
(1987) 11 RAJ CK 0012

In the Rajasthan High Court

Case No : Civil Sales Tax Revision No"s. 422 and 470 of 1987

Shyam Sunder and Bros.

APPELLANT

Vs

C.T.Q., Spl. Circle

RESPONDENT

Date of Decision : 20-11-1987

Acts Referred:

Citation : (1988) 1 RLW 333 : (1988) 1 WLN 272

Hon'ble Judges : K.S. Lodha, J

Bench : Single Bench

Final Decision : Allowed

Judgement

K.S. Lodha, J.—These two sales-tax revisions involve common question of law and, therefore, they are being disposed of by a common order.

2. The relevant periods for the assessments in the two cases are-(1) 25-10-1976 to 10-11-1977; and (2) 12-11-1977 to 31-10-1978. The; precise question which arises for consideration is whether palm oil and R.B D. palm oil is one, and the same commodity or they are two different commercial commodities. The question arises in the following, circumstances: Petitioners Shyam Sunder & Bros. are dealers in edible oils, vegetable oils, soaps, etc., Amongst others, they had sold R.B.D. palm oil and on these sales, they charged 5% sales-tax from the customers. However, when the matter came up for assessment for the aforesaid two periods, the Assessing Authority, viz., the Commercial Taxes Officer, Special Circle, Jodhpur (here in after referred to as "the C.T.O.") was of the opinion that R.B.D. palm oil was covered under the term "palm oil" and the sale thereof was liable to tax @ 10% in accordance with item No. 32 of the Notification No. F (16)FDCT/69 II dated 8-3-1969, which reads--"Palm oil and refined coconut oil--taxable @ 10%", and it did not fall under item 31 of that notification, which reads-" Edible oils excluding palm oil and refined coconut oil -taxable @ 5%." However, before coming to this conclusion, on the request of the assessee, he had examined the evidence in order to find out whether, palm oil and R.B.D. palm oil were one and the same or were two different commercial commodities

and on the basis of that evidence, he had concluded--(1) that Palm oil and R.B.D. Palm oil were two different commercial commodities; (2) that Palm oil was not edible whereas R.B.D. Palm oil was used as edible oil; and (3) that Palm oil was generally used for preparing soaps where as R.B.D. Palm oil was used for human consumption. He further found that on 21-8-1978 another Notification was issued, which provided for 7% sales tax on Palm oil whether refined or unrefined. Therefore, after 21-8-1978 the sales-tax applicable on the sales of R.B.D. Oil was at rate of 7%. He accordingly, levied tax at these rates. Aggrieved of this, the Assessee filed appeals before the learned Addl. Commissioner, Commercial Taxes, but without success. The matter was then brought before the Sales Tax Tribunal and the Division Bench of the Tribunal held that Palm oil referred to in item No 31 of the Notification dated 8-3-1969 included R.B.D. Palm oil also and, therefore, the sales thereof were liable to tax at rate of 10% and after 21-8-1978 it was liable to tax at rate of 7%. The appeals were accordingly rejected. Aggrieved of this decision, the assessee has come up before this Court.

3. The only contention urged on behalf of the assessee is that R.B.D. Palm oil cannot be considered Palm oil and, therefore, under the notification dated 8-3-1969, it fell under item No. 31 and not under item No. 32 till 21-8-1978. Thereafter, of course, it will be governed by the latter notification dated 21-8-1978. It was argued that from the evidence, which had been examined by the Assessing Authority, he had come to the conclusion that the Palm oil and R.B.D. Palm oil are two different commercial commodities and that finding has not been upset by the appellate courts and in the face of that finding, the sales of Palm oil is liable to be taxed at rate of 10%. On the other hand, learned Counsel for the department has supported the decisions of the Assessing Authority and the appellate authority. I have given my careful consideration to the rival contentions.

4. It has been held in *Annapurna Biscuit Manufacturing Co., Kanpur Vs. Commissioner of Sales Tax, U.P., Lucknow*, as under:

It is a settled rule of construction that the words used in a law imposing a tax should be constructed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. If an expression is capable of a wider meaning as well as narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case.

In that case, the question was whether biscuits were covered under the terms "cooked food" and it was held that they were not so covered. Relying on this rule of construction, their Lordships further observed:

It may be that biscuit is served at tea time and in its wider meaning "cooked food" may include biscuit. But ordinarily biscuit is not understood as cooked food. If a person goes to hotel or restaurant and asks for some cooked food or "PAKAYA HUA BHOJAN" certainly he will not be served with biscuit in Uttar

Pradesh. While it is not necessary to state in the present case as to what all items may be called as cooked food, we definitely say that in the context and background of the notification bisuit cannot be treated as cooked food.

5. In another case in *Anwarkhan Mahboob Co. Vs. The State of Bombay (Now Maharashtra) and Others*, while dealing with the question whether tobacco and bidi patti, manufactured out of tobacco are one and the same thing. Their Lordships observed though in different context, as under:

It must, therefore, be held on the facts of this case that when tobacco was delivered in the State of Bombay for the purpose of changing it into a commercially different article, viz. bidi patti. the delivery was for the purpose of consumption.

The question in that case was whether the delivery of tobacco in the State of Bombay for the purpose of changing it into a commercially different article, viz. Bidi patti, was delivery for the purpose of consumption and, therefore, the purchase fell within the meaning of Explanation to Article 286(1)(a) of the Bombay Sales Tax Act, 1953. It was held that after the manufacturing process, the Tobacco had been converted into Bidi Patti & Bidi Patticame out as a commercially different commodity & could not be deemed to be tobacco. Again in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, their Lordships observed as under:

The ordinary meaning to be assigned to a taxable item in a list of specified items is that each item so specified is considered as a separately taxable item for purposes of single point taxation in a series of sales unless the contrary is shown. The mere fact that the substance or raw material out of which it is made has also been taxed in some other form, when it was also as a separate commercial commodity, would make no difference for purposes of the law of sales tax.

So also, in *State of Madras Vs. Swastik Tobacco Factory, Vedaranyam*, it was held that chewing tobacco manufactured out of raw tobacco is a commercially different commodity. In that case, rule 8(1)(i) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 was under consideration, which provided the deduction from the gross turnover the excise duty, if any, paid by the dealer to the Central Government in respect of the goods sold by him, and while considering that question, their Lordships of the Supreme Court opined that the excise duty paid on raw tobacco cannot be deemed to be paid in respect of chewing tobacco, which is manufactured out of raw tobacco and the two are separate commercial commodities. The authorities can be multiplied in order to support the above principle or rule of construction, but all of them need not be mentioned here. Applying this principle to the facts of the present case, it may at once be stated that the Assessing Authority itself had come to the conclusion that Palm oil and RBD Palm oil were two commercially different commodities and they were so understood by the people dealing with them. Their usages were

different. Palm oil as such is not generally used for cooking purpose. It is not generally known as edible oil, whereas RBD Palm oil is used for human consumption and is edible oil. After refining and deodorising the raw Palm oil and converting it into RBD Palm oil, it can scarcely be used for the manufacture of soaps as the Palm oil as such is generally used. When palm oil is, thus, edible oil and is not generally used for the purpose of manufacturing soap, it would only be available with the dealers dealing in edible oils and not with the dealers dealing in cosmetics or the raw-materials for preparation of soap etc. If a person wants to purchase RBD Palm oil, he would not be supplied with ordinary Palm oil, and, therefore, this conclusion is inevitable that RBD Palm oil is a different commodity than Palm oil. This conclusion would also be borne out from the different notifications which have been issued by the State Government from time to time. Under the Notification dated 8-3-1969, referred to above, item 31 mentions Palm oil and refined coconut oil while making exception to the edible oils for which this item provides. It must be presumed that the State Government, while issuing this notification was aware of the distinction or difference between raw and refined oils and that is why while Palm oil was concerned, it was mentioned as merely Palm oil and it was not further mentioned as Palm oil or refined Palm oil, whereas in the case of coconut oil, the refined coconut oil has been made exception to the edible oils. Under item No. 32 of the same Notification again Palm oil and refined coconut oil have been mentioned as different commodities and have been made taxable at rate of 10%. Then, in the notification dated 21-8-1978, Palm oil, both refined and not refined, have been separately taxed at the rate of 7% and refined coconut oil has been taxed at rate of 10%. This rate on the Palm oil, refined or not refined, has further been changed to 8% under the Notification dated 5-3-1979. This brings out the intention of the State Government not to tax Palm oil refined or unrefined at rate of 10% and, therefore, the logical conclusion would be that the Palm oil mentioned in item No. 31 of the Notification dated 8th March, 1969 only means the Palm oil as it comes out from the expresser and does not include refined and deodorised Palm oil and, therefore, under the notification dated 8-3-1969, the sales of RBD Palm oil could be taxed only at rate of 5% and not 10% under item 32 of that notification. It clearly becomes edible oil and does not fall under the exceptions of Palm oil.

6. Learned Counsel for the department placed strong reliance on *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, wherein the question was whether hydrogenated ground-nut oil is ground nut oil and their Lordships have found it to be so, but that decision cannot apply to the present case because even after hydrogenation, the basic equality of the ground-nut oil continues to be so and it did not get converted into a commercially different commodity. The precise question before the Hon'ble Supreme Court was whether the assessee was entitled to the benefit of the deduction of the purchase price of the kernel or ground-nut, under rule 18(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, which went to the manufacture of the hydrogenated ground-nut oil from the sale turnover of such oil. While holding

that the assessee was so entitled, their Lordships of the Supreme Court referred to the finding of the Tribunal and the High Court to the effect--"that except for its keeping quality without rancidity and ease of packing and transport without leakage, hydrogenated oil serves the same purpose as a cooking medium and has identical food value as refined ground-nut oil. There is no use to which the ground-nut oil can be put for which the hydrogenated oil could not be used, nor is there any use to which the hydrogenated oil could be put for which the raw oil could not be used", and added as under:

Similarly, we consider that hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume ground-nut oil.

The case is, thus, clearly distinguishable. As already pointed out, RBD Palm oil is meant for altogether a different use, viz. human consumption, whereas the Palm oil is meant for manufacture of soap etc. Ordinarily, the Palm oil as such is not used for human consumption. I am, therefore, clearly of the opinion, that RBD Palm oil does not fall under item 32 of the Notification dated 8-3-1969, but must fall under the head "Edible oil" under item No. 31 and does not come within the exceptions carved out under this item. The Assessing Authority and the learned Deputy Commissioner (Appeals) as also the Tribunal were, therefore, not justified in holding that RBD Palm oil continues to be Palm oil and is taxable otherwise than under item 31 of the Notification dated 8-3-1969. Of-course after coming into force of the Notification dated 21-8-1978, the position has changed as under that notification, the Palm oil, refined or not, has been made separately taxable at a different rate.

7. The revisions are, therefore, allowed and it is held that Palm oil and RBD Palm oil were taxable at rate of 5% before the coming into force of the Notification dated 21-8-1978.