
(1963) 10 P&H CK 0020

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 66 of 1961

The Excise and Taxation Commissioner and Another

APPELLANT

Vs

Shiv Ram and Another

RESPONDENT

Date of Decision : 10-10-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax Act, 1948 — Section 6(1)

Citation : (1964) 1 ILR (P&H) 622

Hon'ble Judges : D. Falshaw, C.J; Harbans Singh, J

Bench : Division Bench

Advocate : H.S. Doabia, A.A.G. and T.S. Doabia, for the Appellant; D.C. Gupta and J.V. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

D. Falshaw, C.J.—These are three appeals filed under Clause 10 of the Letters Patent by the State and officers of the Excise and Taxation Department against decisions of three different learned Single Judges, Mehar Singh, Grover and S.B. Capoor, JJ., accepting petitions filed under Article 226 of the Constitution by the respective Respondents, Messrs Shiv Ram Sant Ram of Barnala, Messrs Matu Ram Rameshar Parshad and Messrs Trikha Ram Chandu Lal of Jind.

2. The Petitioners in each case are carrying on business as Halwais and the question involved in each case is the interpretation placed by the Sales-tax Assessing Authorities on item 50 in Schedule "B" to the Punjab General Sales Tax Act of 1948. Schedule "B" has been framed under the provisions of Section 6 of the Act, Sub-section (1) of which reads—

(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.

3. Item 50 in Schedule "B" reads-

1. Articles ordinarily prepared by Halwais. 2. When sold by Halwais exclusively".

Since item 50-A has also been mentioned in the arguments, it may also be reproduced. It reads-

1. Retori, Patashas, Gajjaks Misri (candy or cooza), golies, boora, Makhana, Marunda and Phullian. 2.

4. There is no qualification in the second column, but it may be mentioned that this item was included in Schedule "B" in 1959 after the assessment years to which these petitions relate.

5. The interpretation placed by the Assessing Authority on item 50 was that since the Assessee-firms admittedly made and sold the sweetmeats referred to in item 50-A as well as sweetmeats called Laddoos and Jalaibis which were recognised as ordinarily prepared by Halwais, and they also sold sugar, they were liable to pay sales tax during the period in question even on the goods considered to be ordinarily prepared by Halwais, and the only item on which exemption could be allowed was sugar which was independently exempted from sales-tax without any qualification. In other words the exemption granted under item 50 was forfeited by the Halwais even in respect of goods ordinarily made and sold by them because of the fact that they also made and sold other articles. This interpretation has been rejected by all the three learned Single Judges, who have held that the correct interpretation is that all articles ordinarily prepared, by Halwais are exempt from sales-tax when sold by the Halwais who prepared them, and that sales-tax only becomes payable on such articles when they are sold by persons other than those who prepared them and who deal in other goods. In two of the cases, those decided by Grover, J., and S.B. Kapoor, J., the question was left open to be determined by the Assessing Authority as a question of fact whether boora, one of the substances referred to in item 50-A, is or is not a substance ordinarily prepared by Halwais.

6. There are two points involved, firstly, whether the forms of sweetmeats enumerated in item 50-A, "retori, patashas, Gajjaks, Misri (candy or cooza), golies, boora, makhana, marunda and phullian", are ordinarily prepared by Halwais, and secondly whether Halwais lose the exemption granted to their ordinary products by reason of the fact that they also sell other things including sugar.

7. On the first point it must be pointed out at once that in the petition of Messrs Shiv Ram Sant Ram of Barnala it was practically admitted that the substances mentioned in item 50-A were ordinarily prepared by Halwais, as would appear from the reply filed by the Excise and Taxation Commissioner, paragraph 8 of which reads-

The contents of the petition contained in paragraph 8 are admitted to the extent that retoris and patashas, etc., are Halwai goods but the Petitioner is not

exclusively dealing in such goods and as such he is not entitled to the exemption.

8. In other words in that case the sole question was the interpretation of the qualification contained in column 2 under item 50 "when sold by Halwais exclusively."

9. Apart from this admission this matter has been considered by my learned brother Harbans Singh, J., in *M/s Khushi Ram Prem Chand Halwai v. The Excise and Taxation Commissioner and Ors.* 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 purchased by people too poor to afford *Lvddoos* and *Jalaibis*, etc., which are ordinarily purchased by those who can afford them.

10. It is thus clear that four of the learned Judges of this Court have come to a single conclusion regarding the incorrect interpretation of item 50 and I myself have no doubt that this is the correct interpretation. I am also of the opinion that, as was admitted on behalf of the Department in the case of *Messrs Shiv Ram Sant Ram*, the substances subsequently enumerated in item 50-A must be regarded as substances ordinarily prepared by Halwais. There is, therefore, no force in these appeals which must be dismissed with costs. Counsel's fee Rs. 50 in each case.

Harbans Singh, J.

11. I agree.