

(1956) 05 GAU CK 0003
In the Gauhati High Court
Case No : Sales Tax Reference No. 1 of 1956

Delhi Mistanna Bhandar

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 30-05-1956

Acts Referred:

Assam Sales Tax Act, 1947 — Section 32

Citation : AIR 1957 Guw 31 : (1957) 8 STC 258

Hon'ble Judges : Ram Labhaya, J; Haliram Deka, J

Bench : Division Bench

Advocate : S.M. Lahiri, A.G., F.A. Ahmed, S.K. Ghose and K.P. Chaudhary, for the Appellant; D.N. Medhi, for the Respondent

Judgement

Ram Labhaya, J.—This is a sales tax reference u/s 32 of the Assam Sales Tax Act, 1947, from the Member of the Board of Sales Tax, Assam.

2. Briefly stated, the facts giving rise to the reference, as contained in the statement of the case submitted to this Court, are that the petitioner's (M/s. Delhi Mistanna Bhandar, Police Bazar, Shillong) business was of selling sweets, puri, nimkis, sin gar as, milk, tea etc., at Shillong. The firm was registered under the Act. As a registered dealer, the turnover from sales of sweets, puri, nimkis, singaras, milk, tea etc., was assessed to sales tax by the Superintendent of Taxes on 27th June, 1953. On appeal, the correctness of the assessment was assailed. It was urged on behalf of the assessee that (1) puris, nimkis, singaras etc. were nothing but bread and they were exempt from the levy of tax ; (2) sweets prepared from milk and sugar and all milk products were also exempt, the ingredients of which they were composed, being exempt.

3. The Assistant Commissioner excluded the turnover from sales of puris and upheld the order of the Superintendent of Taxes in regard to the rest of the claim. On revision, the Commissioner of Taxes declined to interfere with the order of the Assistant Commissioner, though he agreed to refer two questions to this Court for decision on a petition u/s 32. The questions are as follows :-

(1) Whether nimkis and singaras are forms of bread, and their sales are exempt from taxation under the Assam Sales Tax Act, 1947, inasmuch as the sale of bread is exempt from taxation under the Act?

(2) Whether the sale of sweets, which are prepared from milk, flour and Sugar, are exempt from taxation inasmuch as the sales of milk, flour and sugar are exempt from taxation under the Act ?

4. The Member of the Board of Sales Tax has expressed the opinion that both the questions should be answered in the negative. He was of the opinion that nimkis and singaras are not within the ambit of the expression "bread" as used in Schedule III of the Sales Tax Act. He also was unable to agree that sweets and milk products are exempt on the ground, urged on behalf of the assesseees.

5. Mr. Ahmed, the learned counsel for the assesseees, has argued that singaras and nimkis fall within the ambit of the expression "bread" in item No. 4 of Schedule III and are thus exempt from liability to sales tax. Exemption is also claimed for these commodities under item No. 1 which exempts all cereals and pulses, including all forms of rice, except when sold in sealed containers. "Bread" may be prepared from different cereals : rice, wheat, maize, bajra ; other food grains may also be used for making bread. The argument is that when flour is converted into nimki or singara, they are not different from bread. If these products could be brought within the purview of the expression "bread", as used in item No. 4 of the Schedule, it would not be necessary to consider whether they could be exempted as cereals under item No. 1.

6. The expression "bread" has not been defined in the Act. There is a dispute about its meaning and connotation. The case of the taxing authorities is that both the products in question cannot be described either as "bread" or cereals. In the absence of a definition, the dictionary meaning of the expression "bread" may be taken into consideration. According to the Oxford English Dictionary, 1933 Edition, "a word originally meaning 'piece, bit, frustum' has passed through the senses of 'piece of bread', 'broken bread', into that of 'bread' as a substance; while at the same time the original word for 'bread, loaf, panis' has been restricted to the undivided article as shaped and baked, the 'loaf'." It is described as "a well-known article of food prepared by moistening, kneading, and baking meal or flour, generally with the addition of yeast or leaven". What is known as "double roti" in India is "prepared according to the process referred to in the dictionary. "Bread", therefore, would undoubtedly include double roti. But the meaning that the expression "bread" has come to acquire in course of time would include even bread prepared without the addition of yeast or leaven. Generally yeast or leaven is used in preparing bread, but the dictionary sense of the expression "bread" does not limit its use to bread prepared with the addition of leaven or yeast. Roti or loaf of bread, whether baked in oven or otherwise, after moistening or kneading atta or flour, would be covered by the expression. It would be, therefore, possible to exempt chapathis and tanure-ki-roti from sales tax by treating them as bread for the purposes of item No. 4 of the schedule

without extending the meaning of the expression given in the standard dictionary referred to above.

7. In *Kayani and Co. v. Commissioner of Sales Tax* AIR 1953 Hyd. 252, on which Mr. Ahmed has relied in support of his contention, it was held that the term "bread" includes all forms of bread which are prepared by moistening, kneading, baking, frying or roasting meal or flour, with or without the addition of yeast, leaven or any other substance for puffing or lightening the article. Shirmal and tanure-ki-roti were held to be different names of roti and were exempted from the levy. The learned Judges observed that "when the Legislature uses a term relating to any article of food, we must construe it in the sense in which it is understood in this country, and not elsewhere." In their view, the intention of the Legislature was to include all kinds of bread which are consumed by the citizens of India, though prepared in different ways or called by different names. They gave the expression "bread" occurring in the Hyderabad General Sales Tax Act of 1950 a much wider meaning than its dictionary sense would justify. They have included two processes, frying and roasting, in addition to the processes given in the Oxford Dictionary. These processes are material. Frying and roasting are chemical processes which involve the use of some kind of fat. What is prepared is not flour or cereal alone. The finished product is a combination of two, and sometimes more commodities. I would, therefore, with profound respect to their Lordships, limit the meaning of the expression to its dictionary sense. The Act is in English and it uses English words. The recognised meaning of the expression which it carries in the English speaking world may alone be attributed to it. No extended meaning may be given to it even when used by the Indian Legislature. I do not find ample justification for the view that the term "bread" has come to be used in India in such a comprehensive sense as to include all products of cereals which are used in place of or as substitutes for bread. They may serve the same purpose, but they may not be bread in the right sense. The standard dictionaries do not recognise that the word has assumed any extended meaning in India. Shirmal, puri, paratas, loochis and kachuris, all are not covered by the expression "bread". They have different names ; even the word "roti" does not apply to them all. The Legislature has given no indication, either in the Hyderabad Act or in the Assam Act, that it has used the word "bread" in a sense different from or wider than what it commands in the English language. Whilst, therefore, chapathis and tanure-ki-roti may be regarded as covered by the expression "bread", any general proposition that the term "bread" includes all forms or kinds of bread prepared even by frying or roasting meal or flour, with or without the addition of yeast, is difficult to subscribe.

8. Double roti alone is not exempt. Chapathi and tanure-ki-roti are also covered by the expression. There is thus no discrimination between different classes of the population. A necessary article of food used by the rich and poor alike, though in different forms, is included in the list of exemptions.

9. Even if the interpretation placed on the expression "bread" in the Hyderabad

case is adopted for purposes of argument, I still do not see how we can treat singara and nimki as bread for purposes of exemption under the Act. The learned Judges in the Hyderabad case laid down that "bread" should include all forms or kinds of bread which are prepared by moistening, kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven or any other substance for puffing or lightening the articles. Mr. Ahmed urges that frying is a way of preparing bread, and nimki is no more than fried flour. The same process of frying, according to him, is employed in preparing singaras. The argument overlooks the fact that whilst the different processes of preparing bread stated by the learned Judges include frying, the expression "bread" was applied only to different forms or kinds of bread prepared in India. The question, therefore, is whether nimkis and singaras are regarded or used as bread in any part of India. These are salted snacks; they are served as articles of luxury. They usually do not form part of the principal meals; no one ever describes them as bread. No one would get singaras and nimkis if he asks for bread or roti. Conversely, there is no likelihood of any one getting roti or chapathi or panita or bread in any form if he asks for singaras or nimkis. Singaras and nimkis are articles of food, but they are a class apart. It should not be overlooked that singaras and nimkis are not merely fried flour ; ghee or some kind of fat is mixed before the kneaded flour is utilised for preparing nimki or singara. Singaras also have potatoes, vegetables, or minced meat in them. Even according to the Hyderabad decision, they could not be described as bread.

10. The two decisions of this Court, on which Mr. Ahmed and the learned Advocate-General both relied, do not help the assesseees. In *Kapildeoram Baijnath Prosad v. J.K. Das* 1954 5 S.T.C. 365 (GH), the question was whether chira and muri were exempt from taxation, as forms of rice. It was held that they were exempt from taxation as cereals under item No. I of Schedule III of the Act. I was a party to that decision. My view was that the expression "cereal" had a limited connotation in which it signified cereals in the form in which they manifest themselves. It also had a wider meaning which included prepared foodstuff of grain like oatmeal or flaked corn. As the Legislature did not indicate in what sense the expression "cereal" was to be used, I felt that a wider meaning could be given to it. Chira and muri thus were found to be entitled to exemption under item No. 1 of the third Schedule. In my view, in order to earn exemption under item No. 1, it was necessary that they should remain cereals unmixed, and unadulterated with other commercial commodities and ought to be capable of being described as cereals. If this rule is applied, singaras and nimkis would not fall even under item No. 1.

11. The learned Chief Justice expressed the opinion that as long as a thing continues to be a cereal and retains its form as such, although it may have undergone some simple processes of boiling or parching, it is difficult to hold that it would not be covered by the exemption provided under item No. 1 of Schedule III. This proposition emphasises that the cereal should retain its form as such. In *Bhakti Bhusan Goswami v. J.C. Goswami* Civil Rule No. 98 of 1953; Unreported,

the learned Chief Justice adhered to the same view. He observed, when dealing with the items of Schedule III, that they should be taken to cover the whole range of the articles mentioned in an exemption clause so long as they prima facie continue to be what they are. The principle so enunciated in the two decisions is not at all helpful to the assesseees. Mr. Ahmed, however, has argued that the learned Chief Justice applied the rule as stated by him to cooked rice in *Kapildeoram Baijnath Prosad v. J.K. Das* [1954] 5 S.T.C. 365 (GH), and also to cooked rice, dal, fish, meat, vegetables and dahi in *Bhakti Bhusan Goswami v. J.C. Goswami* Civil Rule No. 98 of 1953 Assam, disposed of on 30th March, 1954. He regarded these articles of food as retaining their form even though they were cooked. We are not dealing with any of the foodstuffs to which reference has been made by the learned Chief Justice in his two judgments. The observations in *Kapildeoram Baijnath Prosad v. J.K. Das* 1954 5 S.T.C. 365 SC, about cooked rice were obiter. The decision in *Bhakti Bhusan Goswami v. J.C. Goswami* Civil Rule No. 98 of 1953 Assam is distinguishable on facts; the foodstuffs we are dealing with are different from those in that case. No opinion was expressed in that case about singaras or nimkis, nor would they fall within the scope of the rule as stated by the learned Chief Justice. A decision is an authority and is valuable as a precedent only on the facts on which it is based, and facts of the cases relied on being different, they are of no avail to the assesseees. Singaras and nimkis, in my opinion, are not covered by any item of Schedule III.

12. So far as sweets are concerned, the contention of Mr. Ahmed is that as sweets are prepared from milk, sugar, and flour-items that are exempt under Schedule III-their combination or admixture should not deprive them of the exemption which they carry in their original state. This contention has got absolutely no substance. Sweets cannot be described as sugar, milk or flour. In the process of preparation of sweets milk, sugar and flour are mixed up with other ingredients, like vegetable ghee, which is not exempt from sales tax ; they are completely transformed in the process of manufacture ; they are also not articles which are essential for the life of the community ; they are specifically excluded from the list of essentials by the Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, 1952 (Act LII of 1952) ; they lose the privilege of exemption by being mixed up and by the transformation they undergo from the chemical processes to which they are subjected before they reach the stage of sweets.

13. The Hyderabad case on which Mr. Ahmed relies answers this contention of his completely. It was held in that case that articles prepared from exempted stuffs are not exempt, and the learned Judges declined to hold that the expression "rice" included cooked rice or biriyani or pulao. But even if we assume that cooked rice was entitled to exemption, the rule could not be extended to include sweets, for reasons stated above. In my opinion, the view that has prevailed with the taxing authorities is correct. I answer both the questions in the negative.

Deka, J.

14. Two points have been referred to us u/s 32 of the Assam Sales Tax Act (Act XVII of 1947) (which I shall hereafter call the Act for the sake of brevity), and they are as follows :

(1) Whether nimkis and singaras are forms of bread and their sales are exempt from taxation under the Assam Sales Tax Act, 1947, inasmuch as the sale of bread is exempt from taxation under the Act ?

(2) Whether the sale of sweets, which are prepared from milk, flour and sugar, is exempt from taxation inasmuch as the sales of milk, flour and sugar are exempt from taxation under the Act ?

15. The first question refers to nimkis and singaras, and the second to "sweets" prepared from milk, flour and sugar. In the statement of facts prepared u/s 32 (4), the exact process of preparation of nimkis and singaras is not given, nor their condiments, but it is suggested that they contain articles on which sales tax is due. We have perforce to use our own knowledge as to what those things are and how they are prepared. Both these articles contain flour and they are fried in ghee, vegetable oil or some other oily substance. The singara is stuffed with potato, vegetable or the like, and both these articles are salted. The stuffed articles might contain a little of pepper and spice.

16. Section 7 of the Act says that "subject to the conditions and exceptions, if any, set out in Schedule III attached to this Act, the sale of goods specified therein shall be exempt from taxation under this Act". Item 4 of the said Schedule III is "bread". The bread is, therefore, exempt from taxation-whether we may call nimkis and singaras bread in the sense in which it has been used in Schedule III. The learned Member of the Board of Sales Tax, Assam, has given the dictionary meaning of the word "bread" as food made out of flour or meal baked. He further states that "bread" connotes a staple food for the subsistence of human beings,-as we find in the expression "Men do not live by bread alone". According to the learned Member of the Board, neither singara nor nimki is a staple food, and that the process of preparation in either case is more involved than mere baking. In his opinion, either of these two articles is something more than bread, and, as such, taxable.

17. Mr. F. Ahmed for the assessee contends that these two articles are not taxable, and he bases his argument on two grounds : (1) that since puri is considered fit to be exempted from tax by the Assistant Commissioner by his order of 15th February, 1954, singara and nimki also ought to have been so exempted, and (2) the case laws are in favour of the contention that these articles are of the same class as common bread as used by the people of India, and he relies mainly on a decision of the Hyderabad High Court in Kayani and Co. v. Commissioner of Sales Tax 1953 4 S.T.C. 387 SC and some decisions of this Court, Kapildeoram Baijnath Prosiid v. J.K. Das 1954 5 S.T.C. 365 SC and Bhakti Bhusan Goswami v. J.C. Goswami Civil Rule No. 98 of 1953 dated 30th March, 1954, an unreported decision of this Court.

18. It is not for us to discuss as to whether puri is rightly exempted from the list of taxable articles, as it is not covered by the reference, nor can we take the finding to be *ex hypothesi* correct. We must examine independently whether these two articles, nimki and singara, can be classed as "bread", or as mere cereal, as contended by the learned Advocate for the assessee.

19. In *Kayani and Co. v. Commissioner of Sales Tax* 1953 4 S.T.C. 387 SC what was held by the Hyderabad High Court was that the word "bread" (which was exempted from tax under the Hyderabad General Sales Tax Act) was not confined to loaf or double roti but included "all forms or kinds of bread which are prepared by moistening, kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven, or any other substance for puffing or lightening the article". Even if we accept this decision as conclusive, neither nimki nor singara can be brought within the definition of bread, as they are prepared by processes not meant for preparation of bread or chapati and substances, other than for puffing and lightening are added in their preparation to give them their natural taste and colour. Mr. Ahmed argued that singara may be a slight improvement on a bread as it contains some potato or other vegetables, but nimki is a plain preparation of flour and ghee, and, as such, it may be included in the list of bread as shirmal, a bread-like preparation of milk, flour and sweet, was included in the list of bread by the Hyderabad High Court.

20. *Kapildeoram Baijnath Prosad v. J.K. Das* 1954 5 S.T.C. 365 SC was a decision of this Court by a Division Bench, which held that chira and muri are exempt from tax, in the opinion of Sarjoo Prosad, C.J., they being forms of rice, and in the opinion of Ram Labhaya, J., they being cereals. The Chief Justice also observes at one place in the said judgment that "chira and muri, to all intents and purposes, are cereals, and have not lost their character of cereals by any process of transformation so as to make us call them by any other name". In the said judgment, his Lordship observes at another place that "if cereal or rice has been so mixed up with other ingredients or so transformed as not to be reasonably called by that name, the position would be undoubtedly different." These lines are useful in the matter of our coming to a finding in this case.

21. Ram Labhaya, J., observes that if the expression "cereal" is used in a broad and comprehensive sense, in which it would include readily edible food, which has been prepared by merely conditioning a cereal in its original state, both chira and muri would be covered by item No. 1 of the third Schedule as they retain the quality of cereal whose original state has ceased to exist. His Lordship observes lower down that where cereals are sold along with other commercial articles, they lose the privilege of exemption.

22. Applying these tests to the present case, we find that in nitnki and singara, the flour or wheat cannot be said to be merely conditioned by a mechanical or simple process just to make them fit for human consumption, but, on the other hand, "they are mixed with other ingredients or are so transformed as not to be reasonably called by that name". In the present context, they were more often

sold with commercial articles like tea and coffee in a hotel, and in the language of Ram Labhaya, J., "they lose the privilege of exemption.

23. In *Bhakti Bhusan Goswami v. J.N. Goswami* Civil Rule No. 98 of 1953 the Honourable Chief Justice observed that in the exemption list in Schedule III of the Act, in the absence of any definite denomination of the articles concerned, "they should be taken to cover the whole range of the articles mentioned in the exemption clause so long as they prima facie continue to be what they are.

24. We cannot say that the articles in the present case continued prima facie to be what they are, -- rather they changed their forms considerably and became something else. With due respect to the view held by the Judges of the Hyderabad High Court in *Kayani and Co.*'s case 1953 4 S.T.C. 387 SC regarding shirmal, I cannot say that nimki could be just a bread or cereal or that singara belongs to the same category. What I have said as to nimki or singara applies with still greater force to sweets prepared from a combination of flour, milk and sugar, and, therefore, I am of opinion that both the points under reference should be answered in the negative.

25. Apart from the points I have already discussed, there is another aspect of the question which, to my mind, is not totally negligible, and that is what might have been the intention of the Legislature in having Section 7 of the Act and Schedule III in connexion therewith. The schedule gives a list of articles exempted from taxation and, on a close scrutiny, it will appear that it relates mainly to the common necessities of life. Milk, ghee or butter may be rich food, but even then they are common man's food. The list speaks of no combination thereof as exempted, and any sweets or other preparations cannot be included in the list without doing violence to the words of the statute.

26. For reasons I have already indicated, I agree with my learned brother that the questions under reference should be answered in the negative.