
(2001) 08 P&H CK 0026
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 9065 of 1987

New Karnal Trading Co.

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 13-08-2001

Acts Referred:

Citation : (2002) 2 ILR (P&H) 14 : (2002) 126 STC 430

Hon'ble Judges : N.K. Sud, J

Bench : Single Bench

Advocate : P.K. Jhingan and Avinash Jhingan, for the Appellant; Sukhbir Singh, A.A.G., for the Respondent

Final Decision : Dismissed

Judgement

N.K. Sud, J.—The petitioner, a partnership firm, is a registered dealer under the Haryana General Sales Tax Act, 1973 (for short "the Act"), and is engaged in purchase and sale of common salt amongst other things. The petitioner sells salt in polythene/transparent cellophane packets. No sales tax was being charged on the sale of salt by the petitioner up to the assessment year 1983-84 in view of the exemption granted under item 5 of Schedule B to the Act under which common salt is an exempted item "except when sold in sealed containers". According to the petitioner, the plastic bag is merely a cheap mode of packing and could not be described as a sealed container and, therefore, the common salt sold by it was an exempted item. It has been pointed out that the Excise and Taxation Commissioner, Haryana, had issued instructions on December 1, 1986, to the following effect :

"According to the Haryana General Sales Tax Act, 1973, Schedule B, item No. 5, if the salt is sold in plastic bags (laphafas) or in some other sealed container and then the tax should be levied on it. That the legal remembrancer has been consulted in this behalf and he has confirmed the opinion."

2. The petitioner states that according to the above instructions, the salt sold in

plastic bags became liable to tax. A copy of the instructions communicated to the sales tax authorities on December 19, 1986 has been placed as annexure P-1 with the writ petition.

3. It is alleged that on the basis of the instructions of the Commissioner, the Deputy Excise and Taxation Commissioner (Inspection), Karnal, in exercise of his revisional powers, decided to reopen the assessment for the year 1983-84 which had already been finalised, to levy tax on the sale of salt sold in plastic bags which had earlier been exempted. A copy of this notice dated October 20, 1987 has been placed as annexure P-2 with the writ petition. Proceedings for the assessment year 1984-85 were also taken up by the Assessing Authority, Karnal, vide notice dated August 7, 1987 for computing the liability of tax of the petitioner. It is at this stage that the petitioner had filed the present writ petition praying that the instructions issued by the Commissioner, annexure P-1, and the notice for reopening the assessment for the year 1983-84, annexure P-2, be quashed and the Assessing Authority, Karnal, be restrained from levying tax on salt sold in plastic bags by the petitioner.

4. Mr. Jhingan, appearing on behalf of the petitioner, contended that the Excise and Taxation Commissioner was only the highest administrative authority and could not issue instructions interpreting the legal provisions. By this action, he had closed the doors of the petitioner to contend in the assessment proceedings that plastic bags in which the common salt was being sold could not be treated as a sealed container as the authorities were bound by the instructions of the Commissioner. He relied on the decision of this Court in *Sadhu Singh Gurdeep Singh, Amritsar v. State of Punjab* (2000) 16 P & H (Taxes) 429 (P&H), in which it had been held that circulars issued by the State Government which tend to control the discretion of the assessing and other adjudicating authorities in the matter of levy of taxes are ultra vires of the powers of the State as it may become impossible for the authorities, who are subordinate to the Excise and Taxation Commissioner, to independently examine the plea of the assessee. He, then, contended that the term "sealed container" has not been defined anywhere in the Act and, therefore, it has to be assigned a meaning as understood in the common parlance. A plastic bag in common parlance is merely understood as a cheap mode of packing and is not treated as a container. For this purpose, he placed reliance on the decisions of the Supreme Court in *Ramavatar Budhaiprasad v. Assistant Sales Tax Officer, Akola* 1961 12 STC 286 and *Pappu Sweets and Biscuits v. Commissioner of Trade Tax, U.P., Lucknow* 1998 111 STC 425 ; JT 1998 7 9 SC. He further pointed out that the issue whether the plastic bags could be termed as "sealed container" or not had come up before the Bombay High Court in *Commissioner of Sales Tax v. Bombay Traders* 1976 38 STC 286. In that case, it was held that the plastic bags in which fried cashew-nuts were packed for sale could not be termed as sealed containers.

5. On the other hand, Mr. Sukhbir Singh pointed out that the clarification issued by the State Government had not been given suo motu but on a representation

submitted by the salt traders. This is evident from a plain reading of annexure P-1. He further submitted that even on merits, no fault can be found with the clarification which is in accordance with law. It was also contended that the salt sold in plastic bags would attract sales tax only if the plastic bags are sealed. He referred to the decision of the Supreme Court in *Commissioner of Sales Tax, U.P. v. G.G. Industries, Agra* 1968 21 STC 63, wherein the term "sealed container" was held to mean a container which is "so closed that access to the contents is impossible without breaking the fastening". This interpretation was further applied by the apex Court in *Martand Dairy and Farm v. Union of India* 1975 35 STC 629. It was, therefore, contended that access to salt packed in the plastic bags, which were sealed, could only be had after breaking the seal. Such plastic bags would, therefore, fall within the meaning of the term "sealed container".

6. I have heard the rival contentions and have gone through the authorities cited before me. It is true that the administrative authorities are not expected to interfere in or to control the discretion of the assessing and other adjudicating authorities in the matter of levy of tax. However, as has been correctly pointed out in this case, the necessary clarification had been given in response to a representation of the salt traders. At any rate, the clarification is nothing but a re-iteration of what is mentioned in the Act itself. In the modern world, many items such as milk, oil, ghee, etc., are sold in plastic bags which are sealed. Such plastic bags indeed are containers and if sealed would fall within the meaning of the term "sealed container". The interpretation of the term "sealed container" made by the apex Court in the cases of *G.G. Industries* 1968 21 STC 63 and *Martand Dairy and Farm* 1975 35 STC 629, leaves no room for doubt whatsoever in this behalf. Even the decision of the Bombay High Court in the case of *Bombay Traders* 1976 38 STC 286, so strongly relied upon by the counsel for the petitioner, goes against the claim made by the petitioner. It is true that in that case it was held that the plastic bags in which the fried cashew-nuts were packed and sold could not be termed as "sealed container", but this had only been done on account of a finding of fact recorded by the Tribunal that the packets in which the cashew-nuts were packed could be opened and closed again. The High Court had expressed its reservations about the finding of the Tribunal. However, since the finding of fact had not been questioned before the High Court, it decided the matter on those findings. The following observations of the court may, in this behalf, be specifically referred to :

"Had the matter rested with the question alone we would have accepted the contention of Mr. Cooper. We, however, find, as we have already set out earlier, that the Tribunal has given a categorical finding which shows that a sample container in which the cashew-nuts were packed was produced before the Tribunal and the same could be opened and closed again. The other statements of the Tribunal, to which we have referred earlier, also show that the Tribunal has rejected the contention that these containers were such as they would have to be broken or torn open before a person could get access to the cashew-nuts packed therein. In view of this, it appears to us that, following the ratio of the aforesaid

decisions, we must hold that the cashew-nuts were not sold by the assesseees in sealed containers and the Tribunal was justified in holding that the aforesaid sales were covered by entry 5 of Part I of Schedule D to the said Act. We may, however, make it clear that it does appear to us that there is grave doubt about the factual correctness of the conclusion reached by the Tribunal to the effect that the packets in which these cashew-nuts were packed could be opened and closed again. Such doubt is cast by the very fact that the said packets are said to be heat-sealed. The description given by the Tribunal of the packing material is again far from satisfactory. Quite apart from this, the assesseees have produced before us a sample packet containing cashew-nuts of the same type as were used in the sales of cashew-nuts to Air-India, and even a casual examination of this packet shows that it cannot be opened without tearing the same or cutting it open. However, we are bound by the findings of fact given by the Tribunal, to which we have referred earlier. No question has been referred to us as to whether these findings are unsupported by evidence or against the evidence, and hence it would not be open to us to go into this question. It is only in view of this that we have come to the conclusion that the Tribunal's finding regarding the second question referred to us must be upheld."

7. I may also notice the contention of the counsel for the petitioner that the term "sealed container" must be given a meaning as is understood in common parlance. As already observed earlier, today hundreds of consumer items are sold in plastic bags which are sealed. It cannot be said that the same are not understood as containers in common parlance. The authorities of the apex Court cited by the learned counsel for the petitioner are clearly distinguishable.

8. In the case of *Ramavatar Budhaiprasad* 1961 12 STC 286, the proposition before the Supreme Court was whether the word "vegetables" would include "betel leaves" or not. It was held that being a word of every day use, it must be construed in its popular sense meaning "that sense which people conversant with the subject-matter with which the statute is dealing would attribute to it". It was, therefore, held that the word "vegetables" has to be understood as denoting class of vegetables which are grown in a kitchen garden or in a farm and are used for the table. It is in this context that the term "betel leaves" was held to be not included in the meaning of the term "vegetables" in item 6 of Schedule II of the C.P. and Berar Sales Tax Act, 1947.

9. Similarly in the case of *Pappu Sweets and Biscuits* 1998 111 STC 425, the Supreme Court was dealing with the meaning of the term "sweetmeat" or "commodity of like nature". The precise question was whether "toffee" could be included in the meaning of the term "sweetmeat" or "commodity of like nature". The apex Court had referred to the Hindi version of the notification in which the corresponding word used was "mithai". Thus, it was held that the word "sweetmeat" had to be given the same meaning as to the term "mithai". It was further held that the word "mithai" had a definite connotation and it could be said with reasonable amount of certainty that people in this country do not consider

"toffee" as "mithai".

10. None of these authorities are, therefore, applicable while dealing with the meaning of the word "container". As already held, it cannot be said that a plastic bag is not understood as a container in common parlance.

11. In view of the above discussion, I am satisfied that the sealed plastic bags in which the salt is sold, fall within the meaning of the term "sealed containers". It is not disputed that to have access to the salt, the seal has to be broken or torn and the bag cannot be closed again.

12. It has also been conceded before me during the course of arguments that in subsequent years, the petitioner has suffered tax on such sales. The learned counsel for the petitioner has explained that this had been done to avoid getting into litigation as the levy of such tax was ultimately withdrawn in the year 1988. Not even a single instance has been brought to my notice in which the levy of tax on salt sold in sealed plastic bags may have been held to be illegal.

13. I, therefore, find no merit in the writ petition which is accordingly dismissed. However, in the circumstances of the case, there shall be no order as to costs.