A.P. State Electricity Board and Another Vs Komal Biscuits Manufacturing Co. Pvt. Ltd. and Others

Court: Andhra Pradesh High Court

Date of Decision: Jan. 18, 1996

Citation: (1996) 2 ALT 602 : (1996) 2 APLJ 41

Hon'ble Judges: Lingaraja Rath, J; D. Reddeppa Reddi, J

Bench: Division Bench

Advocate: C.V. Nagarjuna Reddy, for the Appellant; V. Rajagopal Reddy and Government Pleader for Industries for Respondent Nos. 2 and 3, for the Respondent

Final Decision: Dismissed

Judgement

Lingaraja Rath, J.
The only question falling for consideration in this appeal is whether ""biscuit"" can be said to be ""Cake and Pastry"" for the

purpose of availing the benefit of a circular issued by the appellant-Board giving 25% concession in payment of power tariff to new industries,

which have gone into regular production on or after 20th October, 1975.

2. In the circular, B.P.Ms.No. 151 (Commercial), dated 13-12-1978, the exemption in question was allowed and list of ineligible industries for

which rebate was not allowed was appended. Item 35 of the list relates to Cake and Pastry manufacturing. There is no dispute that the 1st

respondent is a biscuit manufacturing industry, which had gone into production on or after 20th October, 1975.The industry availed the benefits of

the circular but subsequently communication was made to the 1st respondent saying that rebate was mistakenly allowed to it as ""biscuit"" falls under

Item 35 i.e. ""Cakes and Pastry"" manufacturing and also making demand for recovery of the amount already allowed towards rebate. Writ Petition

No. 5951 of 1986 filed challenging the same was disposed of on 30-1-1989, following the judgment in a batch of writ petitions/directing the

government, in pursuance of whose policy direction, rebate had been allowed by the Board to decide whether biscuit manufacturing industries fall

within the meaning of ""cake and pastry"" manufacturing. The 1st respondent filed Writ Petition No. 13318 of 1988 as the earlier representation to

the government had not been disposed of. An order was passed on 11-9-1990, while retaining the writ petition on file, directing the government to

dispose of the representation. On 19-8-1992, the government rejected the representation holding mat ""biscuit"" has the same two basic ingredients

sugar and flour of cereals like wheat etc, which are also used for cake making for which they come under the same category and biscuit has the

same definition of cake and pastry. It was said that G.O.Ms.No. 146, Industries and Commerce Dated 25-4-1991 did not show cake and pastry

as specific item, but that by virtue of their process of manufacturing they come under item No. 30 which is ""Bread and Bakery Products except

semi/mechanised units"". The order went on to say that since baking is the ultimate process in the two methods of manufacturing and also in the

biscuit manufacturing, the clarification was being given of there being no discrimination between the same products manufactured by different

methods. The writ petition was amended thereafter challenging the decision of the government dated. 19-8-1992. On 18-3-1993 the writ petition

was disposed of holding that the 1st respondent is entitled to 25% rebate, challenging which the Board filed the present appeal. The learned single

Judge, decided the case saying as follows:

The only question is as to whether the biscuit manufacturing includes ""cake and Pastry Manufacturing"" also. By no stretch of imagination, the

biscuit manufacturing can include the cakes and pastries. It is not the case of the respondents- A.P. State Electricity Board that under the guise of

biscuit manufacturing, the petitioner is manufacturing cakes and pastries.

3. The classic test always applied to find out whether two articles are to be identically classified or not is the common parlance test. If in common

parlance, two articles are understood in the same sense, they are to be treated as the same item, even though having different nomenclatures. There

has been series of pronouncements of the Supreme Court and the High Courts on this question. In Indo International Industries Vs. Commissioner

of Sales Tax, Uttar Pradesh, , Supreme Court has observed:

.....If any term or expression has been defined in the enactment then it must be understood in the sense in which it is defined but in the absence

of any definition being given in the enactment the meaning of the term in common parlance or commercial parlance has to be adopted....."" (Para 4)

On that basis, it has been held that clinical syringes cannot be treated as glassware.

4. In Shri Nalini Ranjan Sirkar v. Superintendent of Taxes (1986) 62 STC 21 ap, the question for consideration before the Supreme Court was

whether ""eggs"", ""live poultry"" and ""dressed poultry"" could be regarded as ""meat"". The question was answered in the negative, reiterating the

following principle stated in Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, :

In determing the meaning of connotation of words and expressions describing an article or commodity the turnover of which is taxed in the sales

tax enactment, if there is one principle fairly well-settled, it is that the words or expressions must be construed in the sense in which they are

understood in the trade. by the dealer and the consumer. It is they who are concerned with it, and it is the sense in which they understand it that

constitutes the definitive index of the legislative intention when the statute was enacted.

Same is the view of the Division Bench of this Court in The State of Andhra Pradesh Vs. Brite Poultry Farm, .

5. On application of such test, it can hardly be said that ""biscuit"" and ""cake and pastry"" mean the same thing in common parlance. One cannot walk

into a bakery shop and ask for cake and pastry while meaning to purchase biscuits. Merely because the ingredients in making cake and pastry and

that of biscuit are same, that is, sugar and flour of cereals like wheat etc., the manufactured items are not same. ""Chapati"", which is made out of

wheat and flour, can hardly be said to be ""cake and pastry"". We also cannot agree that biscuit and cake and pastry has the same definition and that

the entry No. 30 of G.O.Ms.No. 146 of 25-4-1991 has any relevance to the question. It is common knowledge that biscuit manufacturing in the

commercial sense means an industrial activity in a much larger scale. But, cakes and pastries are completely different items and are mostly made

either at cottage industry level or domestic level, though industrial manufacturing cannot be ruled out. It is also brought to our notice by the learned

counsel for the respondents that Indian Standards Institution has prescribed specifications for ""Biscuits"" but, no material is placed before us by the

learned counsel for the appellant that any specifications have been prescribed for ""cake and pastry"".

6. The purpose of exemption granted was as an incentive to set up new industries with the desire for industrialization of the State and obviously,

cakes and pastries were included in the ineligible list because their manufacture was not considered by the authorities as an industrial activity or

process. But, the same cannot be said of biscuit manufacturing process, which by and large, involves large scale industrial activity. We are, hence,

unable to agree with the reasons adopted by the government in its clarification Memo No. 1521 /IFR/ 91-4, dated 19-8-1992 and hold that the

1st respondent had been rightly allowed the rebate and was entitled to it for the period stipulated.

7. In the result, this appeal has no merit and hence dismissed with costs. Advocate"s fee Rs. 500/-.