
(1963) 02 AHC CK 0014
In the Allahabad High Court
Case No : S.T.R. No. 267 of 1954

K.P. Bhargava

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 05-02-1963

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11, 4

Citation : (1963) 14 STC 386

Hon'ble Judges : M.C. Desai, C.J;K.B. Asthana, J

Bench : Division Bench

Advocate : A.K. Kirty, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

K.B. Asthana, J.—This is a reference u/s 11 of the U.P. Sales Tax Act made by the learned Judge (Revisions) at the instance of G.G. Industries of Belanganj, Agra (hereinafter called the assessee). The question of law which has been referred for our decision is as follows :-

Whether on the facts proved in this case the turnover in dispute can be held to be the turnover of confectionery sold in sealed containers ?

2. The assessee is a firm which carries on the business of manufacture and sale of confectionery such as chocolate, lollipops, lemondrops etc. In the assessment for the year 1948-49 the assessee claimed an exemption for the turnover representing the sale of confectionery amounting to Rs. 1,50,535-1-6 on the ground that they had obtained exemption certificate regarding the sale of their confectionery from the Government. The learned Sales Tax Officer disallowed the exemption as in his opinion the confectionery was sold in sealed containers and as such the turnover of confectionery was liable to be taxed and he taxed it at the ordinary rate of three pies per rupee and determined Rs. 1,548-10-0 as the sales tax thereon. Being aggrieved against the order of the Sales Tax Officer the assessee went up in appeal. The learned Judge (Appeals) allowed the appeal on

the ground that the Sales Tax Officer did not record a finding that the containers in which the confectionery was sold were sealed. It was further held by him that the word "sealed" meant certification by a seal and merely wrapping with papers the cardboard boxes containing the lollipops would not amount to certification by a seal. On revision by the Commissioner, Sales Tax, the learned Judge (Revisions) reversed the decision of the Judge (Appeals) being of the opinion that the expression "sealed container" was intended to mean that the container in which the confectionery was sealed was fastened up or enclosed securely and ought not be given the narrow meaning which the learned Judge (Appeals) gave to that expression. It was found that the cardboard boxes in which the lollipops were kept had a lid which was not fastened or secured to the box by any label or seal and could be removed without breaking any seal or label. The whole box with the lid on was then wrapped up in cellophane paper whose ends at two sides were secured by pasting with some adhesive material. There was no seal or label of any kind pasted at the point where the ends of cellophane wrapping were secured.

3. The answer to the question referred depends upon the interpretation of Clause (2) of the Notification No. S.T.-118/X-929-48, dated 7th June, 1948, issued by the Governor in exercise of powers conferred by Section 4 of the U.P. Sales Tax Act, 1948, by which it was notified that Section 3 of the Act was not to apply to the sale of certain categories of goods by the dealers described in that notification on certain conditions. Clause (2) of the said notification which is relevant for the purpose of the present case is as follows :

2. Dealers in cooked food (other than cooked food sold in sealed containers) including sweetmeats and other confectionery on payment of a fee at the rate of four annas per Rs. 100 of the turnover, subject to a maximum of Rs. 500.

4. The case of the assessee before the Sales Tax Authorities and before us in this reference has proceeded on the basis that as cooked food included sweetmeats and confectionery, only such sale of confectionery would fall out of the exemption clause where the confectionery was sold in sealed containers and it was submitted that the word "sealed" used in Clause (2) of the notification should be given the meaning as was held by the Judge (Appeals) and on the facts established in the case the turnover of the confectionery sold by the assessee was not liable to tax, the assessee having fulfilled the condition of obtaining an exemption certificate from the appropriate authority after payment of the appropriate annual fee mentioned in the notification. On behalf of the "Tax Authority" it was submitted that the word "sealed" used in Clause (2) was intended to cover the sale of confectionery or sweetmeat in securely packed containers and thus should be given a wider meaning.

5. Sri A. K. Kirty, the learned counsel for the assessee relied upon the meaning of the word "sealed" as given in the dictionary, that is, bearing the impression of a signet in wax etc. as evidence or guarantee of authenticity, or fastened with a seal so close that access to the contents is impossible without breaking the

fastening. Sri Shanti Bhushan, the learned Senior Standing Counsel appearing for the Tax Authorities, however, contended that the word "seal" in that clause should be given its ordinary popular meaning, namely, to close securely any vessel or container by any kind of fastening or covering that must be broken before access can be obtained and submitted that on the facts as found since the cellophane paper which was securely wrapped on the cardboard box containing lollipops had to be torn off before access could be had to the lollipops in the cardboard box, it would answer the definition of sealed container within the meaning of Clause (2). As already noticed above the cellophane wrapping on the cardboard box bore no seal or signet of any kind and in unwrapping that cellophane paper in order to have access to the lollipops inside the cardboard box no operation of breaking any seal or impression was involved. There is no doubt, therefore, that if the word "seal" is given the narrower meaning as contended for by Sri A. K. Kirty, on the facts of the case the lollipops were not sold by the assessee in a sealed container.

6. The short question, therefore, is whether by Clause (2) was it intended to take out of the exemption the sale of confectionery by a dealer in boxes or containers which were fastened or closed by a seal, impression or signet containing the label of the manufacturer as evidence or guarantee of the quality and quantity of the material inside it as is the general commercial practice in such trade or was it intended not to exempt from the liability to pay tax on the sales of sweetmeats and confectionery sold by a dealer in any kind of container, vessel or box ordinarily secured to prevent the falling out of the contents to avoid inconvenience to the purchaser or to protect the contents from normal deterioration by air or moisture or getting mixed up by extraneous materials ?

7. By Section 4 of the Act which deals with exemption from tax it is provided that no tax shall be payable on the sale of certain types of goods and materials mentioned in that section or any other goods which the State Government by notification in the official Gazette exempt. In the notification in question mentioned above by its Clause (2) the State Government in exercise of its powers u/s 4 of the Act granted exemption to dealers from liability to pay tax on the sale of cooked food including sweetmeats and other confectionery on the terms and conditions mentioned therein. By the words within the brackets in that clause, that is, "other than cooked food sold in sealed containers", and for the purpose of the present case, we may read, "other than confectionery sold in sealed containers", it was clearly intended to take out the confectionery sold in sealed containers by a dealer from the exemption which was conferred generally on the sale of cooked food, confectionery etc. In other words, the dealer who sold confectionery in sealed containers could not take advantage of the exemption. The word "dealer" as defined in Clause (c) of Section 2 of the Act means any person or association of persons carrying on the business of buying or selling goods in Uttar Pradesh. Therefore, a dealer who carries on the business of selling confectionery in sealed containers is contemplated as falling outside the exemption clause. A dealer who generally sells in the commercial sense

confectionery in an open state to the customer and then for the sake of convenience, as pointed out above, securely packs it for delivery to the customer cannot be said to be a dealer carrying on business of selling confectionery in sealed containers. The crucial question to consider is whether at the point of time when the sale takes place, is it the sale of a tin of confectionery or a container of confectionery with the contents inside or the confectionery is in an open state and then packed securely in a container for convenient delivery to the purchaser, that is to say, in common parlance, whether the purchaser asks for a tin of biscuits, or a box of lollipops from the seller of a particular size or brand of his choice and purchases the same or whether he purchases the biscuits or the lollipops etc. selecting the same after examining their quality in the open state and then gets the stuff bought securely packed up for convenience ? In the normal circumstance an assurance as to the quantity and quality of the confectionery inside the container which the purchaser while buying does not see for himself can only be carried to him if there is evidence or guarantee of its quantity and quality. If a dealer who carries on the business of confectionery in sealed containers does not create in the market a confidence in the retailers and the consumers he will have hardly any business. In commercial world in such trades, particularly where food materials are concerned, it would be seen that the name and reputation of the manufacturer by itself is a sufficient evidence or guarantee of the quality of the contents. The most usual form or method for furnishing such evidence or guarantee of the quality and quantity of the contents is by way of putting its seal by the manufacturer in order to secure the goods in the container in such a manner that to have access to the contents of the container the seal so put has to be destroyed or broken. For if it were not so done neither the retailer nor the purchaser would be sure whether the goods inside the container as to their quality and quantity are the same as represented and have not been otherwise adulterated or mixed up by extraneous elements. It is hardly necessary to mention that a dealer carrying on the business of selling sweetmeats and confectionery on a comparatively smaller scale would find it uneconomical commercially to put the stuff sold or to be sold in sealed containers; it is only a large scale manufacturer who manufactures and exports the confectionery, who would need sealing the same in a container. In our opinion, therefore, it is only that class of dealers carrying on the business of sale of confectionery in sealed containers as explained above who were not intended to be exempted from the liability to pay sales tax on their turnover. The submission of Sri Kirty for the assessee appears to us to have great force.

8. The conclusions to which we have arrived above will also be consistent with the rule of construction of statute that when a class of persons are selected for enjoying a benefit conferred by the statute then the clauses in the statute providing any exception "ought to be construed strictly so that the real intention of the statute conferring the benefit should be available to as large a class of persons as intended therein. We have, therefore, no hesitation in holding that on the facts of the present case the turnover in dispute cannot be held to be the

turnover of confectionery sold in sealed containers.

9. The question is answered accordingly in favour of the assessee.

10. We assess the costs of this reference at Rs. 100 which shall be paid to the assessee by the opposite party.

11. A copy of our judgment under the seal of the Court and the signature of the Registrar shall be sent to the revising authority and the Commissioner of Sales Tax as required by Sub-section (6) of Section 11 of the Act.