

COMMISSIONER OF TRADE TAX, U.P.

v.

ASSOCIATED DISTRIBUTORS LTD.

(Civil Appeal No. 6636 of 2002)

MAY 5, 2008

[ASHOK BHAN AND DALVEER BHANDARI, JJ.]

Uttar Pradesh Sales Tax Act – Rate of tax – On ‘Bubble gum’ – HELD: Rate of Tax would be at 10% as unclassified and non-scheduled item and not at the rate of 6.25% as a sweetmeat (mithai) – ‘Bubble-gum’ cannot be considered as ‘mithai’ in the State of Uttar Pradesh – Uttar Pradesh Government Notifications No. Vya Ka-2-1225/Even dated 31.3.1992 and No. VYa Ka-2-3403/Even dated 1.10.94.

The question for consideration in the present appeals is rate of tax applicable on the sales of Bubble-gum. Appellant-Revenue imposed the tax at the rate of 10% inclusive of surcharge as an unclassified and non-schedule item. Respondent-assessee challenged the same. Appellate Court taxed it at the rate of 6.25%. In second appeal, Sales Tax Tribunal concluded that Bubble-gum is neither a sweatmeat (Mithai) nor confectionary, hence tax is liable to be paid as an unclassified item. High Court, in revision, reversed the judgment of the Tribunal. Hence the present appeal.

Allowing the appeal, the Court

HELD: 1.1 By no stretch of imagination, can ‘Bubble-gum’ be considered as ‘mithai’ in the State of Uttar Pradesh. Consequently, ‘Bubble-gum’ is taxable as an unclassified good. The notification issued under UP Sales Tax Act, the mithai (sweetmeat), cooked food, namkin etc. are under one entry, but it does not mean that namkin and cooked food is sweetmeat (mithai).

A (Paras 12 and 21) [701-D; 702-G; 703-A]

B 1.2 Bubble-gum in the common parlance cannot be construed as Mithai (sweetmeat). In common parlance, even items of confectionery will not be construed as sweetmeat (mithai). In fact, Bubble gum is not an item for eating. It is kept in the mouth and after chewing the same is thrown out. In fact, it is used as a 'mouth freshener'. It is not made only of sugar. It contains gum base, waxes etc. along with sugar. (Para 8) [700-A, B, C]

C 1.3 The High Court while coming to the finding that the Bubble-gum cannot be treated as a 'sweetmeat' but it is certainly an item of confectionery gave no reasons for its finding. The respondent did not give any break up of the ingredients of 'Bubble-gum'. It was never the case of D the respondent that 'Bubble-gum' was a sugar product. Confectionery is not even mentioned in the notification issued by Government of Uttar Pradesh. The High Court ought to have properly comprehended the object of the E Notification. In the facts and circumstances, the High Court should have applied common parlance test to determine proper categorization of Bubble-gum. (Paras 14 and 15) [701-E, F, G, H; 702-A]

Nutrine Chewing Gum Products Co. Pvt. Ltd., Arya Nagar, Lucknow STI 1985 21 – relied on.

F *Pappu Sweets and Biscuits and Anr. v. Commissioner of Trade Tax, U.P., Lucknow 1998 (7) SCC 228; Annapurna Biscuit Manufacturing Co. Ltd. v. State of UP 1975 UPTC 620; Gum India Ltd. Kanpur v. Commissioner of Trade Tax 1996 STD Tribunal 124 – referred to.*

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 6636 of 2002.

H From the Judgment and Order dated 9.11.2001 of the High Court of Judicature at Allahabad in TTR No. 656/2001.

WITH

Civil Appeal No. 3270, 3271 of 2008 and Civil Appeal No. 2112 of 2007.

Aarohi Bhalla, Manoj Kr. Dwivedi (for G. Venkateswara Rao). for the Appellant.

S.K. Bagaria, Kavin Gulati, Rashmi Singh, Avnish, Pandey (For Kamendra Mishra) for the Respondents In C.A. No. 6636/2002.

Dhruv Aggarwal, Praveen Kumar for Intervener in C.A. No. 6636/2002.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. 1. Leave granted in the Special Leave Petitions.

2. These appeals are directed against the judgment and order dated 09.11.2001 of the High Court of Judicature at Allahabad passed in Trade Tax Revision No.656 of 2001.

3. In these appeals, a common question of law arises, therefore, for the sake of convenience the facts of only Civil Appeal No.6636 of 2002 are recapitulated.

4. The issue involved in these appeals is confined to the rate of tax applicable on the sales of Bubble-gum. According to the appellant, Bubble-gum is taxable as an unclassified good and would attract the duty at the rate of 10% inclusive of surcharge. In the impugned judgment, the High Court arrived at the conclusion that Bubble-gum is a confestionery item and, therefore, be taxed at the rate of 6.25%.

5. The Tax Assessing Officer for the assessment year 1994-95 has levied the tax with additional tax at the rate of 10% treating Bubble-gum as unclassified and non-scheduled item. In an appeal filed by the respondent, the learned First Appellate Court accepted the submission of the respondent and taxed Bubble-gum at the rate of 6.25%. The appellant aggrieved by

A the said order preferred the second appeal before the Sales Tax Tribunal, Branch-II Ghaziabad. The Tribunal in detail discussed the controversy involved in the case.

B 6. Under the UP Sales Tax Act, a notification fixing the rate of tax on Bubble-gum for the year 1994-95 was not issued. Under the Government Notification No.Vya Ka.-2-1225/Eleven dated 31.3.92 and Notification No.Vya.Ka.-2-3403/Eleven dated 1.10.94, the liability for payment of tax has been fixed for Sweets, Sweetmeat, Namkeen, Cooked Food, Revadi, Gajak, Biscuit, Double-bread, Cake, Pastry, Rusk and the products of Sugar under the UP Sales Tax Act,

C 7. It is pertinent to mention here that the official language of the State of Uttar Pradesh is Hindi. If any difference is found between the notifications in English and Hindi, the notification issued in Hindi will be applicable. On the said notification, the courts have decided that confectionery comes within sweets (mithai) and sweetmeat, but it has not been mentioned that Bubble-gum comes within the category of a Sweet.

D 8. This court in the case of *Pappu Sweets and Biscuits & Another v. Commissioner of Trade Tax, U.P., Lucknow* (1998) 7 SCC 228 observed thus:

E “12. “There is no doubt that a toffee is a sweetmeat, as understood by the people where toffee originated” and that “Toffee and other things of that nature are of foreign origin and are sweets or sweetmeat according to those people and their nature cannot be changed simply because their origin is different from what is usually conveyed by the word ‘mithai’ in this part of the country”, the High Court preferred to decide the issue by relying upon how toffee is understood by the people of the country where it originated rather than by considering how “toffee” is understood in India and more particularly in the State of U.P. As held by this Court in *CCE v. Parle Exports (P) Ltd.* (1989) 1 SCC 345 p. 357 para 17:

"The words used in the provision, imposing taxes or granting exemption should be understood in the same way in which these are understood in ordinary parlance in the area in which the law is in force or by the people who ordinarily deal with them."

In that case, the question that had arisen for consideration was whether non-alcoholic beverage bases are food products or food preparations in terms of Central Excise Notification No. 55/75 dated 1-3-1975. This Court observed that non-alcoholic beverages are not understood in India as food products or food preparations, though they might have been regarded as such in foreign countries. The High Court, therefore, should have applied the test of popular parlance by finding out how toffee is understood in the country and more particularly in the State of U.P. No evidence was led by the State to substantiate its case that "toffee" is considered as sweetmeat either by the dealers in toffees or by the consumers. On the other hand, evidence was led by the appellant in CA No. 1692 of 1997 indicating that toffee is not considered as sweetmeat, that they are not sold in shops selling sweetmeats but are sold in shops selling confectioneries or other types of goods, and that the consumers do not buy toffees as sweetmeat or treat them as such. It was, however, contended by the learned counsel for the State that sometime before this exemption notification was issued by the State, the Allahabad High Court had in two cases held that toffee is a sweetmeat. But it was so held in a different context and no evidence was led by the State to show that thereafter, the dealers in toffees and consumers started treating them as sweetmeat. In the Hindi version of the notification for the word sweetmeat the word "mithai" is used. The word "mithai" has a definite connotation and it can be said with reasonable amount of certainty that people in this country do not consider toffee as "mithai". The High Court committed a grave error in

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A holding that as some manufacturers of toffees sell their products by describing them as sweets it can be said that in commercial circles toffee is known as sweetmeat.”

B If the ratio of the aforesaid judgment is properly comprehended then Bubble-gum in the common parlance cannot be construed as Mithai (Sweetmeat). When we apply common parlance test and in fact ask someone to bring the sweets from the market, he will never bring Bubble-gum. In common parlance, even items of confectionery will not be construed as sweetmeat (mithai). In fact, Bubble-gum is not an C item for eating. It is kept in the mouth and after chewing the same is thrown out. The Bubble-gum while kept in the mouth by the children is also inflated as a balloon. In fact, it is used as a ‘mouth freshener’. It is not made only of sugar. It contains gum base, waxes etc. along with sugar.

D 9. According to *Wikipedia*, the encyclopedia, Bubble-gum is a type of chewing gum especially designed for blowing bubbles.

E 10. The Commissioner, Sales Tax, UP has relied on judgment in *Nutrine Chewing Gum Products Co. Pvt. Ltd., Arya Nagar, Lucknow* (STI 1985 page 21) and observed that:-

F “In chewing-gum, sugar is an almost insignificant...over it is not eatable. Its use is entirely different. Children use it just for a fun and athletes for controlling the breath. In common parlance also nobody treats it as an item of confectionery. I, therefore, hold that chewing-gum is an unclassified item.”

G Thus, it is clear that Chewing-gum and Bubble-gum do not fall in the category of Sweetmeat (mithai). The learned appellate Court has relied on the judgment dated 4.4.1998 delivered by the Sales Tax Tribunal in Second Appeal No.449 of 1992 titled *Gum Products Pvt. Ltd., Ghaziabad v. Commissioner, Sales Tax*. The Tribunal also relied on the judgment delivered by the H High Court in the case of *Pappu Sweets & Biscuits v.*

Commissioner of Trade Tax (1995 UPTC 1089); *Annapurna Biscuit Manufacturing Co. Ltd. v. State of UP* (1975 UPTC 620) and the judgment of the Sales Tax Tribunal, Kanpur in *Gum India Ltd. Kanpur v. Commissioner of Trade Tax* (1996 STD Tribunal 124). According to these judgments, 'Chewing-gum and Bubble-gum, etc. are taxable as 'sweetmeat' and confectionery items. The tribunal also considered the judgment delivered in the case of *Pappu Sweets* (supra).

11. The notification issued under UP Sales Tax Act, the mithai (sweetmeat), cooked food, namkin etc. are under one entry, but it does not mean that namkin and cooked food is sweetmeat (mithai). The copy of Part V & XI and VIII of the Food Analysis Book which has been submitted, there is a mention about several items like bread, rusk, foodmeat, white bread, cream role ice-cream, cone, Bombay Halwa etc. In this one of items mentioned is Bubble-gum. It does not mean that Bubble-gum is a sweetmeat (mithai) or confectionery.

12. The Tribunal clearly came to the conclusion that Bubble-gum is neither sweetmeat (mithai) nor confectionery. The tax is liable to be paid on Bubble-gum as an unclassified item.

13. The respondent aggrieved by the said judgment of the tribunal filed a revision petition before the High Court of judicature at Allahabad.

14. The High Court came to the specific finding that the Bubble-gum cannot be treated as a sweetmeat but it is certainly an item of confectionery. In the impugned judgment, the High Court gave no reasons for its finding. The respondent did not give any break up of the ingredients of Bubble-gum. It was never the case of the respondent that Bubble-gum is a sugar product. Confectionery is not even mentioned in the notification. The High Court ought to have properly comprehended the object of the notification.

15. In the facts and circumstances, the High Court should have applied common parlance test to determine proper

A categorization of Bubble-gum. It may be pertinent to mention that the respondent has not filed any appeal against the said finding of the High Court that Bubble-gum is not a sweetmeat.

16. The appellant aggrieved by the judgment of the High Court dated 9.11.2001 has preferred this appeal.

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17. The dispute is confined to the assessment year 1994-95. According to the respondent, Bubble-gum was covered by the specific entry at Sl. No.48 of notification dated 7.9.1981 as amended by notification dated 31.3.1992. The said entry no.48 reads as under:

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“Sweetmeats, namkins, cooked food, rewari, gajak, biscuits, bread, cakes, pastries, buns, rusks and sugar products, except any of the aforesaid goods which are exempt under any other notifications issued under UP Sales Tax Act.”

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18. Learned counsel for the respondent made serious efforts to demonstrate that the Bubble-gum should be classified in the category of 'sweetmeat'. He frankly conceded that the High Court gave a specific finding that the Bubble-gum cannot be treated as sweetmeat and that finding was not challenged by the respondent.

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19. The learned counsel for the respondent submitted that the Bubble-gum contains 60% sucrose by weight and it being a product of sugar, it should come in the category of sweetmeat.

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20. The respondent submitted that the expression 'sugar products' has not been defined. It would mean and cover any product which is very rich in sugar. A product in which sugar is predominant constituent over other constituents and which does not have coverage by any other more specific heading is clearly a sugar product.

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21. In *Pappu Sweets (supra)*, this court in order to give meaning to the notification issued by the State of Uttar Pradesh has laid great emphasis on the common parlance test. The court

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gave an apt illustration of a toffee. Toffee in the country of origin may be considered as sweetmeat but it cannot be considered as mithai in this part of the country (Uttar Pradesh). Similarly, by no stretch of imagination, can Bubble-gum be considered as mithai in the State of Uttar Pradesh. Consequently, 'Bubble-gum' is taxable as an unclassified good. A B

22. These civil appeals are accordingly allowed and the impugned judgment of the High Court is set aside. In the facts and circumstances, we direct the parties to bear their own costs.

K.K.T.

Appeal allowed C