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**(1985) 12 P&H CK 0019**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : Civil Writ Petition No. 199 of 1983**

Hot Millions

APPELLANT

Vs

Union Territory and Another

RESPONDENT

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**Date of Decision :** 04-12-1985

**Acts Referred:**

Punjab General Sales Tax Act, 1948 — Section 2

**Citation :** (1986) 62 STC 342

**Hon'ble Judges :** D.V. Sehgal, J

**Bench :** Single Bench

**Advocate :** R.N. Narula and P.S. Saini, for the Appellant; M.R. Agnihotri and Deepak Agnihotri, for the Respondent

**Final Decision :** Allowed

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## Judgement

D.V. Sehgal, J.—The firm by the name of Hot Millions, Sector 17-D, Chandigarh (hereinafter referred to as the petitioner), through the present writ petition has prayed for the issuance of a writ of certiorari for quashing "final notice" dated 26th November, 1982 (annexure P.2), and two subsequent notices dated 27th December, 1982 (annexures P.3 and P.4), issued by the Excise and Taxation Officer-cum-Assessing Authority, Union Territory, Chandigarh, respondent No. 2. The notice (annexure P.2) is in the form of a decision rejecting various contentions raised by the petitioner in its representation dated 18th October, 1982 (annexure P.1), which, as the text shows, was in response to some earlier notices issued by respondent No. 2 in respect of sales tax assessment for the years 1980-81, 1981-82 and 1982-83.

2. The petitioner's contention in the representation (annexure P.1) as also in the writ petition is that the petitioner has set up a restaurant by the name of Hot Millions in a posh locality in Sector 17, Chandigarh, which is being run by it providing various services and amenities such as central cooling, wall to wall rubber laid carpeting and mosaic flooring, special sophisticated made to order furniture, counters of marble all around and the walls behind the counters are all

made of marble. It is averred that the kitchen equipment is electric/gas and is highly sophisticated. It is laid out to ensure cleanliness and please the palate of the visitors, This facility is specifically provided to make a visual appeal to the visitors wishing to satisfy their bodily needs. Specialised, trained and skilled staff is employed by the petitioner to ensure quick preparation and services and that the visitors personal tastes are catered with promptness. There are pleasant and tasteful setting, furnishings, potted plants, etc. Besides, music, western and traditional, is played through a sophisticated stereophonic system in the establishment. Lighting arrangement is so made as to give a soothing feeling. Serviettes provided are of finest and cutlery and crockery are of the best quality. Besides the said service, food and beverages are provided by the petitioner in the restaurant. The personnel working in the restaurant are elegantly dressed who look after the needs of the visitors. The charge made for the services rendered is based upon per head or per dish for the consumption at the premises. Eatables and beverages are provided as hospitality for satisfaction of a bodily desire, ministering a bodily want of the visitors. The transaction for providing the said services, according to the petitioner, is one essentially of service the performance of which is part of the amenities incidental thereto are provided in terms of offering hospitality. As stated above, the petitioner received notices from respondent No. 2 for sale tax assessment for the years 1980-81, 1981-82 and 1982-83 in reply to which representation (annexure P.1) was made wherein all the above facts, besides others, were delineated. The judgment of the Supreme Court in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, besides the view on the same lines taken by the different High Courts, was also brought to the notice of respondent No. 2. The petitioner thus contended that the articles of food or beverages being served in its restaurant cater to the needs of the visitors who consume and destroy the same by consumption and such service does not amount to sale of eatables and beverages. Respondent No. 2, however, turned down the contentions made by the petitioner in the representation (annexure P.1) vide "final notice" (annexure P.2) wherein the law laid down by the Supreme Court in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, and the judgments of different High Courts following the law so laid down by the final Court were sought to be distinguished on the following grounds :

- (a) The customers have to carry eatables from the counter themselves.
- (b) The customer is not attended by any waiter for the order booking.
- (c) The customer has to stand in a queue to get coupons of the delivery of snacks.
- (d) The customer cannot sit at ease to enjoy the environment around because he is always in anxiety to go for the delivery of eatables at the counter. This does not give pleasure of service as envisaged by the Supreme Court in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi, .

(e) The waiter standing across the counter shouts for the customers when eatables are ready.

(f) The area of the petitioner's premises is so congested that one cannot sit at ease like a restaurant in wide open place. The premises of the petitioner is known as "snack-bar". The meaning of "bar" means to stand at a place. In every restaurant the customer is provided water on arrival into it by a well-dressed waiter and which adds to the service of the customers. In the petitioner's premises, one has to drink water from the cooler.

(g) It has been generally seen that in the premises of the petitioner, that the customers have a right over the left-over because due to paucity of space the customers sometime carry the snacks outside and eat around the fountain.

3. Respondent No. 2 thus concluded that the eatables and beverages served at the petitioner's premises are liable to sales tax and, therefore, directed the petitioner to produce the account books for the years 1980-81, 1981-82 and 1982-83 for working out the tax liability. To the same effect are the notices (annexures P.3 and P.4). The petitioner has impugned the legality and validity of the above notices.

4. Right at the beginning, the learned counsel for the respondents raised a preliminary objection to the effect that since no order of assessment of sales tax had yet been passed by respondent No. 2 and when such an assessment order is passed, the same would be appealable under the provisions of the Punjab General Sales Tax Act, 1948 (hereinafter called the "Act"). There being an alternative remedy available to the petitioner, the present writ petition has to be dismissed on this ground alone. It is difficult to agree with the contention of the learned counsel for the respondents for more than one reason. Firstly, the writ petition was admitted nearly three years ago and it would not be proper at this stage to relegate the petitioner to an alternative remedy provided by the statute. Secondly, as I am coming to the conclusion that the services rendered at the petitioner's premises do not partake the nature of sale as defined in Section 2(h) of the Act and respondent No. 2 is wrongly assuming jurisdiction which in fact does not vest in him, it would not be proper to make the petitioner to go through the entire gamut of subjecting itself to an order of assessment, deposit of the assessed amount of tax and then prefer appeals and representation, etc., under the Act. Thirdly, since the matter is virtually *res Integra*, it would not be in the interest of justice to relegate the petitioner to the remedy under the statute.

5. As would be evident from the contents of the representation (annexure P.1) and the virtual decision of respondent No. 2 (annexure P.2) styling the services rendered at the premises as sales and holding that the same are exigible to sales tax, the following undisputed facts emerge :

6. The petitioner's premises is situate in the posh locality of sector 17, Chandigarh. It is providing cooling and heating arrangement at the premises in accordance with the season to keep the temperature comfortable inside. While

nearly half of the premises is used for cookery and counter, remaining half of it has sitting arrangements where invariably the customers sit till the time the dishes and beverages for which orders are placed by them are catered to. No doubt the petitioner provides for a modern method of receiving cash at the counter, the visitor secures coupon, then passes on to the cooking section of the establishment and when the dishes or beverages are ready, collects the same and takes it to the seat at the table where he/she alone or with friends consumes the same. But it is undisputed that besides providing crockery and cutlery, furnishing and furniture for suitable comfort of the visitor, he is also entertained by music, western and traditional, through the stereo system. After the visitor consumes the eatables and beverages then the personnel of the petitioner clear out the tables and remove the used crockery and cutlery for cleaning purpose. The fact that the visitor can see the dishes being prepared on the other side of the counter or that he himself carries the dishes or beverages so prepared and thus according to respondent No. 2 the services rendered are somewhat less than what are generally provided in other restaurants would hardly make any difference. The essential fact which has to be seen is that the eatables are not taken out of the premises nor are they sold for such purpose. These are in fact consumed and thus destroyed in the premises itself. The services rendered may vary from one establishment to the other. Their mode, and quality may also be different so as to meet the needs of the type of visitors for whom in general the premises are made to cater. Shopping centre of sector 17, Chandigarh, is undisputably modern in character. The visitor to the shopping centre generally needs respite and some refreshment after shopping. At the same time they also do not have so free a time as to wait for the bearer to come and take the orders. This has been so asserted by the petitioner and respondent No. 2 does not dispute this fact. The mere fact, therefore, that the visitors are not served with water when they take their seats in the premises of the petitioner and rather the visitor has himself to take the water from the cooler does not in any way change the character of the services rendered. One reason pressed into service by respondent No. 2 is that some visitors, after collecting the eatables or beverages, sit near the fountain in the plaza in sector 17, Chandigarh, appears to be a contradiction of what respondent No. 2 states in the body of its decision (annexure P.2). When crockery and cutlery for eatables and beverages are provided by the petitioner, it is hardly possible that a visitor would be permitted to take out these-costly items containing the eatables or beverages to a place away from the petitioner's premises. In my view, the services rendered by the petitioner, including the service of eatables and beverages at its premises whether it may be called restaurant or styled as "snack-bar" as respondent No. 2 wants to do is hardly material. It is the ingredients of the services rendered which are material to determine whether or not eatables served along with the other services rendered can be styled as "sale" within the meaning of Section 2(h) of the Act which is to the following effect:

"sale" means any transfer of property in goods other than goods specified in

Schedule C for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge.

7. In *Northern India Caterers (India) Ltd.*'s case [1978] 42 STC 388 (SC) the Supreme Court approved the following statement of law in *Electa B. Merrill v. James W. Hodson* 1915 LRA 481:

The essence of it is not an agreement for the transfer of the general property of the food or drink placed at the command of the customer for the satisfaction of his desires, or actually appropriated by him in the process of appeasing his appetite or thirst. The customer does not become the owner of the food set before him, or of that portion which is served for his use, or of that which finds a place on his plate or in side dishes set about it. No designated portion becomes his. He is privileged to eat, and that is all. The uneaten food is not his. He cannot do what he pleases with it. That which is set before him or placed at his command is provided to enable him to satisfy his immediate wants, and for no other purpose. He may satisfy those wants; but there he must stop. He may not turn over unconsumed portions to others at his pleasure, or carry away such portions. The true essence of the transaction is service in the satisfaction of a human need or desire, -ministry to a bodily want. A necessary incident of this service or ministry is the consumption of the food required. This consumption involves destruction, and nothing remains of what is consumed to which the right of property can be said to attach. Before consumption title does not pass; after consumption there remains nothing to become the subject of title. What the customer pays for is a right to satisfy his appetite by the process of destruction. What he thus pays for includes more than the price of the food as such. It includes all that enters into the conception of service, and with it no small factor of direct personal service. It does not contemplate the transfer of the general property in the food supplied as a factor in the service rendered.

8. The law laid down by the Supreme Court in *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, has been followed by Andhra Pradesh High Court in *Durga Bhavan v. Deputy Commercial Tax Officer, Anantapur* [1981] 47 STC 104(HC) and it has been held that in the case of the restaurant where such services are rendered, the transaction does not amount to sale but is one of services though the degree of services may vary from restaurant to restaurant. The same view has been taken by the Karnataka High Court in *K. Seetharama Rao v. Assistant Commercial Tax Officer* (printed at page 348 *infra*) 1981 Tax LR 2888 and by the Delhi High Court in *East India Hotels Ltd. v. Commissioner of Sales Tax, Delhi Administration, New Delhi* [1981] 48 STC 179(HC). The matter also came up before a single Bench of this Court in *Gopi Nath and Sons v. Shri H.B. Gandhi Excise and Taxation Officer-cum-Assessing Authority* 1983 RLR 226 and the law laid down by the Supreme Court in *Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi*, was followed.

9. At the end, the learned counsel for the respondents has contended that it is for the petitioner to satisfy the sales tax authorities that the services rendered by

the petitioner, including service of eatables and beverages at its premises, are not exigible to sales tax. A similar contention was turned down by this Court in Gopi Nath's case [1983] 54 STC 211(HC) : 1983 RLR 226 . Rather, on the contrary, the view taken by this Court in Associated Hotels of India Ltd. Vs. Excise and Taxation Officer and Another, is that the burden of proving that the supply of food amounted to sale is on the revenue. This contention therefore, has to be repelled.

10. In view of the above discussion, this petition is allowed, the notices dated 26th November, 1982 (annexure P.2), dated 27th December, 1982 (annexures P.3 and P.4), are quashed. There shall be no order as to costs.