(1974) 07 AP CK 0009

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 4859/72 and 5741/73

International Foods APPELLANT

Vs

Collector of Central Excise RESPONDENT

Date of Decision : 31-07-1974

Acts Referred:
Central Excises and Salt Act, 1944 — Section 2, 3, 3(2)

Citation : (1978) 2 ELT 50

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Muktadar, J.—Is wafer a biscuit ? It has become necessary to give a ruling on this question because the Collector, Central Excise, Hyderabad has levied duty and also penalty on wafers as he was of the opinion that wafers are included in the category of biscuits which were considered to be excisable goods within the meaning of Section 2(d) of the Central Excises and Salt Act, 1944 (hereinafter referred to as the Act). The petitioner is the proprietor of a concern known as Messrs International Foods. The firm is engaged in the manufacture of wafers and cones. The first respondent levied excise duty on the wafers manufactured by the petitioner under the Act.

2. It is the case of the petitioner that wafer does not come within the category of biscuits and, therefore, they are not liable for assessment of duty as they are not excisable goods as defined u/s 2(d) of the Act. The petitioner, therefore, prays for a declaration that wafers are. not covered by the expression "excisable golds'''' and hence are, not chargeable to duty.

3. Mr. V. Jagannadha Rao, in support of his contention that wafers are not biscuits first reminds me of the established principle of interpretation that in construing fiscal statutes and in determining the liability of a subject to tax one must have regard to the strict letter of the law and not merely to the spirit of the

statute or the substance of the law. He also reminds me that a provision in a fiscal statute which is intended for the benefit of the tax payer must be construed liberally in favour of the tax payer with a view to ensuring benefit to him and not in a narrow and pedantic manner With an eye to deprive him of the benefit. With these reminders he proceeds to argue that until 1970 biscuits were not considered to be excisable goods but by the Finance Act 1970, biscuits were included as item I(c) in the First Schedule to the Act, He further contends by reference to encyclopaedia Britannia that the processes in the manufacture of biscuits and in the manufacture of wafers are completely different and, therefore the word ''biscuit'' cannot under any circumstances be considered to include wafer. In order to appreciate the contention of the learned Advocate it is necessary to examine the relevant provisions of the Act. Section 2(d) of the Act, defines excisable goods to mean goods specified in the First Schedule as being subject to a duty of excise and include salt. Section 3 of the Act, is a charging section and it provides that there shall be levied and collected in such manner as may be prescribed duties of excise on all excisable goods other than salt which are produced or manufactured in India. Sub-section (2) of Section 3 provides that the Central Government may, by notification in the official Gazette, fix, for the purpose of levying the said duties, tariff values of any articles enumerated either specifically or under general headings, in the First Schedule as Chargeable with duty ad valorem and may alter any tariff values for the time being in force. In furtherance of this Section, biscuits were included as Item I(c) in the First Schedule. The 1st respondent in his counter has stated that he has considered wafers as biscuits because wafers are known as biscuits in the market and it is common experience to find wafers packed in fancy tin boxes by well known manufacturers such as J.B. Manghram and Co., Shalimar Biscuits and Parle Products. Another reason which prompted the first respondent to consider wafers in the category of biscuits is the meaninig given to wafer in chamber''s Twentieth Century Dictionary as "very thin crisp cake or biscuit baked in. Wafer-irons or tongs, formerly eaten. It is also stated in the counter that Corpus Juris Secundum describes wafer as a thin cake or biscuit. Since biscuits are included as food product in tariff Item I(c) of the First Schedule to the Act, he was of the opinion that Wafers came within the category of biscuits and consequently were assessable to duty under the Act.

4. In Oxford Dictionary the word ''biscuit'' means a piece of unleavened bread of various materials, usually crisp, dry, hard and in small fiat thin cakes, and the Word ''wafer'' means a kind of very thin sweet honeycomb faced biscuit now chiefly eaten with ices; thin disk of unleavened bread used in Ucharist. Similarly in Chambers'' Dictionary biscuit means hard dry bread in small cakes; a soft round cake; and wafers means a very thin crisp cake or biscuit baked in wafer-irons or tongs, formerly eaten with wine; a similar biscuit eaten with ice-cream a thin round cake of unleavened bread. These definitions leave us in no doubt that wafer is a kind of biscuit. Although it might be different in size and shape. Mr. V. Jagannandha Rao has taken me through Encylopaedia Britannica to show that

the method of manufacture of biscuits and wafers is completely different and, therefore, it would not be proper to place wafers in the category of biscuits. In Encyclopadia Britannica, 1953 Education, it is stated that the variety of products by the term biscuits has shown a marked increase since the beginning of the 20th Century, and the products of a large modem biscuit bakery include a great number of specialized varieties of which the composition and methods of manufacture differ widely and that in the United States among the most popular varieties are also sugar and other wafers". The ingredients used in biscuits are numerous and of these wheat flour is the most important. The type of flour used depends upon the kind of biscuit to be produced and varies. from a very soft flour, used in the more tender cookies, to "stronger" flours, used in soda crackers, containing more and stronger gluten. In addition to the common white wheat flour, other cereal flours such as whole wheat, oatmeal rye, corn, rice, soy and arrowroot flour may be used to give variations in flavour. It is also stated that the manufacture of biscuits varies considerably depending upon the type to be produced. The Encyclopaedia Brittanica defines wafer as a thin flat cake or biscuit. Thus, it leaves us in no doubt that wafer is a varity of biscuit. Once this position is accepted wafer being a variety of biscuit is liable to excise duty under the Act Mr. V. Jagannadha Rao, contended that a perusal of the counter affidavit filed by the respondent No. 1 would show that he had considered wafer to be a biscuit because wafers are known as biscuits in the market and not as to whether wafers are biscuit objectively. Mr. Subrahmanya Ready counters this contention stating that the respondent has considered wafers as a variety of biscuits not only because they are known as biscuits in market but also on the ground that the meaning assigned to biscuits and wafers in the Chamber''s 20th Century Dictionary and also in Corpus Juris Secudum, where in wafer is described as a thin cake or biscuit. Mr Sub-rahmanya Reddy contended that the word ''goods'' is not at all defined in the At and, therefore, either a dictionary meaning should be given the word ''goods'' or the word ''wafer'' as known to the market and since wafers are known as biscuits in the duty levied is proper. In support of his contention he cites a ruling in South Bihar Sugar Mills Ltd., etc. Vs. Union of India (UOI) and Others, where it was held that as the Act does not define goods the legislature must be taken to have used that word in its ordinary dictionary meaning. The dictionary meaning is that to become goods it must be something which can ordinarily come to the market to be bought and sold and is Known to the market. Thus, I am of the opinion that wafer is a kind of biscuit and as such is liable to excise duty Therefore the action taken by the first respondent cannot be quashed in thes writ petition.

5. Incidently, after dictating this judgment I can across a tin of waters manufactured by the petitioner who describe themselves as a "manufactures of Wafer Biscuits".

6. Hence, these writ petitions are dismissed will costs. Advocate''s fee Rs. 100/- in each.

