

SUPREME COURT OF INDIA

Commr. of Sales Tax, M.P.

Vs.

General Foods Pvt. Ltd., Indore

(S Bharucha and V Khare JJ.)

01.09.1998

ORDER

1. The question that the High Court of Madhya Pradesh was required to consider in these appeals reads thus :

Whether, on the facts and in the circumstances of this case, the Board of Revenue was justified in holding that the husk of soyabean was liable to be taxed as the same was not covered by Notification No. 1073-537-V-ST dated 7th April, 1967, as extended from time to time and consequently it was not exempt from payment of turnover tax ?

The High Court answered the question in the negative and in favour of the assessees. The State is in appeal by special leave.

2. The notification which we are required to consider was issued on 7th April, 1967 in exercise of power conferred by section 12 of the Madhya Pradesh General Sales Tax Act, 1958. Thereby the State exempted from the payment of tax "husk of all grains, cereals, pulses and rice".

3. The assesseees extract oil from soyabean. In their assessment the assessing authority held that the husk of soyabeans was not exempt from the payment of tax by reason of the said notification and assessed the assesseees accordingly. The assesseees' first appeal to the Deputy Commissioner and second appeal to the Board of Revenue were dismissed. The Board of Revenue found that there was "no doubt that soyabean is a leguminous plant and it would have come under pulses, had it not been specifically included as an oil-seed under the Schedule appended to the Act itself... item 7 of Part I of Schedule II includes soyabean (glycine seja) specifically. When soyabean has been treated as oil-seed under the Act it cannot be considered as other than oil-seed".

4. In answering the question the High Court took the view that cereals, which were not defined in the Act, meant any grain which was used for food. Soyabeans were used for food. No particular species of grain could be excluded from the category of grain merely because it was capable of being used as an oil-seed as well.

5. It seems to us that what is relevant is thus : what is the article which is exempted from tax by the said notification. The article is the husk, whether it be of grains or of cereals or of pulses. The husk of soyabeans could not have been taxed under the entry relating to soyabeans in the Schedule to the Act. There being no entry in the Schedule specifically relating to husk, it could, at best, have been taxed under a residuary entry. There is, in our view, no justification for the argument that the husk of soyabeans falls outside the scope of the said notification because soyabeans have been specifically listed in the Schedule to the Act under the category of oil-seeds. What is relevant for our purposes is to see whether the husk of soyabeans is the husk of a grain or a cereal or a pulse. The final fact finding authority, the Board of Revenue, has held that soyabeans are pulses. The husk of soyabeans, therefore, is the husk of pulses and the notification squarely applies.

6. It is, in these circumstances, unnecessary to refer to the authorities cited by learned counsel for the State which would apply in relation to the soyabean and not to the ' husk.

7. The appeals are dismissed with no order as to costs.