(1963) 07 P&H CK 0001

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1658 of 1962

Messrs. Khushi Ram Prem Chand APPELLANT

Vs

The Excise and Taxation Commissioner, Punjab, and others RESPONDENT

Date of Decision : 29-07-1963

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 11(6)

Citation : (1963) 07 P&H CK 0001

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Advocate : Puran Chand, for the Appellant; H.S. Doabaia, Adiitional Advocate General, for the Respondent

Final Decision : Allowed

Judgement

Harbans Singh, J.—Facts giving rise to this case are that the Petitioner was carrying on a shop for the manufacture and sale of goods like the reoris, Patashas, Phulian and gajak at Chauri Sarak, Ludhiana. He had not got himself registered under the Sales-tax Act and a notice was sent to him as a result of which he appeared and his statement was recorded on 10th of April, 1957. His gross turnover was estimated at Rs. 10.000 by the Assessing Authority for the year 1953-54, whereafter the Assessing Authority allowed him a deduction of Rs. 8.000/- and assessed him on a turnover of Rs. 22.000/-The Petitioner hied an appeal before the Deputy Excise and Taxation Commissioner, and the point urged before him was that he being a halwai, who manufactures " reoris, patashas, phulian, etc." -the articles which are ordinarily prepared by the halwais and sold as such- was not liable for registration. The Appellate Authority came to the following conclusion:-

I have thoroughly examined this point and have come to the conclusion that halwais prepare sweetmeats after using ghee, sugar, maida, baisan, etc. They also sell milk, curd and tea etc. But the Appellant has admitted before me that he does not use ghee and he never sold milk or tea. Accordingly I hold that the

Appellant is not a halwai but he is a confectioner.

The same view was taken by the Excise and Taxation Commissioner, Punjab, in revision. In particular, while dealing with this argument, he staled-

Actually, reoris, patashas and gajak were separately excluded under item 50-A of Schedule B in February, 1959. This would suggest that these goods were not considered halwai goods and supposed to be not included under item 50 giving exemption to halwai goods.

Reoris, Patashas, phullian, gajak, etc cannot be called goods ordinarily prepared by halwais

It is this order dated 6th of June, 1962, which is challenged by the present writ.

2. Two points were raised: First, that the assessment is bad for the simple reason that notice for the same was given beyond a period of three years, as provided in Sub-section (6) of Section 11 of the Sales Tax Act and, secondly, that the goods manufactured by the Petitioner were goods which are ordinarily manufactured by the halwais and the same were sold by him and, consequently, he was exempted from the payment of the sales tax. I will take these points seriatim.

3. With regard to the first point, Sub-section (6) of Section 11 provides as follows;-

If upon information which has come into his possession, the Assessing Authority is satisfied that any dealer has been liable to pay tax under this Act in respect of any period but has failed to apply for registration the Assessing Authority shall, within three years after the expiry of such period, after giving the dealer a reasonable opportunity of being heard, proceed to assess.

It was urged that the Assessing Authority, according to this Sub-section, must proceed to assess within three years of the expiry of the period concerned. The words "proceed to assess" have been interpreted by a Full Bench of this Court in Messrs, Rameshwar Lal Sarup Chand v. Shri U.S. Naurath (1963) 65 P.L.R. 768 (F.B.) decided on 29th of May, 1953 to mean ctual assessment and this must be done within three years. Assessment order in the present case was passed on 22nd of April, 1957, and the period of 1953-54 must be deemed to have ended on 31st of March, 1954. Consequently, the assessment order is beyond the period of limitation and therefore, beyond the jurisdiction of the Assessing Authority. The point taken by the learned Additional Advocate-General was that this matter of limitation was not agitated before the Appellate Authority or the Revisional Authority. This may be so but when there was complete lack of jurisdiction in the Assessing Authority, the other questions do not arise.

4. In view of the above, it is not necessary to deal with the second point. However, in Shiv Ram v. The Excise and Taxation Commissioner, etc C.W. No. 778 at 1960 the question in dispute was exactly the same, namely, whether sugar preparations of golian, makhana, phulian and reoris were ordinary preparations

by halwais. Although the Assessing Authorities bad treated these not to be preparations by halwais, yet in the return filed in that case, it was admitted on behalf of the department that these were ordinary preparations of the halwais. No doubt, the admission in that case cannot be taken to be admission in this case, but it is obvious that the test laid down by the Appellate Authority and the Revisional Authority is not a correct one. According to the test laid down, a halwai must necessarily .use ghee, otherwise he ceases to be a halwai and the preparations made by him cease to be preparations of the halwai. It is not difficult to think of very large number of Indian sweets which are prepared entirely from milk and sugar and no ghee is used at all. I consider that reoris, patashas, phulian etc., which are Indian candies prepared from sugar alone or sugar conjoined with other articles, must be treated to be articles ordinarily prepared by the halwais.

5. With regard to the argument used by the Excise and Taxation Commissioner that item 50 of Schedule B was later on split up etc., it will be necessary to examine the history of this item. u/s 6 of the Sales Tax Act, the items mentioned in this Schedule are exempt from sales-tax subject to conditions given in column No. 2, if any. Item 50, which was inserted for the first time in 1949 by Act 35 of 1949 and later on substituted by Revenue Department notification dated nth of October, 1951, was as follows:-

50.

Articles ordinarily prepared by halwais.

When sold by them.

At the relevant time, the entry existed in this form. It was altogether omitted in 1956 by notification No. 2692-E. & T. 56/2789. Then, vide notification No. 79o E. & T. (III)-57/621 dated 7th February, 1959, two items 50 and 50-A were added. These were as follows:-

50.

Articles ordinarily prepared by halwais.

When sold by halwais exclusively.

50-A.

Reoris, patashas, gajjaks, misri (candy or cooza), golies, boora, makhanas, marunda and phulian.

From the splitting up, as above, of the original item 50, the learned Excise and Taxation Commissioner had come to the conclusion that reoris, patashas, etc. being separately itemised in the Schedule, could not be the preparations of halwai. I am afraid, I cannot agree with this reasoning. Originally there was only one entry, namely, No. 50 dealing with articles ordinarily prepared by halwais when sold by halwais excusively. That item still remains and this exemption is a conditional one and according to this articles ordinarily prepared by halwais, of sold by others, are chargeable to sales-tax. Item 50 A has been added and relates to reoris, patashas, gajjaks, etc., which being rather minor type of sweetmeats used mainly by a comparatively poorer class of society, are altogether exempted whether sold by the halwais who prepare them or by any other person. This splitting up alone does not show that these items when prepared by halwais cannot be treated to be articles ordinarily prepared by halwais. I am therefore, of the view that reoris, patashas, gajjaks etc were items ordinarily prepared by I the halwais and on this ground also, the Petitioner was not liable to registration.

6. For the reasons given above, therefore, I accept this petition and make the rule absolute and quash the assessment order. The Petitioner will have his costs irorn the Respondents. Counsel fee Rs. 100/-.