Siri Pharma and anr. Vs. Superintendent of Central Excise, M.O.R.i. and ors.

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Court : Andhra Pradesh

Decided On : Jun-22-1977

Reported in : 1978(2)ELT21(AP)

Judge : B.J. Divan, C.J. and Amareswari, J.

Acts : Central Excise Act, 1944; ;Customs Tariff Act, 1975 - Sections 1

Appeal No. : Writ Petition No. 6950/74

Appellant : Siri Pharma and anr.

Respondent : Superintendent of Central Excise, M.O.R.i. and ors.

Advocate for Pet/Ap. : Sri. Damodararao

Disposition : Petition dismissed

Judgement :

B.J. Divan, C.J.

1. This matter is placed before us on a reference made by our learned brother, Madlusndan Rao J. He has referred the matter to a Division Bench because he felt that the question whether the essence of chicken is liable to excise duty under Entry 1-B of the First Schedule to the Central Excises and Salt Act, 1944 was of considerable importance and he deemed it desirable that the case should be decided by a Bench of two judges.

2. The petitioners herein are manufacturers of essence of chicken. The first petitioner is a registered partnership firm carrying on the business of pharmaceutical works of manufacture and production of patented and proprietary medicines. The first pettioner firm is the lessee of the second petitioner, and the buiness premises are owned by the second petitioner company. The essence of chicken is produced or manufactured by the first petitioner besides other medicinal goods. The first petitioner is paying excise duties to the authorities under the Central Excises and Salt Act. Declaration of particulars of goods produced or manufactured and intended to be removed by the first petitioner with full particulars of the goods with drug Schedule was submitted by the first petitioner to the Central Excise Authority at Vijayawada and the same was verified and found correct by the Inspector on November 30, 1971. Item 5 of the said declaration contained goods of 30 kinds of medicinal preparation of which Item 12 was essence of chicken. At one stage, the second respondent, i.e. the Assistant Collector of Central Excise, Vijayawada passed an order that all the 30 items were not excisable. However, on September 15, 1972, the first respondent i.e., the Superintendent of Central Excise, Vijayawada, intimated to the first petitioner that the essence of chicken was an extract of meat juice and that 'Meat extracts and Meat Juices' would come under the purview of Tariff Item No. 1B of the First Schedule attached to the Central Excises and Salt Act, 1944, hereinafter referred to as the Act, as an item of prepared and preserved food with effect from 1-3-1969 and that the essence of chicken therefore attracted Central Excise Duty with effect from March 1, 1969. Therefore, representations were made and ultimately, the petitioners have filed this writ petition for a declaration that the essence of chicken is not a product of meat and for declaring that the essence of chicken is not liable to levy of excise duty under item 1B of the First Schedule to the Act. The petitioners have prayed that orders of Respondent 3, the Union of India, confirming the levying of excise duty on the product 'Essence of Chicken under item 1B should be quashed.

3. In order to appreciate the contentions ot me parties, it is worthwhile to state how the essence of chicken is manufactured. Annexure 8 in the material papers, which is an order passed by the Government of India on the Revision Petition under Section 36 of the Act sets out the process as follows :

'The commercial essence of chicken is a hydrolysate of chicken flesh. The flesh along with the bones is finely minced suspended in water and enzymatically digested with Papain at the optimum PH under cold process until the maximum formal titre is obtained. Thus, it is not boiled as in the case of preparation of soup.'

The tariff description of Prepared or Preserved foods as included in the First Schedule to the Central Excises and Salt Act, 1944 is as follows :

'1B. Prepared or Preserved Foods put up in unit containers and ordinarily intended for sale including preparations of Vegetables, Fruits, Milk, Cereals, Flour, Starch, Birds, Eggs, Meat Offals, Animal Blood, Fish, Crustaceans af Mollases not elsewhere specified.'

4. A notification was issued on March 1, 1969 and a further notification was issued on March 1, 1970 as a result of which only such items as were mentioned in the Schedule annexed to the notifications were to bear levy of excise duty under item 1B. It is therefore clear that if the preparation called the essence of chicken falls within one of the entries in the schedule to the notification, it would be liable to full excise duty and would not be entitled to exemption from levy of excise duty. The notification in this connection provided that all the items falling within Entry 1B-Prepared or Preserved Foods-Other than those specified in the Schedule anneved to the notification would be exempt from payment of ten per cent ad valorem excise duty. Item 3 in the Schedule is : 'Meat extracts and meat juices.' Item 6 is 'Soups and broths, in liquid, solid or powder form'. The question that we have to ask ourselves is whether the word 'meat' would include flesh of chicken or whether it is to be confined to flesh of animals, like cows, buffaloes, goats, sheep and other animals only.

5. In Encyclopaedia Britannica, it is pointed out that meat is the flesh or edible offal of domestic animals used for food. It includes beef, pork, lamb, mutton and veal. In a broad sense, the term meat may include poultry and game. It is true as observed by the Supreme Court in Ram Krishna v. Janpad Sabha - C.As No. 188/56 to 191/56 decided on 7-2-1962 at page 1079 of A.I.R. 1962 S.C. 1073, it is a cardinal prin-ciple of statutory construction that the intention of the legislature should be gathered from the words of the enactment. If those words are incapable of the

construction as was being contended for, that construction cannot be modified and the legislative intent with which that proviso was enacted supplemented by a reference to what the legislature did later. No doubt, there is authority for the proposition that when the meaning of the words used in an enactment is ambiguous or obscure, subsequent statutes might sometimes be used as what has been termed 'a parliamentary exposition' of the obscure phraseology. There is no indication in the Central Excises and Salt Act, 1944 as to whether the word 'meat' is to be understood in the wider sense by including in it flesh or poultry and fowls or whether it is to be understood in the narrower sense of flesh of animals only. Sri Subramanya Reddy, learned Standing Counsel for the Central Government has drawn our attention to the fact that in the Customs Tariff Act, 1975, Section 1 (Chapter 1) says that Chapter I covers all live animals except fish crustaceans and mollusk microbial cultures and other products mentioned therein. In Chapter II of S, 1, 'meat and edible meat offals' are defined to mean 'meat including poultry live unfit or unsuitable for human consumption etc. etc.' The tables set out in that Chapter (Chapter II of Section 1) of the Act indicates that meat would include flesh of poultry as well. If entry No. 3 in the Schedule to the notification is to be applied as taking away the exemption, then, it is obvious that the essence of chicken must amount to meat extract or meat juice. It is obvious that it is not meat juice but it is a product, for which the flesh of chicken together with its bones is used. The process which we have indicated above clearly goes to show that apart from the flesh of chicken, even bones of chicken are being used. So, it is difficult to accept the contention urged on behalf of the Centeral Government and the respondents before us that the essence of chicken is a meat extract. It is possible that meat understood in the larger sense is inclusive of flesh of chicken but bones also enter into the process of manufacture of the essence of chicken. Under these circumstances, it is difficult for us to accept the contention that even understood in the wider sense of the word 'meat', essence of chicken is a meat extract. It is a product derived by processing chicken flesh and chicken bones both.

6. However, the problem assumes a different aspect when one comes to Entry 6 in the schedule to the notification 'soups' 'and broths'. It is comon ground that the essence of chicken is not a soup as ordinarily understood. However, the word

'broth' has to be properly understood. According to the dictionary meaning of the word 'broth', an infusion or decoction of vegetable and animal substances in water, used as a soup or a medium for culture of bacteria is a broth.

7. We are not concerned with the medium for culture of bacteria and it is only an infusion or decoction of animal substances used as such. But when it is used as part of ones's food, we have to consider whether the essence of chicken amounts to a broth. There is no indication in the schedule to the notification concerned as to from what material, soup or broth is to be prepared. It may be material to know from the language or origin whether it would be a broth as known in the ordinary meaning. It is a principle of interpretation of statutes like the Central Excises and Salt Act that meanings given to articles in a fiscal statute like this must be as people in trade and commerce, conversant with the subject, generally treat and understand them in the usual course. It is also clear that the basis of the reason with regard to the end-use of the article is absolutely irrelevant-vide Dunlop India Ltd., v. Union of India-Civil Appeal Nos. 1446/72 and 2746/72 decided on 6-10-1975. This decision of the Supreme Court also points out that in interpreting the meaning of words in a taxing statute, the acceptation of a particular word by the Trade and its popular meaning should commend itself to the authority, and it has been pointed out that there are several earlier decisions of the Supreme Court accepting this principle of what may be called the meaning of the word as known in the market place. Applying that test, the word 'broth', it is obvious would apply to the essence of chicken because it is prepared by putting the flesh and bones of chicken in water and processing the same so as to ultimately use the same as some article of food. It is possible, as Sri Damodararao, learned counsel for the petitioner, urged before us that the essence of chicken is not used as an ordinary Item of food, but is used generally as a food in convalescence so as to provide nourishment for those who are in need of extra nourishment. It is same as other substances used and recommended for convalescence. The essence of chicken is evolved as an Item of food. It is not a medicine, because it is not used for curative purposes, nor is it so prescribed. It may be an Item of medicine in special cases. Under these circumstances, it is clear that the essence of chicken is an Item of food. It is a prepared and preserved food and therefore it would come within Item 1B. Since it is a broth, it would fall within Item 6 of schedule to the notification

concerned and therefore, full excise duty is leviable and is liable to be paid on the essence of chicken.

8. Under these circumstances, the authorities, concerned were right in levying excise duty on the essence of chicken prepared by the first petitioner as lessee of the second petitioner, This writ petition therefore fails and is dismissed with costs.