
(1992) 05 P&H CK 0027

In the Punjab And Haryana At Chandigarh

Case No : General Sales Tax References No"s. 5 to 9 of 1980

State of Haryana

APPELLANT

Vs

Hira Nand and Bros.

RESPONDENT

Date of Decision : 22-05-1992

Acts Referred:

Haryana General Sales Tax Act, 1973 — Section 42(1)
Punjab General Sales Tax Act, 1948 — Section 6, 6(1)

Citation : (1992) 102 PLR 401 : (1993) 88 STC 419

Hon'ble Judges : M.S. Liberhan, J;H.S. Bedi, J;G.C. Garg, J

Bench : Full Bench

Advocate : D.D. Vasudeva, A.A.G, for the Appellant; R.P. Sawhney, for the Respondent

Judgement

G.C. Garg, J.—This judgment will dispose of General Sales Tax Reference Nos. 5 to 9 of 1980, the question referred to this Court for opinion being identical. References relate to assessment years 1969-70 to 1973-74 in respect of the same assessee.

2. The Sales Tax Tribunal, Haryana, has referred the following question of law for opinion of this Court :

"Whether, in the facts and circumstances of the case and the legal position as enunciated by the honourable High Court of the Punjab and Haryana in the case reported in 1973 RLR 350 (Deluxe Dhaba v. State of Haryana) the respondent-dealer was entitled to the benefit of entry 50 of Schedule "B" of the Punjab General Sales Tax Act, 1948, as applicable to the State of Haryana on the basis of the earlier judgment of the High Court reported in [1961] 12 STC 554 (Shiv Ram v. Excise and Taxation Commissioner) ?"

3. A Division Bench of this Court while considering the question referred, noticed that there is conflict in the judicial opinion given by two Benches on the construction of two entries couched in identical language, in cases Excise and

Taxation Commissioner v. Shiv Ram ILR (1964) Punj 622 and Deluxe Dhaba v. State of Haryana 1973 RLR 350. The Division Bench further noticed that the two views in the aforesaid two cases are irreconcilable. This is how the matter has come up before the Full Bench.

4. Facts giving rise to the question involved maybe stated thus :

Assesses, Hira Nand and Brothers, Yamunanagar--registered dealer under the Punjab General Sales Tax Act, 1948 (for short called "the Punjab Act") was engaged in the business of preparing and selling halwai goods along with other goods, such as juices, jams, squashes, ice-cream, tea, coffee, soft drinks (Coca Cola, Fanta, milk badam), chana bhatura, aalu ki tikki, samosa and such other items during the relevant assessment years. The premises of the assessee consist of two shops having arrangement for comfortable seating of the customers. The Assessing Authority while framing assessment, denied the benefit to the assessee under entry 50 of Schedule "B" of the Punjab Act, as applicable to the State of Haryana, by concluding that the establishments of the assessee could not be described as halwai shops and the same are eating establishments of the type of a restaurant as distinct from a halwai shop. In support of his conclusion, reliance was placed on the case of Deluxe Dhaba 1973 RLR 350. The appeal preferred by the assessee was rejected by the Deputy Excise and Taxation Commissioner (Appeals), Ambala, by observing that the assessee was not running a halwai shop but was running a restaurant/eating establishment. The judgment of this Court in Shiv Ram's case ILR (1964) Punj 622 was distinguished by saying that the factum of the assessee in that case being a halwai was never in dispute. On further appeal by the assessee, the learned Tribunal came to the conclusion that the word "exclusively" had been used in a different sense in entry 50 and was meant to exempt sales tax only on the Reliance for this view was placed on the judgment of this Court in Shiv Ram's case ILR (1964) Punj 622. It was also noticed by the learned Tribunal that there was a difference between entry 72 and entry 50. The net conclusion of the learned Tribunal is that a halwai is entitled to claim exemption from sales tax under entry 50 in respect of sale of articles ordinarily prepared and sold by halwais. A further finding of fact was also recorded that the assessee in the present case is a halwai and be treated as such for taxing his sales. The learned Tribunal also noticed that entry 50 has been deleted with effect from December 1, 1972 and the exemption will not be available thereafter even to a halwai.

5. In the references, it is not disputed by either of the parties that the assessee is to be treated as a halwai during the relevant assessment years and that the exemption under entry 50 stood withdrawn by deletion of entry 50 after December 1, 1972.

6. In order to better appreciate the controversy raised, it would be appropriate to notice the relevant provisions of Section 6, and entries 50 and 72 in Schedule "B" of the Punjab Act, which are as under :

"Section 6(1). No tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the conditions and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free from time to time under this section."

7. Entry 50 of Schedule "B" of the Punjab Act :

(1)

(2)

Articles ordinarily prepared by halwais

When sold by halwais exclusively,"

Entry 72 of Schedule "B" of the Punjab Act :

"Indian food preparations including dahi, lassi and tea ordinarily prepared by tandoorwalas, dhabawalas and lohwalas.

When sold by the persons running tandoors, dhabas and lohs exclusively."

8. A reading of the aforesaid two entries irresistably shows that these are similar and have been included in Schedule "B" to achieve the same purpose. Entry 50 takes care of articles ordinarily prepared by halwais and sold by halwais. Entry 72 takes care of Indian food preparations ordinarily prepared by tandoorwalas, dhabawalas and lohwalas, when sold by the persons running tandoors, dhabas and lohs exclusively. It is manifest that these entries were included in Schedule "B" with a view to provide relief in the levy, recovery and payment of sales tax on the sale of goods specified in column 1 of entries of the Schedule when sold by the persons indicated in the corresponding entry in the second column thereof. It is again apparent that the two entries will be governed by the same interpretation being similar.

9. The use of word "exclusively" in the second column of the entry has cast some doubt on the interpretation of the entry. A close scrutiny of the entry brings out that the articles ordinarily prepared by halwais, when sold by them, are exempted from the payment of sales tax. The exemption will, however, not be available to persons/establishments who are not halwais selling these articles. In other words, exemption from payment of tax is only available to articles when sold by halwais. The word "exclusively" has apparently been used to emphasize that the exemption is available to halwais only on the sale of articles ordinarily prepared by halwais and these very articles will be subject to tax when sold by any other person/ establishment. The use of word "exclusively" goes with the word "halwai". It cannot be read with the word "articles" appearing in column 1 of the entry as that would mean exemption from payment of tax is available to a halwai when he sells the articles prepared by halwais exclusively and would lose the benefit of exemption by selling any other item, whether subject to tax or not, along with exempted articles, even in respect of exempted articles. The entry is

specific. It cannot be read to mean that exemption from payment of tax is available to a dealer when he sells the articles exclusively and the exemption stands withdrawn when he sells even a packet of nutties in addition to articles mentioned in column 1 of the Schedule. Exemption from payment of tax is to the articles when sold by a specific person and not to any other person selling these very articles. The exemption is in favour of a named dealer only. A halwai selling articles detailed in column 1 of the entry will enjoy benefit irrespective of the fact that he is also selling other taxable/non-taxable goods. He would of course be liable to pay tax in respect of other taxable items. A dealer who is not a halwai, if sells the articles prepared by halwais, would be liable to pay tax on the sales thereof and would not be entitled to claim benefit of entry 50 even if he is selling such articles "exclusively". Thus, it cannot be said that exemption under entry 50 or entry 72 is available to a dealer in respect of articles detailed in column 1 of the entry if he is exclusively doing the business of sale of these articles and no others. The reading of the entry in any other way, in our opinion, would mean that the word "exclusively" appearing in column 2 of the entry be not read with the word "halwai" but with the word "articles". In a taxing statute, in case of doubt, the benefit must go to assessee.

10. The Supreme Court while interpreting the taxing statute in the case of Polestar Electronic (Put.) Ltd. v. Additional Commissioner, Sales Tax [1978] 41 STC 409 observed as under :

"Now, if there is one principle of interpretation more well-settled than any other, it is that a statutory enactment must ordinarily be construed according to the plain natural meaning of its language and that no words should be added, altered or modified unless it is plainly necessary to do so in order to prevent a provision from being unintelligible, absurd, unreasonable, unworkable or totally irreconcilable with the rest of the statute. This rule of literal construction is firmly established and it has received judicial recognition in numerous cases."

11. In the latter part of this very case, the apex Court observed that if the Legislature has failed to clarify its intention by use of appropriate language, the benefit must go to the taxpayer. The observations made are :

"It must also be remembered that Section 5(2)(a)(ii) and the second proviso occur in a taxing statute and it is a well-settled rule of interpretation that in construing a taxing statute "one must have regard to the strict letter of the law and not merely to the spirit of the statute or the substance of the law". The oft-quoted words of Rowlatt, J., in Cape Brandy Syndicate v. Inland Revenue Commissioners [1921] 1 KB 64 lay down the correct rule of interpretation in case of a fiscal statute : "In a taxing Act one has to look merely at what is clearly said. There is no room for any intendment. There is no equity about a tax. There is no presumption as to a tax. Nothing is to be read in, nothing is to be implied. One can only look fairly at the language used." It is a rule firmly established that "the words of a taxing Act must never be stretched against a taxpayer". If the Legislature has failed to clarify its meaning by use of appropriate language, the

benefit must go to the taxpayer."

12. The provisions of entry 50 fell for consideration before a single Bench of this Court on an earlier occasion as well in the case of Shiv Ram v. Excise and Taxation Commissioner [1961] 12 STC 554, wherein it was held as under :

"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."

13. Two other single Benches of this Court also took the same view as was taken by Mehar Singh, J. (as his Lordship then was) in Shiv Ram's case [1961] 12 STC 554.

14. The matter was taken in appeal in all the three cases by the Excise and Taxation Commissioner, Punjab, and the honourable Judges of the Division Bench dismissed all the three Letters Patent Appeals. The judgment of the Division Bench is reported as Excise and Taxation Commissioner v. Shiv Ram ILR (1964) Punj 622. The view taken in the case of Shiv Ram [1961] 12 STC 554, was affirmed by the Division Bench in the following words :

"Apart from this admission this matter has been considered by my learned brother Harbans Singh, J., in Khushi Ram Prem Chand Halwai v, Excise and Taxation Commissioner, Civil Writ No. 1658 of 1962, decided on the 29th of July, 1963, and I entirely agree with his view that the inclusion of these particular forms of sweetmeats under item 50-A cannot be taken as meaning that they are not ordinarily recognised as preparations of halwais. He has come to the conclusion that item 50 means that all ordinary preparations of halwais are exempted from sales tax as long as they are sold by the halwais who prepared them, but cease to be exempted when sold by other persons, and also that the sweetmeats enumerated in item 50-A have been specially singled out for complete exemption regardless of the identity of the seller because they are cheaper forms of sweetmeats prepared by people too poor to afford luddoos and jalaibis, etc., which are ordinarily purchased by those who can afford them.

It is thus clear that four of the learned Judges of this Court have come to a single conclusion regarding the correct interpretation of item 50 and I myself have no

doubt that this is the correct interpretation."

15. Later on, entry 72 relating to different articles, but in similar terms as entry 50, came up for consideration before a Division Bench of this Court in Deluxe Dhaba's case 1973 RLR 350 in which a contrary view was taken. The question that came up for discussion before the Bench was formulated in the following terms :

"Whether, Deluxe Dhaba is entitled to exemption with regard to the Indian food preparations under entry 72 in Schedule B to the Punjab General Sales Tax Act (46 of 1948) ?"

16. The Bench noticed that while granting exemption to Indian food preparations under entry 72, tea had not been included therein and the assessee was thus, not entitled to exemption with regard to sale of tea, biscuits and Coca Cola, etc. It was found that the assessee was not doing the business of tandoorwalas and dhabawalas exclusively as he was also selling tea and soft drinks, etc., and the two businesses formed part of the same establishment. In this context, it was held as under :

"In view of these facts, it cannot be held that appellant-establishment is carrying on the business of dhaba exclusively and, therefore, is not entitled to the exemption provided in entry 72 of Schedule B to the Act. That exemption is available only to a tandoorwala or dhabawala who is doing no other business whatsoever."

17. The view taken by the Division Bench in Deluxe Dhaba's case 1973 RLR 350 runs counter to the view taken by another Division Bench in Shiv Ram's case ILR (1964) Punj 622. The entries in the two cases, though different, but are couched in identical terms. Reference must also be made to the case State of Punjab v. National Bakery [1974] 34 STC 37, a judgment of a Division Bench of this Court and relied upon by the learned counsel for the assessee. In this case, entries 18 and 63 of Schedule "B" fell for consideration. The said entries read as under :

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Entry 18:

"Meat, fish and eggs.

Except when sold in tins, bottles or cartons."

Entry 63 :

"Bakery goods prepared without using power at any stage.

When sold, otherwise than in containers and packets by bakers dealing exclusively in such goods."

18. The Division Bench took a view that mere fact that dealer sells two exempted goods will not make the dealer selling goods mentioned under entry 63, liable to sales tax merely because he is selling another tax-free goods, namely, eggs. The above view was taken after noticing that the department sought to take advantage of expression "dealing exclusively" appearing in entry 63 of Schedule "B".

19. It is unfortunate that the view of the Division Bench in Shiv Rani's case ILR (1964) Punj 622 was not brought to the notice of the Division Bench dealing with the case of Deluxe Dhaba 1973 RLR 350. Had it been done so, such anomalous situation may not have arisen, as Harbans Singh, J. (as his Lordship then was) was a member of the Division Bench dealing with Shiv Ram's case ILR (1964) Punj 622 and Deluxe Dhaba's case 1973 RLR 350.

20. As a result of the above discussion, with utmost respect to our brother Judges constituting the Division Benches, we are unable to agree with the view taken in Deluxe Dhaba's case 1973 RLR 350 and the same is consequently overruled. The view taken by the Division Bench in Shiv Ram's case ILR (1964) Punj 622 is hereby approved.

21. As a necessary consequence, the question referred to us must be answered in the affirmative, that is in favour of the assessee and against the department. There will, however, be no order as to costs.