items themselves. These items have no nutritive value. The food colours are added to make article of foodstuffs attractive and impressive. These words are of every day use and they must therefore be understood in their popular sense. The addition of "essences" in the food items gives special smell to nose to increase urge of people towards food and to also increase appetite. Essences are added to improve taste of foodstuffs.

13. "Food colour" is like a cosmetic intended for beautifying, promoting attractiveness or altering appearance and thereby aesthetic value of foods. "Food colours" and "essences" and the use to which they are put, I do not find that the claim of the assessee is acceptable that they are "foodstuffs".

14. The Supreme Court in the case of Collector of Central Excise v. Parle Exports (P.) Ltd. [1989] 75 STC 105 : 1989 UPTC 173 a case under the Central Excise Act, has held that the word "food" has no definition of universal application and be varied from the statute to statute. In this very case Supreme Court has given various shades of "foodstuff as defined in Oxford English Dictionary and in Webster's English Dictionary.

15. In the case of Commissioner of Sales Tax v. V.L. Industries [1999] 112 STC 311 a question arose whether "Gulkand" mixture of rose petals and sugar can be regarded as "foodstuff or food provision. It was held that the food as ordinarily understood means : material consisting of carbohydrates, fats, proteins and supplementary substances such as minerals and vitamins that is taken or absorbed into the body of an organism in order to sustain growth, repair and all vital process and to furnish energy for all activity of organism. The foodstuff in common parlance means those articles, which are eaten at the tea table. Thus "Gulkand" was not held as "foodstuff".

16. It was held in the case of State of Gujarat v. Gokaldas Trading Co. [1991] 82 STC 248 that "Bournvita" is not a foodstuff or food provision. If article which is normally eaten or if it can be offered as food to a normal person, who is found hungry, then it can be regarded as foodstuff or food provision but not otherwise.

17. In popular sense food means when one asks another have you had your food ? One means composite preparation, which normally go to constitute meal, karhi, rice, sweet meats, food, cooked, vegetable and so on. On the same line of reasoning Gujarat High Court in the case of State of Gujarat v. Chunilal Mayachand Mehta [1992] 85 STC 62 has held that "Nestle Nestum Baby Cereal" and "Nestle Nestum" cannot be said to be foodstuff.

18. "Papad" which are product made of pulses contains ingredient which have combination of other food items would supply nourishment has been held foodstuff by the Madras High Court in the case of V. Krishnan v. State of Tamil Nadu [1983] 52 STC 183.

19. The Tribunal has placed reliance upon the judgment of this Court given in the case of Anchor Sweet Products 1979 UPTC 1290. This was held that the word product enlarges the scope of the notification so as to include not only foodstuff as are commonly understood to such other articles which contains ingredients like baking powder or other substance which facilitate their use as foodstuff. Then the court considered the question as to whether "gulab jamun mix" sold by the assesses would be "foodstuff or not. The court concluded that Gulab Jamun mix can be foodstuff after giving a wider meaning to phrase "use as such" used in the notification. "Gulab Jamuns" are made after mixing "Maida" paste with water and then frying it and putting the Gulab Jamun balls in the sugar syrup. The sugar syrup undoubtedly a foodstuff as it is made out of sugar. It was held that the word foodstuff, as occurring in the notification means also such foodstuff has become edible on cooking or boiling and as the Gulab Jamun balls are mixed with another foodstuff i.e., sugar syrup, Gulab Jamun sold by the assessee would fall under item No. 56 of the notification. On a close scrutiny of the facts of the above case with the facts of the case in hand it clearly shows that the above case is distinguishable. The Gulab Jamun balls prepared out of Gulab Jamun are mixed with another foodstuff, i.e., sugar syrup. In the case in hand the food colour and essences are not foodstuff, as they are not edible themselves as understood in common parlance.

20. With the advancement of scientific technology market is flooded with the instant foods like "idly mix" the instant bara mix, gulab jamun mix. The idea behind preparation of instant mix appears to be to cut short the time taken in the process of preparing and cooking items, concerned to the barest menu and to provide instant food if the exigency or circumstances so require. The contents of such goods in question would be, food after undergoing preparation mid way with the addition of some other ingredients and processing of heating, boiling, etc. These items have their nutritive value and may be regarded as "foodstuff". But "food colour" and "essences" are not themselves "foodstuff" and therefore their addition to edible item will not make them foodstuff within the meaning of aforesaid two notifications in question.

21. In interpreting the words and phrases in the entries of taxing statute Supreme Court time and again has repeated that entries are not to understand in their scientific and technical meaning. The term and expression used in the Tariff have to be understood by their popular meaning, i.e., attached to them by those using products. Reference can be made to the recent judgment of the Supreme Court given in the case of Alpine Industries Vs. Collector of Central Excise, New Delhi,

22. There is one additional reason for not including the "essences" within the definition of word "foodstuff". The essences are the substance obtained from a plant, drug or alike by distillation, infusion etc., and containing its characteristic property in concentrated form. The foodstuff is generally understood "include solid items". Liquid items are covered by the word beverages. The beverages mean drink of any kind other than water as tea, coffee, bear and milk, etc.

23. The upshot of the above discussion is that the order of the Tribunal holding that "food colour" and "essences" are "foodstuffs" within the meaning of aforesaid notification, is not legally correct. The order of the Tribunal is liable to be set aside.

24. For the reasons given above all the four revisions are allowed and the question of law raised by the department is decided in its favour and against the dealer-opposite party.