
(1965) 10 GUJ CK 0007
In the Gujarat High Court
Case No : Sales Tax Reference No. 1 of 1965

Govindshram Hotel

APPELLANT

Vs

The State of Gujarat

RESPONDENT

Date of Decision : 29-10-1965

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 5, 52

Citation : (1966) 17 STC 100

Hon'ble Judges : P.N. Bhagwati, J;J.M. Shelat, J

Bench : Division Bench

Advocate : I.M. Nanavaty, for the Appellant; A.D. Desai, Assistant Government Pleader, instructed by M.G. Doshit, Additional Government Pleader, for the Respondent

Judgement

Bhagwati, J.—A short question of construction of entry 14 of Schedule A to the Bombay Sales Tax Act, 1959, arises on this reference. The applicants carry on business of running a hotel and in the course of such business they serve cooked food and non-alcoholic drinks for consumption in the hotel and they also enter into catering contracts under which they serve cooked food and non-alcoholic drinks at their customers' premises through their servants for consumption there. On 2nd January, 1960, the applicants served through their servants fifty plates of refreshments consisting of pendas, bananas, wafers and tea at a price not exceeding rupee one for each person in pursuance of an order placed by A. V. Parekh Institute for consumption at the premises of the Institute. The applicants then applied to the Deputy Commissioner of Sales Tax u/s 52 for determination of the question whether any tax was payable on the sales of refreshments made to A. V. Parekh Institute. The applicants contended that the sales were covered by entry 14 of Schedule A and were, therefore, exempt from tax, but this contention was negatived by the Deputy Commissioner of Sales Tax. The applicants, therefore, preferred an appeal to the Tribunal but the Tribunal also took the same view and held that entry 14 of Schedule A exempted sale of cooked food and non-alcoholic drinks only when they were served in the hotel

premises or immediately outside or within a reasonable distance of the hotel premises and service inside other private premises could not be regarded as service "outside" the hotel premises within the meaning of entry 14 of Schedule A. The Tribunal accordingly confirmed the order of the Deputy Commissioner of Sales Tax. This view of the Tribunal is now challenged before us in the present reference.

2. The determination of the question submitted for our opinion turns on the true interpretation of entry 14 of Schedule A. The question becomes relevant because u/s 5 no tax is payable on the sales of any goods specified in Schedule A and if the refreshments sold by the applicants to A. V. Parekh Institute fall within entry 14 of Schedule A the sales would be exempt from tax. Entry 14 of Schedule A as it stood at the material time was in the following :-

"SCHEDULE - A -----			
Serial Description of goods	Conditions	No. exemptions subject to which exemption is granted	
-----	-----	(1)	(2) (3)

Cooked food and non-alcoholic drinks served at one time at a price of not more than one rupee per person, for consumption at or outside any eating house, restaurant, hotel, refreshment room or boarding establishment which is not a shop or establishment conducted primarily for the sale of sweetmeats, confectionery, cakes, biscuits or pastries.			

3. It is clear on a plain reading of the entry that the following conditions must be satisfied in order to attract the applicability of the entry, namely : (i) the goods sold must be cooked food and non alcoholic drinks; (ii) they must be served at one time at a price of not more than one rupee per person; (iii) they must be served for consumption and not for sale or any other purpose; and (iv) the service must be for consumption at or outside an eating house, restaurant, hotel, refreshment room or boarding establishment not falling within the excepted category. Now there was no dispute between the parties that the first three conditions were satisfied in the case of sales of refreshments made by the applicants to A. V. Parekh Institute, but the contest centred round the question whether the fourth condition was satisfied. The hotel of the applicants was not a shop or establishment conducted primarily for the sale of sweetmeats, confectionery, cakes, biscuits or pastries and did not, therefore, come within the excepted category, but the point of the debate was whether service for consumption at the premises of A. V. Parekh Institute could be said to be service for consumption "at or outside" the hotel of the applicants within the meaning of the entry. The argument of the Revenue was - and that was the argument which found favour with the Tribunal - that in the context and having regard to the collocation of words, "at or outside" in the entry meant inside the establishment or immediately outside or in the immediate vicinity of the establishment and

consequently cooked food and non-alcoholic drinks served for consumption at the premises of A. V. Parekh Institute could not be regarded as served for consumption "at or outside" the applicants' hotel. The answer which the applicants gave to this argument was that having regard to the object and purpose of the entry and its legislative history, there was no reason to give a narrow and constricted meaning to the expression "at or outside" which according to its plain natural meaning meant not only inside or immediately outside the establishment but also anywhere outside the establishment, whether such place be in the immediate vicinity of the establishment, or far way from the establishment and service of cooked food and non-alcoholic drinks at the premises of A. V. Parekh Institute was, therefore, service for consumption outside the applicants' hotel within the meaning of the entry. These rival contentions raised a narrow but interesting question construction which we shall now proceed to examine.

4. It is a sound rule of construction of a statute originally laid down in Heydon's case (3 Co. Rep. 7a; 76 E.R. 637), and reaffirmed by Earl of Halsbury in Eastmar Photographic Material Co. v. Comptroller-General of Patents, Designs and Trade Marks ([1898] A.C. 571) that :-

"..... to construe the statute in question, it is not only legitimate but highly convenient to refer both to the former Act and to the ascertained evils to which the former Act had given rise, and to the later Act which provided the remedy"

5. In order to arrive at a proper interpretation of entry 14 of Schedule A, it is, therefore, necessary to consider how the matter stood immediately before the enactment of entry 14 of Schedule A, what the mischief was for which the old law did not provide and the remedy provided by entry 14 of Schedule A to cure that mischief. Prior to the coming into force of the Bombay Sales Tax Act, 1959, the law relating to sales tax which was in force was the Bombay Sales Tax Act, 1953, and the entry in that Act corresponding to entry 14 of Schedule A was entry 22 of Schedule A which was in the following terms :-

SCHEDULE - A	Serial Description of goods	Conditions and exemptions	No. subject to which exemption has been granted
	11	Food and non-alcoholic Except when the cost of food drinks consumed at a hotel, and drinks consumed at one restaurant, refreshment time by one person exceeds room, eating house or other rupee one." place where such food and drinks are served.	

6. This entry required that food and non-alcoholic drinks in order to be exempt from tax should be consumed "at" a hotel, restaurant, refreshment room, eating house or other place where such food and drinks are served. In some cases which came up before the Tribunal under this entry, a question arose as to the

true interpretation of the word "at" and the Tribunal interpreted that word to mean not only "in" but also "immediately outside" so that sale of food and non-alcoholic drinks served and consumed immediately outside the eating establishment in front of it was held to be exempt from tax under this entry. The reasons which weighed with the Tribunal in taking this view were, first, that the Legislature had used the word "at" and not "in" and secondly, in many eating establishments having small and inadequate premises, food and non-alcoholic drinks are often served by them to customers standing immediately outside the premises and the customers consume such food and non-alcoholic drinks standing, make payment at the counter and walk away and such consumption though not consumption in the eating establishment would certainly be consumption "at" the eating establishment. But a considerable amount of difficulty and hardship was caused to owners of eating establishments under this entry. The sales of food and non-alcoholic drinks made by them were exempt from tax where food and non-alcoholic drinks were consumed in the eating establishment or immediately outside the eating establishment but where food and non-alcoholic drinks were served by them at other places or though served at the eating establishment were taken away by the customers for consumption elsewhere, the sales were not exempt from tax. Now by the very nature of the business they could not possibly maintain separate accounts in respect of these two categories of sales, and the Sales Tax Authorities, therefore, used to estimate the taxable sales by reference to such uncertain and undeterminative factors as the number of tables in the area of the eating establishment, the number of waiters employed, the area of the owners of eating establishments etc. This caused great hardship to the owners of eating establishments and often resulted in unfair and unjust taxation and moreover there was really no valid or cogent reason to differentiate between sale of food and non-alcoholic drinks for consumption at the eating establishment and sale of food and non-alcoholic drinks for consumption elsewhere so long as the basic condition was satisfied, namely, that the cost of food and non-alcoholic drinks consumed at one time should not exceed one rupee per person. The Legislature, therefore while enacting the Bombay Sales Tax Act, 1959, introduced the corresponding entry 14 of Schedule A in different terms and instead of confining the exemption to cases where food and non-alcoholic drinks are consumed "at the eating establishment" extended the scope of the exemption by providing that the consumption may be "at or outside" the eating establishment. The Legislature while extending the scope of the exemption in this direction limited it in another by confining it to cooked food instead of any kind of food but that is not a matter which should detain us since what was sold by the applicants in the present case was admittedly cooked food along with non-alcoholic drinks. It will be seen from what is stated above that when the Legislature enacted the Bombay Sales Tax Act, 1959, the Legislature had before it, entry 22 of Schedule A to the Bombay Sales Tax Act, 1953, which as judicially construed by the Tribunal covered food and non-alcoholic drinks consumed immediately outside the eating establishment and it was, therefore, sufficient for the Legislature to repeat that entry in the new Act

without any amendment if the Legislature wanted to continue the exemption within the same limits, but the Legislature deliberately added the words "or outside" in order to enlarge the coverage of the exemption with a view to curing the mischief which the old entry had revealed and eliminating the hardship and difficulty which were being experienced by the owners of eating establishments under the old entry. Now under entry 14 of Schedule A sales of cooked food and non-alcoholic drinks served by an eating establishment not falling within the excepted category are exempt from tax whether the consumption takes place in or immediately outside the eating establishment or at any other place outside the eating establishment. If the word "outside" in entry 14 of Schedule A is interpreted to mean immediately outside, we would be sinning against several well-established rules of construction. In the first place such interpretation would render the words "or outside" totally superfluous for the same legal effect would equally be brought about by the use of the single word "at" as already held by the Tribunal while interpreting the old entry 22 of Schedule A. Secondly, by accepting such interpretation we would be placing an artificially narrow and constricted meaning on the word "outside". That word is a word of ordinary English usage and according to its plain natural meaning it mean any place in the wide open world outside the eating establishment. The premises of A. V. Parekh Institute would certainly be outside the eating establishment of the applicants according to the ordinary connotation of that word. And thirdly, the object and purpose of the Legislature in adding the word "or outside" would be clearly set at naught if we regard the addition of those words as having been made by the Legislature merely *ex super abundanti cautela*. Moreover in reason and on principle also there is no basis for the supposed distinction between sale of cooked food and non-alcoholic drinks when they are served for consumption in or immediately outside the eating establishment and sale of cooked food and non-alcoholic drinks when they are served for consumption at any other place outside the eating establishment. The object of the Legislature in granting exemption under entry 14 of Schedule A clearly is that cooked food and non-alcoholic drinks being almost the bare necessities of life, no tax should be chargeable by the State on sale of cooked food and non-alcoholic drinks provided of course they are served at one time at a price not exceeding one rupee per person, this latter condition being introduced to secure that the benefit of the exemption should be available only to the common man who would ordinarily not consume at one time cooked food and non-alcoholic drinks exceeding one rupee and if that be the object of enactment of entry 14 of Schedule A, we do not see what difference it should make whether cooked food and non-alcoholic drinks are served by the eating establishment to the common customer for consumption in or immediately outside the eating establishment or at any other place outside the eating establishment. The *raison d'etre* of the exemption would apply equally in both cases and the construction which we are inclined to place on entry 14 of Schedule A accords more with the legislative object and implements it more fully and effectively than the construction canvassed on behalf of the Revenue. We are, therefore, of the view that the exemption granted under entry 14 of

Schedule A is available not only where cooked food and non-alcoholic drinks are served by an eating establishment (other than that falling within the excepted category) for consumption in or immediately outside the eating establishment but also where cooked food and non-alcoholic drinks are served by the eating establishment at any other place outside the eating establishment for at any other place outside the eating establishment.

7. Our answers to the questions referred to us, therefore, are : Question (a) in the affirmative and question (b) in the negative. In view of our answer to question (b), the two subsidiary questions under question (c) do not arise. The State will pay the costs of the reference to the applicants.

8. Reference answered accordingly.