

Dilip Kumar Peppermints Vs. the State of Karnataka

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Court : Karnataka

Decided On : Jun-13-1986

Reported in : [1986]63STC143(Kar)

Judge : K.S. Puttaswamy and ;R.S. Mahendra, JJ.

Acts : [Central Sales Tax Act, 1956](#) - Sections 14 and 15; [Karnataka Sales Tax Act, 1957](#) - Sections 5(1), 8 and 22A

Appeal No. : S.T.A. No. 11 of 1985

Appellant : Dilip Kumar Peppermints

Respondent : The State of Karnataka

Advocate for Def. : S. Rajendra Babu, Government Adv.

Advocate for Pet/Ap. : K. Srinivasan, Adv.

Judgement :

K.S. Puttaswamy, J.

1. This appeal is by the assessee and is directed against the order dated 27th May, 1985, of the Commissioner of Commercial Taxes, Karnataka, Bangalore ('Commissioner'), in case No. SMR 42/83-84 made under section 22A of the [Karnataka Sales Tax Act, 1957](#) ('Karnataka Act 25 of 1957') ('the Act').

2. The assessee, which is a partnership firm of partners, inter alia, engaged in the manufacture and sale of 'lisa' sugar is a registered dealer under the Act on the file of the Additional Commercial Tax Officer, I Circle, Belgaum (CTO').

3. For the period from 1st April, 1975, to 31st March, 1976, the assessee filed its return before the CTO under the Act inter alia disclosing a sales turnover of Rs. 2,22,500 of 'lisa sugar', but, however, claiming exemption from payment of tax on the same under section 8 of the Act. On 27th August, 1979, the CTO completed the assessment (annexure A) and accepted the said claim of the assessee.

4. In exercise of the powers conferred by section 22A of the Act, the Commissioner issued two show cause notices on 23rd July, 1983, and 17th September, 1984 (annexures B and D), to the assessee proposing to revise the order of the CTO on the exemption granted on the sales turnover of 'lisa sugar' for the aforesaid period which was opposed by it on a large number of grounds. On an examination of the records, the cause shown thereto and affording an opportunity of hearing to the assessee, the Commissioner by his order dated 27th May, 1985, has revised the order of the CTO and has directed the CTO to levy tax on the sales turnover of 'lisa sugar' of Rs. 2,22,500 under section 5(1) of the Act. Hence, this appeal.

5. Sri K. Srinivasan, learned counsel for the assessee, contends that 'lisa sugar' was nothing but 'sugar' and, therefore, falls within the exempted article 'sugar' of entry 31-B of the Fifty Schedule - goods exempted from tax under section 8 of the Act - as rightly found by the CTO and the view expressed by the Commissioner to the contrary was illegal and incorrect. In support of his contention Sri Srinivasan has strongly relied on the ruling of the Supreme Court, which affirmed the decision of the Gujarat High Court, in *State of Gujarat v. Sakarwala Brothers* [1967] 19 STC 24 at 30 (SC) and a Division Bench ruling of this Court in *M. L. Abdul Malik and Co. v. Commercial Tax Officer, 2nd Circle, Basavangudi, Bangalore* [1963] 14 STC 214.

6. Sri S. Rajendra Babu, learned Government Advocate appearing for the revenue, refuting the contention of Sri Srinivasan, contends that 'lisa sugar' was not 'sugar' and the Commissioner had rightly disallowed the exemption illegally

granted by the CTO. In support of his contention Sri Babu has strongly relied on a Division Bench ruling of this Court in Krishna Products v. State of Karnataka [1984] 56 STC 190, the Division Bench rulings of the High Court of Delhi in Commissioner of Sales Tax, Delhi v. Nangumal Ram Kishore [1981] 48 STC 277, Commissioner of Sales Tax, Delhi v. Puran Chand & Sons (printed as appendix in the same volume at pages 284 to 286) and a Division Bench ruling of the Madras High Court in Nemichand Parasmal and Company v. Deputy Commercial Tax Officer, Evening Bazaar Assessment Circle, Madras [1984] 55 STC 47.

7. On the claim made by the assessee for exemption on 'lisa sugar' the CTO expressed thus :

'However, it is a fact that 'lisa sugar' is nothing but a mixture of sugar, glucose and some masala. Taking into consideration the rate of sugar during 1975-76, i.e., at Rs. 445, Rs. 423, Rs. 487 per quintal, your sales of lisa sugar at Rs. 7.20, Rs. 7.11, Rs. 7.28, Rs. 7.40 per kg. appears to be reasonable. Taking into account the quantum of lisa sugar, at 31.787 kgs. manufactured by you during the year under assessment, your claim of exemption on a turnover of Rs. 2,22,500 in respect of the sales of lisa sugar appears to be reasonable and hence it is allowed.'

But, the Commissioner without disputing the case of the assessee that the sucrose content of 'lisa sugar' was more than 90 per cent., extensively quoting the Division Bench ruling of the Delhi High Court in Puran Chand & Sons' case [1981] 48 STC 284 (App.) had expressed thus :

'6. In the light of the above decision of the Division Bench of the Delhi High Court wherein this specific issue was considered and decided, it is felt that lisa sugar even with a 92 per cent. sucrose and with additives like starch, liquid glucose, etc., no longer retains the status of sugar as is understood in common parlance by the common man, the common trader, common business, etc.

7. In the light of the above, the proposition as indicated in the revised show cause notice dated 17th September, 1984, is confirmed and the case is remanded back to the assessing authority with a direction to levy tax under section 5(1) on lisa sugar valued at Rs. 2,22,500.00.'

Which of these findings are sound and legal in the interesting question that arises before us.

8. Entry 31-B of the Fifth Schedule to the Act inserted by the Karnataka Sales Tax (Second Amendment) Act of 1958 (Karnataka Act 31 of 1958) with effect from 1st January, 1959, reads thus :

'31-B. Sugar other than sugar candy, confectionery and the like.'

Prior to 1st January, 1959, there was no such entry in the Fifth Schedule to the Act.

9. The rules for interpretation of entries found in the sales tax laws of the country have been explained by the Supreme Court in a large number of cases. In *Indo International v. Commissioner of Sales Tax* : 1981(8)ELT325(SC) the Supreme Court reviewing the earlier cases had expressed thus :

'4. It is well-settled that in interpreting items in statutes like the Excise Tax Acts or Sales Tax Acts, whose primary object is to raise revenue and for which purpose they classify diverse products, articles and substances, resort should be had not to the scientific and technical meaning of the terms or expressions used but to their popular meaning, that is to say, the meaning attached to them by those dealing in them. If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted. In *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola* : [1962]1SCR279 the question was whether 'betel leaves' fell within the item 'vegetable' so as to earn exemption from sales tax and this court held that the word 'vegetable' had not been defined in the Act, and that the same must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance and so construed, it denoted those classes of vegetable matter which are grown in kitchen garden and are used for the table and did not comprise betel leaves within it and, therefore, betel leaves were not exempt from taxation. In *Commissioner of Sales Tax, Madhya Pradesh v. Jaswant Singh Charan Singh* : [1967]2SCR720 the question was whether the item

'coal' under entry 1 of Part III of Schedule II to the Madhya Pradesh General Sales Tax Act, 1958, included charcoal or not and this court observed thus : 'Now, there can be no dispute that while coal is technically understood as a mineral product, charcoal is manufactured by human agency from products like wood and other things. But it is now well-settled that while interpreting items in statutes like the Sales Tax Acts, resort should be had not to the scientific or the technical meaning of such terms but to their popular meaning or the meaning attached to them by those dealing in them, that is to say, to their commercial sense.' Viewing the question from the above angle this court further observed that both a merchant dealing in coal and a consumer wanting to purchase it would regard coal not in its geological sense but in the sense as ordinarily understood and would include 'charcoal' in the term 'coal' and held that 'charcoal' fell within the concerned entry 1 of Part III of Schedule II to the Act.

5. Having regard to the aforesaid well-settled test the question is whether clinical syringes could be regarded as 'glassware' falling within entry 39 of the First Schedule to the Act It is true that the dictionary meaning of the expression 'glassware' is 'articles made of glass' (see Webster's New World Dictionary). However, in commercial sense glassware would never comprise articles like clinical syringes, thermometers, lactometers and the like which have specialised significance and utility. In popular or commercial parlance a general merchant dealing in 'glassware' does not ordinarily deal in articles like clinical syringes, thermometers, lactometers, etc., which articles though made of glass, are normally available in medical stores or with the manufactures thereof like the assessee. It is equally unlikely that a consumer would ask for such articles from a glassware shop. In popular sense when one talks of glassware such specialised articles like clinical syringes, thermometers, lactometers and the like do not come up to one's mind. Applying the aforesaid test, therefore, we are clearly of the view that the clinical syringes which the assessee manufactures and sells cannot be considered as 'glassware' falling within entry 39 of the First Schedule to the Act.'

In Annapurna Biscuit Manufacturing Co. v. Commissioner of Sales Tax, U.P., Lucknow : [1982]1SCR149 the Supreme Court approving the ruling of the Allahabad High Court which had held that 'biscuit was not cooked food' had

expressed thus :

'It is a well-settled rule of construction that the words used in a law imposing a tax should be construed in the same way in which they are understood in ordinary parlance in the area in which the law is in force. If an expression is capable of a wider meaning as well as narrower meaning the question whether the wider or the narrower meaning should be given depends on the context and the background of the case. In *Hinde v. Allmond* (1918) 87 LJKB 893 the question was whether tea was an 'article of food' within the meaning of an order designed to prohibit the hoarding of food, namely, Food Hoarding Order of 1917. The learned Judges held it was not, even though in some other decisions it had been held to be an 'article of food'. Shearman, J., one of the Judges, said that he rested his judgment on the 'common sense interpretation of the word 'food' in the Order, apart from its meaning in any other statute'. It is interesting to note that in a case before the Allahabad High Court in *Annapurna Biscuit Manufacturing Company v. State of U.P.* [1975] 35 STC 127 the assessee had contended that biscuit was an article of confectionery and that contention was negatived. It is relevant to note, as we have mentioned earlier, that when the Hindi text of the notification was issued contemporaneously with the English version, the words *pakaya hua bhojan* were used as the equivalent of the words 'cooked food'.

It may be that biscuit is served at tea time and in its wider meaning 'cooked food' may include biscuit. But ordinarily biscuit is not understood as cooked food. If a person goes to a hotel or restaurant and asks for some cooked food or *pakaya hua bhojan* certainly he will not be served with biscuits in Uttar Pradesh. While it is not necessary to state in the present case as to what all items may be called as cooked food, we can definitely say that in the context and background of the notification biscuit cannot be treated as cooked food.

The High Court of Allahabad has in an earlier case in *Commissioner of Sales Tax v. Jassu Ram Bakery Dealer* [1976] 38 STC 461 held that biscuit was not cooked food. The High Court of Madhya Pradesh has also taken the same view in *Commissioner of Sales Tax, Madhya Pradesh v. Shri Ballabhdas Ishwardas* [1968] 21 STC 309. We approve of the view expressed in the aforesaid decisions.'

Bearing these principles we must ascertain whether 'lisa sugar' is sugar or not.

10. In its appeal memo, the assessee had set out the process of manufacture of 'lisa sugar' as under :

'Process of manufacture of 'lisa sugar'

To manufacture 100 kgs. of 'lisa sugar', 98 per cent. of sugar will be taken and this will be powdered by mechanical process and thereafter, 3 per cent. liquid glucose and 1 per cent. water is added back to the said powdered sugar and subsequently 1/2 per cent. of essence and 1/2 per cent. of starch is blended to the said product by means of mechanical operation. The final product that we procure is called 'lisa sugar' that is soft sugar which contains more than 90 per cent. sucrose.

* * *In the instant case 'lisa sugar' that is icing sugar is prepared from ordinary sugar.'

The term 'lisa' which is not found in any of the standard English dictionaries, Chemical dictionary and Words and Phrases, Permanent Edition also, does not appear to be an English term but appears to be a local term coined to distinguish the same from ordinary sugar. Before the authorities as also before us, the assessee does not dispute that 'lisa sugar' was exclusively used for the manufacture of confectionery and was not used as ordinary sugar in the preparation of beverage, soft drinks and other sweets. A manufacturer of confectionery does not buy ordinary sugar. A common man does not buy 'lisa sugar' for his day-to-day requirements in his house. So also a trade or a shopkeeper does not sell ordinary sugar when a person approaches him to sell 'lisa sugar' or the vice versa. Both will have no difficulty in distinguishing one from the other. After all the assessee by giving his own name and by merely maintaining the sucrose content, cannot treat the product 'lisa sugar' as ordinary sugar and thus take it out of the taxation net.

11. On the very case pleaded by the assessee, it is obvious that ordinary sugar had lost its identity and the one manufactured and sold by it as 'lisa sugar' was an entirely different product or commodity and was not ordinary sugar.

12. On the foregoing discussion, we are firmly of the view that 'lisa sugar' was not ordinary sugar found in entry 31-B of the Fifty Schedule to the Act.

13. In *Puran Chand & Sons'* case [1981] 48 STC 284 (App.) a Division Bench of the Delhi High Court consisting of Prakash Narain, Ag. C.J., and S. B. Wad, J., examining whether 'icing sugar' or 'lisa sugar' was sugar within the meaning of entry 'sugar' occurring in the Bengal Finance (Sales Tax) Act of 1941 as in force in the Union Territory of Delhi, had expressed thus :

'It is settled law as far as taxing statutes are concerned that unless a term is otherwise specifically defined, words must be understood in the manner a common man would understand them and terms must be given a meaning which is given in the commercial world. Importing of dictionary meanings is not justified, when a word or a term is of common use and well-understood. Sugar is a well-known commodity both in common parlance and in the commercial world. By no stretch of imagination can icing sugar be termed as sugar. Indeed, all the authorities including the Finance Commissioner are agreed on that point. It is also a cardinal principle of interpretation of statutes that unless it is necessary or specifically provides, definition in one statute cannot be transferred to construe a word or a term in another statute. In taxing statutes, particularly, artificial definitions are sometimes given by the legislature in its wisdom to provide for contingencies which the legislature considers necessary to provide for. Therefore, when the legislature, in the present case, defined sugar in the Central Act, it was for the purpose of that Act and no other Act. To import that definition into the local Act is not warranted either on principles governing interpretation of statutes or on any other judicial principle. We are of the view that the definition of the term 'sugar' given in the Central Act is given for the purposes of that Act. Sugar as used in local Act in entry 9 of the Second Schedule must be understood to be sugar which is understood to be that commodity by the common man or by a shopkeeper or a trader or a customer. Even the contents of icing sugar make it clear that it is not the same as ordinary sugar. Therefore, if under a local Act, tax is to be imposed on sale of sugar, it cannot be more than what is provided by section 15 of the Central Act, but as far as exemption is concerned, the position is different. The item which can be considered to be exempt is sugar simpliciter and not sugar with

any additives, like icing sugar, which has an additive of starch.'

On extracting and relying on this passage, the Commissioner had held against the assessee. We are in respectful agreement with the view expressed by their Lordships of the Delhi High Court in Puran Chand and Sons' case [1981] 48 STC 284 (App.). In Nangumal Ram Kishore's case [1981] 48 STC 277 another Division Bench of the Delhi High Court consisting of Kanpur and Goswamy, JJ., and concurred with the above enunciation.

14. In Nemichand Parasmal and Co.'s case [1984] 55 STC 47 a Division Bench of the Madras High Court consisting of Ramanujam and Ratnam, JJ., had occasion to examine whether 'diamond sugar' was 'sugar' within the meaning of the entry 'sugar' occurring in the Third Schedule to the Tamil Nadu General Sales Tax Act. On a review of all the earlier cases and relying on the ruling of the Supreme Court in Annapurna Biscuit Manufacturing Company's case : [1982]1SCR149 , their Lordship have held that 'diamond sugar' was not sugar. We are in respectful agreement with the view expressed by their Lordships of the Madras High Court in nemichand Parasmal's case [1984] 55 STC 47.

15. In Krishna Product's case [1984] 56 STC 190 a Division Bench of this Court consisting of Jagannatha Shetty, J. (as his Lordship then was), and Rajasekhara Murthy, J., dealing with whether 'sugar syrup' was sugar of entry 31-B of the Fifth Schedule to the Act, however, without much discussion as it was too obvious even to merit any detailed discussion, had held that the former was not sugar. We are also of the view that this ruling supports our conclusion.

16. In Sakarwala Brothers' case [1967] 19 STC 24 at 25 (Guj) and 30 (SC), the Supreme Court and the Gujarat High Court were dealing with entry 47 (of Schedule A) of the Bombay Sales Tax Act of 1959 that was then in force in the State of Gujarat which reads thus :

'Sugar as defined in item No. 8 of the First Schedule to the Central Excises and Salt Act, 1944.'

This entry is not analogous to entry 31-B of the Fifth Schedule to the Act. The ruling of the Supreme Court and the Gujarat High Court turned on the term 'sugar' in the language of entry 47 (of Schedule A) of the Bombay Act which adopted the very meaning in the Central Excises and Salt Act of 1944 (Act 1 of 19) (1944 Act) to which aspect we will refer in some detail at a later stage. But, at this stage, it is suffice to state that the principles enunciated in Sakarwala Brothers' case [1967] 19 STC 24 at 30 (SC) interpreting an altogether a different entry, do not bear on the point and assist the assessee. What is true of Sakarwala Brothers' case [1967] 19 STC 24 at 30 (SC) is also true of the earlier Division Bench ruling of this Court in Abdul Malik's case [1963] 14 STC 214 which interpreted a similar entry of the Act. We are also of the view that a careful analysis of the ruling of this Court in Abdul Malik's case [1983] 14 STC 214 far from supporting the assessee, supports the revenue.

17. Sri Srinivasan had urged that 'sugar' as defined in the 1944 Act adopted in section 14(vii) of the [Central Sales Tax Act, 1956](#) (Central Act No. 74 of 1956) (CST Act), was a declared article and that in deciding the claim for exemption under the State Act, that very meaning should be adopted on which view the decision of the Commissioner was unsupportable.

18. Sri Babu has urged that the definition of the term 'sugar' either in the 1944 Act or the CST Act is not opposite to decide on the meaning of entry 31-B of the Fifth Schedule to the Act.

19. Tariff item No. 1 of the First Schedule to the 1944 Act defines 'sugar' thus :

'THE FIRST SCHEDULE

(See section 3)

The duties specified in the First Schedule are duties leviable only on excisable goods; and the duty may be levied on the basis of weight or at a fixed tariff or ad valorem. -----Item Description of

goods	Rate	of	dutyNo.	-----Basic	Special
excise-----				-----	

(1)

(2)

(3)-----FOOD1. Sugar, produced in a factory ordinarily using power in the course of production of sugar - 'Sugar' means any form of sugar in which the sucrose content, if expressed as a percentage of the material dried to constant weight at 105 degrees centigrade, would be more than ninety - (1) Sugar other than khand sari or palmyra Thirty-seven Ten per cent. and a half of the basic per cent. ad duty valorem chargeable. (2) Khand sari sugar - that is to say, Fifteen per cent. sugar in the manufacture of which neither a vacuum pan nor a vacuum valorem evaporator is employed. (3) Palmyra sugar, that is to say, Nil. do. sugar manufactured from jaggery obtained by boiling the juice of the palmyra palm.-----* * * *

Section 14(viii) of the CST Act has adopted the same.

20. The validity of any of these provisions is not in issue before us. What is in issue is their construction and their application to the commodity.

21. The meaning of Tariff item No. 1 of the 1944 Act was only for purposes of that Act and that Act only. As the CST Act adopts the very meaning of the 1944 Act we must give that very meaning in the CST Act also had to be accepted as correct. But, the real difficulty arises only at the next stage.

22. The State Act does not adopt what is defined in the CST Act but makes a deliberate and conscious departure. When that is so, it is idle to contend that we should give to the expression 'sugar' in the State Act, the same meaning given to the expression 'sugar' in the CST Act.

23. We will assume that Sri Srinivasan is right in his stand and examine the claim of the assessee from that stand point also.

24. We are of the view that an assessee can claim exemption from payment of sales tax on 'sugar' if and only if that very sugar is purchased and is sold by him in that very condition without any change thereto and not otherwise.

25. We have earlier found that the lisa sugar sold by the assessee was not the very sugar purchased by him but was a different commodity. On this view, the

claim of the assessee for exemption is not allowable.

26. Sri Srinivasan has lastly contended that the direction of the Commissioner to assess the turnover section 5(1) instead of section 5(4) of the Act was illegal.

27. Sri Babu has urged that the direction of the Commissioner to assess the sales turnover under section 5(1) of the Act was legal and valid.

28. We have earlier found that 'lisa sugar' was an entirely different commodity and was not 'sugar' occurring in entry 31-B of the Fifth Schedule to the Act. 'Lisa sugar' is not covered by any of the entries in the Second and Third Schedule to the Act. If that is so, then lisa sugar had to be treated as an unclassified article attracting section 5(1) of the Act as rightly directed by the Commissioner. We are no merit in this contention of Sri Srinivasan and reject the same.

29. As all the contentions urged for the appellant fail, this appeal is liable to be dismissed. We, therefore, dismiss this appeal. But, in the circumstances of the case, we direct the parties to bear their own costs.

30. Appeal dismissed.