

(1967) 11 AHC CK 0016
In the Allahabad High Court

Case No : Writ Petition No's. 27, 28, 29, 979, 980, 981 and 982 of 1967

Barjatya Traders

APPELLANT

Vs

Sales Tax Officer

RESPONDENT

Date of Decision : 30-11-1967

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 3D

Citation : (1968) 21 STC 197

Hon'ble Judges : R.S. Pathak, J; M.H. Beg, J

Bench : Division Bench

Advocate : R.K. Upadhya and J.C. Bhardwaj, for the Appellant; The Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

M.H. Beg, J.—Messrs Barjatya Traders of Hathras have filed four Writ Petitions Nos. 27, 28, 981 and 982 of 1967 challenging the assessment orders made by the Sales Tax Officer, Hathras, opposite party No. 1, assessing the petitioner to pay sales tax for the assessment quarter ending 30th June, 1967, the assessment years 1964-65 and 1965-66, and the assessment quarter ending 30th September, 1966. Messrs Gangaram Sitaram of Hathras have filed Writ Petitions Nos. 29 and 979 of 1967 challenging the assessment orders made by the Sales Tax Officer, Hathras, for the quarters ending 30th June, 1966, and 30th September, 1966. Messrs Dayabhai Zaver Bhai of Hathras have filed Writ Petition No. 980 of 1967 challenging the assessment order of the Sales Tax Officer, Hathras, for the assessment year 1965-66. In each of the writ petitions the assessment order is challenged only to the extent of the purchases of arhar dal from dal and oil-seeds manufacturers.

2. The petitioners' contention in each of the above-mentioned writ petitions was that the purchase tax imposed by Section 3-D of the U.P. Sales Tax Act is a single point tax and can only be imposed once and not repeatedly in a series of purchases and sales. They alleged that the arhar dal purchased by them had

already been taxed in the hands of the dal and oil-seeds manufacturers who had sold the same Commodity after putting it through a process which did not alter the nature of the commodity. This contention was rejected in each of the above-mentioned assessments by the Sales Tax Officer who held that arhar was commercially a different commodity from arhar dal when sold as dal so that it was liable in the hands of the above-mentioned petitioners, for the payment of purchase tax u/s 3-D of the U. P. Sales Tax Act as amended in 1964. The points involved in each of the writ petitions are common. The whole set of petitions may, therefore, be decided by the same judgment.

3. The case on behalf of the department as set out in the counter-affidavits on behalf of the department is as follows : "Arhar and arhar dal are two commercial commodities, inasmuch as arhar has to undergo several processes before dal is manufactured from it. The first process is of cleaning in which dust, durrana, etc. are removed. In this process chhilka, chuni and kutta are obtained as by-products. The decorticated arhar is then subjected to oil and water process wherein oil and water are applied to it and then it is left to dry. The dried arhar is then dragged in the mill when zarda, khanda, tuna (small pieces of arhar) and dal are obtained. In the final process all these things are separated. Thus it is not correct to say that arhar and dal are the same things." It is evident that the case set up in this Court is that, although arhar and arhar dal may belong to the same genus, they are different "commercial commodities". The Sales Tax Officer had, when he decided the cases, considered arhar and arhar-ki-dal not only to be separate commercial commodities but also as different products, each of a different genus. He referred to arhar as a "cereal" which was converted into a "pulse" by the process of manufacture. The processes were mentioned as follows by the Sales Tax Officer : "The cereals have to undergo several processes of cleaning, decortication, application of oil and water, grinding etc., before they are converted into pulses." The Sales Tax Officer thought that the arhar bought by the assessee in each case was a first purchase of dal which was a new "commercial commodity". He observed, "The case is similar to that of maida, suji and atta manufactured from wheat.

4. The petitioners relied upon *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, where it was held that although raw groundnut oil is converted into refined oil by being put through a process which consisted of separating the non-fatty contents of the raw oil so as to convert the contents of oil into those containing cent, per cent. oil. The resulting refined oil had different characteristics of colour, taste, and order from that of raw groundnut oil, but the product was still held to be groundnut oil for purposes of taxation. The Supreme Court observed :

In our opinion, the learned Judges of the High Court laid an undue emphasis on the addition by way of the absorption of the hydrogen atoms in the process of hardening and on the consequent inter-molecular, changes in the oil. The addition of the hydrogen atoms was effected in order to saturate a portion of the,

oleic and linoleic constituents of the oil and render the oil more stable thus improving its quality and utility. But neither mere absorption of other matter, nor inter-molecular changes necessarily affect the identity of a substance as ordinarily understood.

5. It also said:

There is no use to which the groundnut oil can be put for which the hydrogenated oil should not be used, nor is there any use to which the hydrogenated oil could be "put for which the raw oil could not be used.

Similarly we consider that hydrogenated oil still continues to be "groundnut oil" notwithstanding the processing which is merely for the purpose of rendering the oil more stable thus improving its keeping qualities for those who desire to consume groundnut oil.

6. In *Kayani and Co. v. Commissioner of Sales Tax* [1953] 4 S.T.C. 387 the Hyderabad High Court held that "bread" as an item for sales tax included "all forms or kinds of bread which are prepared by moistening, kneading, baking, frying or roasting meal or flour with or without the addition of yeast, leaven or any other substance for puffing or lightening the article.

7. In *Kapildeoram Baijnath Prasad v. J.K. Das and Ors.* [1954] 5 S.T.C. 365 the words "all cereals and pulses including all forms of rice" were held by the Assam High Court to include rice in the form of chira (beaten rice) and muri (parched rice).

8. In *The Government of Andhra Pradesh v. Pachipulsi Venkata Subba Rao Vallamkonda Venkateswarlu and Ors.* [1960] 11 S.T.C. 561 the term "cotton cloth" was held by the Andhra High Court to include pieces of cloth which had been printed and processed and sold in the form of sarees and dhoties.

9. In *Iyanar Coffee and Tea Co., Tuticorin v. The State of Madras* [1962] 13 S.T.C. 290 the Madras High Court held that "coffee" for the purposes of sales tax remained the same whether it was in the form of coffee-beans (raw or roasted) or coffee powder, although the definition of the term "coffee" given in the relevant enactment excluded coffee in the form of a drink. The exclusion of coffee as a drink from coffee as a produce was due to the definition in the relevant provision itself.

10. In *State of Gujarat v. Sakarwala Brothers* [1967] 19 S.T.C. 24 the Supreme Court held that "sugar" included its various forms such as patasa, harda and alchidana, into which it had been converted, and it confirmed the decision of the Gujarat High Court. Some of the cases mentioned above were relied upon by the Supreme Court.

11. The term "cereal" is applied to "members of the grass family, which had edible starchy seeds" (see *Encyclopedia Britannica*, 1949 Edition, Volume 5, page 157), whereas the term "pulse" is defined : "In Botany, a collective term for

beans, peas, lentils and other members of the family leguminous" (Encyclopedia Britannica, Volume 18, page 762, 1949 Edition). Our attention was also invited to Professor Albert F. Hill's "Economic Botany", a "Text-book of Useful Plants and Plant Products", to contend that cereals belonged to a family which was different: from that of "legumes" under which arhar would fall. We do not think that it is necessary to discuss the differences between cereals and pulses because the department seems to have now realised that arhar-ki-dal can only be a pulse. It cannot be treated as a cereal at any stage.

12. The question, however, remains whether the particular processes through which arhar was put by the manufacturers converted it into a new commercial commodity. Whether or not the particular processes through which arhar was put by the manufacturer converted it into a new commercial commodity is a matter which, in view of the meagre material before us, we are not inclined to decide. Hence, we leave it to the Sales Tax Officer to determine this question afresh. That decision must be taken by him in the light of the tests laid down by the Supreme Court and the High Courts, some of whose decisions we have referred to above. It will be open to the petitioners to lead further evidence on the matter and also for the Sales Tax Officer to bring on the record material which he may consider necessary for the purpose of determining the question.

13. The Sales Tax Officer has pointed out that the dal purchased by the petitioners had not been subjected to purchase tax, because it might be of cereals imported from outside Uttar Pradesh, in which case no purchase tax would have been paid. The Sales Tax Officer appears to have thought that the test for determining the liability of the petitioners is whether purchase tax had been paid previously in respect of the commodity before it was purchased by the petitioners. In our opinion, the Sales Tax Officer has misconceived the basis on which liability to purchase tax is created by Section 3-D(1). That provision imposes purchase tax on first purchases. It is the first purchase of a commodity which attracts the tax. It is irrelevant that for one reason or another the first purchase, in some cases, has been exempt from tax. If the first purchase is free from tax and the commodity is sold again, the second purchase thus affected will not attract tax. That is because the law imposes purchase tax on the first purchase and not upon the second purchase. The Sales Tax Officer must first determine whether arhar and arhar-ki-dal are the same commercial commodities and then apply his mind to and determine the question whether the purchases made by the petitioners are first purchases or second purchases. Sometimes manufacturers themselves grow the produce out of which a commercial commodity is "manufactured". If this is so, in any of the cases before us, there could be no question of a second purchase even if no new commercial commodity is produced by the so-called "manufacturers" who seem to have subjected arhar only to some kind of "processing". Fresh evidence should, therefore, be also taken to determine whether there were first or second purchases even if no new commercial commodity emerged from the process of alleged "manufacture".

14. The question of the validity of the provisions of Section 3-D of the U. P. Sales Tax Act was also raised, but no arguments were advanced on this aspect before us. Although an alternative remedy was available to the petitioners by way of an appeal, it will not be available now. The question of the validity of the provisions of Section 3-D of the U.P. Sales Tax Act and the other questions mentioned above having been raised, the writ petitions were admitted. The orders have the effect of imposing financial liabilities. The petitioners have a fundamental right to carry on business without any illegal restrictions or impediments. Inasmuch as the assessment orders have, on the face of these orders, been made upon a complete misconception of the law and a large number of cases are affected, we have decided to interfere notwithstanding the existence of an alternative remedy.

15. Consequently, we allow these writ petitions and quash the order of the Sales Tax Officer in each case. The result is that the assessment proceedings will now be deemed to be pending in each case before the Sales Tax Officer who will go into the evidence from a legally correct angle and pass fresh assessment orders containing the necessary findings. In the circumstances of the case, the parties will bear their own costs.