(1973) 04 P&H CK 0007

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 8 of 1972

Mount View Hotel APPELLANT

Vs

The Sales Tax Tribunal RESPONDENT

Date of Decision : 23-04-1973

Acts Referred:
Punjab General Sales Tax Act, 1948 — Section 5, 6

Citation : (1973) 32 STC 646

Hon'ble Judges : Harbans Singh, C.J;Bal Raj Tuli, J

Bench : Division Bench

Advocate : R.N. Narula, for the Appellant; Anand Sarup and M.L. Puri, for the Respondent

Judgement

Harbans Singh, C. J

1. This order will dispose of two references, G. S. Tax References Nos. 8 and 9 of 1972, at the instance of M/s. Mount View Hotel, Sector 10, Chandigarh, hereinafter referred to as the assessee. These two references relate to two different assessment years for the purpose of sales tax. The question referred in both the cases was as follows:

Whether vegetables, fish, meat and eggs, etc., sold as consumption articles were subject to assessment of sales tax or not.

2. u/s 6 of the Punjab General Sales Tax Act, 1948, which is applicable to the Union Territory of Chandigarh, where the assessee carries on his business, "no tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the condition and exceptions, if any, set out in the corresponding entry in the second column thereof". The State Government is also given power, after giving notice by notification of the period specified, to delete from or add to the schedule any entry. Entries Nos. 16 and 18 are in point. These run as follows:

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16.	

Vegetables. Except when sold in tins, bottles or cartons. 18. Meat, fish and eggs. Except when sold in tins, bottles or cartons.

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3. The sole question is whether vegetables, meat, fish and eggs, as referred to in these two entries, mean these articles in raw condition or whether the exemption also applies when the vegetables, meat, fish or eggs are cooked as a dish to be taken as a part of food. The sales tax authorities felt that the entries, as given, relate only to these articles in uncooked form and not to food preparations made out of them to be used as eatables.

4. The learned counsel for the assessee urged that the exemption applies to vegetables, meat, fish and eggs in whatever form the same may be. In this connection, on the other side, reference was made to entries Nos. 72 and 73. These two entries were inserted by Notification No. S.O. 5/P.A. 46/48/S-6/67 dated 23rd January, 1967. These entries are as follows :

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l 2 ____

___ 72. Indian food preparations When sold by the ordinarily prepared by persons running Tan- Tandoorwalas, Dhabawalas doors, Dhabas and Lohs and Lohwalas. exclusively. (Entry in column No. 1 was susequently changed in 1970, but that is not material for our purpose.) 73. Eatables and drinks. When sold by the railway tea stall contractors authorised by railway autho- rities within the railway premises at their tea stalls.

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5. It is thus clear that Indian food preparations, which would normally be prepared out of vegetables, meat, fish and eggs or pulses, would be subject to tax, except for and to the extent of entry No. 72 inserted in the year 1967. It would follow from this that prior to 1967, these items were not exempt. According to Section 5, tax is leviable on the taxable turnover of a dealer at such rates as are mentioned therein. It is only by Section 6 that some articles which are mentioned in the first column of Schedule B are exempt. But for such exemption, the general provision of Section 5, which is the taxing section, would be applicable to the sale of all goods. But for entry No. 16 or 18, even vegetables, meat, fish and eggs, in their raw condition, would not be exempt and they are not exempt when they are sold in tins, bottles or cartons. Obviously, the idea conveyed by the words "vegetables, meat, fish and eggs" in these entries is that these articles in their raw condition are exempt. In fact, when a person goes to a shop and he wants to purchase meat, he is always understood to demand meat in its uncooked form. Same applies to fish, eggs and vegetables. If he wants any of these articles in its cooked form, he will have to ask "vegetable curry, meat curry, fish curry, boiled meat, grilled meat, grilled vegetables, etc." Vegetables, meat, fish and eggs when converted into Indian preparations or eatable dishes would be different articles from vegetables, meat, fish and eggs in their raw condition. ''The very fact that in entries Nos. 72 and 73, Indian food

preparations, eatables and drinks are exempt only when they are sold by particular types of persons, shows that Indian food preparations and other eatables and drinks would be liable to payment of sales tax when sold by other persons. No doubt, these entries were added subsequent to the period to which the assessments in dispute relate, but this goes to show that during the period in dispute these preparations, even when sold by Tandoorwalas, Dhabawalas, Lohwalas and railway tea stall contractors, were not exempt, or, in other words, Indian food preparations and eatables were generally subject to payment of sales tax.

6. It was urged that even a cooked meat and fish are sold in tins, bottles or cartons. That may be true. But then, as is generally known, they are sold as meat curry, mince meat, fish curry and vegetable curry. When uncooked vegetables are sold, otherwise than in tins, they would be exempt but when uncooked vegetables, like peas, cauliflower, etc., are sold in tins, they would be subject to payment of sales tax, because of the condition mentioned in column No. 2 of entries Nos. 16 and 18.

7. In view of the above, therefore, we feel that the taxing authorities took the correct view of the matter and, consequently, the answer to the question referred must be given in the affirmative. The assessee would pay the costs to the department in these cases. We assess Rs. 100 as counsel fee in each case.

