

M/s. Gulati & Co

v.

The Commissioner of Sales Tax, U.P., Lucknow

(Supreme Court Of India)

HON'BLE MR. JUSTICE H.L. DATTU HON'BLE MR. JUSTICE C. NAGAPPAN

Civil Appeal No. 1779-1782 Of 2004 | 12-12-2013

H.L. Dattu, J.

1. These appeals are directed against the common judgment and order passed by the High Court of Judicature at Allahabad in Sales Tax Revision Nos.974 of 1991, 1011 of 1990, 975 of 1991 and 1013 of 1990, dated 21.08.2003, whereby and whereunder, the High Court has allowed the revision petitions of the Revenue and set aside the order passed by the Sales Tax Appellate Tribunal.

2. The issue that falls for our consideration and decision in these Civil Appeals is whether food colours and food essences used in the manufacturing of foodstuffs and food products would fall under Entry 56 of the Notification No. ST-2-7218/10/6(43)/77, dated 30.09.1977 (for short "the notification").

3. In order to answer the aforesaid issue, brief facts may be noted. For the sake of convenience, we would only notice facts in Civil Appeal No. 1179 of 2004. In this appeal, we are concerned with the assessment years 1979-80, 1981-82, 1982-83 and 1983-84. The appellant is a dealer under the Act. It is engaged in the sale of various items, including food colors and food essences and according to the appellant, the aforesaid products are used in the manufacture of foodstuffs and food products.

4. At the stage, it would be useful to refer to the said notification issued by the State Government. The same is extracted under:

"Notification No.ST-II-7218/X-6(43)-77-U.P.Act XV/48- Order-77, dated 30.9.1977

[Published in U.P.Gazette Extraordinary, dated 1-10-1977]

In exercise of the powers under clause (b) of sub-section (1) of Section 3-A of the U.P.Sales Tax Act, 1948 (U.P.Act No.XV of 1948), read with section 21 of the U.P.General Clauses Act, 1904 (U.P.Act No.1 of 1904), the Governor is pleased to make, with effect from October 1, 1977, the following amendment in Notification No.ST-II- 332/X-1012-1971, dated November 15, 1971, as amended from time to time:

AMENDMENT

In the Schedule to the aforesaid notification, for the existing entries under Columns II, III and IV, against Items 9, 23, 29, 32, 33, 37, 39, 46, 56, 61, 71 and 95, the following entries shall be substituted, namely :-

xxx xxx xxx

56. Milk powder, condensed milk, baby milk, baby food and all other foodstuffs or products, whether used as such or after mixing them with any other foodstuff or beverage, when sold in sealed or tinned containers."

5. The rate of tax stood at 5% at the relevant time. The aforesaid entry was reiterated in a subsequent notification No. 5785, dated 07.09.1981 and the rate of tax was enhanced from 5% to 6%.

6. Before we advert to the findings of the assessing authority, the Tribunal and the High Court, we would analyse Entry 56 of the Notification. The said entry speaks of milk powder, condensed milk, baby milk, baby food and all other foodstuffs or products. The legislature by using the expression "all other" would intend to include any article which is edible in nature. The other expression used in the entry is "whether the foodstuff is used as such or after mixing with any other foodstuff or beverage". That only means to say that Entry 56 contemplates that when the foodstuff is used as such or it is mixed with any other foodstuff or beverage and thereafter, sold in sealed or tinned containers, the Notification certainly would apply and the rate of tax on such foodstuff would be at 5% or 6%, as at the relevant point of time.

7. The Sales Tax Authority was of the view that sale of food colours and essences by the appellant assessee would not fall within Entry 56 of the Notification and therefore, computed the sales tax liability of the appellant and passed the order of assessment.

8. Aggrieved by the order of assessment, the assessee had unsuccessfully filed the First Appeal and thereafter filed second appeal before the Sales Tax Appellate Tribunal, inter alia, questioning the assessment orders passed by the assessing authority for the assessment years 1979-80, 1981-82, 1982-83 and 1983-84. The Tribunal, by its orders dated 17.2.1990 and 22.4.1991 has allowed the appeals by accepting the stand of the assessee that "food colours" and "food essences" are foodstuffs within the meaning of Entry 56 of the aforesaid notification.

9. It is this order of the Tribunal which was carried in revision before the High Court by the Revenue. The High Court after carefully analysing Entry 56 of the Notification has come to the conclusion that food colours and food essences must not be construed in their technical parlance but must be read in common parlance and therefore, cannot be characterized as foodstuffs and food products and, accordingly, reversed the finding and conclusion reached by the Tribunal and allowed the revision petition filed by the Revenue.

10. Aggrieved by the said finding and conclusion reached by the High Court, the assessee is before us in these appeals.

11. We have heard Shri Dhruv Agrawal, learned senior counsel appearing for the appellant and Shri Pawan Shree Agarwal, learned counsel for the respondent-State. We have also carefully perused the relevant entry i.e. Entry 56 of the Notification for the relevant assessment years and the orders of Courts below.

12. As we have already noticed, the assessee carries on the business of the sale of food colours and food essences. According to the appellant-assessee, the food colours and food essences would fall under Entry 56 of the Notification, dated 30.9.1977 and thereby he would be liable for reduced rate of tax.

13. In interpretation of fiscal statutes, the entries must not prima facie be construed in their technical or scientific import but must be understood in its ordinary sense. Therefore, the expression "foodstuff" must receive its ordinary and natural meaning; that is to say a meaning which takes account of and accords with the day-to-day affairs of life. By "foodstuffs" is meant food of some kind. (*Sat Pal Gupta v. State of Haryana*, (1982) 1 SCC 610; *ESI Corpn. v. TELCO*, (1975) 2 SCC 835; *State of Orissa v. Titaghur Paper Mills Co. Ltd.*, 1985 Supp SCC 280). Since, the word "foodstuffs" which occurs in Entry 56 has not been defined under U.P. Sales Tax Act, the legislature must be taken to have used that word in its ordinary dictionary meaning. While we are mindful that though the Court may take the aid of dictionaries to ascertain the meaning of a word in common parlance, in doing so the court must bear in mind that a word is used in different senses according to its context and a dictionary gives all the meanings of a word and the court would, therefore, have to select the

particular meaning which would be relevant to the context in which it has to interpret that word.

14. The meaning of "foodstuff" according to lexicographers is as follows:

(a) Oxford Advanced Learner's Dictionary: "a substance suitable for consumption as food"

(b) Collins English Dictionary: "any material, substance, etc, that can be used as food"

(c) Macmillan English Dictionary for Advanced Learners: "a type of food"

15. The aforesaid clarifies that the expression "foodstuff" in itself does not constitute a class of products but only encompasses the products which fall into the category of "food. This necessitates examination of the term "food" to ascertain import of "foodstuffs".

16. The Shorter Oxford English Dictionary (Third Edition) defines "food" as "what one takes into the system to maintain life and growth". According to Webster's Third New International Dictionary, "food" means "material consisting of carbohydrates, fats, proteins and supplementary substances, that is taken or absorbed into the body of an organism in order to sustain growth, repair, and all vital processes and to furnish energy for all activity of the organism; something that nourishes or develops or sustains". Therefore, "foodstuff" would refer to anything with a nutritive value which is consumed for growth or sustaining ones life.

17. It is trite that there is no fixed test for classification of a taxable commodity and the most commonly employed is the "common parlance test". Whether a particular article will fall within a particular tariff heading or not has to be decided on the basis of the tangible material or evidence to determine how such an article is understood in "common parlance" or in its popular sense meaning. That is to say, comprehending the term in same context as those who are concerned with it and it is that the sense in which they understand it that constitutes the definitive index of the legislative intention, when the statute was enacted. (A. Nagaraju Bros. v. State of A.P., 1994 Supp (3) SCC 122; Delhi Cloth and General Mills Co. Ltd. v. State of Rajasthan, (1996) 2 SCC 449; CCE v. Wockhardt Life Sciences Ltd., (2012) 5 SCC 585)

18. The use of "common parlance" test and its advantage over the "etymological" test has been very aptly explained by this Court in context of term "furniture" in Craft Interiors (P) Ltd. v. CCE, (2006) 12 SCC 250. This Court has observed as under:

"18. We may add that sometimes chairs, beds, tables, desks, etc. are affixed to the ground, but nevertheless they will still be called as furniture (one may recall the fixed bed in Sherlock Holmes story "The Speckled Band"). This is because when we interpret a word we should not only see the dictionary meaning but even more the popular meaning which the word has acquired in common parlance. As stated by K.L. Sarkar (in his book *Mimansa Rules of Interpretation*) "the popular meaning overpowers the etymological meaning".

19. To give an example, the word "pankaja" literally means born in mud. The word "panka" means "mud" and the word "ja" means "which is born in". Hence the etymological meaning of the word "pankaja" is that "which is born in mud". Many things can be born in mud e.g. insects, vegetation, water flowers, etc. However, by popular usage the word "pankaja" has acquired a particular meaning in common parlance i.e. lotus. This meaning will, therefore, prevail over the etymological meanings.

20. Similarly, the word "furniture" has a meaning in common parlance which every layman understands. It commonly refers to chairs, desks, tables, beds, etc. Hence we should give it this popular meaning."

19. In our considered view, the words with which we are concerned must be construed in the sense which is imputed to them by the persons who deal in and who consume such articles and therefore, we would now explore the meaning and usage of terms "foodstuffs", "food colours" and "food essences" in their common parlance.

20. Bose J. in *State of Bombay v. Virkumar Gulabchand Shah*, 1952 SCR 877, in context of whether turmeric is a "foodstuff" within the meaning of clause 3 of the Spices (Forward Contracts Prohibition) Order, 1944, read with Section 2(a) of the Essential Supplies (Temporary Powers) Act, 1946, (Act 24 of 1946) has adopted the "common parlance" test and observed that:

"9... Much learned judicial thought has been expended upon this problem what is and what is not food and what is and what is not a foodstuff; and the only conclusion I can draw from a careful consideration of all the available material is that the term "foodstuff" is ambiguous. In one sense it has a narrow meaning and is limited to articles which are eaten as food for purposes of nutrition and nourishment and so would exclude condiments and spices such as yeast, salt, pepper, baking powder and turmeric. In a wider sense, it includes everything that goes into the preparation of food proper (as understood in the narrow sense) to make it more palatable and digestible. In my opinion, the problem posed cannot be answered in the abstract and must be viewed in relation to its background and context.

11. It will be seen from these definitions that "foodstuff" has no special meaning of its own. It merely carries us back to the definition of "food" because "foodstuff" is anything which is used as "food".

12. So far as "food" is concerned, it can be used in a wide as well as a narrow sense and, in my opinion, much must depend upon the context and background. Even in a popular sense, when one asks another, "Have you had your food?", one means the composite preparations which normally go to constitute a meal curry and rice, sweetmeats, pudding, cooked vegetables and so forth."

21. Further, in Virkumar Gulabchand Shah case (supra) Fazl Ali J. while concurring with the views of Bose J. has observed as follows:

"In one sense, everything which enters into the composition of food so as to make it palatable may be described as "foodstuff", but that word is commonly used with reference only to those articles which are eaten for their nutritive value and which form the principal ingredients of cooked or uncooked meal, such as wheat, rice, meat, fish, milk, bread, butter, etc. It seems to me desirable that the Act should be amended so as to expressly include within the definition of the somewhat elastic expression "foodstuff" turmeric and such other condiments as the Legislature intends to be treated as such for achieving the objects in its view."

(emphasis supplied)

22. In *Welcome Hotel v. State of A.P.*, (1983) 4 SCC 575, this Court while construing the term "foodstuff", has observed that the expression foodstuffs is made of two expressions, food plus stuff. The expression food has generally been understood to mean nutritive material absorbed or taken into the body of an organism which serves for purposes of growth, work or repair and for the maintenance of the vital process. While, the stuff which is used as food would be foodstuff and therefore, foodstuff is that which is taken into the system to maintain life and growth and to supply waste of tissue.

23. In *CST v. S.N. Brothers*, (1973) 3 SCC 496, this Court has considered the question as to "whether the food colour and essence are under the circumstances items to be taxed under Section 3-A within the Notification No. ST-905/X, dated March 31, 1956." Therein, food colours and syrup essences imported by the dealer would fall within the Entries 10 and 37 of the notification which referred to "10. Dyes and colours and composition thereof" and "37. Scents and perfumes", respectively. This Court answering the question in negative observed as follows:

"5. The words "dyes and colours" used in Entry 10 and the words "scents and perfumes" used in Entry 37 have to be construed in their own context and in the sense, as ordinarily understood and attributed to these words by people usually conversant with and dealing in such goods. Similarly the words "food colours" and "syrup essences" which are descriptive of the class of goods the sales of which are to be taxed under the Act have to be construed in the sense in which they are popularly understood by those who deal in them and who purchase and use them. "

24. In common parlance, the words "food" and "foodstuff" are used interchangeably. Any reference to "food" in common parlance suggests a substance or composite preparation which constitutes a meal to satiate hunger. The two products are either chemically manufactured or processed after their isolation from a plant and therefore, available as retail products in their concentrated forms. Thus, the food colours and essences cannot be consumed as such and their addition to any foodstuff is basically to ornamentally improve the end-product by making it attractive and impressive. The purpose behind their addition is to aid appetite by pleasing ones olfactory and ocular senses. Insofar as food essence is concerned, it also aids in improvement of the taste of the food product. They have no relation to enhancing the nutritive value of food and only cosmetically aid in enhancing the aesthetic value of the food product.

25. In the light of the aforesaid it could be concluded that food colours and food essences have not been considered to be foodstuff or a combination of the foodstuffs by either lexicographers or in common parlance and the two by no stretch of imagination would constitute "foodstuff". Therefore, we are of the considered opinion that the claim of the assessee that "food colours" and "food essences" are "foodstuffs" within the meaning of the notification was rightly rejected by the High Court upsetting the view expressed by the Tribunal.

26. Having gone through the orders passed by the High Court, we are of the considered view that the High Court has not committed any error, whatsoever, which would call for our interference in these appeals.

27. Accordingly, the appeals stands dismissed. No costs.

28. Ordered accordingly.