
(2005) 04 PAT CK 0033

In the Patna High Court

Case No : C.W.J.C. Nos. 16438 of 2004, 459, 485, 486 and 2300 of 2005

Spic Phi Seeds Ltd. and Others

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 29-04-2005

Acts Referred:

Citation : (2005) 04 PAT CK 0033

Judgement

Nagendha Rai, Ag. C.J.

1. The points involved in all the five writ applications are same and as such they have been heard together and are being disposed of by a common order.

2. All the petitioners are registered dealers under the Bihar Finance Act, 1981 (hereinafter referred to as "the Act") to sell specified seeds including maize seeds. The point for consideration in this case is as to whether the maize seed is to be levied tax at 4 per cent by treating as cereals under entry No. 12 of the notification dated December 26, 1977, annexure III issued u/s 12 of the Act containing the rate of tax leviable on sale of goods or at 8 per cent as unspecified goods, being general rate of tax as provided u/s 12 of the Act.

3. The petitioners have challenged the assessment orders as well as demands made from them charging sales tax at 8 per cent on maize seeds. Their assertion is that earlier it was charged at 4 per cent by treating as cereals but by the assessment orders impugned they have been charged at 8 per cent. The assertion of some of the petitioners is that they have been differently charged as in some divisions they have been still charged at 4 per cent not 8 per cent. Their further assertion is that the definition of cereals as given under item No. 12 of Annexure III is an exclusive provision and it includes maize in all of its forms and as such it will cover the maize seeds as well. Thus, the demand of tax at 8 per cent is impermissible in law. The said demand has been made in pursuance of the instructions issued by the Commissioner of Commercial Taxes dated May 7, 2002, a copy of which has been annexed as annexure 3 to C.W.J.C. No. 459 of 2005. It is stated that on challenge the said direction has already been quashed

by this Court but even still the authorities are influenced by the said direction wherein a rate of tax for maize seed has been prescribed as 8 per cent.

4. The stand of the State is that admittedly the petitioners are registered under the Bihar Finance Act for sale and purchase of hybrid seeds of maize and other seeds. They are not dealing in cereals. In view of the provision of the Central Sales Tax Act certain commodities were declared as goods of special importance including cereals. The rate of tax with regard to declared goods u/s 14 of the Central Sales Tax Act, 1956 has been prescribed not to exceed more than 4 per cent under any sales tax statutes of any State. In conformity with the said provision the State has specified the rate of tax upon cereals at 4 per cent vide a notification dated December 26, 1977. The petitioners treating their hybrid seeds as cereals started paying 4 per cent sales tax on the maize seeds as a result of which the inconsistent orders were passed with regard to the rate of tax. Now by the impugned order the assessing authorities having realised mistake have charged maize seeds at 8 per cent on the ground that the commodity dealt with by the petitioners is unspecified commodity and not the cereals as claimed by the petitioners. The authorities have levied tax at 8 per cent by taking into consideration the ordinary or commercial meaning of the maize according to common parlance. Further, the case of the State is that the hybrid seeds sold by the petitioners are chemically treated with poison in order to make them insect resistant for better germination and as such not a cereal which connotes any grain used for food either by human being or by livestock and thus these seeds cannot be treated as cereals.

5. In other words, the stand of the State is that cereals and hybrid seeds are two different things. The petitioners are registered for sale of seeds not for the cereals. The goods being sold by them are not used for human consumption or the livestock. According to the settled law the sales tax is levied on sale of different commercial commodities and not the production or the manufacture of a particular substance out of which the commodity has been made out. As soon as the commercial commodities came into existence they became a separate taxable goods for the purpose of sales tax and as the petitioners sell seeds it cannot be treated as cereals.

6. The learned Counsel for the petitioners submitted that (i) when two reasonable interpretations are possible in a taxing statute then the one in favour of the assessee should be accepted unless there are compelling reasons to take a different view, (ii) the residuary or unspecified heading can be resorted to only when even after giving liberal construction to the special provision it is not possible to cover the goods in question under a specified entry, (iii) the entry defines cereals which include cereals including maize in all forms and as such the maize seed also is one of the forms of maize and it is included within cereal, (iv) the edibility or non-edibility should not be a test to decide as to whether a particular product is a cereal or not. Even if the maize seeds are non-edible commodity it will be a cereal under entry No. 12 of the Act, (v) it is further

submitted that in the interpretation of a fiscal statute, the meaning which is understood by the people in trade and commerce, is to be accepted and technical, scientific test and other criteria should be applied within limits. In support of their submission they have relied upon the judgments which will be referred to at an appropriate place.

7. The learned Counsel appearing for the State on the other hand submitted that cereals and seeds have not to be understood according to the technical, scientific, botanical or dictionary meaning but has to be understood in popular sense, meaning thereby, the sense with which the people conversant with the subject attribute to it. The cereals and the seeds are two different things. The seeds are chemically treated with poison in order to make them for better germination and they cannot be used as cereals, even if the cereal is given a wide meaning which includes edible and non-edible items. He also submitted that the rate of tax is provided u/s 12 of the Act and general rate of tax is 8 per cent. The only proviso of the said Section provides for increasing or decreasing the rate of tax so if article is not covered by the proviso the general provision as contained in Section 12 will apply and the rate of tax will be 8 per cent as in this case. In view of the provision of the Central Sales Tax Act the cereal has been declared as a goods of special importance and 4 per cent is leviable on it. Maize seeds are not cereal and as such the general rate as provided u/s 12 of the Act will apply.

8. The settled law is that taxing statute is to be construed strictly and while interpreting the taxing statute if two reasonable views are possible and one is favourable to the assessee then the same should be accepted. In this connection three cases relied upon by the learned Counsel for the petitioners are useful to be referred to, that is, *M/s. Birla Cement Works Vs. The Central Board of Direct Taxes and Others*, *Cemento Corporation Ltd. Vs. Collector Central Excise*, *Cemento Corporation Ltd. Vs. Collector Central Excise, Union of India (UOI) and Others Vs. Onkar S. Kanwar and Others*, wherein it has been held categorically that in case where two views are possible the one in favour of the assessee must be adopted.

9. It is also clearly well-settled that residuary heading should be resorted to only when even on liberal construction of the specific heading it is not possible to come to the conclusion that goods are covered by specific heading [see *Collector of Central Excise, Shillong Vs. Wood Craft Products Ltd.*]. However, that question does not arise in this case. Here a general rate of tax is 8 per cent as per Section 12 of the Act and the proviso is exception to that and the cereal has been taxed to 4 per cent in terms of the said proviso read with provision of Section 14 of the Central Sales Tax Act. Thus, generally the rate of tax is 8 per cent. Unless it is found that the petitioners' case is covered by the exception they cannot be given benefit of the same.

10. It is also well-settled that an entry in taxing statute should be construed in its popular sense meaning thereby the sense with which the people dealing the

subject-matter is conversant. But once the article has been specified and put under a distinct entry the basis of entry cannot be questioned. A meaning is to be given to a particular article in a fiscal statute which people specially in trade and commerce are conversant with the subject and understood in common parlance [see *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, , *Dunlop India Ltd. v. Union of India* AIR 1977 SC 597, *Porritts and Spencer (Asia) Ltd. Vs. State of Haryana*,].

11. In the case of *Ganesh Trading Co., Karnal Vs. State of Haryana and Another*, the question was whether the paddy and rice can be considered as identical goods for the purpose of imposition of sales tax. Dealing with the said matter the apex Court held that they are two different things in ordinary parlance when paddy is dehusked and rice is produced then the identity of the goods is changed. This decision was relied upon by the counsel for the State. In the case of *Dunlop India Ltd.* AIR 1977 SC 597, which was relied upon by the counsel for the petitioner, it has been held as follows :

"It is well established that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the trade and its popular meaning should commend itself to the authority."

12. Thus, there is no controversy as to how an entry in a taxing statute or fiscal statute is to be interpreted. At this stage, it will be useful to quote Section 12 and relevant entry of annexure III issued u/s 12 of the Act, which run as follows :

"Section 12. Rate of tax.--(1) The sales tax or purchase tax payable by a dealer u/s 3 or 4 shall be levied at the rate of 8 percentum of his taxable turnover :

Provided that the State Government may, from time to time, by notification and subject to such conditions and restrictions as it may impose, fix higher rate not exceeding 25 percentum or any lower rate not below 2 percentum in respect of such class of dealers or such goods or class or description of goods, or such sales, category or description of sales as may be specified in the notification.

(2) Notwithstanding anything contained in this part the levy of the tax payable by a dealer under this part on sales or purchases of declared goods made by him inside Bihar shall be subject to the restrictions and conditions contained in Section 15 of the Central Sales Tax Act, 1956 (LXXIV of 1956)."

13. The general rate of tax is 8 per cent and under the proviso power has been given to reduce the tax up to 2 per cent or to enhance up to 25 per cent.

14. Sub-section (2) of Section 12 provides that the levy of tax payable by a dealer on sale or purchase of the declared goods made by him inside Bihar shall be subject to the restrictions and conditions in Section 15 of the Central Sales Tax Act and cereal is declared as goods u/s 14 of the Central Sales Tax Act and in accordance with the same the rate of 4 per cent has been provided to the cereals under annexure III.

15. Entry No. 12 from annexure III of the Act runs as follows :

"Cereals (excluding atta, maida, suji and paddy) including all forms of rice, peas, millet, kodo, (kutti), jowar and bajra, wheat, barley, maize, sago, besan and sattu and cereals as defined in Section 14 of the Central Sales Tax Act, 1956."

16. The entry No. 12 "cereals" after excluding certain items, includes maize also in all forms and it includes the cereal as defined u/s 14 of the Central Sales Tax Act.

17. Section 14 of the Central Sales Tax Act defines cereals, that is to say--

(i) paddy, (ii) rice, (iii) wheat, (iv) jowar or milo, (v) bajra, (vi) maize, (vii) ragi, (viii) kodon, (ix) kutki, (x) barley.

The maize is also included at item No. (vi), as stated above.

18. According to the learned Counsel for the petitioners, all forms of maize is included within the definition of "cereals" and as such maize seed also is one of the forms of the maize and is included in the definition of "cereal". They have also submitted that the identity of the maize seeds is not changed only because of use of chemical and poisonous substance for its protection. They relied upon the judgment of the apex Court in the case of *Tungabhadra Industries Ltd. v. Commercial Tax Officer* [1960] 11 STC 827 PAT. In that case the question for consideration was whether hydrogenated groundnut oil is included within the groundnut oil. It was held that when groundnut oil is converted into refined oil, there is no doubt processing, but this consists merely in removing from raw groundnut oil that constituent part of the raw oil which is not really oil. The elements removed in this refining process consist of free fatty acids, phosphotides and unsaponifiable matter. After the removal of this non-oleic matter therefore the oil continues to be groundnut oil and nothing more. The matter removed from the raw groundnut oil, not being oil, cannot be used, after separation, as oil or for any purpose for which oil could be used. Accordingly held that refined oil continues to be groundnut oil. The said case, in our view is not helpful to the petitioners to decide the controversy as in that case the hydrogenated oil remained coconut oil. Its use being the same and only irrelevant materials were taken out. They have also relied upon the judgment of the division Bench of the Karnataka High Court in the case of *M.N. Nilugal Vs. The District Manager, Food Corporation of India and Another*, where one of the question for consideration was whether damaged rice/wheat to be used as cattle/poultry feed is a cereal. Their Lordships considered the meaning of cereal by referring to the dictionary meaning as well as the decisions of the different High Courts and came to the conclusion that where rice and wheat are not fit for human consumption but fit for being used for livestock and poultry both will still be a cereal. In this connection it is relevant to quote paragraph 20 of the judgment, which runs as follows :

"The decision in *S.V. Halavapalli and Sons and Others Vs. Commissioner of*

Commercial Taxes and Others, does not advance the case of the State that the term "cereal" refers only to grains meant for human consumption. "Cereal" in common parlance means a grain of the grass family like wheat, rice, jowar, oats, maize, etc., used as food for man and livestock. To put it differently, any grain which is edible is cereal. "Edible" refers to suitability for consumption by humans. "Edible" also refers to suitability for consumption by livestock (domestic animals) and poultry. When a food grain is fit for consumption by both human and livestock, there can be no doubt that it is a cereal. Even where on account of decay or damage, a cereal is found to be unfit for human consumption but still fit for consumption by livestock, it will still continue to be a "cereal". If the cereal, on account of its damaged condition is wholly unfit for consumption either by human or by livestock, but is fit to be used only as a manure or at best for production of industrial starch, then it may cease to be considered as a "cereal".

19. According to the said paragraph their Lordships held that if a cereal is fit for human consumption or even consumption for livestock then it still continues to be a cereal. But when it is fit to be used as manure or at best for production of industrial starch then it may cease to be considered as a cereal. In our view, the said decision instead of supporting the petitioners supports the stand of the State. In this case the maize seeds are soaked with poisonous substance and it is used for the purpose of growing crops only and it is unfit for human consumption as well as for consumption by livestock.

20. Thus, none of the cases relied upon by learned Counsel for the petitioners supports the stand that maize seeds not fit for consumption either by human being or livestock be still included within the definition of "cereal".

21. Learned Counsel for the State relied upon four cases in support of his stand, that is, the judgments of the Supreme Court in the case of State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, , Ganesh Trading Co., Karnal Vs. State of Haryana and Another, , the judgment of the High Court of Madhya Pradesh in the case of General Foods Private Limited v. Commissioner of Sales Tax [1987] 66 STC 271 PAT1, and the judgment of the High Court of Karnataka in the case of S. V. Halavapalli and Sons v. Commissioner of Commercial Taxes [1984] 57 STC 343 PAT.

22. In the case of State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others, the question was whether the cotton includes cotton seeds. The apex Court held that they were two distinct commercial goods though before the seeds were separated both the cotton and the seeds were part of one commodity. In Ganesh Trading Co., Karnal Vs. State of Haryana and Another, the question was whether the paddy and the rice are identical goods. Relying upon the well-settled principle of determining the matter it was held that there are two different things in ordinary parlance and even the identity is changed when the paddy is dehusked and rice is produced. In the case of General Foods Private Limited Vs. Commissioner of Sales Tax, one of the question for consideration was meaning of cereal and it was held that though the word cereal has not been defined under

the relevant Act but it connotes any grain used for food. In the case of S.V. Halavapalli and Sons and Others Vs. Commissioner of Commercial Taxes and Others, the question for consideration was similar as in the said case and it was held that while interpreting the entry the strict dictionary, technical, scientific and botanical meaning is not to be applied but has to be understood and construed in its popular sense. Cereal and seeds in common parlance both are different items.

23. Thus, after going through the judgments cited by the learned Counsel for the parties and taking into consideration the settled law as indicated above the botanical and technical meaning with regard to which the reference was made by some of the learned Counsel of the petitioners cannot be of any assistance to determine the controversy. The word used in the entry is to be understood as understood by the persons dealing with it. No doubt the maize seed is also maize but in common parlance people dealing with it treat it in a different manner. The maize can only be treated as cereals when they are fit for human consumption and the livestock. But as the maize in question are soaked with chemical and poisonous substance, they can be used only for growing crops/cereals and not for consumption.

24. Thus, we hold that the maize seeds are not covered by entry No. 12 of annexure III and the assessing authorities are right in coming to the conclusion that the rate of tax is 8 per cent and not 4 per cent.

25. Now coming to the question of other submissions advanced on behalf of the petitioners that as the maize seeds have been taxed at 4 per cent for many years that position should not be departed from. In support of the said submission they have relied upon a judgment of the Supreme Court in the case of M/s. Radhasoami Satsang Saomi Bagh, Agra Vs. Commissioner of Income Tax, and referred to paragraph 16 of the judgment where it has been held that res judicata does not apply to Income Tax proceedings. Each assessment year being a unit, what is decided in one year may not apply in the following year but where a fundamental aspect permeating through the different assessment years has been found as a fact one way or the other and parties have allowed that position to be sustained by not challenging the order, it would not be at all appropriate to allow the position to be changed in a subsequent year.

26. In view of the settled law, nobody can quarrel with the same but the question is as to whether the same is applicable in this case. In this case, according to the own case of the petitioners, some of them instead of following a procedure of appeal have challenged the assessment order on the ground that the assessing authorities are not consistent in imposing the rate of tax with regard to maize seeds. In some cases they are imposing tax at 4 per cent and in some cases at 8 per cent and as such inconsistent position was being followed by many authorities. Due to inconsistency and to clarify the position the matter has been brought before this Court. This apart, the question is a pure question of law and the fact that it was not challenged earlier cannot be a ground to not rectify the mistake committed earlier.

27. The other submission advanced on behalf of the petitioners is that the assessing authorities, quasi-judicial authorities, have been influenced by the direction issued by the Commissioner dated May 7, 2002 is wholly misconceived. It is an admitted fact that the said circular has already been quashed by this Court in the case of Pro Agro Seeds Co. Ltd. Vs. State of Bihar and Others . In that view of the matter, that direction does not exist in the eye of law. This apart in any of the assessment orders the assessing authorities have not ever considered the said notification and it has been categorically stated in the counter-affidavit filed on behalf of the State that the said direction of the Commissioner has not been taken into consideration and the authorities have considered the matter relying upon the statutory provisions.

28. Thus, the assessing authorities were right in charging the rate of tax at 8 per cent with regard to the maize seeds and the maize seed is not included within the definition of the cereals under entry No. 12 of annexure 3 even a liberal meaning is given to the word cereals.

29. In the result, there is no merit in these writ applications and the same are dismissed.

Barin Ghosh, J.

I agree.