

(1974) 01 P&H CK 0020
In the Punjab And Haryana At Chandigarh
Case No : Sales Tax Reference No. 16 of 1972

Kaviraj Pt. Durga Datt Sharma

APPELLANT

Vs

The State of Punjab

RESPONDENT

Date of Decision : 09-01-1974

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 2, 22, 4

Citation : (1974) 33 STC 479

Hon'ble Judges : Pritam Singh Pattar, J; Prem Chand Pandit, J

Bench : Division Bench

Advocate : Bhagirath Dassand S.K. Hirajee, for the Appellant; L.K. Sood, for Advocate-General, for the Respondent

Judgement

Prem Chand Pandit, J.—This order will dispose of two connected Sales Tax References Nos. 16 and 17 of 1972. The year of assessment is 1957-58. The first reference is under the Punjab General Sales Tax Act, 1948, hereinafter called the Punjab Act, and the other is under the Central Sales Tax Act, 1956, hereinafter referred to as the Central Act.

2. On 28th October, 1970, a Bench of this Court directed the Sales Tax Tribunal, Punjab, to refer the following two questions of law for our opinion:

(1) Whether, in the circumstances of the case, the medicinal preparations given to the named patients on his own prescriptions by a registered medical practitioner amounts to a manufacture of medicine and pharmaceutical preparations?

(2) Whether the petitioner is a "dealer" within the provisions of the Punjab and Central Acts and the medicines prepared on his own prescriptions and delivered to his own patients who actually consult him amount to "sale" within the meaning of the Punjab and the Central Acts?

3. The assessee is an ayurvedic practitioner and the proprietor of Messrs. Navratna Kalpa Pharmacy, Jullundur. He tours throughout India and after seeing

the patients gives them medicines prepared by him. The bills issued to them generally show separately the amount of consultation fee, the price of the medicines and other incidental charges, including the postage expenses. Returns were filed by him both under the Punjab and the Central Acts. Certain deductions were claimed by him and under the Punjab Act they were allowed in respect of sales made during tours outside the State and in foreign countries. As regards the Central Act, deductions regarding consultation fee was not allowed, because, according to the Assessing Authority, the same "had been noted in the relevant register according to the whims and wishes of the assessee himself". Besides, the assessee could not produce the forwarding letters sent along with the V.P.P. parcels, indicating the charges for medicines as well as the consultation fee separately. The assessments for the year 1957-58 under both the Acts were made by the Assessing Authority on 13th November, 1959.

4. Thereafter, the assessee filed two separate appeals against the assessment orders before the Deputy Excise and Taxation Commissioner, who allowed the deductions in respect of postal and consultation charges. The deductions regarding the consultation charges were allowed under the Central Act and thus the appeals were partly accepted.

5. Thereafter, revisions were preferred by the assessee before the Excise and Taxation Commissioner. The only point urged there was that the assessee was not a "dealer", because he did not sell any goods in the ordinary course of any trade and business. It was also submitted that his work did not constitute any "business". He was not a manufacturer and was only a consulting qualified physician and gave medicines or mixtures only after he had seen the patients and never prescribed them otherwise. The Commissioner was doubtful whether the assessee could be held to be a dealer. According to him, the assessee only prescribed medicines and charged for them along with his consultation fee. He went from place to place, examined the patients and prescribed medicines. The revision petitions were, accordingly, allowed.

6. Thereafter, on suo motu action, the learned Financial Commissioner (Sales Tax Tribunal) was of the view that the assessee's earnings were the result of the sale of medicines manufactured by him. Those medicines were supplied and sold not only to patients who actually consulted him, but also to those who wrote to him and sought his advice for their ailments. The sale of his medicines abroad, according to the learned Financial Commissioner, indicated that the assessee's medicines were fairly well-known and used like other patent medicines. It was, therefore, held that the assessee, apart from being a medical practitioner, was a manufacturer of medicines which were patronised by the public. The orders made by the Deputy Excise and Taxation Commissioner and the Commissioner were, accordingly, set aside and those of the Assessing Authority restored.

7. An application was then made by the assessee u/s 22 of the Punjab Act for referring certain questions of law to this court. This application was dismissed by the learned Financial Commissioner. As regards the first question, it was held by

him that a medical practitioner, who sold medicines both patent and otherwise, came within the definition of a manufacturer. On the second question, it was observed that the assessee was clearly a "dealer" according to the evidence on the record and he sold medicines not only to his patients, but to others as well by post. Besides, it was not the same standard medicines that he sold, but numerous varieties of it. Thereafter, this court was moved for the same purpose, with the result that the above two questions of law were referred to us for our opinion.

8. The word "dealer" is defined in Section 2(d) of the Punjab Act and the relevant portion of it says:

"Dealer" means any person...who in the normal course of trade sells or purchases any goods that are actually delivered for the purpose of consumption in the State of Punjab....

9. No definition of "manufacture" is, however, given in the said Act.

10. So far as this court is concerned in *Dr. Baldev Raj v. The State of Punjab and Anr.* [1969] 24 S.T.C. 50 p&h, B.R. Tuli, J., observed:

A doctor who only dispenses his own prescriptions for his patients is a "dealer" within the meaning of Section 2(d) of the Punjab General Sales Tax Act, 1948, and he himself manufactures or produces goods for sale as contemplated in Section 4(5)(b) of the Act. There is no difference between the case of a chemist who prepares medicines on the prescriptions of any doctor and the doctor who has his own dispensary to dispense his own prescriptions for his patients.

11. This decision was, however, reversed on Letters Patent appeal by S.B. Capoor and R.S. Narula, JJ., in *Dr. Baldev Raj v. The State of Punjab and Anr.* [1969] 24 S.T.C. 173 P&H, on the strength of the Supreme Court authority in *Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo*, . In *Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo*, , the assessee was a medical practitioner and in the performance of his professional duties, he examined patients, advised them and prescribed medicines, which were issued from his dispensary. The Sales Tax Officer was of the view that the dispensing of medicines according to the prescriptions issued by the assessee amounted to "manufacture" of medicines and he accordingly assessed him to pay tax on his turnover. That order was confirmed on appeal and further on revision by the sales tax authorities. The Judge (Revisions), Sales Tax, U.P., then referred the following question of law to the High Court of Allahabad for its opinion:

Whether the preparation of medicines on prescriptions of the applicant amounted to a manufacture of "medicines and pharmaceutical preparations" within the meaning of Notification No. ST-3504/X dated 10th May, 1956, and whether the applicant was assessable to tax on the turnover of the medicines so dispensed.

12. The High Court held that the assessee was not a manufacturer of medicines and pharmaceutical preparations within the meaning of the notification and,

therefore, not assessable to tax on the turnover of medicines so dispensed. Against that decision, the Commissioner of Sales Tax, U.P., moved the Supreme Court. The sole question that arose for decision before it was whether by virtue of the said notification, the assessee was exempt from liability to pay tax. The relevant part of the said notification was as under:

In exercise of the powers conferred by Section 3-A of the U.P. Sales Tax Act, 1948, as amended from time to time, and in supersession of all the previous notifications on the subject, the Governor of Uttar Pradesh is hereby pleased to declare that with effect from May 8, 1956, the turnover in respect of medicines and pharmaceutical preparations shall not be liable to tax except....

(b) in the case of medicines and pharmaceutical preparations manufactured in Uttar Pradesh, at the point of sale by the manufacturer....

13. The revenue authorities had held that when in the assessee's dispensary medicines and pharmaceutical preparations, as prescribed by him, were mixed, the process of mixing resulted in "manufacture" of medicines by him as a "manufacturer". While dealing with this point, the Supreme Court observed:

In our judgment when, as prescribed by a medical practitioner, a mixture of different drugs is prepared by the medical practitioner or by his employees specially for the use of a patient in the treatment of an ailment or discomfort diagnosed by the medical practitioner by his professional skill, and which mixture is normally incapable of being passed from hand to hand as a commercial commodity, the medical practitioner supplying the medicines cannot be said to be a manufacturer of the mixture and the mixture cannot be said to be manufactured within the meaning of the notification.... If preparation of a mixture of drugs as prescribed by a medical practitioner in his own dispensary is not manufacture of medicines or pharmaceutical preparations, the exception clause of the notification will have no application.

Acceptance of the contention by the revenue would imply that a medical practitioner supplying to his patients medicines and pharmaceutical preparations separately is not liable to tax; when under his direction they are mixed by his employees for the special use of a patient under his treatment and to achieve a specific purpose, the turnover from the resultant mixture is taxable. In the absence of clearer phraseology, the court would not in a taxing provision be willing to give that interpretation.

14. As a result of this finding, the appeal was dismissed.

15. According to the above decision, if a medical practitioner prepares some medicine by mixing different drugs and uses the same for the treatment of some disease which has been diagnosed by him by his professional skill and that medicine is normally incapable of being passed from hand to hand as a commercial commodity, then the said medical practitioner, who supplies the medicines, cannot be called a manufacturer of the same. In the instant case, it

had been found by the Assessing Authority that the assessee used to buy different kinds of precious stones and from them he used to prepare medicines of several varieties by mixing them using numerous combinations and permutations. He used to prescribe these medicines according to the ailment of his patients whom he used to see personally or who used to consult him through correspondence. Applying the rule of law laid down by the Supreme Court in Commissioner of Sales Tax, U.P. Vs. Dr. Sukh Deo, , it could not be said that the assessee was a manufacturer of those medicines. His earnings were, therefore, not the result of the sale of medicines manufactured by him. He was a vaid owning a dispensary and gave medicines to his patients after examining them or after consultation through correspondence. He was not selling any goods in the normal course of trade and, in fact, he was not doing any business or trade and would, thus, not be termed a "dealer" within the meaning of Section 2(d) of the Punjab Act.

16. In view of what I have said above, the answer to both these questions, in my opinion, would be in the negative and, consequently, in favour of the assessee.

P.S. Pattar, J.

I agree.