(1976) 10 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 4 of 1974

Dewan Chand Chaman Lal APPELLANT

Vs

The State of Punjab RESPONDENT

Date of Decision : 13-10-1976

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 4

Citation : (1977) 39 STC 75

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

Bench : Division Bench

Advocate : L.K. Sood, for the Appellant; D.N. Rampal, Deputy Advocate-General, for the Respondent

Judgement

O. Chinnappa Reddy, Ag. C.J.—Following a Judgment of the Madhya Pradesh High Court in Commissioner of Sales Tax v. Bakhat Rai & Co. [1966] 18 S.T.C. 285 it was held by a learned single Judge of this court in Hans Raj Choudhri v. J.S. Rajyana [1967] 19 S.T.C. 489 that groundnuts could not be treated as "oil-seeds" so as to attract purchase tax under the Punjab General Sales Tax Act, 1948. In the Madhya Pradesh case [1966] 18 S.T.C. 285 the learned Judges observed that every Article or seed which could yield oil was not an "oil-seed" within the meaning of the C.P. and Berar Sales Tax Act. The test was not whether oil could be extracted from a fruit or seed, but it was whether in common parlance the Article was known as "oil-seed" used principally for the extraction of oil. The learned Judges then said :

Judged by this test, it cannot be said that coconuts, groundnuts and jira fall within the meaning of the term ''oil-seeds''.

2. While one may readily agree with the test propounded by the learned Judges for determining whether any Article or seed is an "oil-seed", one cannot agree with the actual conclusion arrived at by the learned Judges that groundnuts do not fall within the meaning of the term "oil-seeds". It is well-known that groundnuts are primarily used throughout the country for the extraction of oil

and that groundnut oil is one of the most commonly used cooking mediums in the country. We do not have the slightest doubt that groundnuts are known in common parlance as "oil-seeds". With a view to get over the effect of this decision, entry 3 of Schedule C appended to the Punjab General Sales Tax Act which related to "oil-seeds" was amended so as to include groundnuts.

3. In the present case, we are not concerned with groundnuts as such but with "parched groundnuts". The assessee deals in the manufacture and sale of parched groundnuts. He purchases raw groundnuts, subjects the same to the process of parching and sells parched groundnuts. The groundnuts are subjected to tax at the point of purchase. The question has arisen, whether parched groundnuts can be subjected to tax at the point of sale. The assessee claims that they cannot be so subjected to tax because of Section 4(2-A) of the Act, which is as follows:

Notwithstanding anything contained in Sub-sections (1) and (2), no tax on the sale of any goods shall be levied if a tax on their purchase is payable under this Act.

4. The submission of the learned counsel for the assessee is that the very groundnuts which are purchased and subjected to tax at the point of purchase are sold once again and, therefore, no tax can be levied at the point of sale. According to the learned counsel, groundnuts and parched groundnuts are the very same goods. It is not possible to agree with this submission. In order to qualify as "parched groundnuts", groundnuts are subjected to a mechanical process resulting in loss of considerable moisture and some volatile oil. Raw groundnuts which are not generally eaten as such are made edible for direct consumption by parching. Even the taste is a little different and the price is much higher. No one would dream of using parched groundnuts for extracting oil. For one thing, parching itself would have caused some loss of the oil content and for Another it would be too expensive. We do not think that parched groundnuts are known in common parlance as "oil-seeds" used principally for the extraction of oil. We are, therefore, unable to hold that parched groundnuts fall within the meaning of the expression "oil-seeds". We hold that groundnuts and parched groundnuts are not the same goods for the purposes of Section 4(2-A) of the Punjab General Sales Tax Act.

5. The Sales Tax Tribunal, Punjab, has referred the following questions for our decision :

(i) Whether groundnuts and parched groundnuts are not one and the same commodity and/or the groundnuts become commercially different commodity after it is parched ?

(ii) Whether the ratio decidendi of the Judgment reported in Hans Raj Choudhri v. J.S. Rajyana, Excise and Taxation Officer (Enforcement) [1967] 19 S.T.C. 489 is not attracted in view of the notification amending Schedule C ?

In Schedule C, it is mentioned :

Oil-seed including groundnut.

The competent authority asserted this amendment to exclude the possibility that groundnut becomes a different commodity after it is parched. The legislature understood that the groundnut in any shape whatsoever does not cease to be groundnut and even if the shape of the groundnut is changed-parched or unparched-it remains the same commodity.

(iii) Whether, having levied purchase tax on groundnut, the revenue was competent to impose sales tax on parched groundnut treating groundnut to be different commodity when it is parched ?

6. In the light of our earlier discussion, our answers to the questions are as follows :

(i) Groundnuts and parched groundnuts are commercially different commodities.

(ii) Hans Raj Choudhri v. J.S. Rajyana [1967] 19 S.T.C. 489 was wrongly decided, though the test was correctly stated.

(iii) The revenue was competent to impose sales tax on parched groundnuts notwithstanding the fact that purchase tax had been levied on groundnuts.

7. There will be no order as to costs.

