
(1983) 12 AHC CK 0032
In the Allahabad High Court
Case No : Sales Tax Revision No. 28 of 1983

Commissioner, Sales Tax

APPELLANT

Vs

Triloki Nath and Sons

RESPONDENT

Date of Decision : 23-12-1983

Acts Referred:

Uttar Pradesh Sales Tax Act, 1948 — Section 11

Citation : (1984) 57 STC 322

Hon'ble Judges : K.N. Misra, J

Bench : Single Bench

Advocate : R.K. Gulati, Amicus Curiae, for the Respondent

Final Decision : Dismissed

Judgement

K.N. Misra, J.—This revision u/s 11 of the Uttar Pradesh Sales Tax Act (hereinafter referred to as the "Act") is directed against the judgment and order dated 11th October, 1982, passed by the Sales Tax Tribunal, Gorakhpur Bench, Gorakhpur (hereinafter referred to as the "Tribunal"), allowing the second appeal of the assessee-opposite party holding that "neem ki khali" is a kind of manure and it cannot be put in the category of oil-cake and as such it has been wrongly taxed. Thus, a further relief on the turnover of "neem ki khali" fixed at Rs. 10,000 on which tax relief at the rate of 5 per cent amounting to Rs. 500 has been given to the assessee. This order of the Tribunal has been challenged in this revision.

2. Learned Standing Counsel urged that the Tribunal has erred in holding that the "neem ki khali" is manure (fertilizer) and as such exempt from tax. Learned Standing Counsel urged that Notification No. ST-3470/X dated 16th July, 1956, made u/s 4 of the Act grants exemption from the levy of tax only to "fertilizers, other than chemical fertilizers". According to the learned counsel "neem ki khali" cannot fall in the category of fertilizer and as such it cannot be exempted from levy of tax. The learned counsel contended that "neem ki khali" falls in the category of oil-cake and as such it would be covered by Notification No. ST-

II-2995/X- 6(7)-73 dated 3rd April, 1975, which was amended by Notification No. ST-II-8452/X- L(2)-75 dated 1st October, 1975, and as such purchase tax was liable to be paid at the rate of 4 per cent. Referring to these notifications learned Standing Counsel urged that the Tribunal legally erred in holding that no tax was liable to be charged on the aforesaid amount of the turnover of "neem ki khali".

3. No one appeared on behalf of the assessee. I, however, requested Sri R. K. Gulati and Sri Bharatji Agrawal to agree and place relevant material so that proper decision may be arrived at on the undernoted question involved in the case :

Whether the Tribunal was legally justified in holding that there is no liability of tax on "neem ki khali" (oil-cake of neem) being a fertilizer covered by Notification No. ST-3470/X dated 16th July, 1956, or it will be liable to be taxed being oil-cake and covered by Notification No. ST-II-2995/X-6(7)-73 dated 3rd April, 1975, as amended by Notification No. ST-II-8452/X-1(2)-75 dated 1st October, 1975, by which tax rate leviable on oil-cake was enhanced from 2 per cent to 4 per cent ?

4. It is to be noticed that by virtue of Notification No. ST-908 dated 20th August, 1948, made u/s 4 of the Act oil-cakes were exempted from the liability of tax under the Act, and oil-cakes were included in the item "cattle fodder", which was exempt from tax. Entry at serial No. (3) in the said notification made u/s 4 of the Act granting exemption read as follows :

(3) Cattle fodder, including green fodder, gowar, chuni, bhusi, chhilka, oilcakes and cotton seed.

5. Later on by Notification No. ST-911/X dated 31st March, 1956, only cattle fodder including green fodder was exempt from payment of tax. This entry was, however, substituted with retrospective effect by Notification No. ST-3471/X dated 16th July, 1956, which reads as "cattle fodder including green fodder, chuni, bhusi, chhilka, chokar, cotton seed, gowar and oil-cake". Later on, this entry at serial No. (3) in respect of cattle fodder in the aforesaid notification was, however, substituted by the following entry by Notification No. 2994/X- 6(7)-73 dated 3rd April, 1975, "cattle fodder including green fodder, chuni, bhusi, chhilka, chokar and gowar, but not including khali (oil-cake), rice polish, rice bran or rice husk". And, by notification of the same date, namely, No. ST-II-2995/X-6(7)-73 dated 3rd April, 1975, issued under Sub-section (1) of Section 3-D of the Act, oil-cake was made liable to tax. The rate of tax was enhanced to 4 per cent by subsequent notification dated 1st October, 1975. It is thus evident that in view of these later aforesaid notifications tax is leviable on the business turnover of "oil-cakes" and it is immaterial whether the same were used as cattle fodder or not. Although in the year 1948 "oil-cakes" were not taxable having been included in the entry at serial No. (3) regarding cattle fodder, but later on it was excluded from the entry relating to "cattle fodder" and it was made liable to pay tax by a

notification of the same dated 3rd April, 1975, referred to above. Learned Standing Counsel urged that the exclusion of "oil-cake" from the entry relating to cattle fodder by Notification No. 2994/X- 6(7)-73 dated 3rd April, 1975, and it being made liable to pay tax by another notification of the same date cannot be construed to mean that "oil-cake" (khali) cannot be treated to be a cattle fodder. According to learned counsel, "oil-cake" (khali), which is used as cattle fodder, enjoyed exemption till 5th April, 1975, when it was made liable to pay tax in view of the aforesaid Notification No. 2995/X-6(7)-73 dated 3rd April, 1975, which became operative with effect from 5th April, 1975. Learned Standing Counsel further contended that in view of this later notification it is immaterial whether "oil-cake of neem" (neem ki khali) is capable of being used as cattle fodder or not because all "oilcake" (including de-oiled cakes) without any exception with regard to its variety, nature or quality and utility, have been made liable to tax. Thus, even if "neem ki khali" (oil-cake of neem) may not be found capable of being used as cattle feed, but even then it would be liable to tax.

6. Learned counsel further contended that "oil-cake of neem" (neem ki khali) cannot be said to fall in the category of "fertilizer" so as to be treated as exempt from payment of tax being covered by the aforesaid Notification No. ST-3470/X dated 16th July, 1956. The Tribunal, thus, legally erred in granting exemption from payment of sales tax on the turnover relating to "neem ki khali".

7. Learned counsel, Sri R. K. Gulati, argued that "neem ki khali" is the residue of "neem" seeds, which contains certain percentage of oil. The "neem" oil is extracted from the seeds and its residue (khali) is used as manure (fertilizer). Learned counsel contended that the "neem ki khali" is not known to be used as cattle feed and it is altogether a different matter that it might sometimes be used for medicinal purposes. Learned counsel further contended that although "neem ki khali" is no doubt an "oil-cake", but merely on that ground it cannot be made liable to tax under the aforesaid Notification No. ST-II-2995/X- G(7)-73 dated 3rd April, 1975.

8. Learned counsel referred to Webster's Dictionary for dictionary meaning of the word "oil-cake", where it is mentioned : "Oil-cake, a cake or mass of the compressed refuse seed of cotton, flax, mustard, etc., from which oil has been extracted : it is used as food for cattle and as fertilizer" (emphasis applied*). Referring to this dictionary meaning, learned counsel contended that the use of "oil-cake" is not confined only as a food for cattle, but it is also used as "fertilizer". He contended that even if it be assumed that "neem ki khali" can, by some stretch of imagination, be found to be capable of being used as food for cattle, but at the same time it cannot be denied that it is not generally used as "fertilizer". Learned counsel urged that where a particular article is exempt from tax falling under the category of "fertilizer" and at the same time it may be construed to fall in the aforesaid notification dated 3rd April, 1975, being an "oil-cake", but even then it would be exempt from tax liability. Learned counsel strenuously contended that it is commonly known that "neem ki khali" is

generally used as "fertilizer" and as such, although it is "oil-cake" it will enjoy exemption from tax available to "fertilizers" under Notification No. 3470/X dated 16th July, 1956. This product would continue to retain its identity as a "fertilizer", no matter what use its prospective purchasers might put it to. This product (neem ki khali) is generally utilised as a "fertilizer" both in agriculture and horticulture. It is not used as cattle feed, except on occasions when it is administered as a curative to certain animal diseases. It's use as such cannot make it a cattle fodder. It is also common knowledge that all "oil-cakes" are not used as cattle feed and the "neem ki khali" is one falling in the exception. It is generally used as a "fertilizer" and would, therefore, be exempt from tax although it falls in the category of "oil-cake".

9. In support of his argument that where there are two conflicting entries and the case of the assessee is covered by both entries, then the one granting exemption, which is more beneficial to assessee would be held to be applicable to it, the learned counsel referred to *Diwan Rubber Industries v. Commissioner of Sales Tax* (printed at page 329 *infra*) 1982 UPTC 618 in which it was held that "what could be the policy behind it and on what basis the classification in respect of goods has been made is not up for consideration but where there are two competing entries and manufacturer is covered by both then the entry granting exemption which is more beneficial to the assessee should be held applicable to it". In another case *Commissioner of Sales Tax v. Onkar Nath Jagdish Prasad* 1980 UPTC 1290 it was held that "if the commodity is capable of being put to more than one use {sic} the payment of tax depends on its popular or general meaning in commercial world. If fish meal is understood in the commercial circle as a commodity which is used for "manure" then it cannot be held to be otherwise only because someone used it as poultry feed".

10. Referring to these decisions learned counsel urged that "neem ki khali" is understood in the commercial circle as well as by agriculturists and horticulturists as a commodity, which is used for manure (fertilizer), and as such, it cannot be held to be otherwise merely because it might be used by someone for any other purpose.

11. I have given my anxious consideration to the aforesaid arguments of the learned counsel and I find substance in the arguments addressed by Sri R. K. Gulati. It is evident from the notifications, referred to above, that all types of "oil-cakes", whether used as cattle fodder or as a "fertilizer", were exempt from tax. The "oil-cake", which was used as "fertilizer" and also other "oil-cakes", which were not used as "fertilizers" but were used either as a cattle fodder or for any other purpose whatsoever, were exempt from tax right from 1948 in view of Notification No. ST-908/X dated 20th August, 1948, and these remained exempted from liability of tax till 5th April 1975, and for the first time by Notification No. 2995/X-6(7)-73 dated 3rd April, 1975, "oil-cake" (khali) was made liable to tax at the rate of 2 per cent, which was enhanced to 4 per cent by a subsequent notification dated 1st October, 1975. It is very material to note that

while "oil-cake" was made taxable by Notification No. 2995/X-6(7)-73 dated 3rd April, 1975, but no amendment was made in Notification No. ST-3470/X dated 16th July, 1956, by which commodities falling in the category of "fertilizers" were exempt from payment of tax. Thus, the "oil-cake" which fell in the category of "fertilizers" continued to enjoy the exemption granted by the said notification. Without bringing necessary amendment in the said notification by expressly providing therein that "fertilizers" will not include "oil-cake" it cannot be said that Notification No. ST-II-2995/X-6(7)-73 dated 3rd April, 1975, will bring in its sweep all types of "oil-cakes" irrespective of the fact that one of these, namely, "neem ki khali", would be exempt from tax being used as "fertilizers". It is well-settled that if once an exemption is granted u/s 4 of the Act in respect of any class of goods or class of persons, then unless such exemption is withdrawn it shall remain in force. In the present case it is not disputed that Notification No. ST-3470/X dated 16th July, 1956, granting exemption to "fertilizers" has not yet been amended by excluding "oil-cake" from the ambit of said entry in the notification regarding "fertilizer".

12. Similar questions cropped up for consideration before the Full Bench of the Punjab and Haryana High Court in Sheo Karan Dass Bhoj Raj v. State of Haryana [1974] 34 STC 94 (FB). Two questions arose in that case, firstly, whether on the basis of evidence it can be held that "oil-cake" is or is not fodder or "fertilizer" and secondly, whether on the facts and circumstances of the case "oil-cakes" fall within item 44 or 54 of Schedule B to the Act ?

13. It is to be noted that only "fertilizers" enjoyed exemption from tax, but while the aforesaid reference was pending for consideration before the High Court, the legislature intervened with an amendment excluding "oil-cakes" from both the aforesaid items with retrospective effect. The controversy was, therefore, resolved by the legislative amendment by which "oil-cakes" were excluded from the category of "fertilizers" as well as "fodder" simultaneously from items 44 and 54 of Schedule B to the Act. It, thus goes to indicate that even in the State of Punjab and Haryana some variety of "oil-cakes" did fall in the category of "fertilizer" being used as such and it necessitated a simultaneous amendment in item 44 mentioning therein "fertilizers, but not including oil-cakes", while excluding "oil-cakes" from item 54 relating to "fodder" which reads as : "fodder : dry or green, but not including "oil-cakes" and guar giri".

14. In the present case, however, we find that no amendment has yet been made in Notification No. ST-3470/X dated 16th July, 1956, and "oil-cake" used as "fertilizer" has not been excluded from the ambit of that notification granting exemption to "fertilizer" in general. Since no amendment has been made in the said notification relating to "fertilizer" the effect would be that if any article falls in the category of "fertilizers" it will continue to enjoy exemption irrespective of the fact that the product by its nomenclature or "oil-cake" may be covered by the aforesaid Notification No. ST-II-2995/X-6(7)-73 dated 3rd April, 1975. If the intention was to take away the exemption available to "oil-cake" falling in the

category of "fertilizers", there should have been a simultaneous amendment in the aforesaid Notification No. 3470/X dated 16th July, 1956, relating to "fertilizers", as was done in the similar case in the State of Punjab and Haryana, referred to above.

15. In Commissioner of Sales Tax, U. P., Lucknow v. Rita. Ice Cream Co., Gorakhpur 1981 UPTC 1239, a similar question cropped up for consideration. There were certain notifications made u/s 4 of the Act exempting milk and milk products. The last notification on the subject was dated 21st May, 1974. The State Government had, however, issued certain notifications dated 1st December, 1973, 4th November, 1974, and 30th May, 1975, u/s 3-A of the Act specifically referring to ice-cream and lassi making them taxable under those notifications. The existing notifications u/s 4 of the Act exempted milk and milk products from tax were, however, not amended until 30th July, 1981, whereby ice-cream and ice-candy, kulfi, milk-shake and lassi were excluded from entry No. 10 granting exemption to milk and milk products. The question arose whether prior to the aforesaid amendment the notifications u/s 4 of the Act would prevail over the notifications issued u/s 3-A of the Act. It was held that "while on the one hand, Section 3-A brings to tax "ice-cream and lassi" sold to consumers, the notifications issued u/s 4 grant exemptions to "milk products" which on judicial interpretations include "ice-cream and lassi". It would, thus, appear that the transactions or sales which enjoy exemptions have to be included in the gross turnover, but they are exempted when the net turnover is calculated as there were notifications u/s 4 of the Act. Even though ice-cream and lassi have been made taxable u/s 3-A of the Act, but on account of the notifications issued u/s 4 of the Act the turnover of these items could not be included in the net taxable turnover. Thus, the view taken by the revising authority that the sale of ice-cream was not taxable in view of the exemption granted under the notifications issued u/s 4 of the Act in respect of milk products appears to be correct".

16. In Deep Chand Goyal v. Sales Tax Officer, Sector II 1982 UPTC 1058 the Division Bench of this Court held that "if once an exemption is granted u/s 4 of the Act in respect of any class of goods or class of persons, then unless such exemption is withdrawn it shall remain in force".

17. In this view of the matter I am of the opinion that since the aforesaid Notification No. ST-3470/X dated 16th July, 1956, granting exemption to "fertilizers" has not been amended by excluding "oil-cake" from the category of "fertilizers" the same would continue to enjoy the exemption. In a taxing statute one has to look merely what is clearly said. There is no room for any intendment, there is no equity about a tax, there is no presumption as to a tax, nothing is to be added and nothing is to be implied. One can only look fairly at the language used while considering the provisions of the Act, rule or notification on the subject. The exemptions granted by or under statute or by notifications must be strictly construed. If an assessee wants to bring his case within any of the exemptions it will be for him to make out a case quite clearly within language of

the exemption granted. But the exemption from tax granted by statute should be given full scope and amplitude and should not be withheld by imposing limitations not inserted by the legislature or by the delegated authority under the notification-issued u/s 4 of the Act. If the words of a particular notification granting exemption are general in terms and are so worded to cover a claim for exemption in respect of any commodity falling under those categories, the same would not be minimised by reason of any supposed spirit of law or by reference to the legislative intent or State policy because it is well-settled that fiscal measures are not built upon any theory of taxation.

18. In the present case Notification No. ST-3470/X dated 16th July, 1956, provides exemption to "fertilizers", other than chemical "fertilizers". It makes no other exemption and any commodity which is generally used as "fertilizer" and is known to be used as such in common parlance, would fall in the category of "fertilizers" covered by the aforesaid notification.

19. It is next to be seen whether "neem ki khali" (oil-cake of neem) is used as "fertilizer". All "oil-cakes" are resultant products received under the process of extracting oil contents of seeds or fruits of plants or trees having oil contents. The "oil-cakes" are brought in use in various ways. Certain varieties of "oilcakes" are used as cattle feed, like mustard oil-cakes, Unseed oil-cakes, etc. It is generally known that "neem ki khali", because of its contents and smell, etc., is not used for cattle feed and it is generally used as manure. Although the process of production of "oil-cakes" of all varieties is the same and then reach the consumers through the same channel of distribution, but these are brought to use differently. If any particular variety of "oil-cake", namely, "neem ki khali", is capable of being used as "fertilizer" the same would be exempted from taxation being covered by the aforesaid Notification No. ST-3470/X dated 16th July, 1956, granting exemption to "fertilizers". But those "oil-cakes", which are not generally used as "fertilizers", but, are generally utilised as cattle feed, the same would be liable to tax being covered by Notification No. ST-II-2995/ X-6(7)-73 dated 3rd April, 1975. It is common knowledge that "neem ki khali" is not generally used as cattle fodder, but it is commonly known to be used as "fertilizer". The Tribunal in the present case has held that "neem ki khali" is a kind of manure and it cannot be put in the category of "oil-cake" of all other kinds. It has also come in evidence that the assessee had purchased "neem ki khali", which it utilised as manure and it was also recorded in the account books on the separate khata regarding manures, namely, "khad-khata". The first appellate court has not granted exemption merely on the ground that "neem ki khali" (oil-cake of neem) is covered by the notification by which sales tax on "oil-cake" is made leviable. The first appellate court has observed that since there is no exemption given in the said notification regarding "oil-cakes of neem" and as such the assessee was liable to pay purchase tax on it. Neither the assessing authority nor the first appellate court has held that "neem ki khali" is not used as manure, nor they have rejected the case of the assessee that he had purchased "neem ki khali" as manure and it was also recorded in the account books in the "khad-khata".

Entries in the account books have not been doubted and the assessing authority as well as the first appellate court imposed tax merely taking the view that the transaction was covered by the notification dated 3rd April, 1975, by which "oil-cakes" were made liable to tax. No attempt was made by these authorities to consider the question whether "oil-cake of neem" (neem ki khali) would be exempt from tax being "fertilizer" and covered by the aforesaid Notification No. ST-3470/X dated 16th July, 1956, granting exemption to "fertilizers", which has not been amended so far, by excluding "oil-cake" from it.

20. I have gone through the order passed by the Tribunal very carefully and I find that the finding recorded by the Tribunal, holding that "neem ki khali" is a kind of manure (fertilizer) is perfectly correct and it has been rightly held to be exempted from tax being covered by the aforesaid Notification No. ST-3470/X dated 16th July, 1956.

21. Before parting with the case I would like to express that Sri R. K. Gulati, Advocate, gave valuable assistance to Court by arguing the case at some length. He very ably argued the case and placed all the relevant notifications and cited relevant case law on the subject.

22. In the result, I find no substance in this revision. It is, accordingly, dismissed. I, however, direct the parties to bear their own costs.