

(1971) 04 DEL CK 0011
In the Delhi High Court
Case No : S.T.R. No. 4 of 1969

Ghasi Ram Hari Ram

APPELLANT

Vs

Commissioner of Sales Tax

RESPONDENT

Date of Decision : 30-04-1971

Acts Referred:

Citation : (1973) 30 STC 88

Hon'ble Judges : H.R. Khanna, C.J;P.N. Khanna, J

Bench : Division Bench

Advocate : G.S. Bawa, for the Appellant; B.N. Kirpal and R. Sawhney, for the Respondent

Judgement

P.N. Khanna, J.—This judgment will dispose of four sales tax references being Nos. 4, 5, 6 and 7 of 1969 relating to the years 1961-62, 1958-59, 1959-60 and 1960-61 respectively, made at the instance of the assessed, Messrs. Ghasi Ram Hari Ram.

2. The assessed is a Hindu undivided family firm with Shri Ghasi Ram as its karta. Its business consists of purchasing gram, rice, dal, groundnut, imli seeds, etc., and selling the same after passing them through the process of parching, which business in common parlance is known as that of "bharbhoonja". The business is said to be in existence for the last about 150 years. On receipt of a complaint that the assessed was doing business in contravention of Section 7, read with Section 4(2) of the Bengal Finance (Sales Tax) Act, 1941, as extended to the Union Territory of Delhi, herein called the Act, an enquiry was instituted by the authorities in 1961. The business premises of the firm were visited but no books of account were found. A few purchase vouchers, however, were taken into possession. The assessed was required to submit details of the purchases made by the firm from other dealers ; but Ghasi Ram stated that it was not possible for him to collect such data as the dealers from whom purchases had been made were not co-operating. Spot enquiries were started. The assessed was considered to have made purchases to the extent of Rs. 15,057.68 including

purchase of sugar of the value of Rs. 107.57 during the assessment year 1961-62. Adding a guess figure for untouched or cash purchases, the total purchases were fixed at Rs. 20,000. Adding a certain percentage of profits, the turnover was estimated at Rs. 22,400.00 per annum. The assessing authority was of the view that there was not much scope for fluctuations in sales from year to year. The assessed was treated as a manufacturer for whom the "taxable quantum" under the Act is Rs. 10,000. The assessed's liability to pay tax was held to have commenced much prior to 1st April, 1958. Assessments were made for the assessment years 1958-59, 1959-60, 1960-61 and 1961-62, by determining Rs. 22,500 as the gross and taxable turnover for each year.

3. The assessed contended that the sale of parched rice, gram and dal was not taxable as u/s 6 of the Act they were tax-free goods, being included in the category of "all cereals and pulses including all forms of rice", which is item 1 in the list of exempted goods. The assessing authority repelled this contention and held that the dealers' turnover consisted of sale of manufactured goods and not of cereals and pulses including all forms of rice "in raw form".

4. Four separate appeals were filed by the assessed, for the four assessment years. The Appellate Assistant Commissioner of Sales Tax partially accepted three of the appeals to the extent that the taxable turnover for the years 1958-59 and 1959-60 was reduced to Rs. 16,000 for each year, while in respect of the assessment year 1960-61 it was reduced to Rs. 19,000. The appeal in respect of the assessment year 1961-62 was dismissed. The revision petitions filed on behalf of the assessed were dismissed by the Commissioner of Sales Tax. The second revision petitions before the Additional District Judge, Delhi, met the same fate. The assessed then applied to the Lt. Governor of the Union Territory of Delhi u/s 21(1) of the Act, with a prayer to refer to this court certain questions of law, which, according to it, arose out of the order of the learned Additional District Judge. The Lt. Governor dismissed the assessed's applications on the ground that there was nothing in the judgment of the learned Additional District Judge which might attract the provisions of Section 21 of the Act. The assessed moved this court u/s 21(2)(b) of the said Act, The matter came up before a Division Bench, which was of the view that the order of the learned Additional District judge did raise questions of law. A direction was issued to the Lt. Governor to refer to this court the following two questions in respect of the assessment years 1958-59, 1959-60 and 1960-61 :

(1) Whether there is any material on record pertaining to the assessment year in question to sustain the impugned order of assessment ?

(2) Whether parched rice, gram and dal are. cereals within the meaning of those terms as used in item 1 of the Second Schedule (exempted goods) to the Act and are thus exempt from the levy of sales tax under the Act ?

5. Question No. (2) alone was directed to be referred for the assessment year 1961-62. The Lt. Governor has, accordingly, referred to this court the aforesaid

questions of law which have arisen out of the said orders of the Additional District Judge for the aforesaid years.

6. Taking up question No. (2), first, Section 6 of the Act provides that no tax shall be payable under the Act on the sale of goods specified in the Second Schedule. In the said schedule of "exempted goods", item No. 1 reads :

(1) All cereals and pulses including all forms of rice (except when sold in sealed containers).

7. The word "cereal" denotes grain, used as food, such as wheat, rice, barley, etc. One of its meanings as given in Chambers's Twentieth Century Dictionary is : "a food prepared from such grain, especially a breakfast food easily got ready". It is a matter of common knowledge that easily prepared and ready to serve breakfast foods are made by subjecting corn, grain or rice to some process of conditioning, so that they become capable of being consumed instantaneously with milk or cream, like corn flakes, rice flakes, oatmeal, etc., which are displayed on a grocer's shelf packed under the label of "cereals". And when the word "cereals" follows the word "all", the expression "all cereals" assumes a more comprehensive significance. To avoid any doubts, the words "and pulses" are further added. And still further, the addition of the expression "including all forms of rice" is significant.

8. The learned counsel for the revenue contended that "all forms of rice" would cover all varieties of rice, superior, inferior and others and broken rice and other short varieties of rice. But then the language used would have been "all varieties and sizes of rice." "Form" of rice is different from its varieties or sizes. Dictionary meaning of the word "form" includes shape or mode of being of an object. The expression "all forms of rice" would thus embrace within its fold, rice in all its forms, as distinguished from its mere varieties or sizes. It would include rice in various shapes and conditions as for example rice in its raw form, fried form, or parched form. Different varieties of rice and different sizes of rice may be covered by the word "rice" itself. But here the exemption is given to "all forms of rice". So rice in all its forms, even in the form of "murmura", would be included in the exemption.

9. The contention that cereals, pulses and rice in raw form alone are covered by the exemption cannot be accepted, for whenever it was intended to exempt anything in its raw form, it was specifically stated so in the relevant entry in the schedule which has been amended from time to time. Original entry No. 21 exempted "raw cotton". Entry No. 29 originally was "raw hides and skins". Item No. 43 which has now been deleted, exempted "raw wool". But entry No. 1 has remained unamended so far. The word "raw" is completely missing from this entry and the exemption is given, on the other hand, to "all cereals and pulses" and which is said to include "all forms of rice".

10. It would be further noticed that the same cereals and pulses including all forms of rice are not exempt from tax "when sold in sealed containers". The

intention is not to extend the exemption to sophisticated breakfast foods sold in such containers. The exemption is limited to such articles when sold, without being sealed in any containers, by petty shopkeepers, like the assessed in this case, who are not in a position to maintain any accounts or to recover the levy of sales tax on their small transactions ; and in whose case the cost of levy, assessment and recovery of sales tax may be out of proportion to the net gain to the revenue.

11. Under the Assam Sales Tax Act, item 1 of the Schedule of the exempted goods was in similar language and exempted from tax "all cereals and pulses including all forms of rice". The Assam High Court in *Kapildeoram Baijnath Prosad v. J. K. Das and Ors.* [1954] 5 S.T.C. 365, held that as long as a thing continued to be cereal and retained its form as such although it may have undergone some simple processes of boiling or parching, it could not be held that it was not to be covered by the exemption. Chira and muri, it was held, do not cease to be cereals merely because rice or paddy had undergone the process of being flattened and fried in assuming the form of chira and muri.

12. In *Tungabhadra Industries Ltd. Vs. The Commercial Tax Officer, Kurnool*, , the Supreme Court was of the view that hydrogenated groundnut oil (commonly known as vanaspati) remained groundnut oil within the meaning of Rule 19(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939. This was so in spite of the fact that the groundnut oil was passed through a process of hydrogenation, bringing about a Chemical change and turning it into a semi-solid condition, thereby resulting in a change in its shape. In *Ramavatar Budhaiprasad Etc. Vs. Assistant Sales Tax Officer, Akola*, the Supreme Court was considering the word "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947. It was held that the word must be construed not in any technical sense nor from the botanical point of view but as understood in common parlance. It was, Therefore, to be understood as denoting class of "vegetables" which are grown in a kitchen garden or in a farm and are used for the table. Betel leaves were held to be not vegetables. In *Yamsani Sudarsanam v. The State of Andhra Pradesh* [1962] 13 S.T.C. 743, the High Court of Andhra Pradesh was of the view that parched rice is not the same thing as "rice". In that case, the dealer claimed exemption of the sale of parched rice manufactured out of the paddy which he purchased, by reason of an Explanation read with Schedule III, items 5 and 6. The Andhra Pradesh High Court was of the view that rice, parched rice both were different. "Rice" was different from "parched rice". But referring to the exemption of "all cereals and pulses, including all forms of rice", occurring in the Assam case [1954] 5 S.T.C. 365 (as it occurs in our case too), the "Andhra Pradesh High Court said in that case : "The position is different here". The word "cereal" was recognised to have been used in a broad and comprehensive sense in which it would include readily edible food. In the case before the Andhra Pradesh High Court, the interpretation of the word "cereal" was not involved. The only thing that was said was that parched rice was not "rice" and not that it was not cereal. In *Tilok Chand Prasan Kumar v. Sales Tax Officer* [1970] 25 S.T.C.

118, dal mills cleaned the arhar dal purchased by them and after the husk was removed, the dal itself was put to a process which resulted in its breaking down into particles of different sizes which were sold under different names according to their sizes, such as, zarda, khanda, tuna and dal. The Allahabad High Court was of the view that the dal purchased by the assessed under aforesaid names could not be said to be a commodity essentially different from the arhar dal purchased by the dal mills.

13. In the case before us, parched gram or parched dal in common parlance is still known as gram or dal. A customer going to the assessed when asking for "chana" or "dal" could be understood to be asking for parched chana or parched dal. as these words in their popular sense include gram or dal even when parched. It cannot be said that the same are not exempt merely because they have been passed through a process of parching. Likewise, rice in all its forms is included in the term "cereal" ; and in common parlance, corn, rice or grain in parched form are referred to as "cereals".

14. In view of the above, we are of the view that parched rice, gram or dal continue to remain cereals within the meaning of those terms as used in item No. 1 of the Second Schedule to the Act and are thus exempt from the levy of tax under the Act except when sold in sealed containers. It is nobody's case that the assessed sells anything in sealed containers. Our answer to question No. (2) is, Therefore, in the affirmative.

15. If parched rice, gram and dal are excluded from the assessed's turnover we do not find on record any material pertaining to the assessment years in question to sustain the impugned order of assessment. Our answer to question No. (1), Therefore, is in the negative.

16. In the circumstances of the case, the assessed will have its costs. Counsel's fee Rs. 200.