
(1972) 11 P&H CK 0014
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 3008 of 1972

Science House

APPELLANT

Vs

The Assessing Authority

RESPONDENT

Date of Decision : 14-11-1972

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Punjab General Sales Tax Act, 1948 — Section 11A, 5

Citation : (1973) 31 STC 235

Hon'ble Judges : Rajendra Nath Mittal, J

Bench : Single Bench

Advocate : Bhagirath Dass and Hira Ji, for the Appellant; R.K. Chhibber, for the Respondent

Final Decision : Allowed

Judgement

Rajendra Nath Mittal, J.—This writ petition has been filed under Articles 226 and 227 of the Constitution of India for quashing the notices, annexures B, B-I and B-2, dated 5th June, 1972, issued by the Assessing Authority, Ludhiana, for reassessment under the Punjab General Sales Tax Act, 1948 (hereinafter referred to as the "Act").

2. The facts of this writ petition in brief are that the petitioner is a registered firm under the Act and it deals in laboratory chemicals and laboratory apparatus, such as beakers, test tubes, flasks, jars, graduated cylinders, condensers, etc., for schools, colleges and hospitals. In the year 1967-68, it was assessed to a sales tax of Rs. 15,375.67 at the rate of six per cent, on the goods sold by the petitioner, namely, laboratory chemicals, beakers, test tubes, flasks, gas jars, graduated cylinders, condensers, etc. (annexure A), in the year 1968-69 to Rs. 20,601.71 (annexure A-I) and in the year 1969-70 to Rs. 25,508.49 (annexure A-2). The Assessing Authority, respondent No. 1, issued three notices on 5th June, 1972, relating to the aforesaid three years (copies annexures B, B-I and B-2) stating that the sales for the respective years have been underassessed the

levy of appropriate tax. It is further stated that the petitioner should show cause as to why the reassessment should not be made against it. The petitioner has challenged the aforesaid notices on the ground that the aforementioned goods which are used in school, college and hospital laboratories cannot be termed as "luxury items" and that the respondent cannot charge a higher rate of tax on them.

3. The respondent has contested the petition and stated that the aforesaid goods were glasswares under entry 23 of Schedule A of the Act and were liable to tax at the rate of eight per cent. On the basis of the definite information, a notice u/s 11A of the Act was issued to the petitioner. It is also stated that the petition is premature as the matter has not been decided by respondent No. 1 as yet.

4. A preliminary objection has been raised by the learned counsel for the respondent that the petition is premature. The learned counsel for the petitioner states that vires of entry 23 of Schedule A and jurisdiction of the respondent to issue the impugned notice have been challenged by the petitioner and he can file the writ petition for the aforesaid purpose.

5. I have heard the learned counsel for the parties and am of the view that the argument of the learned counsel for the respondent has got no force. In the present case, the question is whether beakers, test tubes, flasks, gas jars, cylinders, etc., which are used in the school, college and hospital laboratories are luxury goods within the meaning of proviso to Sub-section (1) of u/s 5 of the Act and if not, can the Legislature include them in Schedule A of the Act, which relates to such goods. The jurisdiction of the respondent to issue the notices has also been challenged. If the facts of the case justify interference, the jurisdiction of this court is not taken away merely because the authority concerned has not decided the matter. Infirmary of the notice in the present case has been challenged on the ground of jurisdiction of the respondent which depends on the interpretation of u/s 5 of the Act. Such a question can be gone into by this court. I, therefore, reject the objection of the learned counsel for the respondent.

6. The contention of the learned counsel for the petitioner is that the items mentioned above are not luxury goods, Proviso to Sub-section (1) of u/s 5 of the Act provides that a tax at such rate not exceeding eight naya paise in a rupee may be levied on the sale of luxury goods as specified in Schedule A appended to this Act. The said sub-section with the proviso is as follows :

5. Rate of tax.-(1) Subject to the provisions of this Act, there shall be levied on the taxable turnover of a dealer a tax at such rates not exceeding six naya paise in a rupee as the State Government may by notification direct :

Provided that a tax at such rate, not exceeding eight naya paise in a rupee, as may be so notified, may be levied on the sale of luxury goods as specified in Schedule A appended to this Act from such date as the State Government may by notification direct. The State Government after giving by notification not less than three months notice of its intention so to do may by like notification add to

or delete from this Schedule and thereupon this Schedule shall be deemed to have been amended accordingly.

6. Entry 23 of Schedule A relates to glassware, glazedware, etc. and the same is as follows:

Entry 23 : Glassware, glazedware and Chinaware including crockery.

7. The word "glassware" has not been defined in the Act. It has been defined in the Webster's New International Dictionary to mean as "articles made of glass, especially tableware of glass used in serving food and drinks". The word "luxury" has also not been defined in the Act. Its meanings as given in Shorter Oxford English Dictionary, Third Edition, at page 1180, are :

Habitual use of what is choice or costly, whether food, dress, furniture, or appliances. Sumptuous and exquisite food or surroundings. Something which conduces to enjoyment over and above the necessities of life. Hence, now, something which is desirable but not indispensable.

8. In Webster's New International Dictionary, Second Edition, the word "luxury" has been defined at page 1470, which is as follows :

A free indulgence in costly food, dress, furniture, or anything expensive which gratifies the appetites or tastes ; also, a mode of life characterized by material abundance.

Anything which pleases the senses and is also costly, or difficult to obtain; an expensive rarity ; as, silks, jewels and rare fruits are luxuries. Any convenience regarded as an indulgence rather than a necessity.

9. From the perusal of the abovesaid definitions, it will be clear that "luxury" is a relative term. Glasswares used in school, college and hospital laboratories cannot be said to be luxurious items. They are necessary for educating the children and conducting various tests relating to patients. The learned counsel for the respondent states that as the Legislature has used the word "glassware" as an item of luxury, therefore, this court cannot hold otherwise. Proviso to Sub-section (1) of u/s 5 of the Act authorises higher tax on the sale of luxury goods as specified in Schedule A. The first question to be determined here is as to what are luxury goods, as only such goods can be included in Schedule A. If goods are not such, they cannot be included in Schedule A. The State Government can add to and delete from the said schedule any item. Only the luxury goods can be included in the schedule and not other goods. The only method of determining the luxurious nature of the goods is to find out for what purpose they are used. Luxury is regarded as an indulgence than a necessity. Use of the goods in the present case cannot be considered for luxurious purposes. The aforesaid goods may be glasswares but are not luxury goods. Therefore, the respondent cannot charge on their sale a tax at a higher rate. I am also supported in the aforesaid observations by an unre-ported judgment of this court of M.R. Sharma, J., in Civil Writ No. 703 of 1972 (Amir Chand Om Parkash v. The Assessing Authority,

Amritsar, decided on 25th September, 1972) Since reported at [1973] 31 S.T.C. 232. In that case, respondent No. 1 made an assessment on the sale of doop and agarbatti at a higher rate treating the same as perfumery as given in entry No. 16 of Schedule A. The same was challenged in this court. The learned Judge came to the conclusion that the aforesaid goods do not fall within the description of luxury goods.

10. For the reasons recorded above, I accept this petition with costs and quash the notices of respondent, annexures B, B-1 and B-2, all dated 5th June, 1972.