(1970) 12 P&H CK 0036

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 2427 of 1965

Mohan Dal Mills — APPELLANT

Vs

The State of Punjab and Others — RESPONDENT

Date of Decision : 22-12-1970

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1971) 28 STC 424

Hon'ble Judges : D.K. Mahajan, J;Bal Raj Tuli, J

Bench : Division Bench

Advocate : G.C. Mittal and S.N. Garg, for the Appellant; C.D. Dewan, A.A.G., for the Respondent

Final Decision : Allowed

Judgement

1. This is a petition under Article 226 of the Constitution of India and is directed against the order of the Deputy Excise and Taxation Commissioner (Appeals), Ambala City, whereby the sale of moong dal amounting to Rs. 2,92,000 was assessed to sales tax at the rate of 5 naye paise under the second proviso to Section 5(2)(a)(ii) of the Punjab General Sales Tax Act, 1948. The sale in question was before the amendment of the form of the registration certificate.

2. The petitioner is a manufacturer of moong dal. On the strength of their registration certificate they purchased moong and then converted it into dal for purposes of sale. The petitioner sent the dal to Delhi and sold it through a commission agent. The Assessing Authority came to the conclusion that the transaction whereby the goods were despatched on consignment basis, did not constitute a sale as there was no transfer of property in the goods. On this basis it was concluded that the transfer of goods has not been in accordance with the registration certificate. For this reason the purchase of moong amounting to Rs. 2,92,000 was brought to tax as already stated. It may be mentioned that the authorities proceeded to take this view on the basis of the decision of Shamsher

Bahadur, J., in Amur Hosiery Works (Regd.) v. The State of Punjab Civil Writ No. 157.9 of 1962 decided on 8th March; 1963. The view the learned Judge took was not shared by Harbans Singh, J. (as he then was) for in Amar Hosiery Works Vs. The State of Punjab and Others, the learned Judge took a diametrically opposite view. It may be mentioned that the case which came before Harbans Singh, J., was also of the same firm, namely, Amar Hosiery Works (Regd.), Ludhiana. The view which Harbans Singh, J., took was also shared by me in Tulsi Ram Sud Vs. The Excise and Taxation Commissioner and Another, It is significant that the judgment of Shamsher Bahadur, J., was not brought to my notice or to the notice of Harbans Singh, J. (as he then was). As there was a conflict of opinion on this matter, this petition was admitted forthwith to a Division Bench.

3. We have gone through the judgment of Shamsher Bahadur, J., and also the judgments which took the opposite view and, in our opinion, the view taken in the other two decisions is the correct view. It is not necessary to restate the reasons because they are amply given in both these decisions. Mr. Dewan realised the force of this contention and urged a totally different argument.

4. His contention was that the goods were not sold at all. In fact, he maintains that there is no proof that the goods were sold. According to him, the goods were sent by the assessee to Delhi, he himself being the consignee. It is not known what happened to the goods thereafter. This contention is wholly unfounded. In paragraph 5 of the petition, the petitioner stated that "the goods were sent on consignment basis after manufacture in Punjab for sale outside the State of Punjab through commission agents." In reply to this allegation in paragraph 5 of the return it is stated that "the Assessing Authority rightly disallowed the deductions claimed by the petitioner-firm in respect of the sales made by it, on the basis of the judgment dated 8th March, 1963, of the Honourable High Court in the case of Messrs Amar Hosiery Works, Ludhiana v. The State of Punjab Civil Writ No. 1579 of 1962 decided on 8th March, 1963." It is, therefore, clear that in the return it was admitted that the goods had been sold.

5. The matter does not rest here. In the order of the, Assessing Authority it is clearly stated that:

The dealer has proof of consignment basis sales for Rs. 3,24,738.05 which has been placed on the file. Out of these, goods worth Rs. 2,88,670.06 were purchased on the strength of Punjab Registration Certificate and the balance goods worth Rs. 36,067.99 were imported goods.

6. In the order of the Appellate Authority, it is stated that:

In the present case, the goods were sent on consignment basis to places outside the State of Punjab for sale. The despatch of goods on consignment basis does not constitute sale because there is no transfer of property in goods for a valuable consideration.

7. It is, therefore, clear that all through the stand taken was that the despatch of goods on consignment basis for sale does not amount to sale. We have already held that the correct view is that sale of goods on consignment basis does amount to a sale and the view taken by me and Harbans Singh, J. (as he then was) is the correct view.

8. For the reasons recorded above, we allow this petition and quash the orders, annexures A and B. In case the petitioner has deposited the amount of tax, it may be refunded to him. There will be no order as to costs.

