(1964) 09 MP CK 0015

In the Madhya Pradesh High Court

Case No : M. C. C. No. 122 of 1964 (J)

Commissioner Sales Tax APPELLANT

Vs

Harichand Chandulal RESPONDENT

Date of Decision : 17-09-1964

Acts Referred:
Madhya Pradesh General Sales Tax Act, 1958 — Section 44, 7

Citation : (1964) JLJ 666

Hon'ble Judges : P.V. Dixit, C.J;K.L. Pandey, J

Bench : Division Bench

Advocate : R.J. Bhave, for the Appellant; A.P. Sen and K.K. Adhikari, for the Respondent

Judgement

P.V. Dixit, C.J.—This is a reference u/s 44 of the Madhya Pradesh General Sales Tax Act, 1958, at the instance of the Commissioner of Sales Tax, Madhya Pradesh The question which we are required to answer is:

Whether ''Khowa'' comes under the word ''curd'' in item No. 21 of Schedule I to the Act and is, therefore exempt from tax under Act ?

2. The material facts are that the assessee Harichand Chandulal of Seoni is a dealer in grains, oil-seeds and ''Khowa''. For the assessment period form 12th November 1958 to 31st October 1959 the Sales Tax Officer imposed on the assessee purchase tax u/s 7 of the Act on sales of ''Khowa'' of the value of Rs. 27,536/5/9. The assessee''s contention was that as under entry No. 21. of Schedule I to the Act ''Khowa'' was exempted from tax u/s 10 (1) of the Act, no purchase tax could be imposed on him on the sales of ''Khowa'' This contention was negatived by the Sales Tax Officer as well as in first appeal against the order of the Sales Tax Officer. It was, however, accepted in second appeal by the Sales Tax Tribunal taking the view that ''Khowa'' is ''curd''; and that, therefore, it fails within the exemption granted by entry No. 21 of Schedule I.

3. Entry No. 21 of Schedule I to the Act, as it stood at the material time, ran as

follows:

"21. Milk including condensed and powdered milk, curd and butter-milk." The words ''milk'', ''condensed and powdered milk'', ''curd'' and ''butter-milk'' used in the entry have not been defined in the Act and must, therefore, be understood in the sense they have in common parlance and in their popular meaning as understood by people who deal in the sale or purchase of milk, condensed and powdered milk, curd and butter-milk. The Supreme Court has emphasized in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola, , that the terms and expressions used in tax statutes must be construed not in any technical sense but as understood in common parlance and that if the word or term is of everyday use, it must be construed in its popular meaning, that is, "that sense which people conversant with the subject matter with which the statute is dealing would attribute to it." It would not, therefore, be permissible to put on the words used in entry No. 21 a construction giving them a special meaning. Now. Schedule 1 enumerates goods which u/s 10 (1) of the Act are exempt from tax. The exemption granted by entry No. 21 of the Schedule is a creature of statute and must be construed strictly. In The Union of India (UOI) Vs. The Commercial Tax Officer, West Bengal and Others, , it has been held that exemption granted by section 5 (2) of the Bengal Finance (Sales-Tax) Act, 1941, being the creation of the statute, must be construed strictly. No doubt, an exemption from tax given by a statutory provision must be given full scope and amplitude a d cannot be whittled down by importing limitations not inserted by the Legislature. But it is also well settled that the exemption claimed must fall clearly within the language granting exemption. In Crawford''s Statutory Construction it has been stated in paragraph 258 at page 506 that-

Provisions providing for an exemption may be properly construed strictly against the person who makes the claim of an exemption. In other words, before an exemption can be recognized, the person or property claimed to be exempt must come clearly within the language apparently granting the exemption.

4. Now, milk is in article of daily use with many people; and there can be no confusion in the mind of anybody with regard to its connotation. It is an opaque white fluid secreted by the mammary glands of female mammals for the nourishment of their young. Condensed or powdered milk, or curd, or butter milk, as generally understood, is not milk. But the scope of the connotation of the word ''milk'' has been widened in entry no. 21 of Schedule I by including in that expression "condensed and powdered milk, curd and butter-milk". ''Khowa'' is in no sense condensed or powdered milk, or curd, or butter-milk, It is a milk product which is obtained by boiling milk to a certain temperature when the fluid nature of the milk is lost and a product of certain hardness, toughness and consistency is obtained That product, which is generally known as ''Khowa'' cannot be turned into milk fluid by adding any water to it. ''Khowa'' is not, therefore, either condensed or powdered milk. Nor is it curd or butter-milk. The process by which curd is obtained from milk is altogether different. Curd is

"coagulated substance formed (naturally or artificially) by action of acids on milk". In curd there is some amount of fermentation. It is sour in taste. Butter milk is obtained when curd is churned, and some water is added to it. There is no sourness in the taste of ''Khowa''. It has the sweetness of milk and is used along with sugar in the preparation of many sweets and dishes. ''Khowa'' is no doubt a milk product, but it is not milk. What is exempted from tax under entry no. 21 is ''milk'' and not ''milk products''. It is noteworthy that wherever the Legislature intended to exempt milk product from taxation, it did so by specific enumeration in Schedule I of the product Thus item No. 32 of Schedule I makes a specific mention of ''Lassi'' So also under item no. 47 of that Schedule ''Gnee'' is exempted from tax. Both ''Ghee'' and ''Lassi'' are milk products. It is thus clear that the term ''milk'' as used in item no. 21 cannot be understood in a wide sense so as to include milk products. In our opinion, the view expressed by the Tribunal that ''Khowa'' is curd and, therefore exempt from tax under entry no. 21 is not correct.

5. Shri Sen, learned counsel appearing for for the assessee, referred us to the Hindi text of the Central provinces and Berar Sales Tax Act, 1947, giving exemption from taxation to milk and curd and specifying curd as meaning ''Dahi and Khowa''. It was suggested that in the background of the Act of 1947 the word ''curd'' as used in entry no. 21 of the act of 1958 should also be understood as including ''Khowa''. We are unable to accept this contention. The assessment here is under the Act of 1958 and not under the Act of 1947, that being so, the meaning given to the word ''curd'' in the Hindi version of the Act of 1947 can be of no assistance in the contrition of the word ''curd'' as used in entry No. 21 of Schedule I to the Act of 19 8.

6. For these reasons, our answer to the question stated for our opinion is that ''Khowa'' does not fall within the meaning of the word ''curd'' as used in item No. 21 of Schedule I to the Act of 1958, and is, therefore, not exempt from tax under the entry. In the circumstances of the case, we leave the parties to bear their own costs.