
(1973) 08 P&H CK 0016

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax Reference No. 3 of 1972

Sheo Karan Dass Bhoj Raj

APPELLANT

Vs

The State of Haryana

RESPONDENT

Date of Decision : 17-08-1973

Acts Referred:

Citation : (1974) 34 STC 94

Hon'ble Judges : Prem Chand Jain, J;D.K. Mahajan, J;Bal Raj Tuli, J

Bench : Full Bench

Advocate : S.C. Goyal and O.P. Goyal, for the Appellant; J.N. Kaushal, Advocate-General and Naubat Singh, District Attorney, for the Respondent

Judgement

D.K. Mahajan, J.—This order will dispose of General Sales Tax References Nos. 3 to 7 of 1972.

By our order dated 1st November, 1971, the Sales Tax Tribunal, Haryana, was required to refer the following questions of law for our opinion :

(1) Whether there is evidence on the basis of which it can be held that oil-cake is or is not fodder or fertiliser ?

(2) Whether, on the facts and in the circumstances of the case, "oilcakes" fall within item 44 or 54 of Schedule B to the Act ?

2. The Tribunal accordingly, by its order dated 16th June, 1972, referred these questions of law along with the statement of the case. In the meantime, the State of Haryana passed the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1972 (Act No. 19 of 1972). By this Act, entries Nos. 44 and 54 in Schedule B have been substituted by the following entries :

44. Fertilisers but not including oil-cakes.

54. Fodder : dry or green, but not including oil-cakes and guar giri.

3. It is also provided that entry 44 will be deemed to have always been

substituted with effect from the very inception of the Act, and entry 54 will be deemed to have been substituted with effect from 20th May, 1955. Later on, a new Act has been passed, namely, Haryana General Sales Tax Act (No. 20 of 1973), and the previous Act has been repealed. Entries 44 and 54 of the old Act have been replaced by entries 27 and 34, and they accord with the entries as amended by Amendment Act 19 of 1972, with one difference that against entry No. 34 it is stated that it will come into force with effect from 20th May, 1955.

4. The contention of Mr. J.N. Kaushal, the learned Counsel for the State, is that these references be answered in favour of the department in view of the amendment in the law and, for this contention, the learned Counsel relies on the decision of the Supreme Court in *Commissioner of Sales Tax, U.P. v. Bijli Cotton Mills, Hathras, U.P.* [1964] 15 S.T.C. 656. Mr. Siri Chand Goyal, the learned Counsel for the assessee, does not dispute this contention. He, however, urges that in view of the note against entry 34 in the 1973 Act, that it will come into force with effect from 20th May, 1955, there being no similar note against entry 27, the problem still remains to be solved. We are unable to agree with this contention. Entry 44 was amended by Act 19 of 1972, and that entry remained in force for the years to which these references relate till it was substituted by the 1973 Act. Therefore, there is no substance in the contention raised.

5. For the reasons recorded above, in view of the amended state of the law, we answer the questions referred to us in favour of the department and against the assessee. There will be no order as to costs.