

(1970) 08 P&H CK 0028
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ No. 408 of 1970

Shambhu Ram Nathu Ram

APPELLANT

Vs

The Excise and Taxation Officer (Assessing Authority)

RESPONDENT

Date of Decision : 04-08-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1970) 26 STC 561

Hon'ble Judges : Bal Raj Tuli, J

Bench : Single Bench

Advocate : Harbans Lal, for the Appellant; D.N. Rampal, Assistant Advocate-General (Punjab), for the Respondent

Final Decision : Allowed

Judgement

Bal Raj Tuli, J.—This order will dispose of Civil Writ 407 of 1970-Messrs Suraj Bhan Jagdish Chand v. The Excise and Taxation Officer, Sangrur-and Civil Writ 408 of 1970-Messrs Shambhu Ram Nathu Ram v. The Excise and Taxation Officer, Sangrur-as a common question of law is involved in both these writ petitions, that question being, whether cotton seeds are oil-seeds as defined in Section 14(vi) of the Central Sales Tax Act, 1956 (hereinafter called the Central Act) and in entry (3) in Schedule "C" to the Punjab General Sales Tax Act, 1948 (hereinafter called the Punjab Act). There is a slight difference between the description of oil-seeds in the Central Sales Tax Act and in Schedule "C" to the Punjab General Sales Tax Act and, therefore, both the clauses are set out below :

2. Section 14(vi) of the Central Sales Tax Act reads as under :-

14. It is hereby declared that the following goods are of special importance in inter-State trade or commerce:-...

(vi) oil-seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in the manufacture of varnishes, soaps and the like, or in

lubrication and volatile oils used chiefly in medicines, perfumes, cosmetics and the like....

3. Entry (3) in Schedule "C" to the Punjab General Sales Tax Act, 1948, reads as under:

Oil-seeds, (including groundnut) that is to say, seeds yielding non volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

4. Schedule "C" to the Punjab Act enumerates the goods on which purchase tax and not the sales tax is leviable, so that, if cotton seeds are held to be oil-seeds, they will be subject to the levy of purchase tax on their purchase price and not sales tax on the sale price.

5. On behalf of the petitioners, it has been vehemently argued that cotton seeds are oil-seeds as oil is extracted from cotton seeds on a commercial scale which is used in the manufacture of vanaspati meant for human consumption. Reliance is placed on the following paragraph in Encyclopaedia Britannica, Volume 6, 1969 Edition, page 629:

Utilization of cotton seed products.-Although cotton seed products have been used variously for centuries, their greatest commercial utilization has been in the United States. The commercial processing of cotton seed has been increased in other countries, principally Mexico, Brazil, India and Egypt. The yield of products is influenced by the variety of cotton, the environment under which the cotton crop is grown and the efficiency of the processing methods used for recovery of the oil. Typical average yields per short ton of seed crushed are : 314 lb. of crude oil; 901 lb. of cake or meal; 466 lb. of hulls; 184 lb. of linters; and 135 lb. of processing waste and loss.

6. Oil.-Thoroughly refined and processed cotton seed oil is one of the principal, high-grade edible oils of commerce. The average factory consumption in the United States of refined cotton seed oil is approximately 30 per cent, of the total of all edible and inedible vegetable oils used annually. About 29 per cent, of the refined cotton seed oil consumed annually goes into the manufacture of margarine ; 35 per cent, into shortenings; 30 per cent, into salad oil, salad dressing, mayonnaise, cooking oils and other products ; and 2 per cent, into inedible products. "Winterized" cotton seed is a superior salad and cooking oil because of its good keeping quality. About 75 per cent, of the "winterized" vegetable oils are obtained from cotton seed oil. Owing to studies of the relation of facts to health there has been a trend toward increased use of salad and cooking oils and decreased use of shortening.

7. The use of cotton seed oil in inedible products is limited largely to off-grade oils and soap stocks. The oil and fatty acids obtained from them and acidulated soap stocks are used in the manufacture of soaps, lubricants, protective coatings

and chemical products. The fatty acid pitch is used chiefly in the production of floor coverings, composition roofing and insulating materials.

8. It is argued that oil is extracted from cotton seed for commercial purposes and that is one of the principal uses to which the cotton seeds are put these days. Previously, the cotton seeds were only used as cattle feed but now oil is extracted out of them chiefly for human consumption. The learned counsel seeks to derive assistance from a judgment of their Lordships of the Supreme Court in Union of India (UOI) Vs. Delhi Cloth and General Mills, , wherein it is stated in para. 5 of the report as under :

The experts who have filed affidavits in support of the petitioners' case agree with Mr. Krishnan that common oils, like groundnut, sesame, mustard, cotton seed, etc., in their raw stage always contain varying amounts of impurities and these impurities have to be removed by different processes before hydrogenation for the purpose of producing vanaspati can be applied.

9. The learned counsel argues that cotton seed oil has been mentioned in this paragraph as one of the common oils used for the purpose of producing vanaspati. In para. 10 of the report, an extract is given from Bailey's book on "Cotton seed and cotton seed products" reading as under :

In a discussion of the composition and characteristics of cotton seed oil, three kinds of oil are to be distinguished. They are: (a) crude oil, which is the oil as it is expressed from the seed and the commodity shipped from the oil mills, (b) refined oil, or oil which has been freed of most of its non-glyceride constituents by treatment with alkali, with or without subsequent bleaching or deodorisation ; and (c) hydrogenated oil.

10. The reference to cotton seed oil as common oil and the method of its extraction fully supports the submission of the learned counsel for the petitioners that cotton seeds are oil-seeds. The learned counsel has relied on a judgment of their Lordships of the Supreme Court in State of Madras Vs. M.R. Krishnaswami Naidu and Others, etc., wherein cotton seed oil is mentioned as one of the ingredients of vanaspati, its percentage ranging from 0 to 10. In State of Orissa v. Dinabandhu Sahu & Sons [1969] 24 S.T.C. 233(Ori) a reference is made to a communication of the Government of India No. 4(8)-ST/57, dated 31st January, 1958, addressed to all State Governments stating that the items appearing in the list annexed thereto came within the purview of the definition of oil-seeds as given in Section 14 of the Central Act and requesting that the list might be circulated amongst the sales tax authorities for their guidance. On the basis of this communication, some State Governments like Punjab and Bombay issued instructions to the sales tax authorities. The Collector of Sales Tax of Bombay State issued Circular No. CST-48-58 (495/14), dated 15th March, 1958, giving a list of 54 items, No. 10 of which is cotton seed (*Gossypium Harbaccum*). The Excise and Taxation Commissioner, Punjab, issued instructions, vide Circular No. 2554/STI, dated 18th May, 1959, in which the same list of 54 items is

mentioned. Thereafter, the following statement appears-

Seeds not to be regarded as falling within the definition of oil-seeds u/s 14 : seeds not crushed in commercial quantities but, if crushed yield vegetable oils which may be used in medicines. They are not to be regarded as "oil-seeds" for the purposes of Section 14 of the Central Sales Tax Act, 1956 : (a) Almond seed, (b) Pista seed, (c) Kharbooza seed, (d) Tarbooz seed, (e) Kakdi seed and (f) Kaddu seed.

11. It is thus clear that cotton seed was considered to be an oil-seed by the Central Government as well as by the Bombay Government and the Punjab Government. But the assessing authorities in the State of Punjab no more consider cotton seeds to be oil-seeds in view of the judgment of their Lordships of the Supreme Court in *State of Punjab and Others Vs. Chandu Lal Kishori Lal and Others*, wherein an observation is made that cotton seeds are not declared goods. In the judgment of their Lordships entries (1) and (3) from Schedule "C" to the Punjab Act have been set out, but not Clause (vi) of Section 14 of the Central Act, nor was it brought to their Lordships' notice that oil-seeds are declared goods u/s 14(vi) of the Central Act. The point that was canvassed before their Lordships was that cotton seeds were not different from cotton and the dealer was entitled to deduct the sale price of the cotton seeds from the purchase turnover u/s 5(2)(a)(vi) of the Punjab Act. In that case, the dealer purchased unginned cotton and by a process of manufacture separated the seeds from the cotton and sold ginned cotton to the customers. It was submitted on behalf of the manufacturer that he had paid tax on the purchase of unginned cotton which underwent a process of manufacture resulting into two products, that is, ginned cotton and cotton seeds. He should, therefore, be deemed to have paid tax on the purchase of cotton seeds and when he sold cotton seeds, he should have been allowed the deduction of that turnover from his purchase turnover. This submission was repelled by their Lordships with the following observations:

In our opinion, the appellants are right in their contention that the ginning process is a manufacturing process. But the question presented for determination in the present case is somewhat different, viz., whether the respondent is entitled to the exemption u/s 5(2)(a)(vi) of the Act in the context and setting of the language of Sections 14 and 15 of the Central Sales Tax Act, 1956. "Declared goods" in Section 14 of the Central Sales Tax Act, 1956, are individually specified under separate items. "Cotton ginned or unginned" is treated as a single commodity under one item of declared goods. It is evident that cotton ginned or unginned being treated as a single commodity and as a single species of declared goods cannot be subject u/s 15(a) of the Central Sales Tax Act to a tax exceeding two per cent, of the sale or purchase price thereof or at more than one stage. But so far as cotton seeds are concerned, it is difficult to accept the contention that the sale of cotton seeds must be treated as a sale of declared goods for the purpose of Section 15 (a) or (b) of the Central Sales Tax

Act, 1956. It is true that cotton in its unginned state contains cotton seeds. But it is by a manufacturing process that the cotton and the seed are separated and it is not correct to say that the seed so separated is cotton itself or part of the cotton. They are two distinct commercial goods though before the manufacturing process the seeds might have been a part of the cotton itself. There is hence no warrant for the contention that cotton seed is not different from cotton. It follows that the respondent is not entitled to deduct the sale price of the cotton seeds from the purchase turnover u/s 5(2)(a)(vi) of the Act. In our opinion, the assessing authority was right in holding that the respondent was not entitled to deduction in respect of cotton seeds sold by it to registered dealers. It is conceded that the assessing authority had already granted deduction u/s 5(2)(a)(vi) so far as ginned cotton is concerned.

12. It is quite evident "from their Lordships" observations that what was being held was that cotton seeds were not cotton within the meaning of Section 14(ii) of the Central Act, but their Lordships were not called upon to pronounce whether cotton seeds are oil-seeds, as denned in Clause (vi) of Section 14 of the Central Act. There is no doubt that entry (3) from Schedule "C" to the Punjab Act was set out but no reference was made to it in the judgment nor was it considered relevant to decide whether cotton seeds were declared goods. I may emphasise that their Lordships considered cotton seed in relation to cotton and not in relation to oil-seeds for observing that "it is difficult to accept the contention that the sale of cotton seeds must be treated as a sale of declared goods for the purpose of Section 15 (a) or (b) of the Central Sales Tax Act, 1956." Their Lord ships further observed : "There is hence no warrant for the contention that cotton seed is not different from cotton." That judgment, therefore in my opinion, does not lead to the conclusion that their Lordships decided that cotton seeds were not oil-seeds, as defined in entry (3) in Schedule "C" to the Punjab Act or Clause (vi) of Section 14 of the Central Act.

13. On behalf of the respondent, reliance has been placed on a judgment of Shamsheer Bahadur, J., in *Hans Raj Choudhri v. J.S. Rajyana*, Excise and Taxation Officer [1967] 19 S.T.C. 489 (Ker) in which the learned Judge held that groundnuts could not be treated as oil-seeds to justify the imposition of purchase tax under the Punjab Act. The learned Judge relied on a Division Bench decision of the Madhya Pradesh High Court in *Commissioner of Sales Tax Vs. Bakhat Rai and Co.*, wherein it was stated that the test is not whether oil can be extracted from a fruit or seed, but it is whether in common parlance the article is known as "oil-seed" used principally for the extraction of oil. Even from the point of view of that test, I am of the opinion that cotton seeds are commonly known as oil seeds and the cotton seed oil is used for the manufacture of vanaspati ghee which is meant for human consumption. The learned counsel for the respondent has then relied on a Division Bench judgment of the Madras High Court in *S. Kannappa Mudaliar Vs. State of Madras*, wherein it was held that coconuts are not oil-seeds within the meaning of item 6(a) of the Second Schedule to the Madras General Sales Tax Act, 1959. The learned Judges disagreed with the judgment of the

Mysore and Kerala High Courts holding coconuts as oil-seeds. That judgment is, thus, of no help.

14. Let us now turn to entry (3) in Schedule "C" to the Punjab Act. According to that entry, the seeds must yield non-volatile oils. There is no dispute that cotton seed oil is a non-volatile oil. The second requirement is that the oil must be used for human consumption. There is no doubt on this point as well, as the vanaspati, in which cotton seed oil is used, is meant for human consumption. There is another use mentioned in this entry and that is, the oil may be used in industry. As I have pointed out above, cotton seed is used in industry for the manufacture of vanaspati. The words "or in industry" are not to be found in Clause (vi) of Section 14 of the Central Act. Thus, I am of the opinion that even according to the definition of oil-seeds in entry (3) of Schedule "C" to the Punjab Act, cotton seeds fall in the category of oil-seeds.

15. For the reasons given above, I hold that cotton seeds are oil-seeds as defined in entry (3) of Schedule "C" to the Punjab Act as the oil produced from the cotton seeds is used in industry for the manufacture of vanaspati ghee which is meant for human consumption. The writ petitions are, therefore, accepted and the assessing authority is directed to amend the impugned orders in so far as they relate to cotton seeds, in the light of the observations made above, that is, considering cotton seeds as oil seeds. Since the point involved was not free from difficulty, I leave the parties to bear their own costs.