

## **Commissioner Of Sales Tax, U.P. vs G.G. Industries, Agra on 25 April, 1967**

**Equivalent citations: [1968]21STC63(SC)**

**Author: S.M. Sikri**

**Bench: J.C. Shah, S.M. Sikri, V. Ramaswami**

### **JUDGMENT**

S.M. Sikri, J.

1. These two appeals raise a common question and can be conveniently disposed of together. Civil Appeal No. 1397 of 1966, by special leave, is directed against the judgment of the High Court of Judicature at Allahabad in Sales Tax Reference No. 267 of 1954. The Judge (Revisions) Sales Tax, U.P., had referred the following question under section 11 of the U.P. Sales Tax Act, 1948, hereinafter referred to as the Act :

"Whether on the facts proved in this case the turnover in dispute can be held to be the turnover of confectionery sold in sealed containers ?"

2. In order to appreciate the point arising in the case it is necessary to give a few facts. M/s. G.G. Industries, Belanganj, Agra, hereinafter referred to as the assessee, is a firm which carries on, inter alia, the business of manufacture and sale of confectionery such as chocolates, lollipops, lemon-drops etc. For the assessment year 1949-50, the Sales Tax Officer overruled the contention of the assessee that sales of confectionery were exempt on payment of fee at the rate annas four per Rs. 100 as cooked food for which an exemption had been obtained by payment of the maximum fee of Rs. 500. He held :

"This confectionery is sold in packings of tin and cardboard which are closed by the use of cellophane paper to protect the contents from being affected by atmospheric conditions. The pieces of confectionery, in most of the cases, bear mark of the firm engraved on it. It was contended by the firm that merely wrapping the cardboard packages by paper does not make them sealed containers. The idea behind putting a seal on the coverings, to my mind, is that a protection shall be afforded from adulteration by dealers at subsequent stages. It is to ensure that only the goods manufactured by the assessee reach the customer as their produce. No adulteration is made in between by the middlemen. This aim is fully met when the pieces of confectionery bear the seal of the firm engraved on each item and they packed in packages of cardboard or tin covered by cellophane paper. All this practically

amounts to sealed containers ....."The assessee appealed to the Judge (Appeals) Sales Tax who rejected the contention of the assessee that confectionery was not sold by them in sealed containers. The assessee's representative produced before him lollipops in a closed packet of cardboard and lemon drops contained in a bag of cellophane paper for his examination. He observed :

"The packet is wrapped in a cover of cellophane paper and label of the manufacturer is pasted on one side of it and not at the ends. The packet is closely sealed and the contents cannot be taken out unless the covering paper is torn and removed."

3. He held :

"If the packets were securely closed and gave an appearance of a sealed container they should not be taken out of that category merely because the label was pasted a little below the ends on one side ..... In my mind the closing of the ends of a packet securely by paste or gum does amount to sealing the packet though no stamp of any kind may be affixed on it."

4. Regarding lemon drops he held that they were sold in bags of cellophane paper which were not sealed containers, but as no separate accounts were available he thought it proper to treat the sale of the entire confectionery as sale in sealed containers.

5. The assessee then filed a revision. The Judge (Revisions), Sales Tax, dismissed the revision. He held :

"The intention of the Legislature was that it was enough if the container was sealed with label. The container may also be of any kind. In the present case the confectionery was packed in a container of cardboard. The packets were securely closed and the contents could be taken out unless the container was torn. Having regard to the conditions of the packets I am still of the same opinion which I took previously that the confectionery was sold in sealed containers. The expression 'sealed container' should not be given a narrow or restricted meaning. The intention of the Legislature was to give exemption to confectionery sold loose and not to confectionery sold in a securely closed and labelled packet of cardboard". The Judge (Revisions), Sales Tax, then, at the instance of the assessee, referred in question which we have already set out. The High Court answered the question in favour of the assessee. The Commissioner of Sales Tax, U.P., having obtained leave from this Court, the appeal is now before us.

6. The answer to the question depends upon the interpretation of the expression "sealed containers" in clause (2) of Notification No. S.T. 118/X-929-48 dated June 7, 1948, issued under section 4 of the Act. Clause (2) reads thus :

"2. Dealers is cooked food (other than cooked food sold in sealed containers), including sweetmeats and other confectionery on payment of a fee at the rate of four annas per Rs. 100 of the turnover, subject to a maximum of Rs. 500."

7. Section 4 of the Act reads as under :

"4. Exemption from tax. - (1) No tax shall be payable on -

(a) the sale of water, milk, salt, newspapers and motor spirit as defined in the U.P. Sale of Motor Spirit (Taxation) Act, 1939, and of any other goods which the State Government may by notification in the official Gazette, exempt.

(b) the sale of any goods by the All-India Spinners' Association or Gandhi Ashram, Meerut, and their branches or such other persons or class of persons as the State Government may from time to time exempt on such conditions and on payment of such fees, if any, not exceeding eight thousand rupees annually as may be specified by notification in the official Gazette."

8. It was argued before the High Court by the learned counsel for the assessee that the word "sealed" meant "bearing the impression of signet in wax, etc., as evidence or guarantee of authenticity, or fastened with a seal so close that access to the contents is impossible without breaking the fastening." The learned counsel for the department, on the other hand, argued that the word "seal" should be given its ordinary popular meaning, namely, "to close securely any vessel or container by any kind of fastening or covering that must be broken before access can be obtained." The High Court accepted the contention of the learned counsel for the assessee. The High Court observed ([1963] 14 S.T.C. 386, at p. 390) : "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 a 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. It 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 sealing 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."

9. The learned counsel for the appellant contends that the expression "sealed container" means a container which is "so closed that access (to the contents) is impossible without breaking the fastening". This is one of the meanings given to the word "sealed" in the Shorter Oxford English

Dictionary. We are of the opinion that his contention must be accepted. Clause (2) of the notification deals with the trade of selling cooked food including sweetmeats and other confectionery. There are four ways of selling confectionery : (1) in sealed tins; (2) in sealed cardboxes or bottles; (3) in non-sealed cardboxes or bottles; and (4) loose. According to the learned counsel for the respondent the only category which does not enjoy the exemption given by the notification is the first category, i.e., sale in sealed tins. But it is difficult to appreciate why the authority issuing the notification should distinguish between category one and category two. In the case of a sealed tin it has to be cut; in the case of a sealed cardbox the covering has to be torn. A sealed tin may or may not be hermetically sealed. Therefore, the fact that a sealed tin may be airtight and a sealed cardbox is never really airtight does not assist us in deciding the point. Further cardboxes are more often used for the sale of confectionery than tins. It seems to us that it was not the intention to distinguish between sale in sealed tins and sale in sealed cardboxes. Once this conclusion is reached, it may be asked : how does one ordinarily seal a cardbox ? Ordinarily the cardbox is wrapped in paper or other covering, cellophane paper is sometimes added and then labels pasted. Ordinarily no seal of wax is applied. We have already reproduced the description of the packet produced as a sample before the Judge (Appeals) Sales Tax. It seems to us that this packet would fall within the expression "sealed container" occurring in the notification. It may be, as observed by the High Court, that the idea underlying the notification was to benefit small dealers, but with respect, small dealers may also sell confectionery in sealed containers. It may be that the idea underlying the exemption was, at least, partly administrative. It is difficult to check small sales made loose or in unsealed small packets. 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. In the result, the appeal must be allowed, the judgment of the High Court set aside and the question answered in favour of the Commissioner of Sales Tax, U.P.

10. Civil Appeal No. 1398 of 1966 is concerned with the assessment year 1948-49, and the same question was referred to the High Court by the Judge (Revisions). This appeal must also be allowed and the question answered in favour of the Commissioner. The Commissioner will be entitled to his costs in this Court, and the High Court. One hearing fee.