

(1974) 11 P&H CK 0006

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 9 of 1973

Ganesh Dal and Rice Mills

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 11-11-1974

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 2, 22, 5

Citation : (1975) 35 STC 366

Hon'ble Judges : Rajendra Nath Mittal, J; Man Mohan Singh Gujral, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; M.S. Liberhan for the Advocate-General, for the Respondent

Judgement

Man Mohan Singh Gujral, J.—This is a reference by the Sales Tax Tribunal, Haryana, u/s 22 of the Punjab General Sales Tax Act, 1948, as amended from time to time and applicable to the State of Haryana. The reference has been made by an order dated 16th October, 1972, and by this the following two questions have been referred :

(a) Whether, on the facts and in the circumstances of this case, the applicant could be held to be a dealer as defined in Section 2(d) of the Act as it then stood qua cotton worth Rs. 4,20,278.05 purchased for the purpose of sending it out of the State of Haryana ; and

(b) If answer to the first question is in the affirmative, whether the Tribunal was also justified in holding the applicant as last dealer liable to pay the tax and in upholding the levy of purchase tax on the applicant on the aforesaid cotton which was sent to and sold out of the State of Haryana.

The facts found by the Tribunal in the order of reference in so far as they are relevant for the disposal of the reference are as follows : The applicant, Messrs. Ganesh Dal and Rice Mills, Ellanabad, is a registered partnership-firm and is a dealer within the expression used in the Punjab General Sales Tax Act, 1948.

During the year ending 31st March, 1968, the applicant purchased unginned cotton of the value of Rs. 4,20,278.05 and this purchase was made from various commission agents in the State of Haryana. After the purchase of the unginned cotton it was ginned by the applicant-firm and was then sent outside the State for sale. By order dated 19th March, 1970, the Assessing Authority, Sirsa, levied purchase tax on the purchase of cotton made by the petitioner-firm. The assessee then filed an appeal before the Deputy Excise and Taxation Commissioner which was dismissed and so was the second appeal of the assessee by the order of the Tribunal dated 30th June, 1972. On the dismissal of these appeals the assessee filed an application before the Tribunal on the basis of which the above order of reference was made.

2. In so far as the first question referred to the High Court is concerned, it is conceded on behalf of the petitioner-firm that the answer has to be given against the petitioner-firm. The definition of dealer, as it stood at the time the relevant purchases were made, was as follows :

2. (d) "dealer" means any person including a department of Government, who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of consumption in the State of Haryana, irrespective of the fact that the main place of business of such person is outside the said State and where the main place of business of any such person is not in the said State, "dealer" includes the local manager or agent of such person in Haryana in respect of such business.

By the Haryana General Sales Tax Act, 1973, the definition of "dealer" was altered with the effect that the words "actually delivered for the purpose of consumption in the State" were deleted. This amendment was made operative with effect from 7th September, 1955, by Sub-section (3) of Section 1 of the Haryana General Sales Tax Act, 1973. It would, therefore, be clear that at the time the relevant purchases were made the definition of "dealer" as given in the Haryana General Sales Tax Act, 1973, would be applicable ; and even if the purchases were not made for the purpose of consumption in the State, the applicant-firm would be "dealer" qua these purchases. In the circumstances of this case the applicant could be held to be dealer at the time when- the cotton was purchased even if the purchase was made for the purpose of sending it out of the State of Haryana. This is so because of the amended definition that has been introduced by the Haryana General Sales Tax Act, 1973.

3. Question (b) : On the facts found by the Tribunal it is established that the applicant-firm had purchased unginned cotton from commission agents in the State of Haryana and the applicant-firm had then sent the cotton outside the State for the purpose of sale. On these facts it could be held that the applicant was the last dealer within the State of Haryana. The answer to the second part of this question, however, presents some difficulty. The purchase tax was leviable under Clause (iii) of the second proviso to Section 5(1) of the Punjab General Sales Tax Act and was payable at the stage of sale or purchase, as the case may

be, and under the circumstances specified against such goods in Schedule D. Under Schedule D the first entry which related to cotton provided that if it was purchased in the State of Haryana the tax would be leviable at the first purchase within the State of Haryana by a dealer liable to pay tax under this Act. Schedule D was amended by Act 10 of 1970 and the word "first" occurring in column No. 4 was substituted by the word "last". This amendment was to be operative with effect from 19th November, 1969, and was, therefore, not relevant in respect of the purchases made by the petitioner-firm. At the relevant time the purchase tax could only be levied on the first purchase within the State of Haryana by a dealer liable to pay tax under the Act. On the facts found by the Tribunal it is clear that the assessee had purchased cotton from commission agents. The Tribunal was, therefore, not justified in upholding the levy of purchase tax on the assessee on the purchases of cotton which, though made in the State of Haryana, was sent out of the State of Haryana after it was ginned. The assessee was not the first purchaser and was not liable to purchase tax, as Schedule D stood at the time the purchase was made. The reference is answered accordingly. Considering the question of law involved, there is no order regarding costs in this court.

Rajendra Nath Mittal, J.

4. I agree.