

(1967) 02 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 2371 of 1964

Hans Raj Choudhri

APPELLANT

Vs

J.S. Rajyana, Excise and Taxation Officer (Enforcement)

RESPONDENT

Date of Decision : 28-02-1967

Acts Referred:

Constitution of India, 1950 — Article 226, 286

Citation : (1967) 19 STC 489

Hon'ble Judges : Shamsher Bahadur, J

Bench : Single Bench

Advocate : Bhagirath Dass, for the Appellant; Prem Chand Jain, for the Respondent

Final Decision : Allowed

Judgement

Shamsher Bahadur, J.—This judgment will dispose of two writ petitions by Hans Raj Choudhri, both directed against the Excise and Taxation Officer (Enforcement). Civil Writ No. 2371 of 1964 relates to the levy of purchase tax in respect of two items, whereas Civil Writ No. 2562 of 1964 is concerned with the liability created by levying a penalty of Rs. 15,000 u/s 10(6) of the Punjab General Sales Tax Act, 1948.

2. The assessment order in respect of which the liability has been created relates to 1962-63. In the order passed by the Assessing Authority on 30th of September, 1964, which is sought to be impugned in the first petition, a levy of purchase tax on ground-nuts at the rate of 2 per cent. was imposed to the tune of Rs. 34,950.77 P., while a sum of Rs. 934.27 P. was assessed as sales tax on edible oils. The first imposition is challenged on the ground that the levy of the tax is void and ultra vires.

3. The petitioner is a partnership firm doing the business of crushing oil-seeds at Khanna. During the course of its business, it makes purchases of oil-seeds also. It is not disputed that ground-nuts had been purchased by the petitioner and if

these are regarded as oil-seeds the levy would be justifiable. It is contended by Mr. Bhagirath Dass, the learned counsel for the petitioner, that the purchase tax could be levied on articles mentioned in Schedule C of the Punjab General Sales Tax Act (hereinafter called the Act) under category (3) :-

Oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

4. Schedule C has been inserted in the Act in pursuance of Clause (ff) of Section 2 which was to take effect from 1st April, 1960, and defines "purchase" with all its grammatical or cognate expressions, to mean "the acquisition of goods specified in Schedule C for cash or deferred payment or other valuable consideration otherwise than under a mortgage, hypothecation, charge or pledge." The Assessing Authority has observed that "the ground-nuts are without any shadow of doubt oil-seeds." Mr. Bhagirath Dass has invited my attention to a decision of the Madhya Pradesh High Court of Chief Justice Dixit and Shiv Dayal, J., in Commissioner of Sales Tax, Madhya Pradesh, Indore v. Bakhat Rai and Co. [1966] 18 S.T.C. 285. The definition of "oil-seeds" in the C. P. and Berar Sales Tax Act, 1947, is in identical terms with the one mentioned in Schedule C. The point for decision before the Madhya Pradesh Bench was whether coconuts, ground-nuts and jira are oil-seeds and it was held that "every article or seed which can yield oil is not an oil-seed as contemplated by item No. 3 of Part II of Schedule I of the C. P. and Berar Sales Tax Act, 1947. The test is not whether oil can be extracted from a fruit or seed, but it is whether in common parlance the article is known as "oil-seed" used principally for the extraction of oil. Judged by this test, it cannot be said that coconuts, ground-nuts and jira fall within the meaning of the term "oil-seeds"..." If it is found that ground-nuts are not oil-seeds, the foundation for the assessment no longer exists and the levy must be declared to be without warrant.

5. Mr. Prem Chand Jain, the learned counsel for the State, contends, however, that though the ruling of the Madhya Pradesh High Court appears to be decisive on the point, the matter is not concluded thereby. He has invited my attention to paragraph 15 of the petition itself in which it is said that:-

The question as to whether the purchase tax can be imposed on oil-seeds is pending disposal before the Hon"ble Supreme Court in Civil Appeals Nos. 526 and 527 of 1964.

6. Neither counsel has been able to refer me to a decision of the Supreme Court on this point. The reasoning of the Madhya Pradesh High Court does not appear to be unreasonable and prima facie, it appears to me that the ground-nuts cannot be treated as oil-seeds to justify the imposition of the purchase tax.

7. As regards the second item of Rs. 934.27 P., it is submitted by Mr. Bhagirath Dass that the levy is based on a notification which has been declared to be null

and void by a Division Bench of this Court. It is not controverted that the tax has been levied on edible oils in consequence of Notification No. 3483-E. & T.-54/723(CH) of 5th August, 1954. It was held by a Division Bench of this Court consisting of Mehar Singh, J. (as the Chief Justice then was) and myself in *Ganga Ram Suraj Parkash v. The State of Punjab* [1963] 14 S.T.C. 476 that Section 5 of the East Punjab General Sales Tax Act, 1948, which gave an unlimited power to the executive to levy sales tax at the rate it thought best, was invalid till Section 5 was duly amended by the East Punjab General Sales Tax (Second Amendment) Act (19 of 1952). It was, however, held that no imposition on edible oils could have been made till the President's assent had been obtained as required by Article 286(3) of the Constitution. The impugned notification, by which the dealers in edible oils were made liable to pay sales tax, was a law made by the State Legislature after the enactment of Act 52 of 1952 which laid down the inhibition and as the notification did not receive the assent of the President as required by Article 286(3) it was ultra vires and invalid. After the decision in *Ganga Ram's case* [1963] 14 S.T.C. 470 the Punjab Government rectified the defect by another notification of 8th March, 1965, that tax on edible oils could be imposed. This time the President's assent has been obtained. Admittedly, the present levy was made in pursuance of the notification of 1954 which has already been declared to be invalid by the authority of the Division Bench and the State Government itself has conceded this position by making another notification to make the levy lawful.

8. It has been contended by Mr. Munishwar Puri, who appears for the State of Punjab, that according to the recent decision of the Supreme Court in *Sales Tax Officer, Jodhpur and Another Vs. Shiv Ratan G. Mohatta*, , Article 226 of the Constitution does not justify a High Court to quash the assessment order of the Sales Tax Officer unless the aggrieved party has resorted to the remedies provided by the Act. According to Mr. Justice Sikri, speaking for the Court, the fact that the assessee has to deposit sales tax while filing an appeal does not always mean he can by-pass the remedies provided by the Sales Tax Act. It is, however, to be observed that at page 144 it is stated by the learned Judge that:-

There must be something more in a case to warrant the entertainment of a petition under Article 226, something going to the root of the jurisdiction of the Sales Tax Officer, something to show that it would be a case of palpable injustice to the assessee to force him to adopt the remedies provided by the Act.

9. In the instant case, it would be observed that the assessee has challenged the legality of the imposition and the matter goes to the root of the jurisdiction of the Sales Tax Officer. If ground-nuts are not oil-seeds, as contended for, no imposition can be made under the Sales Tax Act and further, if the notification of 1954 is bad, as has been held by a Division Bench of this Court, there can be no levy of sales tax on edible oil. Plainly, the matter with respect to these liabilities concerns the jurisdiction of the sales tax authority and the petition under Article 226 is entertainable by this Court.

10. Holding, as I do, that the impositions of the purchase tax on ground-nuts and the sales tax on edible oils are unlawful, the question of penalty does not arise and the impugned order, which has been challenged in Civil Writ No. 2562 of 1964 imposing a penalty of Rs. 15,000 u/s 10(6) of the Act is clearly unsustainable.

11. In the result, both the petitions would be allowed and the impugned orders of the Assessing Authority set aside. The petitioner would be entitled to the costs of these petitions which I assess at Rs. 250.