(1961) 03 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1047 of 1960

Green Hotel and Restaurant APPELLANT

Vs

Assessing Authority and Others RESPONDENT

Date of Decision : 16-03-1961

Acts Referred:
Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 6

Citation : (1961) 12 STC 603

Hon'ble Judges : K.L. Gosain, J

Bench : Single Bench

Advocate : D.S. Nehra, for the Appellant; A.M. Suri, for The Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

K.L. Gosain, J.—This petition under Article 226 of the Constitution of India has been brought by Messrs Green Hotel and Restaurant Registered, Patiala and proceeds on the following facts :-

2. The petitioners are carrying on a hotel and a restaurant at Patiala with branches at Ludhiana and Jullundur. The petitioner-firm was registered under the Pepsu Sales Tax Ordinance, 2006 Bk., and continues to be so under the East Punjab General Sales Tax Act, 1948, after the merger of the State of Pepsu with the State of Punjab in the year 1956. This firm has been called upon to file a return to pay tax on the sales effected by them during the last few years. They contest their liability to pay tax so far as sales effected by them of Indian food preparations and sweets are concerned. Their case is that sales of the above two items fell within the ambit of entries Nos. 49 and 50 of Schedule ''B'' read with Section 6(1) of the aforesaid Act. Before the 10th July, 1954, the aforesaid entries of the Schedule read as under :-

Column 1 Column 2 "49. Indian food preparations ordinarily sold by Tandoorwalas, Lohwalas and Dhabas. ... 50. Articles ordinarily prepared by

Halwais when sold by them." ... These two items were amended on the 10th July, 1954, to read as under :-

Column 1. Column 2 "49. Indian food preparations ordinarily When sold by per- prepared by Tandoorwalas, Lohwalas, sons running Tan- and Dhabas. doors, Lohs and Dhabas exclusively. 50. Articles ordinarily prepared by When sold by Hal- Halwais. was exclusively." 3. By virtue of Punjab Government Notification No. 2692-E. & T. 56/2789, dated the 27th December, 1956, item No. 50 has now been entirely omitted from the Schedule.

4. The assessing authorities under the Sales Tax Act have in their assessment orders found that the case of the present petitioners does not fall within the ambit of items Nos. 49 and 50 of the aforesaid Schedule and that they are, therefore, liable to pay tax. Their case is that the words "Tandoorwalas, Dhabas and Lohwalas" in item No. 49 and the word "Halwais" in item No. 50 of the Schedule are clearly distinguishable from a restaurant and that the petitioners'' case neither falls under the first column of the Schedule nor under the second in respect of both entries Nos. 49 and 50. It is further pleaded by the respondents that the petitioners sell their other articles namely, soda-water, all kinds of dishes, ice-cream, squash, sandwiches, pasteris, cakes etc., and also hold a licence for the sale of foreign liquor as also Indian made liquor. They allege that the quality of food served in hotel and restaurant, the manner of service and the upkeep of these places are some of the broad features which make them distinguishable from ordinary Dhabas, Tandoors and Halwais. After hearing the learned counsel for the petitioners at fairly great length I am of the opinion that the present petition is premature and misconceived. In order to avail the benefit of items Nos. 49 and 50 of the Schedule, the petitioners must prove the following facts :-

(1) that the food preparations sold by them are those which are ordinarily prepared by Tandoorwalas, Lohwalas and Dhabas ;

(2) that their own position while making sale of these preparations is that of persons running Tandoors, Lohs and Dhabas exclusively;

(3) that the sweets prepared and sold by them are ordinarily those which are prepared by Halwais, and

(4) that their own position while making sale of the said sweets is that of the Halwais.

5. These are matters which can be proved only by examining evidence because they are pure questions of fact. The respondents deny these facts and evidently the same must be proved before the assessing authorities who are competent to record evidence on the same. The petitioners should, in the circumstances, seek their ordinary remedies before the assessing authorities and then before the appellate and revisional authorities. They can bring their case to this Court on a reference by the revisional authority if they establish a case for such a reference.

In any case, there does not seem to be any justification for the petitioners rushing to this Court for extraordinary remedies when ordinary remedies are open to them and they are in a position to avail of the same. After the ordinary remedies have been exhausted, the petitioners may, if they are so advised and if they are legally entitled to do so, invoke the extraordinary remedies provided by Article 226 of the Constitution. The petition has no merits and is dismissed with costs.

