

(2011) 01 P&H CK 0426

In the Punjab And Haryana At Chandigarh

Case No : C. M. No. 18225 of 2010 in/and C.W.P. No. 3200 of 1993 (O and M)

Raghubir Saran Subhash Chander

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision : 17-01-2011

Acts Referred:

Central Sales Tax Act, 1956 — Section 14
Punjab General Sales Tax Act, 1948 — Section 4(2A)

Citation : (2011) 41 VST 198

Hon'ble Judges : Ajay Kumar Mittal, J; Adarsh Kumar Goel, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Adarsh Kumar Goel, J.—Heard. Order dated November 16, 2010, 1 dismissing the writ petition for non-prosecution, is recalled.

C.W. P. No. 3200 of 1993

2. The writ petition challenges order of assessment dated June 29, 1991 2 passed by the revisional authority under the provisions of the Haryana General Sales Tax Act, 1973 (for short, "the Act"), revising the order of assessment passed by the Assessing Authority to the extent of holding that rate of tax applicable to sale of parched groundnuts would be general rate and not the rate applicable to groundnuts, which were declared goods. The Petitioner is a registered dealer under the provisions of the Act and for the assessment year 1982-83, it filed returns, on the basis of which assessment order dated November 16, 1983 was passed. On the sale of groundnuts, rate of tax applicable to the declared goods was applied. The revisional authority exercised suo motu revisional power on the ground that parched groundnuts were different from the groundnuts and were, thus, separate commodities. The relevant observations are:

The following judgments prove that parch groundnuts are different commodity

from the groundnuts:

Dewan Chand Chaman Lal Vs. The State of Punjab, .

Groundnuts and parched groundnuts are not the same goods for the purposes of Section 4(2A) of the Punjab General Sales Tax Act, 1948 but are commercially different commodities.

Groundnuts are undoubtedly seeds and since oil is extracted out of them they are oil-seeds ;

They are understood as such in common parlance.

Avadh Sugar Mills Ltd. Vs. The Sales Tax Officer, Sitapur and Another, , (Avadh Sugar Mills Ltd. Vs. Sales Tax Officer and Another, affirmed and Hans Raj Choudhri Vs. J.S. Rajyana, Excise and Taxation Officer (Enforcement), and Commissioner of Sales v. Bakhat Rai & Co. [1966] 18 STC 285 (Mys) overruled):

Dewan Chand Chaman Lal Vs. The State of Punjab, , Hans Raj Choudhri Vs. J.S. Rajyana, Excise and Taxation Officer (Enforcement), : overruled groundnuts are oil seed from which oil is extracted and are not edible nuts.

State of West Bengal v. Lal Chand Aggarwalla [1973] 77 CWN 910 (Cal).

Groundnuts-taxable when sold to a miller or last sale miller also doing business of sales of groundnuts-purchased by him may be for extracting oil or for sale groundnuts sold to him for resale-not taxable.

Nabi Oil Mills Vs. Commercial Tax Officer and Others, .

When groundnuts are fried, the germinating property of kernel is lost. Most of the oil content, if not all, is also lost, fried groundnuts is not, therefore an oil seed.

Deputy Commissioner of Commercial Taxes, Tiruchirapalli v. R. Kuppuswamy Chettiar [1976] 38 STC 587 (Mad) (590) (Red.)"

As the dealer is dealing in the sale of parch groundnuts thus tax at the general rate is levied. Taxable turnover comes to Rs. 81,307 as per assessment order and admitted by the dealer. Tax at four per cent (as tax at four per cent already levied in the original assessment order) levied comes to Rs. 3,252.25. Surcharge assessed thereon at two per cent... Comes to Rs. 3,317.29. The order is modified to this extent.

3. On appeal, the said order was affirmed by the Tribunal as under:

I have considered the submissions of the parties and have also seen the facts on record and the judgments relied upon by the parties. I am inclined to agree with the contention of the District Attorney that the parched groundnut is not a declared good and is commercially a different commodity from the unparched groundnut which is a commodity used as "oil seed" within the meaning of

Section 14 of the Central Sales Tax Act, 1956. Therefore, the parched groundnut is certainly leviable to tax at the general rate of tax as has been held by the revisional authority. However, in these cases it is not clear whether the Appellant has sold parched groundnut or unparched groundnut. This fact can easily be gone into by the Assessing Authority from the books of accounts of the Appellant. In the situation, it would be fair and appropriate, if these cases are remanded to the Assessing Authority to decide these cases in the light of the observations made above after going through the record and account books of the Appellant. Accordingly, the cases are remanded to the Assessing Authority for fresh decision after giving full opportunity to the Appellant for production for the books of account and other material to substantiate his claim.

4. We have heard learned Counsel for the Petitioner.

5. It is not disputed that parched groundnuts are different from groundnuts and do not fall in the category of declared goods, as held by the revisional authority and the Tribunal, following the judgments relied upon therein. Only contention raised on behalf of the Petitioner is that the Tribunal in another case in *Super Trading Co. v. State of Haryana S.T.A. Nos. 403 and 443 of 1988-89*, annexure P4, applied low rate of tax applicable to the declared goods to be parched groundnuts, holding as under:

...From the perusal of various provisions of relevant Sections under the Central Sales Tax Act and the Haryana General Sales Tax Act it is quite clear that tax upon the declared goods will not exceed four per cent. Parched groundnut may not be useful for extraction of oil but will not stop becoming known as groundnut. The ruling relied upon by the revisional authority and also quoted by the District Attorney (*Dewan Chand Chaman Lal Vs. The State of Punjab*,) indicates that the parched groundnut becomes commercially a different commodity. It only clarifies that the sales tax under the Punjab General Sales Tax Act will be impossible because purchase tax had been earlier paid whereafter it was exempted from the payment of tax. However, under the Haryana General Sales Tax Act groundnut is not exempted from the payment of tax. The tax therefore, is impossible under the Haryana General Sales Tax Act on groundnut as a commodity. The ruling of the Punjab and Haryana High Court only entitles the Punjab Government to levy tax upon the parched groundnut which would otherwise have fallen in the exempted category.

6. We are unable to accept this submission. In view of undisputed legal position that the parched groundnuts are different from groundnuts and were not covered by the category of declared goods, mere fact that the Tribunal held to the contrary, in a particular case, is not a ground to interfere with the impugned order.

7. The petition is dismissed.