
(1985) 08 RAJ CK 0038

In the Rajasthan High Court

Case No : Civil Sales Tax Revision Petition No. 343 of 1985

Mahavir Industries

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 27-08-1985

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Entry 9, 4(1)

Citation : (1986) 61 STC 88 : (1985) 2 WLN 725

Hon'ble Judges : S.N. Bhargava, J; S.K. Mal Lodha, J

Bench : Division Bench

Advocate : Rajendra Mehta, for the Appellant; K.C. Bhandari, for the Respondent

Final Decision : Allowed

Judgement

S.K. Mal Lodha, J.—Mr. K.C. Bhandari, the learned counsel for the sales tax department, was asked to put in appearance on behalf of non-petitioners Nos. 2 and 3. Non-petitioner No. 1, the Board of Revenue for Rajasthan at Ajmer ("the Board"), has been impleaded as a non-petitioner as the order dated 16th October, 1984, was passed by a Division Bench of the Board which is under challenge in revision.

2. Mr. Rajendra Mehta, the learned counsel for the petitioner, states that this revision is squarely covered by the decision rendered in Commercial Taxes Officer v. Swastik Gum Industries (D. B. Civil Sales Tax Case No. 60 of 1980 decided on 30th July, 1985) [1986] 61 STC 83 and submits that the revision may finally be disposed of at the admission stage. We have heard Mr. Rajendra Mehta, the learned counsel for the petitioner, and Mr. K. C. Bhandari, the learned counsel for non-petitioners Nos. 2 and 3.

3. The Division Bench of the Board by its order dated 16th October, 1984, held that gowar churi or korma is not exempt under entry 9 of the Schedule appended to the Rajasthan Sales Tax Act, 1954 (No. 29 of 1954) (for short "the Act" herein), from payment of tax. In this view of the matter, the revision filed by the

petitioner was dismissed. In Commercial Taxes Officer's case (D.B. Civil Sales Tax Case No. 60 of 1980 decided on 30th July, 1985) [1986] 61 STC 83 a question arose whether gowar churi is not included in gowar as mentioned in entry 9 of the Schedule appended to the Act, for, it is a cattle feed. After noticing Annapurna Carbon Industries Co. v. State of A.P.[1976] 37 STC 378 Delhi , Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, Indo International Industries Vs. Commissioner of Sales Tax, Uttar Pradesh, Commissioner of Sales Tax v. Jaswant Singh [1967] 19 STC 469 , Maman Chand Kundan Lal v. State of Haryana [1970] 25 STC 458, Express Dairy Company Limited v. Assessing Authority [1971] 28 STC 37, Omrao Industrial Corporation (Pvt.) Ltd. v. Sales Tax Officer [1974] 33 STC 343 Raj and Commissioner of Sales Tax v. Prayag Ice v. Oil Mills (1985) 12 STL 108, it was held that the Board was right when it held that gowar churi being a cattle feed is exempt from payment of tax according to entry 9 of the Schedule u/s 4(1) of the Act. While assailing the order dated 16th October, 1984, of the Board, Mr. Rajendra Mehta, the learned counsel for the dealer-assessee, submitted that in view of entry 9 of the Schedule u/s 4(1) of the Act, the Board erred in law in holding that gowar churi or korma is not exempt under entry 9 of the Schedule. In other words, it was urged that gowar as mentioned in entry 9 does not include gowar churi or korma. The pith and substance of the submission of the learned counsel for the assessee is that when gowar has been excluded from cattle feeds which are exempt from payment of tax, gowar churi and korma are also exempt. The exemption under entry 9 is, therefore, available in the case of gowar churi and korma. Mr. K. C. Bhandari, the learned counsel for the sales tax department, supported the order of the Board on the grounds stated by it in its order under revision and contended that as gowar is not exempt in view of entry 9 of the Schedule and since Notification No. F. 5(24) FD/CT/72-14 dated 19th May, 1972, makes mention of gowar and that too in all its forms, tax is payable at the rate mentioned in the notification on gowar churi and korma. In exercise of the powers conferred by Section 5 of the Act, the State Government notified in the aforesaid notification that with immediate effect the rate of tax payable by a dealer in respect of goods specified in column 2 of the list annexed thereto shall be as shown against them. The notification has been considered by the Board in coming to the conclusion to which it did. The material part of it is as under :

1. Pulses (excluding moth but including "gowar") in all their forms including "dal", "besan" and "bran" thereof.

- 2...

- 3...

4. Item No. 1 mentioned in this notification is the basis of the view taken by the Board that tax is payable on gowar churi or korma and that it is not exempt under entry 9 of the Schedule annexed to the Act. We may at once point out that this notification was issued u/s 6 of the Act which deals with rate of tax. Section 3 is a charging section and tax is leviable on the commodities covered by the

taxable turnover in accordance with the rate of tax as may be prescribed and levied in accordance with Section 5 of the Act. So notification which has been relied upon by the Board and on the basis of which the learned counsel for the sales tax department has supported the order under revision, to our mind, is applicable for the purpose of the payment of tax on gowar as such and for that purpose as has been stated in the notification "gowar in its all forms". Section 4 of the Act says that the Act will not apply to certain sales. According to Sub-section (1) of Section 4 tax is not payable under the Act on the sale or purchase of the goods specified in column 3 of the Schedule on the fulfilment of the conditions mentioned therein. In front of entry 9 no condition or exception has been specified. Cattle feeds exclusive of gowar, cotton-seeds and oil-cakes are exempt from payment of sales tax. Entry No. 9 of the Schedule appended to the Act was examined by us in Commercial Taxes Officer's case (D.B. Civil Sales Tax Case No. 60 of 1980 decided on 30th July, 1986) [1986] 61 STC 83. After noticing the aforesaid authorities and also the ordinary the common parlance meaning or commercial meaning of gowar and gowar churi, we came to the conclusion that gowar churi is not included in gowar as mentioned in entry 9 of the Schedule. We held that though there is no exemption of gowar but exemption from payment of tax would be available in view of entry 9 to gowar churi as it is a cattle feed. Therefore, so far as entry No. 9 is concerned in view of Commercial Taxes Officer's case (D. B. Civil Sales Tax Case No. 60 of 1980 decided on 30th July, 1986) [1986] 61 STC 83 for its purpose gowar churi or korma is not the same thing as gowar. In this case the ground which has been given by the Board on the basis of the aforesaid notification requires to be considered. The question that calls for our determination is whether in view of the interpretation that we have given to entry 9 of the Schedule qua the word "gowar", the notification that has been issued u/s 6 of the Act and which has been relied on by the Board will prevail for the purpose of interpreting the word "gowar" in connection with the question of exemption. Our attention was drawn by the learned counsel for the dealer-assessee to Commissioner of Sales Tax v. Dayal Singh Kulfiwala [1982] 49 STC 295, Commissioner of Sales Tax, Uttar Pradesh, Lucknow v. Rita Ice Cream [1982] 49 STC 297 and Deep Chand Goyal v. Sales Tax Officer [1983] 52 STC 110. In Commissioner of Sales Tax's case [1982] 49 STC 295 the scope of Sections 3-A and 4 of U.P. Sales Tax Act, 1948, was considered. The State Government in exercise of the powers under Sub-section (2) of Section 3-A of the U.P. Sales Tax Act declared that the turnover in respect of the goods mentioned in the Schedule shall be liable to tax at all points of sale at the rate specified against each in column III of the Schedule. In the Schedule S. No. 17 was in question in view of that notification, the goods were made taxable when such goods were served to the customers. Section 4 of the U.P. Act deals with exemptions. In that case the question arose whether the specifications of the goods for the purpose of Section 3-A(2) will override the exemption of the goods u/s 4 of the Act. The learned single Judge of the Allahabad High Court observed as under:

The operating fields of the two sections, namely, Sections 3-A and 4, are distinct and separate. Section 3-A by itself cannot override the power u/s 4. On the other hand, if certain goods have been classified for purposes of Section 3-A and the point of tax has also been declared by the State Government, if such goods had been exempted from sale, the department cannot contend that the exemption should not be construed in favour of the assessee.

5. In Commissioner of Sales Tax's case [1982] 49 STC 297 SC ice-cream and lassi were made taxable items by issuance of a notification, while on the basis of the judicial opinion ice-cream and lassi were included in the milk products which were exempted by other notifications. The question arose whether in face of these two notifications covering different fields ice-cream and lassi continued to be exempt from payment of sales tax. The very same Sections 3-A and 4 of the U.P. Act were examined. It was held that even though ice-cream and lassi have been made taxable by notification issued u/s 3-A of the U.P. Act, on account of the notification issued u/s 4 of the Act exempting milk products, which on judicial opinion include ice-cream and lassi, the turnover of ice-cream and lassi cannot be included in the net taxable turnover. *Milco Ice-Cream Co. v. Commissioner of Sales Tax, U.P.* [1982] 49 STC 294 was referred to.

6. Commissioner of Sales Tax's case [1982] 49 STC 297 was noticed in *Deep Chand Goyal's case* [1983] 52 STC 110. Cattle fodder including cotton-seed was exempt under the U.P. Act from 1956. An amendment was made to the Central Act including cotton-seed and oil-seeds in 1973. A notification was issued under the U.P. Act levying purchase tax on oil-seeds. Another notification withdrawing exemption to cotton-seeds was issued in 1975. The question arose whether cotton-seeds were exempt for assessment years 1973-74 to 1977-78. In that connection, the court was called upon to decide whether cotton-seeds were included in cattle fodder and what is the effect of exemption or non-liability to tax. It was observed as under :

It is thus settled that transactions or sales which enjoy exemption have to be included in the gross turnover but they are exempted when the net turnover is calculated and as for non-liability to tax, the turnover in respect of such transactions or sales is not included in the gross or the net turnover.

7. From the aforesaid three decisions of the Allahabad High Court, it is clear that the fields of operation of Sections 4 and 6 of the Act are distinct and separate. The question before the Board and which has been canvassed before us is whether the word "gowar" in entry 9 includes gowar churi or korma or not. The notification issued u/s 5 of the Act prescribing the rate of tax on gowar will not have overriding effect on entry 9 of the Schedule appended to the Act which deals with exemption. The notification on which reliance has been placed by the Board will not nullify entry 9 of the Schedule so far as the exclusion of gowar from cattle feeds is concerned. As stated above the fields of operation of Sections 4 and 5 of the Act are altogether different. We agree with the reasons given in the aforesaid three decisions of the Allahabad High Court and adopt them for

resolving the question before us. We are of the opinion that the view taken by the Board in its order dated 16th October, 1984, on the basis of the notification dated 19th May, 1972, that gowar churi or korma is not exempt from payment of tax is erroneous in law. For the reasons mentioned in the Commercial Taxes Officer's case (D.B. Civil Sales Tax Case No. 60 of 1980 decided on 30th July, 1985) [1986] 61 STC 83 we are of the opinion that gowar churi or korma is not included in gowar when gowar has been excluded from cattle feeds which are exempt from payment of sales tax.

8. For the reasons mentioned above, we allow this revision and set aside the order dated 16th October, 1984, passed by the Board and hold that gowar churi or korma is exempt from payment of tax in respect of the year under consideration under entry 9 of the Schedule to the Act.

9. There will be no order as to costs of this revision.