

(1970) 11 P&H CK 0057
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 986 of 1967

Gur Iqbal Singh and Sons	Vs	APPELLANT
The State of Punjab and Another		RESPONDENT

Date of Decision : 16-11-1970

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 5, 6

Citation : (1971) 28 STC 663

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : H.S. Wasu and B.S. Wasu, for the Appellant; M.R. Sharma, D.A.G., for the Respondent

Final Decision : Dismissed

Judgement

Bal Raj Tuli, J.—The petitioner-firm carries on the business of preparing and selling poultry feed which is prepared from broken wheat by adding some other material to it. The Assessing Authority for the assessment years 1963-64 and 1964-65 included the sales of poultry feed of the petitioner-firm in the gross turnover for the assessment of the sales tax. The petitioner-firm brought it to the notice of the Assessing Authority that the poultry feed commonly known as murghi dana is not liable to sales tax in view of the judgment of a Division Bench of this Court (Bhandari, C.J., and Falshaw, J.) in Messrs Puran Chand Lal Chand and Ors. v. The Punjab State and Anr. L.P.A. No. 27 of 1956 decided on 12th August, 1959. The Assessing Authority rightly distinguished that judgment on the fact that the learned Judges deciding the Letters Patent Appeal only held that murghi dana prepared from broken wheat or wheat refraction thrown out by the flour mills is not liable to sales tax as it is not anything different from wheat which is mentioned amongst the tax-free goods in Schedule B to the East Punjab General Sales Tax Act, 1948. The Assessing Authority did not mention the constituents of the poultry feed sold by the petitioner-firm. It has only mentioned, "by transferring the goods from different khatahs, as mentioned

above, the dealer manufactured poultry feed and the sale of poultry feed worth Rs. 91,019.69 so manufactured was claimed as deduction u/s 5(2)(a)(i) of the Act and no tax was paid on such sales by the assessee on the assumption that the commodity is exempt u/s 6 of the Punjab General Sales Tax Act, 1948." In another part of the order, the Assessing Authority stated, "it is a poultry feed which, I think, is entirely a different commodity than that on which judgment has been delivered by the Honourable High Court. It has been manufactured and brought into existence by applying a special formula and a process of manual labour to make it capable of being sold or supplied in the course of business. Hence, the commodity sold by the assessee is a poultry feed which is a mixture of proteins, salts and minerals, vitamins, antibiotics and coccidiostats, whether such mixture contains carbohydrates or not, and not the wheat refractions, referred to in the judgment of the Punjab High Court. It is, therefore, liable to tax at the general rate of tax up to 15th June, 1965, when it was declared a tax-free item under serial No. 71 of Schedule B appended to the Act." Without following further remedy of appeal and revision, the petitioner-firm filed the present petition on 25th May, 1967, on the basis of the judgment of the Division Bench referred to above. In the return, it has been pointed out by the Assistant Excise and Taxation Officer (Assessing Authority), who is the same officer who made the assessment order, that "poultry feed manufactured by the petitioner-firm is quite distinct in substance from wheat. Wheat constitutes only 7 per cent. towards the manufacture of poultry feed and rest of the goods are such on which tax is leviable at the general rate." It is thus clear from this statement in the return that the poultry feed manufactured and sold by the petitioner-firm was analysed and it was found that the wheat constituent was only to the extent of seven per cent. It has also been pointed out in this return that no broken wheat was purchased by the petitioner-firm during the periods under assessment. Evidently, therefore, some other goods were used in the manufacture of this poultry feed. The petitioner himself has admitted in the petition that the poultry feed had been prepared from broken wheat by adding some other material to it. The other materials added to the broken wheat have not been specified by the petitioner-firm and if we have to believe the Assessing Authority, wheat only constituted seven per cent, of the poultry feed. Under these circumstances it was a fit case in which the petitioner-firm ought to have gone up in appeal and challenged the order of the Assessing Authority on the ground that the various constituents of the poultry feed were different kinds of foodgrains, all of which were exempt from the payment of sales tax. The petitioner-firm, however, did not follow that course on the ground that it had to deposit the sales tax assessed before the appeals could be entertained. At the hearing, the learned Counsel for the petitioner, however, informed me that appeals were actually filed and the penalties imposed by the Assessing Authority were waived. If that be so, the petitioner-firm should have gone further in revision to the Excise and Taxation Commissioner and thereafter to the Financial Commissioner or the Sales Tax Tribunal so that the facts could be found to determine whether any of the entries in Schedule B to the Act applied or not. In 1965, by inserting item 71 in Schedule

B to the Act, poultry feed was declared tax-free goods. That entry does not make mention of the grains, etc., but of the different contents in the form of proteins, etc., from which it is quite clear that the poultry feed is a product entirely different from the foodgrains which are tax-free goods. Merely because the foodgrains are exempt from payment of tax does not mean that the products in which foodgrains are used are also exempt from the payment of tax.

2. For the reasons given above, I find no merit in this writ petition which is dismissed but without any order as to costs.