

(1983) 02 P&H CK 0001
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 1116 of 1982

Bhatinda Chemicals and Vanaspati Private Ltd.	APPELLANT
Vs	
Excise and Taxation Commissioner and Another	RESPONDENT

Date of Decision : 10-02-1983

Acts Referred:

Central Sales Tax Act, 1956 — Section 8, 9
Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 11

Citation : (1983) 54 STC 207

Hon'ble Judges : Sukhdev Singh Kang, J

Bench : Single Bench

Advocate : H.L. Sibal and R.C. Seth, for the Appellant; P.S. Kang, for Advocate-General, for the Respondent

Final Decision : Allowed

Judgement

Sukhdev Singh Kang, J.—Messrs. Bhatinda Chemicals and Vanaspati Private Limited, Bhatinda (hereinafter called "the petitioner-firm"), have filed this writ petition under Articles 226/227 of the Constitution of India, for issuance of a writ in the nature of certiorari for quashing three notices dated 24th February, 1982, issued by the Assessing Authority, "D" Ward, Bhatinda, u/s 9(2) of the Central Sales Tax Act, 1956 (for short "the Central Act"), read with Section 11 of the Punjab General Sales Tax Act, 1948 (for short "the Punjab Act"), for reassessment of the cases of the petitioner-firm, relating to the turnover on account of sale of rice bran oil in the course of inter-State trade and commerce, pertaining to the year 1978-79, 1979-80 and 1980-81 respectively.

2. The facts that gave rise to the filing of this writ petition, briefly stated, are that the petitioner-firm is a manufacturer, among other oils, of the rice bran oil and it sells the same to registered dealer having their place of business in other States or Union Territories of India, on the basis of form C. This process is termed as sale in the course of inter-State trade and commerce. The Governor of

Punjab vide notification dated 11th January, 1979, in exercise of powers conferred on him by Sub-section (5) of Section 8 of the Central Act, directed that; the tax payable by any dealer having his place of business in the State of Punjab in respect of the sales made by him, of edible oils from any such place in the course of inter-State trade or commerce to any registered dealer having his place of business in any other State or Union Territory in India, shall be calculated at the rate of one per cent of his turnover in so far as the turnover or any part thereof relates to such sales, subject to the production by him of declaration in form C as prescribed under Sub-section (4) of Section 8 of the Central Act. The petitioner-firm was paying sales tax at the rate of 1 per cent on the sale of rice bran oil in the course of inter-State trade and commerce to registered dealers having their places of business in other States or Union Territories. The other dealers and manufacturers in rice bran oil in the State of Punjab are also paying sales tax at the rate of 1 per cent on such inter-State sales. The petitioner-firm filed returns and paid tax at this rate in the years 1978-79, 1979-80 and 1980-81. They were accepted and the petitioner-firm was assessed on that basis. (Copies of the assessment order in these years have been appended as annexures P-2, P-3 and P-4 respectively).

3. The Excise and Taxation Commissioner, Punjab, wrote a letter dated 4th February, 1982, to all the Assistant Excise and Taxation Commissioners (who are the Assessing Authorities) in connection with the taxability of rice bran oil in the course of inter-State trade and commerce. It has been mentioned therein that rice bran oil is not edible oil as is presently manufactured in the State of Punjab and only a negligible proportion of this oil falls in the category of edible grade oil. Since rice bran oil produced in Punjab is not of edible grade the same should be taxed at the general rate, i. e., at the rate of 4 per cent on the sale of rice bran oil in the course of inter-State trade and commerce to dealers of other States against C forms. It was suggested that thorough scrutiny be made on the cases in the light of facts enumerated in the said letter before finalising assessment in such cases. It was desired that all assessment of pending cases be finalised in the light of these instructions within the current financial year. (A copy of this letter is annexure P-5, appended to the petition). Presumably, after receipt of this letter, the Assessing Authority issued the impugned notices, annexures P-6, P-7 and P-8 to the petitioner-firm, intimating that in consequence of definite information in his possession, the Assessing Authority had reasons to believe that the turnover on account of inter-State sale of rice bran oil had been assessed at the rate of 1 per cent as an edible oil. This was exigible to sales tax at the rate of 4 per cent as an inedible oil. The petitioner was required to show cause why action should not be taken against them. Aggrieved by these notices, the petitioner has filed the present petition.

4. Under orders of this Court dated 26th April, 1982, a sample of rice bran oil was got analysed from the chemical analyst and thereafter the Excise and Taxation Commissioner had filed an affidavit explaining the position regarding this report.

5. In the return filed by Shri Bishan Chand, Excise and Taxation Officer-cum-Assessing Authority, Bhatinda, it has been clearly stated that in the present case, the information supplied by the learned Commissioner revealed that inter-State trade and commerce of rice bran oil had been under-assessed. Therefore the Assessing Authority had acquired the jurisdiction of reopening the case u/s 9(2) of the Central Act, read with Section 11 of the Punjab Act. It was also stated that the rice bran oil was an inedible oil and was liable to tax on its sales in the course of inter-State trade and commerce to dealers in other States against C forms at the rate of 4 per cent.

6. Mr. H.L. Sibal, Senior Advocate, the learned counsel for the petitioner-firm, has raised before me two contentions :

(i) that after the assessment of the petitioner-firm for the abovementioned three years no definite information came into the possession of the Assessing Authority, clothing him with jurisdiction to proceed with reassessment and

(ii) that rice bran oil sold by the petitioner-firm was edible oil. It did not contain more than 8 per cent free fatty acids and 16 per cent acid-value and could not be declared inedible oil even according to the standards laid in annexure P-5.

7. It is not denied that the petitioner-firm filed returns and paid taxes at the rate of 1 per cent for the years 1978-79, 1979-80 and 1980-81. As is apparent from the return of Shri Bishan Chand, the notices for reassessment had been issued on the basis of letter, "annexure P-5, which did not contain any factual information regarding the sales by the petitioner-firm. It contained the opinion of the Excise and Taxation Commissioner that rice bran oil was an inedible oil. It was no information pertaining to the facts of the case which had been suppressed by the petitioner-firm, or had not otherwise come to the knowledge of the Assessing Authority at the time of the assessment. This opinion was formed by the Excise and Taxation Commissioner after the assessment orders had been passed. So, it cannot be said that any definite material has come to the notice of the Assessing Authority, revealing "under-assessment" of the turnover of the assessee. Furthermore, it is manifest from annexure P-5 that the Excise and Taxation Commissioner had suggested that the Assessing Authorities should make assessments in the light of interpretation in annexure P-5 and the Assessing Authority should finalise the pending assessments in the light of the above instructions within the current financial year. These instructions are prospective. They are not retrospective. It was not directed that the previous assessment should also be reopened. So, there was no definite information before the Assessing Authority, which may induce the belief that the turnover of the petitioner-firm had been under-assessed. The notices are illegal and without jurisdiction.

8. There is no ample material on the file to decide the question as to whether rice bran oil sold by the petitioner-firm was edible oil or inedible oil. Even the constituents of the oil have not been brought out on the file by the parties. It is

not disclosed as to which component or components of the rice bran oil, individually or collectively, is inedible or makes the whole oil inedible. So, this question could not be decided on the meagre data which is available.

9. Moreover, in view of my findings on contention No. (i), it is not necessary to go into this question.

10. Mr. Sibal argued that the Excise and Taxation Commissioner had no authority to issue the letter, annexure P-5, fettering the jurisdiction of the quasi-judicial authorities in their quasi-judicial functions. In view of my conclusions on contention No. (i), it will be inappropriate to decide this question. It will, however, be open to the petitioners to urge this point before the Assessing Authority when their assessment is being framed.

11. For the foregoing reasons, I allow this writ petition and quash the notices dated 24th February, 1982 (copies of which are annexures P-6, P-7 and P-8). No costs.