
(1976) 10 P&H CK 0043

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 15 of 1974

Amrit Roller Flour Mills

APPELLANT

Vs

Union Territory of Chandigarh

RESPONDENT

Date of Decision : 13-10-1976

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1977) 39 STC 547

Hon'ble Judges : O. Chinnappa Reddy, Acting C.J.; M.R. Sharma, J

Bench : Division Bench

Advocate : Bhagirath Dass and S.K. Hirajee and B.K. Gupta, for the Appellant;
M.R. Agnihotri and V.K. Sharma, for the Respondent

Judgement

This Judgment has been overruled by : Union Territory of Chandigarh Vs. Amrit Roller Flour Mills, AIR 1985 SC 1199 : (1985) 2 SCALE 51 : (1985) SCC 213 Supp : (1985) 2 SCR 14 Supp : (1985) 60 STC 66 : (1986) 1 UJ 358

M.R. Sharma, J.—This judgment will dispose of G.S.T. References Nos. 15 and 17 to 19 of 1974 as a common question of law arises in all of them. The petitioner-firm in these cases is M/s. Amrit Roller Flour Mills, Industrial Area, Chandigarh (hereinafter referred to as the petitioner-firm), a firm which holds a licence under the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 (hereinafter referred to as the 1957 Order). The petitioner-firm is also registered as dealer under the Punjab General Sales Tax Act, 1948 (hereinafter called the Act). The petitioner-firm is supplied wheat under the orders of the Government of India which it grinds and sells the various products like atta, maida and suji on permits issued by the District Food and Supplies Officer. The Excise and Taxation Officer, Chandigarh, framed an assessment against the petitioner-firm for the year 1964-65 and calculated the total sales tax liability of the firm at Rs. 26,459.00. After giving the allowance for the tax already paid, the Assessing Authority demanded a sum of Rs. 1,439.70 as sales tax from the petitioner-firm. Before

the Assessing Authority an argument was raised on behalf of the petitioner-firm that it sold the wheat products against the permits issued by the Government and, as such, the deals struck by the firm with the recipients of the supplies of wheat products could not be regarded as sales. This argument was turned down by the Assessing Authority on the basis of a Division Bench decision of this Court in *Excise and Taxation Officer (Assessing Authority), Hissar v. Jaswant Singh* [1971] 27 S.T.C. 582. The appeal filed by the firm before the Deputy Excise and Taxation Commissioner, Chandigarh, was dismissed on 22nd January, 1969 and the second appeal taken before the Chairman, Sales Tax Tribunal, Chandigarh, met the same fate on 30th June, 1971. At the instance of the assessee, this court directed the Chairman, Sales Tax Tribunal, Chandigarh, to refer the following question of law to us for our opinion :

Whether, on the facts and in the circumstances of the case, the sale of wheat products against permits issued by the District Food and Supplies Controller, Chandigarh, is liable to be taxed under the Punjab General Sales Tax Act, 1948 ?

2. Apparently, the answer to the question depends upon a finding whether there is any room for consensus to be arrived at between the dealer and the recipients of food products or not. The 1957 Order has been framed by the Central Government u/s 3 of the Essential Commodities Act, 1955. Clause 3 of this Order lays down that no owner or person in-charge of a roller mill shall manufacture, or cause to be manufactured, any wheat product except under and in accordance with the terms and conditions of a licence issued under this Order. Clause 4(2) of this Order lays down that the licence issued shall be in form II. Clause V of form II reads as under :

The licensee shall abide by any directions issued by the licensing authority in regard to the purchase of wheat, extraction of maida, sooji and rawa and also in regard to the distribution or disposal of wheat products.

3. It is trite to say that any violation of the licence apart from being amenable to other action under the 1957 Order is punishable as an offence u/s 7 of the Essential Commodities Act.

4. The cumulative effect of the aforementioned provisions is that the petitioner-firm is not only obliged to follow the instructions of the concerned authority in regard to the purchase of wheat or extraction of other products therefrom but also in regard to the distribution and disposal of such products. The learned counsel for the respondent has very fairly conceded this position. In order to constitute a transaction of sale the following elements must be present: (1) Parties should be competent to contract. (2) There should be mutual assent. (3) Property or goods should pass from the seller to the buyer. (4) The price in money should be paid or promised. Unless and until all the four elements are present in a transaction, it cannot be regarded as a sale. When viewed in this light, it is obvious that the deals between the petitioner-firm and the recipients of the products of wheat produced by it cannot be regarded as transactions of sale.

In Jaswant Singh's case [1971] 27 S.T.C. 582, which has been relied upon on behalf of the revenue, the court was concerned with the provisions of the Punjab Control of Bricks Supplies Order, 1956 and it observed :

Considering the provisions of the Control Order referred to above, it cannot be held that the dealings in question were controlled at every stage leaving no room for consensus.

5. If the statutory order regulating the supply and distribution of goods by and between the parties does not absolutely impinge on the freedom to enter into a contract, the transactions of supply and distribution of goods for valuable consideration do not travel outside the ambit and scope of the transactions of sale. Jaswant Singh's case [1971] 27 S.T.C. 582 is, therefore, clearly distinguishable.

6. On behalf of the petitioner-firm reliance has been placed on a recent Division Bench judgment of this Court in Food Corporation of India v. State of Punjab [1976] 38 S.T.C. 144. In that case, the Food Corporation of India filed a writ petition under Articles 226 and 227 of the Constitution for a declaration that no sales tax was imposable on any of the transactions right from the stage of procurement of rice under the Punjab Rice Procurement (Levy) Order, 1958, from the millers and the licensed dealers by the State Government or its officers up to the stage of delivery of the procured rice to the depots of the corporation outside the State of Punjab. It was held that the State or its officers, while procuring rice, did not represent the corporation because the procurement was on the basis of the Levy Order promulgated by the State Government and the transactions entered into in exercise of the powers under the Levy Order between the miller and the dealer on the one hand and thereafter between the State and the corporation and then between the corporation and the other States form one composite process which owed its origin to the arrangement arrived at between the State Government and the Central Government under which the States were required to contribute to the Central Pool certain percentage of foodgrains, which, in turn, was passed on to the deficit States through the agency of the corporation. The Bench held that no sales tax or purchase tax was exigible on these transactions. Since Food Corporation of India's case [1976] 38 S.T.C. 144 was decided later in point of time and is the decision of a Bench of co-ordinate jurisdiction, we are bound to follow the same with respect. We, accordingly, answer the question referred to us in the negative. There shall, however, be no order as to costs.