(1961) 01 P&H CK 0023

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 778 of 1960

Shiv Ram and Another — APPELLANT

Vs

The Excise and Taxation Commissioner — RESPONDENT

Date of Decision : 12-01-1961

Acts Referred:
Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 11, 5

Citation : (1961) 12 STC 554

Hon'ble Judges : Mehar Singh, J

Bench : Single Bench

Advocate : D.C. Gupta, for the Appellant; H.S. Doabia, Additional Advocate-General, for the Respondent

Judgement

Mehar Singh, J.—The petitioners carry on business as Halwais. They prepare laddus, jalebis, reoris, golian, makhana, phulian etc., articles which are preparations of sugar. They sell those articles but they also sell sugar. In regard to the assessment year 1957-58 they were called upon by notice u/s 11(2) of the Punjab General Sales Tax Act (Punjab Act No. XLVI of 1948) to file returns showing gross turnover and they duly filed the returns. They showed their turnover at Rs. 96,298-9-9 and from this they claimed a deduction according to Section 5(2)(a)(i) of the Act. However, before the Sales Tax Officer, the Assessing Authority, the position taken on their behalf was that they are totally exempt from sales tax because their preparations as Halwais are exempt under entry No. 50 in Schedule B to the Act and sale of sugar is exempt under entry No. 62 of the same Schedule. The Assessing Authority came to the conclusion that preparations of golian, makhanat phulian and reoris are not ordinary preparations by Halwais. Item No. 50 in Schedule B to the Act exempts "articles ordinarily prepared by Halwais, when sold by Halwais exclusively". The Assessing Authority came to the conclusion that the petitioners do not sell exclusively articles prepared by Halwais for apart from those articles they also sell sugar and other articles such as golian, makhana, phulian and reoris, which according to him are not articles ordinarily prepared by Halwais. He thus negatived the contention on behalf of the petitioners and assessed them to sales tax allowing certain deductions u/s 5(2) of the Act.

2. The petitioners say in the petition that, though they have remedies by way of appeal and thereafter revision, but the same are illusory because they cannot go in appeal without first depositing the amount of the tax levied and further the decision of the Assessing Authority is based on executive instructions issued by the Excise and Taxation Commissioner, respondent No. 1, and in the face of those instructions the appeal and the revision must necessarily be rejected by respondent No. 1. The second is not a satisfactory explanation for not having recourse to the remedies provided by the Act, but the first is, for it is in a way an onerous and a penal provision curtailing the right of appeal to this extent that the petitioners cannot exercise it until they make the deposit.

3. The petitioners in their petition under Article 226 of the Constitution urge that the interpretation by the Assessing Authority of item No. 50 in Schedule B to the Act is erroneous and under that item they are entirely exempt from sales tax in the circumstances.

4. The reply on behalf of the respondents is made by an affidavit of respondent No. 1 and though a general denial to the case set up by the petitioners is given but in paragraphs 8 and 9 of the return it is admitted that articles that were found by the Assessing Authority not to be ordinary preparations of Halwais are in fact such preparations. This means that the petitioners have sold articles ordinarily prepared by Halwais and in addition they have sold sugar.

5. Now it has already been pointed out that articles ordinarily prepared by Halwais are exempt from sales tax when sold by Halwais exclusively and under item No. 62 sale of sugar is exempt from sales tax. So all the articles sold by the petitioners are exempt from sales tax.

6. The Assessing Authority has interpreted that a Halwai to have benefit of item No. 50 in Schedule B to the Act must sell exclusively articles ordinarily prepared by Halwais and no other article or commodity. The learned counsel for the petitioners contends that the word "exclusively" in item No. 50 goes with the word "Halwais" and not with the word "articles", as is the case in entry No. 63 relating to bakery goods, which item exempts from sales tax "bakery goods, when sold by bakers dealing exclusively in such goods". The learned counsel says that in this last item the word "exclusively" goes with the dealer dealing in the goods referred to in the item, which he says is not the case in regard to item No. 50. This apparently is so. The learned counsel further points out that by the words "Halwais exclusively" in item No. 50 what is meant is that articles ordinarily prepared by Halwais are to be sold by Halwais alone and when such articles are sold by persons other than Halwais then they are not exempt from sales tax. In reply the learned counsel for the respondents refers to item No. 33 in the same Schedule which provides exemption for photographs including X-ray

photographs, when sold by photographers and radiologists prepared by them, and he points out that photographers and radiologists can sell photographs and X-ray photograps as also other articles but when they themselves prepare photographs and X-ray photographs and sell them then their sales with regard to the latter are exempt from sales tax, which according to him is not the position in regard to the Halwais as referred to in item No. 50.

7. I think the word "exclusively" in item No. 50 obviously goes with the word "Halwais" and what the item means is that when the articles ordinarily prepared by Halwais are sold by Halwais they are exempt from sales tax, but when such articles are sold by persons other than Halwais they are not exempt from the same. So a Halwai can sell articles ordinarily prepared by Halwais and he can also sell any other articles. He will be exempt from sales tax in regard to articles ordinarily prepared by Halwais under item No. 50 and he will be liable to sales tax in regard to the other articles sold unless he can claim exemption with regard to any of them under any other item, as in the present case the petitioners claim exemption on the sale of sugar under item No. 62. In this view the Assessing Authority was not justified in levying sales tax against the petitioners on their gross turnover, for that turnover is confined to sales only of sugar and other articles which at this stage are admitted to be articles ordinarily prepared by Halwais.

8. In consequence the impugned order of the Assessing Authority is quashed and, as also prayed for by the petitioners, the Assessing Authority is prohibited from proceeding to levy sales tax on such sales by the petitioners as are of articles ordinarily prepared by Halwais and as articles otherwise exempt under Schedule B to the Act. The parties are, however, left to their own costs in the petition.

