(2007) 01 AHC CK 0071

In the Allahabad High Court

The Commissioner, Sales Tax APPELLANT

Vs

Heera Lal Ramesh Chandra RESPONDENT

Date of Decision : 25-01-2007

Acts Referred:

Citation : (2007) 01 AHC CK 0071

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Present revision u/s 11 of U.P. Sales Tax Act (hereinafter referred to as "Act") is directed against the order of Tribunal dated 4th May, 1993 for the assessment year 1985-86.

2. The dispute relates to the levy of tax on the turn over of chiraunji worth Rs. 12,25,726/- for the period 01.10.1985 to 31.03.1985. Assessing authority had taxed the aforesaid turn over of chiraunji @ 10% treating it as dry fruit while dealer/opposite party (hereinafter referred to as "Dealer") claimed that it was not dry fruit and liable to tax as an unclassified item @ 8%. In first appeal claim of the dealer was accepted. Commissioner of Trade Tax filed appeal before the Tribunal, which has been dismissed. Tribunal following the decision of the Full Bench of the Sales Tax Tribunal in the case of Heera Lal Mahesh Chandra v. CST reported in 91 STD (T) 51 held that chiraunji is not a dry fruit and is taxable as an unclassified item @ 8%. Thus, the dispute is, whether Full Bench of the Tribunal in the case of Heera Lal Mahesh Chandra v. CST (Supra) has correctly held that chiraunji is not a dry fruit. It has been held that it is liable to tax as spices and condiments for the period prior to 01.06.1985 and as an unclassified item after 01.06.1985. The period involved in the present revision is 01.10.1985 to 31.03.1985. Therefore, this Court is confining its decision to the question whether chiraunji is liable to tax as dry fruit or liable to tax as an unclassified item, leaving the question open as to whether chiraunji is spices or condiments. Full Bench of the Tribunal has held as follows:

It is clear from the definition given in the above Dictionaries that condiment is an item which gives relish to the food. On behalf of the appellant reliance was placed on the decision of the Hon''ble High Court given in the case of Hardeo Das Satya narain, Kanpur v. Commissioner of Sales Tax, U.P., Lucknow 1978 UPTC 789, in which Makhana came up for consideration and it was held that it is not a Dry Fruit For this determination, test of common parlance was adopted in the absence of definition of ''Dry Fruit'' in any Act or Notification or Dictionary. Chiraunji is not eaten or consumed as is the case with Cashew-nuts, Almonds, etc. Chiraunjii is commonly sued for giving relish to certain items of food and it not eaten as Dry Fruit It has also been groupea in spices and condiments in several notifications and the Amending Act mentioned above. We, therefore, hold that it is not a Dry Fruit but a condiment It cannot be regarded by any stretch of imagination as spices. Accordingly the appeal will have to be allowed.

3. Learned Standing Counsel submitted that chiraunji is normally considered as one of the item of the Panchmeva and, therefore, in common parlance it is known as dry fruit. He submitted that chiraunji is normally not eaten as such, is being mainly used in sweets, kheer etc. to give flavour. Learned Counsel for the dealer submitted that it is a inside portion of seed of flower and is not commonly used as dry fruit. He submitted that the finding of the Full Bench of the Tribunal that it is not known as dry fruit in common parlance is finding of fact and can not be interfered with in the absence of any material to the contrary. He submitted that while classifying a commodity, how a commodity is commonly known in common parlance is to be considered. In support of his contention he relied upon on the several decisions.

4. I have given my anxious consideration to the submissions of learned Counsel for both the parties.

5. The Hon''ble Supreme Court in the case of Ram Avtar Budhai Prasad v. Assistant Sales Tax Officer 12 STC 286 ALL held that the word ''vegetable'' in Schedule of C.P. and Berar Sales Tax Act must be construed not in any technical sense nor from botanical point of view but as understood in common parlance. In the case of Collector of Customs, Bombay Vs. Swastic Woollens (P) Ltd. and Others, . Hon''ble Apex Court held in para 4 "We are of the opinion that when no statutory definition is provided in respect of an item in this Customs Act or the Central Excise Act, this trade understanding, meaning thereby the understanding in the opinion of those who deal with the goods in question is the safest guide."

6. In the case of Commissioner of Sales Tax v. Sarin Chemical Laboratory reported in 24 STC 406 ALL the question was whether the tooth paste and tooth powder was medicine or toilet requisite or medicine. The Division Bench of this Court held that it is a matter of common knowledge that toothpaste or tooth powder is an essential item of toiletry in the modern life. The Division Bench held as follows:

It is a matter of common knowledge that tooth paste and tooth power is an essential item of toiletry in modern life. The manufacturers of dentifrices like tooth paste, tooth powder invariably claim medicinal property for their products and some of them do possess prophylactic and remedial properties but whether they do or do not possess medicinal properties claimed by their manufacturers, the fact remains that they are used for dental cleanliness which is an essential Act of toilet. In fact, medicinal properties are claimed even in respect of large number of items of cosmetics such as lotions, creams, snows and powders but that does not mean that such article ceased to belong to the range of cosmetics and became medicines. The word ''medicine'' means also is a word of every day use and we all know what medicine means. Act of brushing one''s teeth with tooth paste or tooth powder is certainly is not the same thing as taking or using medicines.

7. The aforesaid decision has been approved by the Apex Court in the case of Sarin Chemicals Laboratories v. Commissioner of Sales Tax reported in 26 STC 339 ALL. The Apex Court has upheld the test of common parlance in the classification of goods.

8. In the case of 1991 (33) ECR 217 the Apex Court held that Lal Dant Manjan which is being used for cleaning teeth only, is not a drug or ayiirvedic medicine. The relevant portion is quoted below:

Cleaning teeth being an Act of daily toilet, dentifrices produced in the form of tooth powder used for cleaning teeth would be an article of Toilet as held by the Bombay High Court in the case of Commissioner of Sales Tax v. Vicco Laboratories 22 STC 169 ALL. Madras High Court in the case of V.P. Somasundra Mudaliar v. State of Madras (1963) 14 STC 943 SC also took the view that the tooth powder is a ''toilet'' requisite. Hon''ble Supreme Court in the case of Sarin Chemical Laboratory v. Commissioner of Sales Tax, U.P. AIR 1972 SC 65 also held that tooth powder in common parlance is considered as a toilet article. In this judgment, Supreme Court referred to the decisions of Allahabad, Bombay and Madras High Courts mentioned above and confirmed the view taken by those High Courts that the tooth powder is a ''toilet requisite''.

9. In the case of BPL Pharmaceuticals Ltd. v. Collector of Central Excise reported in 104 STC 164 SC the Supreme Court was concerned with "selsun" anti-dandruff preparation containing 2.5 percent of selenium sulphide, which is the full therapeutic limit permissible under the pharmacopoeia. The said product was manufactured under the drug licence as a medicine, put up as a medicine, used under doctor''s advice and sold through chemist''s shops on a doctor''s prescription. It was held medicine as it was understood in common parlance as medicine.

10. In the case of B. Shah & Co. v. State of Gujarat, reported in 28 STC 5 SC Gujarat High Court held nycil-dedicated powder as a medicine. Hon''ble Gujarat High Court on a consideration of definition of word "medicines" held as follows:

It is thus clear that the word "medicine" is susceptible of two distinct meanings and that in its ordinary sense as applied to human ailments, it means something which is administered either internally or externally in the treatment of disease or the relief of sickness. It is now well settled that the names of articles, sales as well as purchases of which are liable to be taxed, given in a statute, unless defined in the statute must be construed not in a technical sense but as understood in common parlance, vide Ramavatar Budhai Prasad v. Assistant Sales Tax Officer. The word "medicine" appearing in Entry-13. Schedule-C, will therefore, have to interpreted not in a technical sense but as understood in common parlance. In its popular sense, "medicine" is a remedial agent, a substance which may be sold in various forms such as liquid, tablets, capsules or powder, which is administered in the treatment of disease and which has the property of curing or remedying disease. This meaning also accords with the dictionary meaning to which we have just referred above. If this is the true meaning of "medicine" in popular parlance, many articles which may not be medicine technically or strictly so called would be covered by the wide ambit of the word "medicine" and we see no reason why Nycil powder, with its special qualities and attributes, its character and composition and its recommended or intended use as advertised by the manufacturers would not be covered within the meaning of the word "medicine" as understood in popular parlance.

11. In the case of Commissioner of Sales Tax v. S/S Balsara Hygiene Products Ltd. reported in 1986 UPTC 367 Odomos has been held as a medicine. This Court held:

There cannot be dispute about the fact that Odomos is used only as mosquitoes repellent The purpose is to save the human skin from mosquitoes which results in several infectious disease; and mostly Malarial Fever etc. It is true that it is not used as a medicine to cure some disease or to heal up some wound but it is certainly a preventive medicine which prevent the body from being infected by the bite of the mosquitoes. One redeeming feature which has also been mentioned by the Tribunal in its order is that manufacturing of this commodity is controlled by the authorities under the Drug and Cosmetics Act, 1940, which also lends support to the contention of the respondent-assessee that it is used like a medicine

It has been contended by the department that Odomos is available even in general stores merchandise shops and is not sold at the Chemist shop exclusively. In my opinion the mere fact that Odomos is available even in general merchandise shops will not detract the substance from being used as a preventive medicine. It is well settled that common parlance meaning has to be applied while interpreting entries under the fiscal statute and the Courts have said time and again that it is not safe to be always guided by the dictionary or technical meanings. It is, therefore, not necessary to deal with various authorities cited by the learned Counsel for the assessee on the point. Since in common parlance Odomos is used as a medicine and is known as a medicine, in my opinion, the Tribunal was fully justified in holding that Odomos was covered under the notification dated 7th September, 1981.

12. Ciraunji is not defined in the Act or Rule or in any of the notification. In Lok Bharti Prakashan Pramanik Hindi Kosh chiraunji has been defined as follows:

"PAYAL NAMAK VRIKSH KE BEJO KI GIRI"

13. In the case of Hardeo Das Satya Narain, Kanpur v. Commissioner of Sales Tax, U.P., Lucknow reported in 1978 UPTC 789 ALL. Learned Single Judge of this Court has held Chhuhara as dry fruit but makhana has not been held as dry fruit. It has been observed that so far as makhana is concerned, it is a seed which is not edible till it is subjected to a heating process, as a result of which it puffs up and becomes an edible commodity. It is, as such, not a dry fruit being a seed, and consequently does not fall within the category of dry fruit.

14. Larger Bench of the Tribunal held that chiraunji is not known as dry fruit in common parlance. No material in this regard has been referred by the Tribunal for arriving to the above conclusion. Apex Court has consistently held that commodity is to be classified on the basis how it is understood in common parlance and in commercial sense. Since the Tribunal has not considered whether chiraunji in common parlance is known as dry fruit or not, it would be appropriate that the matter is to be remanded back to the Tribunal to examine whether chiraunji is understood as dry fruit in common parlance.

15. In the result, revision is allowed in part and the matter is remanded back to the Tribunal to decide the appeal afresh in the light of the observations made above.

