

MARTAND DAIRY & FARM

v.

THE UNION OF INDIA & ORS

April 23, 1975

[V. R. KRISHNA IYER, R. S. SARKARIA AND A. C. GUPTA, JJ.]

Central Sales Tax Act 1956—"Sealed Container"—Meaning of.

A notification issued under the Central Sales Tax Act, 1956 allowed exemption to, among others, cream but excluding "products sold in sealed containers". The appellant sends cream to Calcutta in sealed containers. The sales tax authorities held that the sales were of cream, that they were interstate sales but that the exemption extended by the notification could not be enjoyed by the assessee since he fell within the area of exclusion contained in the exemption notification.

The High Court rejected the writ petition of the appellant. On appeal to this Court it was contended that the containers were used for bulk transmission, that sealing was for preventing abuse on the way or to avoid pilferage and that the emphasis should be on the "cream" and the container had no relevance in the context.

Dismissing the appeal,

HELD: It is not for the Court to launch on obscure fiscal astrology but merely to construe what has been expressed in plain words. "Sealed container" merely means a container which is "so closed that access to the contents is impossible without breaking the fastening. The expression seal in this context does not involve affixture of the seal of the seller such as impressing a signet in wax etc., as evidence or guarantee of authenticity. An article may be regarded as put in sealed containers if it is closed securely in any vessel or container by any kind of fastening or covering that must be broken before access can be obtained to what is packed inside. This is the popular, perhaps the literal, meaning of the expressions used in the notification. Maybe the State thought that sealed containers would be used only by big manufacturers who were able to bear the burden of tax; maybe administrative convenience in assessing quantities sold induced this step. [269B-D]

Commissioner of Sales Tax, U.P., v. G. G. Industries; 21 S.T.C. 63 followed.

Govindram Ramprasad v. Assessing Authority (Sales Tax) 8 S.T.C. 407, held inapplicable.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 1623 and 1624 of 1971.

From the Judgment and Order dated the 13th October, 1970 of the Allahabad High Court in O.M. Writ Petition No. 55 and 56 of 1970.

S. T. Desai, Naunit Lal and Miss Lalita Kohli for the appellant.

G. L. Sanghi, Girish Chandra and R. N. Sachthey for respondent No. 1.

S. C. Manchanda and O. P. Rana for Respondents Nos. 2—4.

A The Judgment of the Court was delivered by :

KRISHNA IYER, J.—Mr. S. T. Desai, counsel for the appellants in both the appeals, correctly assured us that the facts are not in dispute, although the legal inference bearing on taxability is very much in controversy.

B The appellant, who has arrived in this Court by certificate under Art. 133(1)(a) of the Constitution, urges before us that he is not liable to sales tax under the Central Sales Tax Act, 1956 (LXXIV of 1956) (for short, the Act) sought to be levied from him. Admittedly the appellant is a leading dairy of Benaras and has been sending cream to Calcutta for being converted into butter or ghee.

C The long journey involved and the considerable quantities despatched necessarily called for protective receptacles during transport. So the cream used to be carefully sent in *canisters* whose lids were sealed by the seller. The Calcutta buyers received the cream and paid for it on the basis of the ghee/butter recovered from the cream supplied. Although there was some controversy even on the facts, counsel on both sides proceeded on the factual findings recorded by the Judge (Revisions) who held that the sales were of cream, that they were inter-State sales and that the exemption extended by Government notification under the Act for cream could not be enjoyed by the assessee as he fell within the area of exclusion contained in the exemption notification. It is appropriate at this stage to reproduce the notification, dated May 10, 1956, under which the exemption is claimed. It reads :

“No. ST-3506/X

D/10-5-56

Exemption has been allowed to :

F Milk and Milk products such as Chhena, Dahi, kha, Butter and Cream but excluding (i) products sold in sealed containers (ii) sweet-meats and (iii) ghee.”

This in general terms cream is exempted from payment of Central Sales Tax by virtue of this notification but it carves out an exception to the exemption. If the cream were ‘sold in sealed containers’ the seller could not come within the exemption notification. We need not go into the technique of sealing adopted in this case since it is common ground now that the cream is put in containers whose lids are properly soldered. The short question is whether cream sold in soldered containers in the circumstances set out above can be described appropriately as ‘products sold in sealed containers’.

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H Fascinated we were by the imaginative and realistic picturisation of the expression ‘products sold in sealed containers’ projected by Shri S. T. Desai, counsel for the assessee-appellant but, on further reflection, we veered round to the view presented by Sri Sanghi, for the State, that after all law is not always logic and taxation considerations may stem from administrative experience and other factors of life and not artistic visualisation or neat logic and so the literal, though pedestrian, interpretation must prevail.

The High Court has negated the plea of the assessee and since we are inclined to agree with its reasoning, we express our grounds only briefly, although we may, in passing, make reference to two decisions cited before us, viz., *Govindram Ramprasad v. Assessing Authority (Sales Tax)*⁽¹⁾ and *Commissioner of Sales Tax, U.P. v. G. G. Industries*⁽²⁾. *Govindram*⁽¹⁾—a decision of the Madhya Pradesh High Court—is not germane to the question we are dealing with and therefore we need not discuss it. The latter—*The Commissioner of Sales Tax, U.P.*⁽²⁾—we shall discuss as it in some measure, governs the issue before us.

The assessee's main contention is that cream sold in sealed containers must bear a 'mark' meaning, if we may say so, and not be taken literally. What Shri Desai urges is that there are many articles which the consumers buy on the strength of the image projected before them in their packed state. For instance, a well-secured box of chocolates, carton of dried fruits or a tin of coffee put out with well-known markings, a sealed bottle of whisky sold in such manner that its quality, quantity and genuineness are easily acceptable—these, going by the consumers' habit of looking for articles properly packed or tinned and acquiring a special value as a unit of consumer commodity, may legitimately be described as items 'sold in sealed containers'. If we consult our housewives or our village vendors, there is no doubt that these illustrations may be borne out as apt and may even be supplemented by other like instances. A thing is bought loose for a price by a buyer on certain assumptions. But a securely packed or properly sealed commodity sold by a well-known manufacturer is purchased by the consumer based on a sort of flavoured considerations. The assessee's case is that here no cream in sealed containers *as a unit with an individuality* is sold. On the other hand cream *qua* cream is bargained for and despatched. *The canister* is used because, *ex necessitate* large quantities of cream cannot be transported over distances without being put in some container and its leakage and spoilage can be prevented only by soldering or sealing. Items sold in containers are usually so sold for two reasons: (i) for easy consumption by the retail consumer who, by mere sight, is able to distinguish the particular patented brand, and picks it off the counter; (ii) to prevent adulteration or mixing with spurious stuff. In the instant case the containers used are for bulk transmission—like tea chests—and sealing is for preventing abuse on the way or pilferage. And soldering is a sure method of sealing. Further, if the item were not a liquid like cream, but a solid, it could be transported even in gunny bags—merely stitched and without any seal. If this view be sound, certainly the Benaras cream dealer is out of the liability zone. We do not examine the impact on taxability had the receptacles been returned by the buyer since it does not arise on the evidence.

Shri Desai further drew our attention to the fact that the containers had no particular design nor did they bear any special marks or have a uniform size. Thus, the sealed container had no connection with

(1) 8 S.T.C. 407.

(2) 21 S.T.C. 63.

- A the bargain or the stuff sold. The emphasis was on the cream and the container had no pertinence in the context. In this connection, he also referred to s. 8 of the Act which refers to containers and packing material. There is force in the argument, certainly. But, as earlier indicated, judicial adventure in interpretation—particularly in tax matters,—is severely circumscribed, Mr. Desai posed the question whether sale in loose quantities and unsealed containers (in this very case, cream also been sold in milk cans which were not sealed and had been granted tax exemption) made any difference from similar sales in old kerosene tins, the soldering being no sin which attached tax guilt. Not that we are oblivious to the force of this argument, but we are influenced by the words whose normal meaning should ordinarily guide interpretation. All that the notification states is that products sold in sealed containers must sail out of the harbour of exemption. The simple question is this : Was the sale, of cream ? Yes. Was it, when sold, packaged in containers which were sealed ? Yes. On these two affirmative answers the exclusion from the exemption operates. Such is the contention put forward on behalf of the taxing authority by Shri Sanghi, learned counsel.

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In this connection, he drew our attention to *Commissioner of Sales Tax, U.P. (supra)*. Sikri, J. (as he then was), speaking for the Court, considered a somewhat similar question of exemption where sales-tax dealers in cooked food 'other than cooked food sold in sealed containers' were conferred exemption, on certain conditions.

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The commodity there was confectionery sold in sealed containers and the High Court upheld the assessee's case with these words :

- "In commercial world in such trades, particularly where food materials are concerned, it would be seen that the name and reputation of the manufacturer by itself is a sufficient evidence or guarantee of the quality of the contents. The most usual form or method for furnishing such evidence or guarantee of the quality and quantity of the contents is by way of putting its seal by the manufacturer in order to secure the goods in the container in such manner that to have access to the contents of the container the seal so put has to be destroyed or broken. For if it were not so done neither the retailer nor the purchaser would be sure whether the goods inside the container as to their quality and quantity are the same as represented and have not been otherwise adulterated or mixed up by extraneous elements is hardly necessary to mention that a dealer carrying on the business of selling sweetmeats and confectionery on a comparatively smaller scale would find it uneconomical commercially to put the stuff sold or to be sold in sealed containers; it is only a large scale manufacturer who manufactures and exports the confectionery, who would need selling the same in a container. In our opinion, therefore, it is only that class of dealers carrying on the business of sale of confectionery in sealed containers as explained above who were not intended to be exempted from the liability to pay sales tax on their turnover."

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On appeal, this Court, after noticing the plausibility of the opposite point of view and guessing the possible administrative and other reasons for the exclusion from exemption, held :

“Be that as it may, in the context it is difficult to give to the expression ‘sealed container’ a meaning different from the ordinary dictionary meaning.”

“Sealed container” merely means a container which is “so closed that access ‘to the contents’ is impossible without breaking the fastening”. The expression ‘seal’ in this context does not involve an affixture of the seal of the seller such as impressing a signet in wax etc., as evidence or guarantee of authenticity. An article may be regarded as put in sealed containers if it is closed securely in any vessel or container by any kind of fastening or covering that must be broken before access can be obtained to what is packed inside. This is the popular, perhaps the literal, meaning of the expressions used in the notification. Maybe the State thought that sealed containers would be used only by big manufacturers who were able to bear the burden of tax; maybe administrative convenience in assessing quantities sold induced this step. It is not for the Court to launch on obscure fiscal astrology but merely to construe what has been expressed in plain words. We should have been happier if the State had furnished the reasons prompting the exclusion from the exemption. An intelligent appreciation of the reason of the rule is an aid to judicial construction but the State has not been as alert on this score as we might have wished. Why should a sale, if generally exempt from tax, being a milk product, forfeit it merely because the wholesome step of sealing the container and insulating the food article from contamination, is taken during transit? But counsel for the State has expressed his inability to throw light on this aspect or on the reasons for the policy. Had the State’s counter-affidavit been more illuminating on these questions, it would have performed a service to this Court and to the public and rendered the task of judicial construction simpler.

With these observations, we dismiss the appeals but there will be no order as to costs in this Court.

P.B.R.

Appeal dismissed.