courtkutchehry.com

Company : CourtKutchehry
Website : www.courtkutchehry.com
Printed For :
Date : 05/09/2026

(1991) 04 GUJ CK 0021

In the Gujarat High Court

Case No : Sales Tax Reference No. 6 of 1982

State of Gujarat — APPELLANT

Vs

Bhagwati General Agency (Import) — RESPONDENT

Date of Decision : 01-04-1991

Acts Referred:
Gujarat Sales Tax Act, 1969 — Section 18, 69

Citation : (1991) 04 GUJ CK 0021

Hon'ble Judges : S.D. Shah, J;G.T. Nanavati, J

Bench : Division Bench

Advocate : Kamal M. Mehta, Assistant Government Pleader, for the Appellant; R.D. Pathak, for the Respondent

Judgement

S.D. Shah, J.—The Gujarat Sales Tax Tribunal has referred the following question of law for our decision on being moved by the State of Gujarat u/s 69 of the Gujarat Sales Tax Act, 1969 (hereinafter referred to as "the Act").

"Whether, on the facts and in the circumstances of the case, the Tribunal was correct in law in holding that yeast sold in the form of powder and granules by M/s. Bhagwati General Agency (Import) of the value of Rs. 26,322 during the assessment year 1974 is a chemical and is covered by the expression ''dyes and chemicals'' used in entry 9 in Schedule II, Part A, to the Gujarat Sales Tax Act, 1969 or whether the sales thereof were rightly held to have been taxed under the residuary entry 13 in Schedule III to the said Act by the learned Assistant Commissioner of Sales Tax ?"

2. A few facts giving rise to the present reference need be stated. The opponent is a registered dealer and it carries on the business of reselling chemicals, provisions, etc. It purchased and sold yeast in the form of dry powder and granules to the extent of Rs. 26,332 during the period from 1st January, 1974 to 31st December, 1974. A question arose before the Sales Tax Officer as regards the rate of tax payable on the sale of the said yeast. The opponent contended that yeast would fall within entry 9 of Schedule II, Part A to the said Act and sale

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-of-gujarat-appellant-hash-...

thereof would, therefore, be chargeable at 3 per cent, while Revenue contended that the sale of yeast would covered by residuary entry being entry 13 of Schedule III to the said Act and, therefore, sales of yeast would be chargeable to sales tax at 5 per cent and general sales tax at 3 per cent.

3. The Sales Tax Officer as well as the Assistant Commissioner of Sales Tax took the view that sales of yeast would be covered by entry 13 of Schedule III to the said Act and not by entry 9 of Schedule II, Part A, to the said Act.

4. Being aggrieved by the said decision, the opponent carried the matter in second appeal to the Tribunal and the Tribunal held that yeast is chemical by composition as also on account of its reactive property of bringing about the chemical reaction and, therefore, it would be covered by the expression "chemical" as used in entry 9 of Schedule II, Part A to the said Act.

5. On being moved by the State to refer the question of law arising from its decision, the Tribunal has referred the aforesaid question for our decision.

6. The question which we are in fact called upon to decide is whether sales of yeast would fall within entry 9 of Schedule II, Part A to the said Act. In the absence of any specific entry dealing with micro-organism or biological product, in fact we are not called upon to decide as to whether yeast would fall more appropriately in the description of biological product, while deciding the question as to whether a product would fall within a specific entry or not we shall have to keep in mind the cardinal principle of interpretation of entries in the fiscal statute, viz., that if a product falls within a specific entry, resort to the residuary entry should not be made.

7. With this preface, it will be necessary to refer to entry 9 of Schedule II. Part A as it stood at the relevant time and entry 13 of Schedule III to the said Act. The said entries are reproduced hereunder :

---------- Description of goods Rate of sales Rate of tax purchase tax ---------- 9. Dyes and chemicals other than Three paise in Three paise in those specified in any other the rupee. the rupee. entry in this or any other Schedule. 13. All goods other than those Five paise in Three paise in specified from time to time in the rupee. the rupee. section 18 and in Schedules I and II and in the preceding entries. ----------

8. Entry 9 of Schedule II, Part A, refers dyes and chemicals other than those specified in any other entry in Schedule II or any other Schedule. A bare reading of entry 9 suggests that it is a residuary entry so far as dyes and chemicals are concerned. It takes in its purview all types of dyes and chemicals which are not specifically mentioned in any other entry of other Schedules.

9. In order to find out whether yeast can be said to be "chemical" it is necessary to refer to the composition of yeast and its basis characteristics. Yeast is

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-of-gujarat-appellant-hash-…

chemically composed of ammonia, di-ammonia acid, mono ammonia acids, phosphorus-pentoxide, potassium oxide, magnesium oxide, calcium oxide, etc. Yeast powder is manufactured by a chemical process involving the use of molasses and ammonia. It is, therefore, clear that yeast is composed of constituents which are chemicals. So far as the properties of yeast are concerned, it is said that yeast is used in baking process and when it is so used, it brings about chemical reaction through the process of enzymatic conversion of carbohydrate into alcohol and carbondioxide. There is no despite about the fact that yeast is capable of bringing about a chemical reaction or chemical effect. Having thus ascertained the composition of yeast and its basis characteristic of processing reactive properties, we shall now find out the meaning of the word "chemical" used in Oxford English Dictionary, Volume II, Page 319. As an adjective "chemical" is defined as "of, pertaining to or relating to the science of chemistry, or to the substance and phenomena of which it treats", and as noun the word "chemical" is defined in the said dictionary as "a substance obtained or used in chemical operations". Webster''s Seventh New Collegiate Dictionary defines "chemical" as a noun to mean "a substance obtained by a chemical process or used for producing a chemical effect".

10. With the above meaning of the word "chemical" the question which is required to be answered is whether "yeast" is a substance which is used in chemical operations or for producing chemical effect in the manufacture of breads, pastries or other products resulting from baking process. About the basis ingredients of it, viz., that it possesses reactive properties of bringing about a chemical reaction, there is no dispute and, therefore, it can be said to be a substance used for producing a chemical effect. In that sense of the term, we find that yeast can be described as "chemical". From the composition of yeast and its essential characteristics, it is clear that it is a substance obtained by a certain process and is used for producing certain chemical effect. We are, therefor, of the opinion that there cannot be any doubt that yeast powder is a chemical.

11. At this stage we may refer to the decision of a Division Bench of this Court in State of Gujarat v. Jayant Chemical Works Pvt. Ltd. [1975] 36 STC 112, wherein a question arose before the Division Bench as to whether bentonite powder is a chemical so as to be covered by entry 4 of Schedule C to the Bombay Sales Tax Act, 1959. We may mention here that entry 4 of Schedule C of the Bombay Sales Tax Act, 1959, is in pari materia with entry 9 of Schedule II, Part A of the Act with which we are concerned. While dealing with the said entry, the Division Bench of this Court observed as under :

"We are therefore not inclined to accede to this contention of the Revenue for the simple reason that in the first instance, the word ''chemicals'' should not by any stretch of imagination in this particular entry be said to take a limited meaning from the preceding word ''dye-stuff''. It should be noted that this particular entry No. 4, namely, dyes and chemicals other than those mentioned in other entries

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-of-gujarat-appellant-hash-…

of Schedule C or of those in other Schedules is a residuary entry as far as the dye-stuff nd chemicals are concerned. It takes in its purview all types of dyes and chemicals which are not specifically mentioned in other entries of Schedule C or in any other entries of any Schedule."

12. From the above observations, it becomes clear that entry 9 of Schedule II, Part A is a residuary entry so far as dyes and chemicals are concerned, and chemicals which are not specifically mentioned in any of the entries to Schedule II of Schedule III would fall within the said entry. Therefore, yeast powder would fall within entry 9 of Schedule II, Part A to the said Act.

13. The learned Assistant Government Pleader submits that yeast is generally used in baking process for bringing out fermentation. Fermentation process is brought about by the life activates of unicellular plant, microscopically small yeast cell. He further refers to volume I of book captioned "Making Science and Technology" edited by Mr. E. J. Pyler, and more particularly, to the topic of "yeast, molds and bacteria" in chapter 5 of the said book. By reference to the said chapter, he submits that "yeast" is a micro-organism in the shape of a unicellular plant which brings about fermentation process involving biological reaction in the baking process. Based on this reasoning, he submits that yeast by itself, or as such, cannot be classified as chemical. He submits that the process of fermentation in the baking process is fundamentally biological, and therefore, yeast is primarily a biological agent and it is not a chemical.

14. We are not in a position to accept the submission of learned Assistant Government Pleader firstly, because there is absence of any entry in any of the three Schedules dealing with living micro-organisms or any biological product and, by this reference, we are not called upon to decide as to whether yeast would more appropriately fall into the description of biological product or not, secondly while construing an entry in fiscal statute we shall have to keep in mind the fact that when there is a specific entry in the description of which entry the product in question can more appropriately fall, it is not permissible to have resort to a residuary entry, thirdly, we have also reached a finding that by its composition yeast can be described as chemical, fourthly we have found that yeast is a substance having reactive properties and lastly we note that we are called upon to decide as to whether yeast is "chemical" and not the question as to whether "yeast" can be appropriately classified as living micro-organism.

15. For the aforesaid reasons, we do not agree with the learned Assistant Government Pleader that yeast is a product which can be more appropriately classified as living micro-organism, and therefore, it should be classified under entry 13 of Schedule III. As stated above, there is no dispute about the fact that yeast has capacity to bring about chemical reaction and change, and it is within the meaning of term "chemical" as defined by various dictionaries the definitions whereof are referred hereinabove.

16. We, therefore, answer the question referred to us in the affirmative by

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-of-gujarat-appellant-hash-…

holding that the Tribunal was right in law in holding that yeast sold by the opponent is a chemical covered by the expression "dyes and chemicals" as used in entry 9 of Schedule II, Part A to the said Act. We, therefore, answer the question against the State and in favour of the opponent. There shall be no order as to costs in this reference.

17. Reference answered in the affirmative.

Downloaded from CourtKutchehry — https://dev.courtkutchehry.com/judgments/state-of-gujarat-appellant-hash-…