
(1963) 09 CAL CK 0001

Calcutta High Court

Case No: Civil Revision Case No. 3985 of 1960

Tarak Nath Gupta

APPELLANT

Vs

The Commercial Tax
Officer, Shambazar
Charge, and Others

RESPONDENT

Date of Decision: Sept. 2, 1963

Acts Referred:

- Bengal Finance (Sales Tax) Act, 1941 - Section 10(2)

Citation: 67 CWN 1066

Hon'ble Judges: Banerjee, J

Bench: Single Bench

Advocate: Radhabinod Pal, Balai Lal Pal and Kumar Krishna Dutta, for the Appellant; Nirmal Chandra Chakravarty and Sushil Kumar Banerjee, for the Respondent

Judgement

Banerjee, J.

The petitioner, Tarak Nath Gupta, carries on business under the trade name Messrs. B.G. Tobacco Concern (India) and is a dealer, inter alia, in Zarda, registered as such under the Bengal Finance (Sales Tax) Act. For the period December 14, 1957 to November 10, 1958, the petitioner filed a return u/s 10(2) of the Bengal Finance (Sales Tax) Act and from out of his gross turnover, inter alia, claimed exemption in respect of all sums received by sale of Zarda, namely, a total sum of Rs. 53,940.54 nP. He did make the claim on the theory that Zarda was tobacco and as such exempt from levy of sales tax. The respondent Commercial Tax Officer rejected the claim with the following observations:

Under this head the dealer has claimed deduction amounting to Rs. 53,940.54 nP. The dealer sold only "Jarda", which is a taxable item. I made enquiry from the dealer's representatives as to why they have claimed exemptions of sales of "Jarda". They told that they were under the impression that sales-tax was withdrawn on "Jarda" being an

item of tobacco. In the revised return filed in a consolidated form for the period from 14.12.1957 up to Dewali 2015 S.Y. the deductions have been claimed on account of sales of "Jarda". They also referred to their petition dt. 31st January, 1958 applying for lump payment on floating stock as stood on 13.12.1957. I find from the records that the dealer's prayer petition dt. 31.1.1958 as referred above was rejected by my predecessor in this office and the communication of the order of rejection was made to the dealer vide memo. No. 857/2569A dt. 20.2.1958. I also don't find from the records that the dealer was never given any commitment from this office that sales of "Zarda" is not taxable. Thus as "Zarda" has been always a taxable item and still now it is taxable under the B.F.S.T. Act, 1941, this claim of exemption as made by the dealer, on account of sales of "Zarda" is not tenable under the law, hence the entire claim is disallowed & charged to tax. I find that such sales as claimed by the dealer as exemption were made to unregistered customers within the Province of West Bengal. It is also seen from Register XXIII, that the dealer purchased goods on the strength of Declaration forms for this period.

Thereafter, the respondent Commercial Tax Officer issued a notice of demand on the petitioner calling upon him to pay a sum of Rs. 9009.58 nP. as sales tax.

2. Aggrieved by the order, the petitioner moved this Court, under Article 226 of the Constitution, praying for a writ of Certiorari for the quashing of the order of assessment, dated August 31, 1960, and the notice of demand issued on the basis thereof, for a writ of Prohibition restraining the respondents from proceeding further with the levy and collection of tax and for a writ of Mandamus directing the respondents to cancel the impugned order of assessment and obtained this Rule.

3. Dr. Radhabinod Pal, learned Advocate for the petitioner, argued a single point in support of this Rule. He contended that "Zerda" was tobacco in the form of chewing tobacco and as such exempt from the provisions of taxation under the Bengal Finance (Sales Tax) Act.

4. In order to examine the force of this argument, it is necessary for me to see how tobacco became exempt from sales tax.

5. The Constitution (Sixth Amendment) Act, which came in force on September 11, 1956, substituted a new clause (3) to Article 286, which reads as follows:

Any law of a State shall, in so far as it imposes, or authorises the imposition of, a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify.

6. The effect of the amendment was that after September 11, 1956 if the Parliament, by law, declared any goods to be of special importance to inter-State trade or commerce and

also specified restrictions and conditions in regard to the imposition of sales tax on the sale of such goods, a State Legislature could, in the exercise of its powers to levy sales tax under entry 54 of List II, impose sales tax on such declared goods only subject to such restrictions and conditions as the Parliament would specify.

7. Thereafter, in December, 1957, there came into operation the Additional Duties of Excise (Goods of Special Importance) Act 1957 (Indian Parliament Act 58 of 1957) and section 7 of the Act provided:

It is hereby declared that the following goods, namely, xxx tobacco xxx and of special importance in inter-State trade and commerce and every sales tax law of a State which in so far as it imposes or authorises the imposition of tax on the sale or purchase of the declared goods be subject as from the 1st day of April, 1958 to the restrictions and conditions specified in section 15 of the Central Sales Tax Act, 1956

8. The Additional Duties of Excise (Goods of Special Importance) Act, although declaring tobacco as falling within the category of goods of special importance, did not specify any definition of tobacco of its own and by section 2(c) merely indicated that the word "tobacco" shall have the meaning assigned to it in item No. 9 of the First Schedule to the Central Excise and Salt Act, 1944. That meaning in item No. 9 of the First Schedule of the Central Excise and Salt Act, 1944 (with effect from March 1, 1959) was as follows:

Tobacco means any form of tobacco, whether cured or uncured and whether manufactured or not and includes the leaf, stalk and stem of the tobacco plant but does not include any part of a tobacco plant while still attached to the earth.

9. The word "manufacture" is also defined in the Central Excise and Salt Act as follows:

"Manufacture" includes any process incidental or ancillary to the completion of a manufactured product and

(i) in relation to tobacco includes preparations of cigarettes, cigars, cheroots, biris, cigarette or pipe or hookah tobacco, chewing tobacco or snuff, and

(ii) x x x.

10. I need notice here that section 7 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 was repealed by the Central Sales Tax (Second Amendment) Act, 1958 (which came into operation from October 1, 1958) and the declaration of some of the goods of special importance including tobacco was incorporated in section 14 of the Central Sales Tax Act.

11. By a notification No. 504 F.T., dated March 3, 1958 Rules 3 of the Bengal Finance (Sales Tax) Rules was amended by insertion of clause (28) and the amended rule at first read as follows:

In calculating taxable turnover a dealer may deduct from his gross turnover his turnover on the following:--

(1) to (27) * * *

(28) (a) Sales on *****tobacco other than cigarettes on which duty has been paid under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

(b) Sale of * * * tobacco other than cigarettes on which duty has not been paid under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957), provided the Commissioner is satisfied that the dealer claiming exemption of tax on such sales has made a lump payment on account of sales tax payable in respect of such sales.

Explanation: In this clause the expressions * * * "tobacco" shall have the same meaning as in the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957).

12. Rule 28 was again amended by Finance Department notification No. 624 F.T., dated February 24, 1961, and now reads as hereunder quoted:

Sales on * * tobacco other than cigarettes.

Explanation: In this clause, the expression "tobacco" * * have the same meaning as in items * * * 9 of the First Schedule to the Central Excise and Salt Act, 1944.

13. This is how tobacco became exempt from taxation under the Bengal Finance (Sales Tax) Act.

14. Now if Zarda is tobacco then it cannot be taxed under the Bengal Finance (Sales Tax) Act.

15. Unfortunately for the petitioner there is little contained in the petition to show that Zarda is tobacco within the definition of tobacco in the Central Excise and Salt Act, 1944. All that was stated in paragraph 2 of the petition was as follows:

Your petitioner's said business consists in the production of chewing tobacco called Zarda.

16. Later on, discovering that the allegations made in the petition were insufficient to make the point contended for, the petitioner caused an amendment to the petition by incorporation of a fresh paragraph therein. The said paragraph, which is paragraph 20(a), reads as follows:

That your petitioner's further contention in the said matter is that the act of conversion of tobacco into Zarda for the petitioner's said business does not amount to any "manufacture" in the true sense of the term according to law; by such conversion and /or

change no new form and /or quality is given to the original raw material i.e., tobacco. Zarda is nothing but tobacco treated with some scent, as dealt with by the petitioner for his business as aforesaid, and as such taxes having already been levied on the material in question i.e., tobacco according to law, the question of levying further and/or additional taxes on the "Zarda" in relation to the petitioner's business under reference does not arise at all.

17. The amendment, however, did not improve matters, because the amended paragraph 20(a) was affirmed merely as "true to the submissions" of the petitioner. Since the petitioner is not prepared to take responsibility for the statement made in paragraph 20(a) as true to his knowledge, I cannot make much of the amended statement.

18. That the petitioner is a manufacturer of Zarda is admitted in paragraph 4 of the affidavit-in-opposition. But in paragraph 13 of the affidavit-in-opposition it is stated as hereinbelow set out:

As Zarda is not identical with tobacco and as it does not fall within the meaning and definition of tobacco, it is futile to contend that as tobacco has been exempted from payment of sales tax, Zarda will also be deemed to have been exempted from payment of sales tax as an inevitable consequence. It is common knowledge that tobacco is the only one of the raw materials used for the purpose of manufacture of Zarda and it is an admitted position that the petitioner is a manufacturer of Zarda. Zarda being not specifically exempted from payment of sales tax, it cannot be argued merely on analogy that as tobacco is exempted, Zarda is also exempted.

19. In spite of the attitude taken up in the affidavit-in-opposition all that the petitioner stated in the affidavit-in-reply was:

Zarda being nothing but chewing tobacco, i.e., tobacco, the question of specifically exempting Zarda from the purview of taxation does not arise at all. Exemption of tobacco from taxation after 13.12.57 implies exemption of Zarda also from such taxation after 13.12.57.

20. The affidavits are unhelpful and I am not assured that tobacco is the main ingredient used in the manufacture of Zarda. In order to get rid of this difficulty Dr. Pal read out to me the following passage from the Report of Taxation Enquiry Commission (1953-54) set up by the Government of India:

The main areas of consumption of chewing tobacco are in South India where it is mostly used in the raw form without any process of manufacture. It is estimated that more than four-fifths of the total consumption of chewing tobacco in India is in the raw form. Uttar Pradesh and Delhi and to a smaller extent Hyderabad are areas where there is manufacture of chewing tobacco called Zarda in a large scale.

21. The passage quoted above does not resolve the uncertainty with which I am faced. Nothing is stated in the passage as to how Zarda is manufactured and what are the ingredients used in such manufacture. Nothing is also stated of the type of Zarda manufactured in West Bengal. It may be that West Bengal variety of Zarda is a milder form of narcotic manufactured with lesser coefficient of tobacco.

22. Dr. Pal invited my attention to a judgment delivered by D. Basu, J. in (1) Civil Revision Case No. 344 (W) of 1961 (Dilip Kumar Mukherjee v. Commercial Tax Officer--unreported), in which his Lordship observed as follows:

It is common knowledge that Zarda is taken with betel leaves by people in this country, who are used to take narcotics in the process of chewing. It may be said that the act of taking Zarda is analogous to that of taking snuff or hookah, though it may vary in form or degree of intensity, because of the transformation of the tobacco in the preparation of Zarda * * * The fact that other ingredients are added to tobacco in the manufacture of Zarda, such as scent or colouring substance, does not seem to be material if it is admitted that the "main ingredient is tobacco", for some additional ingredients are to be used even for the preparation of cigarettes, cheroots, hookah tobacco or snuff, which are specially mentioned in the definition of "manufacture" * * *. It is also to be noted that the definition of "manufacture" is inclusive and that the enumeration of cigarettes etc. does not exhaust the definition.

23. Before his Lordship, it was admitted by the respondent Commercial Tax authorities that tobacco was the "main ingredient" of the type of Zarda manufactured by the petitioner, in the cases referred to above. His Lordship proceeded on the basis of the admission. I have not the advantage of such an admission in this Rule and on the materials disclosed I am not in a position to decide that the Zarda manufactured and sold by the petitioner is tobacco in substance.

24. What is necessary for the petitioner to prove is that Zarda sold by him is tobacco manufactured into Zarda. The addition of aromatics or tasty substances to tobacco, so as to make Zarda fragrant or palatable will not necessarily change the character of tobacco, if tobacco be not denatured in the process of manufacture of Zarda. If tobacco remains tobacco, even though turned into Zarda, then sales tax cannot be imposed upon it. This is an aspect of the matter which the Commercial Tax Officer ignored when making the assessment. That makes the assessment order erroneous on the face of it and unworthy of being sustained.

25. I, therefore, quash the assessment order and send back the case for being re-heard and decided in the light of the observations contained in this judgment.

26. The Commercial Tax Officer shall now fix a date and allow the petitioner opportunities to prove that Zarda sold by him is tobacco or chewing tobacco, within the definition as in the Central Excise and Salt Act, 1944. If he succeeds in so doing, the Commercial Tax

Officer shall not impose any sales tax on the sales of Zarda, since the time when tobacco sales became exempt from sales tax. If the petitioner fails to prove that, then only he shall impose tax on sales of Zarda.

27. This Rule is made absolute to the extent indicated above. Let a writ of Certiorari and a consequential writ of Mandamus accordingly issue. There will be no order for costs. In view of the judgment delivered above, no order need be made on the application filed in Court on August 27, 1963.