ANNAPURNA BISCUIT MANUFACTURING CO., KANPUR

v.

COMMISSIONER OF SALES TAX, U.P., LUCKNOW

July 28, 1981

[R.S. PATHAK E.S. VENKATARAMIAH AND V. BALAKRISHNA ERADI, JJ.]

U.P. Sales Tax Act, 1948 (Act XV of 1948) and Notification dated 6th October, 1971 issued under section 3-A (2) of the Act providing for lower rate of Sales Tax at 2% of the turnover on "Pakaya Hua Bhojan" (पकाया हुआ भोजन)—*Words and phrases—Whether "biscuits" fall under "cooked food"* (पकाया हुआ भोजन)

Dismissing the appeal, the Court

HELD : 1. In the context and background of the notification "biscuit" cannot be treated as "cooked food". In the Hindi text of the notification, issued contemporaneously with the English version, the words (पकाया हुआ भोजन) were used as the equivalent for cooked food. Ordinarily biscuit is not understood as "cooked food". Nor any one asking for some "cooked food" in a hotel will be served with "biscuits" in Uttar Pradesh. The item has been correctly treated as "unclassified commodity" and tax levied accordingly. [151F,G,H]

Commissioner of Sales Tax v. *Jassu Ram Bakery Dealer,* 38 S.T.C. 461; *Commissioner of Sales Tax Madhya Pradesh* v. *Shri Bailabhdas Iswardas,* 21 S.T.C. 309, approved.

2. 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. [151 C-E]

Hinde v. *Allmond,* 87 L.J. K.B. 893, quoted with approval.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3133 of 1979

Appeal by special leave from the judgment and order dated the 30th July, 1979 of the Allahabad High Court in Sales Tax Revision No. 573 of 1979.

A *G.L. Sanghi, Bharat Ji Aggarwal, Naresh Kumar Sharma* and *Vineet Kumar* for the appellant.

S.C. Manchanda and *Mrs. Sobha Dixit* for the respondent.

The Judgment of the Court was delivered by

B

VENKATARAMIAH, J. The short point for consideration in this appeal is whether the expression 'cooked food' used in certain notifications issued under the U.P. Sales Tax Act, 1948 (U.P. Act XV of 1948) (hereinafter referred to as 'the Act') can be construed as including within its meaning 'biscuits' also.

The assessee, the appellant herein, is a registered firm engaged in the business of manufacture and sale of biscuits intended for human consumption. The assessee is a registered dealer under the Act. During the assessment proceedings under the Act for the year 1972-73 the assessee claimed that the turn-over relating to biscuits manufactured and sold by it amounting to Rs. 35,09,920.38 P. was liable to be taxed at two per cent which was the rate prescribed by a notification issued by the State Government for cooked food contending that 'cooked food' included 'biscuits' also. The notification relied on was one issued on October 6, 1971 under sub-section (2) of section 3-A of the Act in supersession of an earlier notification dated July 1, 1969. In both the notifications the tax was fixed at two per cent of the turn-over payable at all points of sale in the case of cooked food. The Assistant Commissioner (Tax Assessment) Sales Tax, Kanpur who was the assessing authority rejected the contention of the assessee that cooked food included biscuits also and imposed tax at the rate of three and a half per cent on the turn-over relating to biscuits treating the same as an unclassified commodity. An appeal filed against the order of the assessing authority before the Deputy Commissioner Sales Tax and a further appeal before the Judge (Appeal) Sales Tax, Lucknow were unsuccessful. The High Court of Allahabad also declined to interfere with the said order. This appeal by special leave is filed against the order of the High Court under Article 136 of the Constitution.

The only ground urged before us is that biscuits should have been treated by the authorities under the Act and by the High Court as cooked food and sales tax should have been levied on the turn-over of biscuits at the rate prescribed in respect of cooked food under the notification referred to above. The argument urged on

behalf of the appellant is that biscuit which was consumed by human being for nourishment is food and since it is prepared by baking which is a kind of cooking process it should be treated as cooked food. Relying on some foreign English dictionaries it is contended that cooking means preparation of food by application of heat as by boiling, baking, roasting, broiling etc. and biscuit should therefore be treated as cooked food. What is of significance in this case is that the Hindi version of the notification issued uses the expression पकाया हुआ भोजन (pakaya hua bhojan) for 'cooked food' found in the notification in English language.

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* (1) 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 Co.* v. *State of U.P.* (2) 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 पकाया हुआ भोजन ('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 पकाया हुआ भोजन ('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.

(1) 87 L.J.K.B. 893.
(2) 35 S.T.C. 127.

A The High Court of Allahabad has in an earlier case in *Commissioner of Sales Tax* v. *Jassu Ram Bakery Dealer*(1) 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 Iswardas.*(2) We approve of the views expressed in the aforesaid decisions.

B There is no ground to interfere with the orders under appeal. In the result, this appeal fails and is dismissed. No costs.

S.R. *Appeal dismissed.*

(1) 38 STC 461.
(2) 21 STC 309.