M/S Pappu Sweets And Biscuits vs Commissioner Of Trade Tax U.P. Lucknow on 6 October, 1998

Equivalent citations: AIR 1998 SUPREME COURT 3247, 1998 (7) SCC 228, 1998 AIR SCW 3170, 1998 ALL. L. J. 2331, 1999 FAJ 67, 1999 BRLJ 75, 1999 (1) SRJ 321, 1998 (2) UPTC 1086, 1998 (7) ADSC 426, 1998 ( ) STI 97, (1998) 7 JT 9 (SC), (1998) 2 FAC 65, (1998) 5 SCALE 469, (1998) 79 ECR 1, (1998) 111 STC 425, (1998) 7 SUPREME 566, 1998 UPTC 1 157

Bench: S.P. Bharucha, M.K. Mukherjee, G.T. Nanavati

PETITIONER:
M/S PAPPU SWEETS AND BISCUITS

Vs.

RESPONDENT:
COMMISSIONER OF TRADE TAX U.P. LUCKNOW

DATE OF JUDGMENT: 06/10/1998

BENCH:
S.P. BHARUCHA, M.K. MUKHERJEE, G.T. NANAVATI

ACT:

HEADNOTE:

JUDGMENT:

J U D G M E N T Nanavati, J The question that arises for consideration in these two appeals is whether 'toffee' is 'sweetmeat' or a commodity of a like nature and therefore the appellant's industrial units making toffees, though newly set up, were not entitled to the benefit of exemption form payment of sales tax under notification dated 27.7.1991, issued by the State of Uttar Pradesh, in exercise of its powers under Section 4A of the Uttar Pradesh Sales Tax Act, 1948 (for short' the Act'). Withe a view to step up economic growth by promoting development of certain industries in the State, the U.P. State Government decided to grant exemption from payment of sales tax to new industrial units and to units undertaking expansion, diversification. To achieve that object, it issued a notification on 27.7.1991 under Section 4A of the Act. For ready reference, we quote below the

relevant part of that notification.

Whereas the State Government is of the opinion that for promoting the development of certain industries in the State it is necessary to grant exemption from or reduction in rate of tax to new units and also to units which have undertaken expansion, diversification or modernization:

> Now Therefore, in exercise of the powers under section 4-A of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No. XV of 1948), hereinafter referred to as the Act the Governor is pleased to declare that :-
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> 1(A) in respect of any goods manufactured in a 'new unit' other than the units of the type mentioned in Annexure II established in the areas mentioned in column 2 of Annexure 1, the 'date of starting production; whereof falls on or after first day of April, 1990 but not later than 31st day of March, 1995, on tax shall be payable, or, as the case may be, the tax shall be payable at the reduced rates, as specified in column 4 of Annexure 1, by the manufacturer thereof on the turnover of sales of such goods, ...
>
> .....
>
> 1(B) in respect of any goods manufactured in a unit other than the units of the type mentioned in Annexure II, which 'has undertaken expansion, diversification or modernization.
>
> .....
>
> (2)The period of such facility shall be reckoned from the first date of production (1) .....
>
> (2) .....

The facility of exemption from or reduction in the rate of tax shall be subject to the following conditions in addition to the conditions referred to in Section 4-A of the Act.

(i) .....

(ii) that the new unit is established on land or building or both owned or taken on lease for a period of not less than fifteen years by such nit or allotted to such unit by the State or the Central Government or any Government Company or any Corporation owned or controlled by the Central or the the State Government;

(iii) .....

(iv) that the said unit furnishes to the assessing authority concerned an eligibility certificate granted in this behalf by the General Manager, District Industries Centre, Area Development

3. .....

4. .....

5. .....

6. .....

Annexure I ....

Annexure II ....

....

List of Industries not entitled to the facility of exemption from or reduction in rate of tax.

....

....

18. Units making sweetmeat, namkin, reori, gazak and commodities of like nature and restaurants. M/s Pappu Sweet and Biscuits, appellant in CA No. 9282 of 1995, established a new industrial unit for manufacturing 'toffees' in Bareilly district, by investing substantial amount of capital. It commenced production within the specified period and thereafter applied to the Joint Director of Industries, Bareilly, for an eligibility certificate. The Joint Director rejected the application on the ground that toffee is 'sweetmeat' and, therefore, the appellant's new industrial unit being an unit of the type mentioned in Annexure - II to the Notification was not entitled to the exemption. Aggrieved by that rejection, the appellant preferred an appeal to the Trade Tax Tribunal, U.P. It was dismissed as the tribunal agreed with the view of the Joint Director. The appellant then filed a revision petition in the Allahabad High Court but that was also dismissed. Hence, CA No. 9282 of 1995 by it after obtaining special leave.

M/s. Roase Garden Confectionery Pvt. Ltd., appellant in C.A. No. 1692 of 1997 also established a new industrial unit for manufacturing toffees, by making substantial capital investment. It commenced production on 1.4.93. On 17.8.93, it applied to the General Manager, District Industries Centre, Fatehpur, U.P. for an eligibility certificate. The application was referred to the Joint Director who refused to grant it on the ground that toffee is 'sweetmeat' and units manufacturing sweetmeats are specifically excluded by the exemption Notification. The appellant's appeal to the Trade Tax Tribunal and its revision application to the High Court were dismissed. It, has therefore, filed appeal after obtaining special leave.

As the question raised in both the appeals is common, they are heard together and disposed of by this common judgement.

The High Court while interpreting the word 'sweetmeat' in the entry at Sl.No.18 of the list of excluded industries contained in the notification, took into consideration:

> (1) the dictionary meanings of the words 'sweetmeat', 'confectionery' and 'toffee'; (ii) how toffee is understood in commercial parlance; (iii) enlarged scope of Entry No.18 as indicated by the words 'commodities of like nature'; (iv) possibility of discrimination with respect to items of Indian origin like 'reori'; 'gazak' and petha', if toffee is not held to be a 'sweetmeat'; and (v) the fact that some manufacturers of toffees sell their product by describing them as 'sweets'. The reasoning of the High Court and the observations made by it in this behalf are as under :
>
> "In order to find out whether toffee is a mithai or sweetmeat or a commodity of the nature of sweetmeat, reori or gazak, as mentioned in item No.18 aforesaid, we may see what the word 'Mithai' or 'sweetmeat' indicates 'Sweetmeat' as mentioned in the Webster New Collegiate Dictionary, means "a food rich in sugar, a candy or crystallized fruit. Toffee according to the same dictionary, means candy of brittle but tender texture made by boiling sugar and butter together. Thus, a toffee is an article which is rich sugar and is a sweetmeat.
>
> Chambers Dictionary defines 'toffee' as a hard backed sweetmeat made by sugar and butter. In the Oxford Dictionary 'toffee' is stated to mean "all kinds of sweet made from sugar, butter etc." A person manufacturing sweetmeat including things like toffee is called a confectioner. The word 'confect' means "to put together from varied material". The term 'confection' means "the act or processing of confecting as a fancy dish or sweetmeat or fruit or nut preserved for even a medical preparation made with sugar syrup or honey". 'Confectionery' then means "sweet edibles or the confectioner's art or business."

In consolidated Glossary of Technical Terms Central Hindi Directorate, Ministry of Education, Government of India (1962 Edition), 'confectionery' is defined as MISTHAN, MITHAI. In the English Hindi Dictionary of Dr. Kamil Bulkey, the meaning of the word 'confectionery' is given as Misthan, Misthan, Mithai. Thus, according to the dictionaries Mithai is synonymous with 'sweetmeat' in English and that is why the English translation of the aforesaid notification correctly uses 'sweetmeat' as the English version of 'Mithai'. There is no doubt that a toffee is a sweetmeat, as understood by the people where toffee originated. The learned counsel contended that the people in India or in U.P. do not conceive a toffee as a mithai. This may be so in respect of some people. The law of Sales Tax is of general application and is equally applicable to sweetmeat, mithai of nay region whatsoever. 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 word mithai' is a generic word which does not mean only 'mithai' sold in U.P. and consumed by the people

here. A 'Mithai' will remain a 'mithai' whether its origin is English or Chinese or of any other foreign country and it will remain, to be a mithai even if some people in this State do not understand it to be so. The act is meant to cover commercial transactions and is not restricted to the sense of any particular class of people residing in the State of Uttar Pradesh. Then, the notification does not stop at the word 'mithai' or 'sweetmeat' only. It explains that the scope of the word is unlimited and is not restricted to 'mithais' and 'sweetmeats' of any particular region. It mentions 'reort', 'gazak' and commodities of like nature to be included within item no. 18. 'Reori' is nothing but an Indian version of toffee with grains of Til embeded on its surface. The use of the words 'reori', gazak' and 'commodities of like nature' expands the scope to unlimited extent and would take within the scope of the aforesaid entry any mithai or sweetmeat irrespective of its orgin, area of popularity and shelf life etc. A toffee is, undoubtedly, a mithai or a sweetmeat and a commodity of nature like sweetmeat, reori or gazak, Exemptions are discriminatory in nature as the grant exemption to some and deny the same to others. Therefore, they should be strictly interpreted and I find no reason why toffee, mithai or sweetmeat, of foreign origin should be excluded from the scope of Entry at item No.18 while Indian things like reort, gazak, petha which have a sufficiently longer shelf-life should be denied the same benefit. It would be anomalous that a person who sets up a Unit to manufacture reori, gazak, petha etc. Should be denied the exemption while another dealer manufacturing sweets of foreign origin like toffee should be granted exemption buy excluding the commodity form the scope of Entry No.18 in an artificial or discriminatory manner.

It may be mentioned that several manufacturers of toffees and things like that sell their products describing them as sweets. We can see such things sold as parry sweets', Daurala sweets' or 'Cola sweets' at any confectioner's shop."

Learned counsel for the appellants challenged the judgment of the High Court on the ground that it has not correctly construed Entry No.18. They also submitted that the High Court has not correctly interpreted the word 'sweetmeat' as used therein and that instead of being influenced by the dictionary meanings of the words 'sweetmeat' and 'toffee' it should have decided the question whether 'toffee' is sweetmeat' by considering how these commodities are understood by the people in the State. It is true that dictionary meaning of the word 'sweetmeat' is very wide and any food which is sweet and rich in sugar be described as 'sweetmeat'. Toffee is a confection of sugar and other materials and being rich in sugar would be 'sweetmeat' in its wider sense. But for deciding whether toffee is 'sweetmeat' as contemplated by the exemption Notification and the context in which that word is used in the notification.

A close reading of the Notification discloses that the State intended to give benefit of exemption or reduction in rate to these new industrial units and existing units undertaking expansion, diversification or modernization which were to male substantial capital investment. Paragraph 2 of the Notification prescribing conditions of having a licence or a letter of intent and of owning land or building or taking them on lease for a period of not less than 15 years and paragraph 3 prescribing fixed capital investment consisting of land, building, plant, machinery, equipment and apparatus are indicative of that intention. The items mentioned therein viz, 'sweetmeat', 'namkeen', and 'gazak' are usually prepared by shopkeepers and restaurants for selling them to their consumer - customers. They are not manufactured in factories having plants and machinery. The notification further

discloses that the object of declaring exemption from payment of sales tax was to increase industrial activity. Within the State by encouraging setting up of new industrial units or expansion, devitrification or modernization by the existing industrial units. At the same time the State did not desire to extend that benefit to all such industries. It was therefore specifically stated in the notification that industries mentioned in Annexure II shall not be entitled to the benefit of exemption form payment of tax or reduction in rate of tax. Presumably, the State did not desire further growth of such industries by suffering loss of revenue. What is however necessary to note is that Annexure II is an exclusionary part of the exemption notification. The High Court did not examine the issue from this angle and also failed to apposite that exclusionary part of an exemption notification has to be construed rather strictly. Even though the word used in exclusionary part of an exemption notification has a wide dictionary meaning or connotation, only that meaning should be given to it which would achieve rather than frustrate the object of granting exemption and which does not lead to uncertainly or unintended results. A correct reading of the notification further discloses that the words 'commodities of like nature' in Entry 18 were meant to include commodities other than those specifically mentioned. What they indicate is that other commodities of like nature also were not to get benefit of the exemption. To that extent they did widen the scope of the Entry but they cannot be construed to have the effect of enlarging the meaning of the word 'sweetmeat'. As that was not the purpose of including those words in the Entry, the High Court was not justified in holding that they gave an unlimited and unrestricted meaning to the word 'Mithai' or 'sweetmeat'.

The High Court has also not correctly applied the popular parlance test. As can be seen from the observations made by it that "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 in 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 Collector of Excise vs. M/s Parle Exports (P) Ltd. (1989) 1 SCC 345 "The words used in the provision, imposing taxes or granting exemption should be understood in the same way for which they 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 preparation in terms of Central Excise Notification No.55/75 dated 1.3.75. 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 C.A. 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 in can be said with reasonable amount of certainty that people in the this country do not consider toffee as 'mithai'. The High Court committed a have error in 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. The learned counsel for the appellant also drew our attention to a similar exemption notification for the subsequent period issued by the State of U.P. wherein the relevant item is worded thus: "Units making sweetmeats, namkin, reori, gazak (but excluding such confectionery manufacturing units as are registered under the Factories Act, 1948) and restaurants." The llearned counsel submitted that subsequent legislation can be looked at in order to see what is the proper interpretation to be put upon the earlier legislation when the earlier legislation is found to be obscure or ambiguous or capable or more than one interpretation. In support of his contention, he relied upon the decisions of this Court in State of Bihar vs. S.K. Roy (1966) Supp. SCR 259 and Yogender Nath Naskar v. Commissioner of Income Rax, Calcutta (1969) 3 SCR 742. In Naskar's case (supra), this Court quoted with approval the following observations made in Cape Brandy Syndicate v. I.R.C. (1921 2 K.B.403):

> "I think it is clearly established in Attorney General v. Clarkson that subsequent legislation may be looked at in order to see the proper construction to be put upon an earlier Act where that earlier Act is ambiguous. I quit agree that subsequent legislation if it proceeded on an erroneous construction of previous legislation cannot alter that previous legislation; but if there be any ambiguity in the earlier legislation, then the subsequent legislation may fix the proper interpretation which is to be put upon the earlier Act."

For the aforesaid reasons we are of the view that the High Court has not correctly interpreted and construed Entry No.18 of the notification. Considering the object of the notification and the intention of the State Government in granting exemption from payment of sales tax and applying the correct principles of interpretation in such cases, we hold that the word 'sweetmeat' and the words "commodities of like nature" as used in the Notification dated 27.7.91 did not include within their sweep toffees manufactured by industrial units as contemplated by the notification and the Joint Director of Industries, the Tribunal and the High Court were working in taking a contrary view. We, therefore, allow both these appeals, set aside the judgments and orders passed by the High court, and direct the concerned authorities and the State of U.P. to grant the required eligibility certificate and to extend the benefit of sales tax exemption to the extent lawfully available to them under the notification. In view of the facts and circumstances of the case there shall be no order as to costs.