(1970) 03 OHC CK 0018

In the Orissa High Court

Case No : S.J.C. No''s. 62 to 66 of 1967

Jagabandhu Roul APPELLANT

Vs

State of Orissa RESPONDENT

Date of Decision : 12-03-1970

Acts Referred:
Orissa Sales Tax Act, 1947 — Section 6

Citation : (1970) 26 STC 234

Hon'ble Judges : G.K. Misra, C.J;S. Acharya, J

Bench : Division Bench

Advocate : B.K. Mohanty, for the Appellant; Standing Counsel (Sales Tax), for the Respondent

Judgement

G.K. Misra, C.J.—The following question was called upon by this court to be referred by the Sales Tax Tribunal:

In view of the notification exempting tobacco and tobacco products, was the Tribunal justified in taxing ''mitha gundi'' with very small percentage of tobacco ?

2. The facts out of which this question arises are simple. The petitioner carries on business in gundis, both kada and mitha. The assess ment was for quarters ending 31st December, 1960, to 31st December, 1961. Under entry 35 in Notification No. 33925 C.T.A. 130/57-F, dated 30th December, 1957, "tobacco arid all its products" were exempted during the relevant period u/s 6 of the Orissa Sales Tax Act from payment of sales tax. The short question is whether mitha gundi is a tobacco product. In mitha gundi tobacco constitutes 10 per cent, according to the case of the petitioner. The Tribunal observed that "assuming that mitha gundi was prepared according to this formula (about which there is no satisfactory material), even then the percentage is very small and it cannot make the gundi a tobacco product.

3. The learned standing counsel contends that in order to be a tobacco product, the product must contain essentially the characteristics of tobacco. As in mitha

gundi the tobacco contents constitute 10 per cent. or less, essentially it is a preparation of tobacco but not a tobacco product. With our best endeavour after looking into all dictionaries it is not possible to get a precise definition of "products". It is not clear that in order to be a tobacco product it must be wholly produced out of tobacco. In such a case its meaning as understood in common parlance should be adopted.

4. Gundis are of three varieties-kada, mitha and sada (1) gundi. The constituents of the last variety are dhania and panmahuri without any other material having intoxicating effect. In mitha gundi the intoxicating element is comparatively less while in kada gundi it is fairly high. These three varieties of gundi attract three different classes of consumers. One who is not at all addicted to any intoxication cannot stand mitha gundi. A slight taking of miiha gundi would cause reeling effect in the brain while those who are accustomed to kada gundi would not also like to take mitha gundi as it would not produce the desired intoxicating effect. Thus mitha gundi has its own special class of con sumers who are attracted to it because of its contents of tobacco element being very little. All the same it gives them the maximum pleasure. The pleasure derived by each class of consumers from one type of gundi is maximum only if they take that variety of gundi. To illustrate : A man accustomed to take kada gundi would not at all like to take mitha gundi. Similarly, a man accustomed to mitha gundi would not at all touch kada gundi. A person taking to sada gundi mainly consisting of dhania and panmahuri would never touch the other types of gundi. It would appear from the aforesaid analysis that mitha gundi has its attractiveness for the intermediate class of consumers because of its low percentage of intoxicating ingredient. To them the tobacco contents make all the difference. In common parlance, therefore, mitha gundi will be taken to be a gundi for that class of consumers and to the sellers of such gundi. In that sense one must have to take it as a tobacco product.

5. As has already been stated, it is difficult to get any guidance in such cases without a clear-cut definition being laid down what tobacco products mean. In Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, the Supreme Court had to consider whether "charcoal" would come within the definition of "coal". Clearly on a plain meaning it cannot come. Chemjpally they are differently constituted but as in common parlance charcoal is understood to be coal, their Lordships construed charcoal to mean coal. They observed thus :

Now, there can be no dispute that while coal is technically under stood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.

A similar view was taken in Jagabandhu Sahu v. State of Orissa [1969] 24 S.T.C.

240(sc), while construing whether green ginger is a vegetable or not. In J. Shamdas v. State of Andhra Pradesh [1967] 19 S.T.C. 412(sc), a Division Bench of the Andhra Pradesh High Court had to examine whether zarda was a tobacco product or not. Zarda contained 86.2 per cent, of tobacco in one brand and 87.8 per cent, in another. Thus wholly it was not tobacco and there were some other elements in its constitution. Their Lordships held that zarda was a tobacco product. The contention of Mr. Mohapatra, the learned standing counsel, that mitha gundi is a tobacco preparation and not a tobacco product cannot be accepted in view of this decision which held that zarda was a tobacco product even though some constituents of it were not tobacco.

6. From the aforesaid analysis a reasonable principle can be deduced in this way: How is a particular commodity having tobacco contents treated by a particular class of consumers and sellers ? If with the consumers a particular commodity is very popular on account of its having tobacco contents, then to that class of consumers it is a tobacco product. In other words, persons who cannot at all take mitha gundi despite low percentage of tobacco, must take it as a tobacco product and will be reluctant to purchase such articles. On the other hand, persons who take kada gundi would not treat the mitha gundi as a tobacco product. To them the effect is so light that they might get disgusted. Judging from this point of view we hold that mitha gundi is a tobacco product on account of its effectiveness on a particular class of consumers who are accustomed to take it.

7. There is another broad principle on which the dealer must succeed. A taxing statute must be clear and precise in its incidence of taxation. If any of the provisions is ambiguous, the doubts must be resolved in favour of the subject. The Legislature by using "tobacco pro ducts" created a confusion. No definition was given as to clearly limit its meaning. In such circumstances it is difficult to hold that preparations of tobacco cannot be said to be tobacco products. According to us no distinction can be made between tobacco preparations and tobacco products.

8. We would accordingly answer the question by saying that the Tribunal was not justified, in not treating mitha gundi as a tobacco product.

9. In the result, the application succeeds and the reference is accepted. There will be no order as to costs. The reference fees be refunded.

S. Acharya, J.

I agree.

1Omitted word is "sada" in Oriya

