(1953) 04 P&H CK 0011

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 16 of 1953

Harbans Lal Mangal Mal APPELLANT

Vs

Punjab State RESPONDENT

Date of Decision : 28-04-1953

Acts Referred:
Constitution of India, 1950 — Article 226
East Punjab General Sales Tax Act, 1948 — Section 5, 5(1), 6

Citation : AIR 1954 P&H 244

Hon'ble Judges : Kapur, J;Falshaw, J

Bench : Division Bench

Advocate : H.L. Sibal and C.L. Aggarwal, for the Appellant; S.M. Sikri, General, for the Respondent

Final Decision : Allowed

Judgement

Kapur. J.—This rule is directed against the Punjab State through the Excise and Taxation Commissioner, Punjab, calling upon them to show cause why the order made against the petitioner requiring him to pay sales-tax in regard to sales of ''maida'' for the years 1949-50 and 1950-51 should not be quashed.

2. The petitioner is a dealer in wheat-flour. In 1942 on his enquiry he was informed by the then Financial commissioner that the expression ''wheat-flour'' used in Section 5 (i) (b), Punjab General Sales Tax Act of 1941, should be construed according to its dictionary meaning so as to include ''maida'', ''suji'' and ''rawa''. The petitioner again wrote to the Deputy Excise and Taxation Commissioner, Jullundur, on 19-11-1951, to clarify wnetner maida and ''atta'' came within the term ''wneat-flour or not. To this the reply of this officer is dated 24-11-1951 in which he said that ''maida'' and ''atta'' were both exempt from the sales-tax. The gentleman who wrote this letter is B. L Ahuja.

3. On 10-12-1951; and 11-7-1952, the petitioner Was assessed for the years 1949-50 and 1950-51 on the sales made by his firm during these two years. Appeal was taken by the petitioner to the Deputy Excise and Taxation

Commissioner who was the same B. L. Ahuja and he held in this appeal that

" ''Maida'' is a fine product extracted from wheat but it is certainly not wheat-flour and as such is not covered by item No. 1 of the schedule of exemptions."

And he thereupon dismissed the appeal. The petitioner went in revision to the Excise and Taxation Commissioner, Jullundur, on 3-5-1952, but this Tribunal has not heard the appeal, and on 6-8-1952, on behalf of the Commissioner one P. K. Kapur, Personal Assistant, said that the application was not ripe for hearing.

4. The petitioner submits that this is a case which is not covered by the rule laid down by this Court in -- Bharam Chand Kishore Chand Puri and Brothers Vs. The Excise and Taxation Commissioner and Another, nor by the rule which we have laid down today in -- ''Civil Writ No. 309 of 1952 (Funj) (B)'' but falls within the rule laid down in -- Sutlej Cotton Mills Ltd. Vs. Dr. Ranjit Singh, . The Excise and Taxation Commissioner on 21-12-1951, issued a general instruction in which he stated that ''maida'' and ''suji'' are not included in wheat-flour and are therefore taxable under the Act and he instructed his subordinates that they should apply this interpretation to their orders of assessment. Ho has therefore precluded himself from giving an unbiased hearing and deciding the revision petition of the petitioner. And in spite of the fact that the revision petition of the petitioner was filed in May 1952, it has not yet been heard.

5. Wheat-flour was interpreted by the Financial Commissioner according to the dictionary meaning so as to include ''maida'', ''suji'' and ''rawa''. The very gentleman who has dismissed the petitioner''s appeal u/s 20 of the Sales Tax Act, 1948, himself wrote to the petitioner on 24-11-1951, that ''maida'' and ''atta'' were exempt from sales-tax. How he has come to a different conclusion is not clear from his order. I am unable to agree with the interpretation put on "wheat-flour" by the Excise and Taxation Commissioner. It cannot be said that ''maida'' is not included in the word ''wheat-flour.'' Flour according to the dictionary meaning is

"the finer portion of meal (wheat or other) which is separated by bolting; and hence the fine soft powder of any substance".

Maida, therefore, is, according to the dictionary meaning, included in the word ''wheat-flour''. I do not know of any definition of the word ''wheat-flour'' which has ever excluded ''maida''. I would therefore, hold that ''maida'' is excluded under item 1 of the schedule u/s 6.

6. The petitioner went up in appeal in accordance with the machinery provided for by the Sales Tax Act. He also filed a revision petition which has not yet been heard and it appears that Excise and Taxation Commissioner has by issuing a circular excluded himself from correctly interpreting the words ''wheat'' and its ''flour''. And the petitioner''s revision petition is not being heard. In this case therefore I am of the opinion that the rule in V.N. Wanchoo, etc. Vs. Collector of Delhi, etc., applies and I would therefore, issue a writ of certiorari quashing the

order calling upon the petitioner to pay sales-tax and would make the rule absolute. The petitioner will have his costs. Counsel fee Rs. 100/-

Falshaw, J.

7. I agree.

