
(2005) 02 GAU CK 0045
In the Gauhati High Court
Case No : WP (C) No. 2843 of 2002

S.S.E. Private Ltd.

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 23-02-2005

Acts Referred:

Citation : (2005) 2 GLR 468 : (2005) GLT 242 Supp

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : G.N. Sahewalla, A.K. Goswami, P. Bora, Aslam and D. Senapati, for the Appellant; K.N. Choudhury and J. Patowary, for the Respondent

Final Decision : Dismissed

Judgement

Ranjan Gogoi, J.—The question that arises for determination in this writ petition is whether "soyabari" or "soya nuggets" manufactured/prepared by the petitioner falls within Item 1(b) of Schedule II of the Assam General Sales Tax Act, 1993 or whether the said item falls under item No. 2 of Schedule III to the aforesaid Act. It may be noticed at this stage that commodities includible under item 1(b) of Schedule II attracts levy of tax at the rate of 4% whereas those covered by Item 2 of Schedule III attracts a levy of tax at the rate of 8%. While according to the petitioner assessee. Soya Nugget, manufactured by it is an item of dry vegetable and therefore would be appropriately classifiable under Item 1(b) of Schedule II, the respondents contend that the said item manufactured by the petitioner assessee would fall under the residuary items covered by Serial No. 2 of Schedule III to the Act.

2. In the writ petition filed, averments have been made by the writ petitioner to show the actual process by which soya nuggets are manufactured. According to the petitioner Soya Nuggets (Bari) is prepared in its SSI Unit with ingredients like DE-oil, cake, suji, rice, soda, etc. and the eventual product does not lose its character as a dry vegetable and the said product is understood by the consumers as well as in trade to be an item of dry vegetable. The petitioner,

therefore, contends that Soya Nuggets manufactured by it would attract levy of tax at the rate stipulated for the items covered by Serial No. 1(b) of Schedule II to the Act. In support of the contention advanced, Sri Sahewalla, learned counsel for the petitioner, apart from placing before the Court the averments made in the writ petition with regard to the process of preparation/manufacture, has cited two decisions of this Court in the cases of Kali Kumar Sarma, petitioner v. Sales Tax Tribunal, Tripura and Ors., respondents and Shri Chitta Ranjan Saha v. The State of Tripura and Ors., reported in (1989) 1 GLR 91 and (1989) 2 GLR 101 respectively. According to Sri Sahewalla, the ratio discernible from the above two judgments of this Court is that for the purpose of classification of a product for levy of tax, if the product in question is not covered by the definition clause in the statute, ordinarily the common parlance test must be applied in preference to the technical/dictionary meaning of the product. Sri Sahewalla has urged that Soya Nuggets is understood by the householder to be an item of a dry vegetable and in trade also the said item is understood in a similar manner. Therefore, Sri Sahewalla, relying on the proposition laid down by this Court in the cases noted above, has argued that Soya Nuggets manufactured by the petitioner must be understood to be an item of dry vegetable by adopting the common parlance test. It is on the aforesaid basis that Sri Sahewalla contends the contrary view taken by the department to be not correct and accordingly he has submitted that an appropriate direction be issued by this Court to assess the production question under Item 1(b) of Schedule II to the Act.

3. The submissions advanced on behalf of the petitioner assessee has been controverted by Sri J. Patowari, learned counsel assisting Sri K.N. Choudhury, learned Addl. Advocate General, for the State. Sri Patowari, by placing reliance on a published text, has submitted that a vegetable has to undergo three separate processes to reach and attain the stage of a dry vegetable. First of all, by application of heat to the required extent the moisture in the vegetable must be forced out and thereafter by application of dry air the moisture must be absorbed whereafter by a process of air movement the moisture must be carried away from the immediate environment. It is in the aforesaid manner that a vegetable would become a dry vegetable. Sri Patowari has further contended that a dry vegetable would not lose the characteristic of a vegetable and placing reliance on a judgment of the Apex Court in the case of State of West Bengal and Others Vs. Washi Ahmed and Others, it has been contended that vegetable or dry vegetable must be understood to be a product that is grown in the kitchen garden or in the farm and is used for the table. Soya Nuggets manufactured/prepared by the petitioner, according to learned counsel, is not a product of the kitchen garden or the farm though it is used for the purpose of the table. Nevertheless, applying the law laid down by the Apex Court, Sri Patowari has argued that Soya Nuggets cannot be understood to be a specie of vegetable and, therefore, would not be classifiable as a dry vegetable under Item No. 1(b) of Schedule II to the Act. Sri Patowari has further contended that while it is correct that common parlance test must ordinarily be adopted for the purpose of

classification, in the present case, Soya Nuggets is not understood by the householder as an item of dry vegetable. Neither do the vendors dealing in the product cannot be understood to have the perception that in dealing with Soya Nuggets, they are dealing with an item of dry vegetable. Sri Patowari, therefore, has contended that the common parlance test if adopted in the present case would not bring Soya Nuggets within the ambit of Item 1(b) of Schedule II to the Act.

4. The rival submissions advanced on behalf of the parties have been duly considered. The principles for determination of classification of a particular product for purposes of levy of tax need hardly detain the Court. If a particular item is defined by the statute in specific terms there will be little problem. In preference to the common parlance or the trade test or even the common sense approach, the meaning as ascribed by the definition clause must be adopted. The question of judicial interpretation would really arise when a particular product/item or commodity is not defined by the statute. In such a situation the law for the last several decades has been that it is the common parlance test that must be adopted and to the extent possible the technical or scientific meaning or even the dictionary meaning must be avoided. In *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, respondents, the Apex Court had laid down the law to the above effect while being confronted with a question whether betel leaves are vegetables. The above law has been reiterated in a subsequent decision of the Apex Court in the case of *Motipur Zamindary Co. (P) Ltd. Vs. The State of Bihar*, where the question was whether sugarcane would a vegetable. Having noticed the early opinions of the Apex Court in this regard we may now proceed to see as to whether the said view has undergone any significant transformation. In *State of West Bengal v. Washi Ahmed (supra)* relied by the revenue in the present case, the Apex Court was in seisin of the question as to whether ginger would an item of vegetable. Reiterating the law laid down in the case of *Ramavatar Budhai Prasad (supra)* the Apex Court held that the word "vegetable" as appearing in the particular statute under consideration must be construed as understood in common parlance and it must be given its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". Proceeding further the Apex Court took the view that ginger is a vegetable grown in a kitchen garden or in a farm and is used for the table and though it is not a principal item of the meal, it certainly forms a part of the meal as a subsidiary item. The Supreme Court further took the view that ginger is ordinarily sold by the vegetable vendor as a vegetable and is purchased by the house-wife as a vegetable item. Therefore, ginger was held to be more appropriately classifiable as a vegetable item.

5. Applying the above parameters of the law consistently laid down by the Apex Court what is discernible in the facts of the present case is that Soya Nuggets is prepared/manufactured by the petitioner from the basic Ingredients of DE-oil, cake, suji, rice, soda etc. The product does not undergo the process which transforms a vegetable into a dry vegetable. Soya Nuggets may be a vegetarian

food item but merely because it is a vegetarian food item it cannot be construed to be an item of dry vegetable. What is includible in Item 1(b) of Schedule II are not vegetarian items but items of dry vegetable. The distinction is fundamental and has to be appreciated in the right context to consider the tenability of the claims of the assessee. A householder buying a packet of Soya Nuggets cannot be understood to have brought an item of vegetable or dry vegetable. What the householder is purchasing is an item of vegetarian food. Similarly, a vendor selling Soya Nuggets cannot be understood to have a perception that what he is vending is an item of dry vegetable. It would be more reasonable to assume that a vendor of Soya Nuggets understands his business to be one of sale of a vegetarian food item. The common parlance test and a common-sense approach coupled with the peculiar characteristics of the product in question seems to be more reasonably pointing to the direction of Soya Nuggets being an item of vegetarian food and not an item of dry vegetable.

6. In the light of the foregoing discussions what this Court finds is that there is sufficient justification in the stand of the revenue that Soya Nuggets would not be classifiable under Item 1(b) of Schedule II but would more appropriately fall under the Residuary Item contained in Serial No. 2 of Schedule III to the Act. The writ petition, therefore, has to fail in the light of the conclusions recorded above. Accordingly, it is dismissed, however, without any cost. Interim order passed earlier shall stand vacated.