(1984) 04 RAJ CK 0007

In the Rajasthan High Court

Case No : Sales Tax Reference No. 36 of 1976

C.T.O. APPELLANT

Vs

Babu Bakery RESPONDENT

Date of Decision : 09-04-1984

Acts Referred:
Rajasthan Sales Tax Act, 1954 — Section 3(1)(a)

Citation : (1984) RLW 382 : (1984) WLN 354

Hon'ble Judges : S.K. Mal Lodha, J;Kanta Bhatnagar, J

Bench : Division Bench

Judgement

S.K. Mal Lodha, J.—The Board of Revenue for Rajasthan, Ajmer has referred the following question for our decision:

Whether in the facts and circumstance of the case, Board was justified in holding that bread is cooked food within the meaning of the term used in Section 3(1)(a) of the Sales Tax Act and hence not taxable?

The non-petitioner M/s Babu Bakery Udaimandir, Jodhpur (assessee) was assessed on January 4, 1969. Sales-tax at 2% was charged on the sale of bread. On appeal the Deputy Commissioner (Appeals), Commercial Taxes, Jodhpur set aside the assessment. The revision was also dismissed and that had led to the present Reference.

2. Section 3(1)(a) of the Rajasthan Sales Tax Act, 1954 (No. XXIX of 1954) (for short "the Act herein) as it stood at the relevant time is as under:

(3) Incidence of taxation:--(1) Subject to the provisions of this Act, every dealer whose turn over in the previous year in respect of sales or supplies of goods exceeds.

(a) In the case of a dealer who imports goods, or manufactures any goods other than cooked food or deals in cereal and pulses in any of their forms...Rs. 5,000".

According to it dealer could import goods or manufacture goods other than cooked food etc are liable to pay tax if their turn over exceeds Rs. 5,000/-. The contention of the assessee was that the bread is cooked food and, therefore, it is not liable to pay tax. In these circumstances the only question is whether bread is cooked food within the meaning of Section 3(1)(a) of the Act.

3. In Commissioner of Sales Tax, U.P. v. Jassu Ram Bakery (1976) 38 STC 451 question relating to the biscuits arose. The question arose whether biscuits are cooked food or confectionery. The learned Judges of the Allahabad High Court held that biscuit in common parlance does not come under the category of cooked food (Pakaya Huva Bhojan). According to them biscuit is generally taken as a snack or along with tea and is not generally an item of food for a meal. While taking this view they referred to The State of Bombay Vs. Virkumar Gulabchand Shah, where in it was ruled that where an expression occurring in a statute is capable of a wider as well as a narrow meaning, the question whether the wider meaning or the narrower meaning should be given to that expression would depend upon the context and the back ground. It was held in Commissioner of Sales Tax, U.P.''s. case (1976) 38 STC 451 that biscuits do not come under the category of cooked food or confectionery. This decision was followed in Commissioner of Sales Tax v. Janta Biscuits Factory (1977) 39 STC 121 and it was held that biscuits do not come under the category of cooked food and, therefore, the benefit of lower rate of tax given to cooked food including sweetmeats and confectionery other that sold in sealed or tinned containers by Notification No. ST-3123/X-1012(4)-1965 dated 1st July, 1966, issued under the U.P. Sales Tax Act, 1948 is not available to biscuits.

4. P. V. Dixit C. J. speaking for the Division Bench held in Commissioner of Sales Tax v. Ballabhadas Ishwardas (1968) 21 STC 309 that in common parlance cooked food means those things which one eats at regular meal hours. It was observed that Biscuit is no doubt a kind of food if the term is understood in a very wide sense and the process of baking involved in the manufacture of biscuits is no doubt a form of cooking, but it is not "cooked food" which one takes at meal hours, for Biscuits can be eaten alone or as adjust to other food. The aforesaid decision in Commissioner of Sales Tax''s case (1976) 38 STC 451 and Commissioner of Sales Tax''s case (1968)21 STC 309 were approved by their Lordships in Annapurna Biscuit Mfg. Co. v. Commissioner of Sales Tax (1981) 48 STC 254. It was observed there in as under:

It is a well settled rule of construction that the words used in a law imposing a tax should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. If an expression is capable of a wider meaning as well as narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case.

It will be useful to expert the following from the aforesaid decision:

It may be that biscuit is served at tea time and in its wider meaning "cooked food" may include biscuit. But ordinarily biscuit is not understood as cooked food. If a person goes to a hotel or restaurant and asks for some cooked food or "Pakaya Huva bhojan" certainly he will not be served with biscuits in Uttar Prades. While it is not necessary to state in the present case as to what all items may be called as cooked food, we can definitely say that in the context and background of the notification biscuit cannot be treated as cooked food."

In Webester''s Third (International) Dictionary bread has been defined "a food made of a dough of flour or meal from grain with added liquid shortening and a leavening agent, the dough being kneeded, shaped, allowed to rise and baked"; a loof biscuit or cake or sweetened bread dough enriched with eggs and fruit" "a loaf roll or portion of bread" and "bread made from flours other than those of cereals. In common parlance when we call breads or its slices, we refer to the bread as bakery product. The expression "cooked food" has not been defined in the Act. It must be construed as understood in common parlance. It must be given popular sense meaning that sense which people conversent with the subject matter with which the statute is dealing would attribute to it," Reference may usefully be made to Ramavtar Budhaiprasad v. The Assistant Sales Tax Officer, Akola and Anr. (1981) 18 STC 286. If a person asks for cooked food, he will not be supplied bread of the bakery. The assessee carried on the business of bakery at the relevant time. The expression "manufactures any goods other than cooked food" has some significance. There is a process of baking involved in the manufacture of bread of a bakery and it is no doubt a form of cooking but it cannot be called "cooked food" which is taken regularly during meal hours.

5. In Section 3(1) (a) of the Act, the words "excluding bakery products were inserted by the Rajasthan Finance Act, 1979 (Act No. V of 1979) with effect from April 7, 1979 after the expression "cooked food". Adopting the reasoning given in the aforesaid Allahabad, Madhya Predesh and Supreme Court decisions referred to above, we are of opinion that bread is not a cooked food within the meaning of Section 3(1) (a) of the Act as it stood then. We, therefore, answer the question in the negative, in favour of the Department and against the non-petitioner-assessee. As no body has appeared on behalf of the non-petitioner(assessee) there will be no order as to costs of this reference.