(1970) 11 AHC CK 0019

In the Allahabad High Court

Case No : Sales Tax Reference No''s. 126, 127 and 128 of 1970

Dina Nath Lassiwala APPELLANT

Vs

The State of U.P. RESPONDENT

Date of Decision : 13-11-1970

Acts Referred:
Uttar Pradesh Sales Tax Act, 1948 — Section 11(1), 4(1)

Citation : (1971) 28 STC 173

Hon'ble Judges : R.S. Pathak, J;R.L. Gulati, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.S. Pathak, J.—The Additional Judge (Revisions) Sales Tax, Bareilly Range, Bareilly, has referred the following two questions u/s 11(1) of the U.P. Sales Tax Act :

(1) Whether lassi is a milk product and is exempted u/s 4(1) of the U.P. Sales Tax Act.

(2) Whether lassi is a cooked food and is covered under Notification No. ST-2190/X-1097-55 dated 24th July, 1957.

2. The assessee, M/s. Dina Nath Lassiwala, carries on business, as his name indicates, in the preparation and supply of lassi. Lassi is prepared from curd by adding water and a small quantity of sugar as required. In assessment proceedings for the years 1963-64, 1964-65 and 1965-66 the assessee was assessed to sales tax on the turnover of lassi. His appeals against the assessments were dismissed by the appellate authority. Thereafter, his revision applications were dismissed by the Additional Judge (Revisions) Sales Tax. And now these references have been made.

3. The first question is whether lassi is a milk product and is exempt u/s 4(1) of the U.P. Sales Tax Act. Section 4(1) of the Act provides:

4. Exemption from tax.--(1) No tax shall be payable on?

(a) the sale of water, salt...milk,...and any other goods which the State Government may, by notification in the Official Gazette, exempt from time to time; and

(b)...

By Notification No. ST-911/X dated 31st March, 1956, the State Government exempted

10. Milk and milk products such as chhena, dahi, khoa, butter and cream but excluding (1) products sold in sealed containers; and (2) sweetmeats.

4. This provision was repeated from time to time with minor changes, but the exemption in respect of milk and milk products such as chhena and dahi continued throughout. It will be seen that the reference to chhena and dahi is illustrative only of what is intended by the expression "milk products". It is not exhaustive of the content of that expression. Having regard to the comprehensive scope which the State Government intended to convey by the use of that expression, it seems to us only right that lassi should also be included within that scope. Lassi, after all, is prepared by merely adding water to dahi and churning it. It is beyond dispute that dahi is a milk product and, in our opinion, the addition of water to it results in a preparation which cannot but be considered as a milk product also. We should be guilty of indulging in hair-splitting if we did not treat lassi as a milk product merely because it was produced from dahi and not directly from milk.

5. In the circumstances, we hold that lassi is a milk product and is exempt from sales tax by reason of Notification No. ST-911/X dated 31st March, 1956. The first question is answered in the affirmative.

6. In view of the answer to the first question, learned Counsel for the assessee does not press for an answer to the second question.

7. The assessee is entitled to his costs which we assess at Rs. 50 in each case. Counsel''s fee is assessed in the same figure.

