

(1991) 07 GUJ CK 0024
In the Gujarat High Court
Case No : Sales Tax Reference No. 11 of 1984

R. Atmaram Basudiwala	Vs	APPELLANT
State of Gujarat		RESPONDENT

Date of Decision : 02-07-1991

Acts Referred:

Bombay Sales Tax Act, 1959 — Section 2(17)
Gujarat Sales Tax Act, 1969 — Section 18, 19A, 62, 69

Citation : (1991) 07 GUJ CK 0024

Hon'ble Judges : S.D. Dave, J;A.P. Ravani, J

Bench : Division Bench

Judgement

S.D. Dave, J.—The question referred to this High Court for the opinion and answer by the Gujarat Sales Tax Tribunal u/s 69 of the Gujarat

Sales Tax Act, 1969, reads thus :

Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in holding that mori basudi sold by the applicant under

its cash memo No. 5270, dated January 15, 1980, was exigible to tax under entry 50 of Schedule II, Part A to the Gujarat Sales Tax Act, 1969

?

2. The assessee, M/s. R. Atmaram Basudiwala, is a partnership firm carrying on the business of preparing and selling sweets at Ahmedabad. The

assessee-firm is duly registered as a dealer under the Gujarat Sales Tax Act, 1969. The assessee had sold mori basudi without masala weighing

1.50 kg. for an amount of Rs. 24 to one of the customers on January 15, 1980 and issued sale bill bearing No. 5270. The assessee had made the

necessary application for the determination u/s 62 of the Act. The assessee had annexed along with the application the abovesald bill. The question

for determination was as to the rate of tax payable on the sale of mori basudi which would be without sugar and without masala. In the

determination application it was contended that the assessee manufactured condensed milk without any sugar or mala known as mori basudi. It

was urged that mori basudi would be the milk condensed, which would be in a denied and condensed form without sugar and masala. It was urged

that the sale of the abovesaid article would be tax-free under entry No. 10 of Schedule I to the Act. The learned Deputy Commissioner, after

hearing the parties had come to the conclusion that the article namely, mori basudi would fall within residuary entry No. 13 of Schedule III, to the

Act. The assessee had carried the matter before the Tribunal by filing First Appeal No. 7 of 1981. The Tribunal had partially allowed the appeal

and had held that the correct entry applicable would be entry 50 of Schedule II, Part A to the Act, and thus it set aside the order regarding the

applicability of the residuary entry 13 of Schedule III to the Act. Later on the assessee had submitted the necessary application for reference to this

Court and accordingly the reference has been made.

3. While considering the determination application the learned Deputy Commissioner, Sales Tax had considered three entries. He had firstly

considered entry 10 of Schedule I to the Act which runs thus :

(i) Milk, whole or separated or reconstituted.

(ii) Buttermilk, curds and lassi and chakka.

4. Entry 50 of Schedule II to the Act which runs thus was also considered.

Sweets and sweetmeats (including shrikhand, bastidi and doodpak).

5. Lastly residuary entry 13 of Schedule III to the Act, which runs thus, was also considered.

All goods other than those specified from time to time in sections 18 and 19A and 19B and in Schedules I and II and in the preceding entries.

6. The learned Deputy Commissioner had observed that ordinarily the fat contents of pure milk would be much low and that in the same way the

price thereof would also be much low in comparison with mori basudi. The Deputy Commissioner and the Tribunal have examined the question by

applying the well-known principle of popular parlance. The Supreme Court decision in Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax

Officer, Akola, and one another Supreme Court decision in Commissioner of Sales Tax, Madhya Pradesh Vs. Jaswant Singh Charan Singh, were

taken into consideration. Applying the principle laid down by the Supreme Court in the abovesaid two decisions, the Tribunal and the Deputy

Commissioner had come to the conclusion that mori bastidi would not fall within the tax-free entry. In the abovesaid two decisions rendered by the

Supreme Court the well-known principle has been laid down which is to the effect that when a particular entry is to be read and when the question

regarding the particular commodity falling within that entry is to be examined, the test would be as to whether that particular commodity is known

by that particular name in the entry, by the people in the area in which the law exists at the relevant time. If this test is to be applied to the present

question it would become abundantly clear that mori basudi would not fall within the purview of entry 10. The reasoning in the background of the

conclusion is obvious. A customer who is out in the market to purchase milk would never accept mori basudi. In the same way a person who

reaches a sweet shop to have mori basudi would never be content with a pouchful measure of milk, simpliciter. ""Mori basudi"" will always be used

as a sweet after adding sugar to the taste while milk would be used as milk only, though for a variety of purposes in a variety of modes and

methods. Incidentally it may be noticed that the same principle has been reiterated by the Supreme Court in a later decision in Collector of Central

Excise, Bombay-I and Another Vs. Parle Exports (P) Ltd., , treating the test of popular parlance as effective as it was in the light of earlier

decisions.

7. The abovesaid entry 10 which forms the part of the Schedule I to the Act is in respect of milk, whole or separated or reconstituted. It also

speaks of butter-milk, curd, lassi and chakka. The abovesaid items have been made tax-free under entry 10 of Schedule I to the Act. Applying the

principle of popular parlance it, can be said without any hesitation that the article which is being sold in the name and style of mori basudi would

never fall within the purview of abovesaid tax-free entry. Incidentally it requires to be appreciated that at the time of presenting the determination

application, the bill which was produced along with the application by the assessee was also in respect of mori basudi. It therefore goes to show

very clearly that when the seller had sold and the purchaser had purchased the commodity it was known as and it was taken and given as mori

basudi and not as milk. Therefore applying the principle of popular parlance it becomes abundantly clear that mori basudi would not fall within the

abovesaid entry 10 of Schedule I to the Act which is a tax-free entry.

8. As noticed above while deciding the determination application the learned Deputy Commissioner, Sales Tax had come to the conclusion that the

article would fall within the residuary entry 13 of Schedule III to the Act. The abovesaid determination opinion of the learned Deputy

Commissioner, Sales Tax, could not find favour with the Tribunal and in our opinion rightly so. Entry 50 of Schedule II to the Act is in respect of

sweets and sweetmeats. The abovesaid entry also includes shrikhand, basudi and doodhpak. It therefore becomes clear that the Tribunal was

perfectly justified in coming to the conclusion that the abovesaid article which was sold in the name of mori basudi, falls within entry 50 of Schedule

II to the Act.

9. It was sought to be urged before the Tribunal that under the tax-free entry No. 10 of Schedule I butter-milk, curd, lassi and chakka are also

made perfectly tax-free. On the analogy of the abovesaid position it was tried to be urged before us also that chakka is the commodity or a

product from which ultimately shrikhand is being manufactured. Any how chakka has been excluded and it is forming the part of tax-free entry 10

of Schedule I. The Tribunal had accepted the view that entry 50 of Schedule II to the Act is in respect of certain sweets but the tax-free entry 10

includes chakka. If the Legislature wanted to include mori basudi also within the tax-free entry 10 of Schedule I to the Act, nothing could prevent

the Legislature from doing so. We are in perfect agreement with the abovesaid reasoning adopted by the Tribunal. It therefore becomes clear that

the article in question namely, mori basudi would never fall within the tax-free entry 10 of Schedule I to the Act.

10. Examining once again the question from the view point of popular parlance it requires to be appreciated that we have been told at the Bar by

the learned counsel Mr. Pathak appearing on behalf of the assessee that the fat contents of mori basudi would be between 5 per cent to 25 per

cent. It is a matter of common knowledge that ordinarily buffalo milk would be

having the fat contents ranging between 6 per cent to 9 per cent.

The same is the view expressed in the Table under Prevention of Food Adulteration Act, 1954. So far as Gujarat is concerned the fat contents of

buffalo milk would be ranging between 6 per cent to 9 per cent. As noticed above the fat contents of mori basudi would be ranging between 15 to

25 per cent. Moreover there is a vast margin between the price or the rate of the milk and mori basudi. It therefore becomes clear that any person

who manufactures and sells mori basudi not only calls and treats it as the same but also sells mori basudi as a kind of sweet prepared from milk.

The same would be very true of a customer as noticed above. It, therefore, becomes clear that the Tribunal was perfectly justified in invoking the

principle of popular parlance. We are in agreement with the reasonings adopted and conclusion reached by the Tribunal in this respect.

11. Our attention has been invited to two decisions to which we shall make a reference pertinently. The first one is the Allahabad High Court

decision in Indodan Milk Products Ltd. Vs. Commissioner of Sales Tax, . The other decision which has been brought to our notice is the Madras

High Court decision in the case of State of Tamil Nadu v. Indodan Milk Products [1980] 45 STC 498(Mad) In these two decisions the view has

been taken by the abovesaid High Courts that the condensed milk marketed by Indodan Milk Products were only one of the forms of the milk and

that, therefore, the exemption granted under the Sales Tax Acts of U.P. and Tamil Nadu, to sale of milk were available to the sale of condensed

milk, marketed by the abovesaid company. The Tribunal had distinguished the facts of the case on hand and the facts of the abovesaid two High

Court decisions. It requires to be pertinently noticed that the question before the abovesaid two High Courts was in respect of condensed milk

which was being marketed by the abovesaid assessee-company. It can be said without any difficulty that the condensed milk which was being

marketed by the abovesaid company would be retaining the original character of milk, and therefore the abovesaid two decisions on which reliance

has been placed before us would not assist Mr. Pathak in his submission in the instant case.

12. Our attention was also drawn to this High Court decision in State of Gujarat v. Polson Limited (S.T. Reference No. 1 of 1976) wherein the

issue pertained to the sterilised sweetened milk prepared and marketed by M/s. Polson Limited. It was held that the abovesaid article would fall

within entry 10 of Schedule I to the Act. But be it noted, once again, that it was a case of sterilised sweetened milk, whereas we are concerned

with a case in which entirely a different commodity has been prepared from the milk. Some assistance was also sought to be taken from the

Bombay High Court decision in the case of The State of Tamil Nadu Vs. Indodan Milk Products, . In that decision the principle laid down was

that a different commercial commodity must come into being as a result of one of the activities enumerated in section 2(17) of the Bombay Sales

Tax Act, 1959. But it requires to be noticed that the question in the abovesaid case was in respect of the process which can be said to be the

manufacturing process. In the instant case we are not concerned with the abovesaid aspect of the case, and, therefore, no useful purpose would be

served by entering into the details of the facts and principles of the abovesaid case.

13. Mr. Pathak has also pressed in service some portion from a book known as ""Dud Ane Dudni Banavat"" written by Dr. B. M. Patel and Dr. S.

H. Vyas. Our attention has been drawn to a paragraph on page 193 of the abovesaid book. Some process or procedure for preparing certain milk

products have been explained therein. It is stated therein that basudi can be prepared after boiling milk to a certain extent thereafter adding sugar to

the same. But the abovesaid paragraph at page 193 falls under the chapter regarding various milk products. The very paragraph on which the

reliance is sought to be placed would go to show that it is in respect of preparation of entirely a different commodity or milk product from milk.

The process as detailed therein would go to show that by adopting the same an entirely different commodity comes into existence. Merely because

it is said that while preparing basudi the sugar is to be added it cannot be said or culled out that basudi which does not contain sugar and which is

known as mori basudi would be a form of milk.

14. Lastly Mr. Pathak has invited our attention to an unreported decision in S.T. Reference Nos. 15 and 17 of 1989 decided by a Bench of this

Court on March 20, 1991 (Since reported as Chunilal Mayachand v. State of Gujarat in [1992] 85 STC 105 (Guj). In the abovesaid reference

before this Court the question was regarding the milk powder. It is indeed true that it has been laid down by the Bench of this Court that milk

powder would retain the quality of milk and, therefore, it would be a milk. But viewing the facts of the case on hand it can be said without

hesitation that here before us the question is not in respect of some product which can be directly prepared from the milk. Here the question is

regarding the commodity which is being prepared and sold in the form of mori basudi. In view of this position the abovesaid Bench decision

rendered by this Court would also not go to support the contention which is being raised by Mr. Pathak before us.

15. Once again reverting to the Supreme Court decision in Collector of Central Excise [1989] 75 STC 105(SC) it requires to be pointed out that

as stated by the Supreme Court the words, used in the provision imposing tax or granting exemption, should be understood in the same way in

which the same are understood in ordinary parlance in the area in which the law is in force or by people who ordinarily deal with them. As made

clear by us earlier the word mori basudi is being used by the people including the manufacturer for a sweet known as mori basudi and never for the

milk. Viewing this case in this respect also it becomes clear that the abovesaid commodity would not fall within the tax-free entry as urged by the

assessee.

16. It therefore becomes clear that the Tribunal was perfectly justified in coming to the conclusion that the commodity in question would be falling

within entry 50 of Schedule II of the Act. We therefore answer the abovesaid question in affirmative and in favour of the Revenue and against the

assessee, with no order as to costs.

17. Reference answered in the affirmative.