

(1955) 11 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Second Appeal No. 235 of 1954

The Punjab State and Another	Vs	APPELLANT
Puran Chand Lal Chand and Others		RESPONDENT

Date of Decision : 16-11-1955

Acts Referred:

Citation : AIR 1957 P&H 41 : (1956) 7 STC 17

Hon'ble Judges : Dulat, J

Bench : Single Bench

Advocate : Har Parshad, Asst. Advocate General, for the Appellant; Hira Lal Sibal, for the Respondent

Final Decision : Allowed

Judgement

Dulat, J.—The short question in this case is whether what is commonly called murghi dana and sold in the market as murghi dana or chicken feed is exempt for tax under the East Punjab General Sales Tax Act, 1948.

2. The suit in this case was brought by certain dealers in murghi dana for a declaration that this particular commodity was not subject to Sales Tax and this claim rested on the ground that the Schedule to the Act containing a list of the articles ex-emoted from tax included wheat and wheat flour and that murghi dana was mostly, if not solely, comprised of wheat. The Court of first instance found against the plaintiffs holding that the commodity called murghi dana was neither wheat nor wheat flour and therefore dismissed the suit.

On appeal, however, the learned Senior Subordinate Judge, Ambala, took a different view upheld that murghi dana was only another form of wheat and therefore exempt from sales Tax and "on this view decreed the plaintiffs" suit, leaving the parties to their own costs throughout. A second appeal has been brought to this Court on behalf of the Punjab State and the Excise and Taxation Commissioner.

3. It is common ground that if the commodity in question, namely murghi dana,

is not included in the Schedule to the East Punjab General Tax Act, it would be liable to tax. Murghi dana as such is not mentioned in the Schedule. Wheat and its flour are mentioned and the question is whether murghi dana can be called wheat or wheat flour. The evidence shows and there is no dispute about this fact either that murghi dana is made up largely of such grains of wheat as get shrivelled up and otherwise damaged and such grains are therefore taken out being unfit for human consumption.

Some non-cereal vegetable products, such as ulsi, also get mixed with condemned gram of wheat and they form a part of murghi dana. The respondents' contention which has found favour with the lower appellate Court is that murghi dana being largely composed of grains of wheat can be properly called wheat within the meaning of the entry in the Schedule to the General Sales Tax Act. I find myself wholly unable to accept this view. The tax in this case is a tax on the sale of certain commodities and what is exempted is the sale of wheat and wheat flour.

Murghi dana, a sample of which has been produced in Court, can certainly not be sold as wheat or wheat flour nor can it be used as wheat or wheat flour. That to my mind is the correct test and not whether in the last analysis murghi dana is mostly composed of condemned wheat and only a small quantity of some other product. The straightway to look at this matter is to ask if an ordinary person would ever confuse or identify this commodity called murghi dana with what is ordinarily called wheat or wheat flour, and I have not the slightest doubt that this can never happen and as ordinarily understood therefore murghi dana is neither wheat nor wheat flour.

It follows that the commodity in dispute, namely murghi dana, is not exempt from the East Punjab General Sales Tax Act, 1948. I would therefore allow the appeal, set aside the decree of the Court below and dismiss the plaintiffs' suit and considering all the circumstances leave the parties to their own costs throughout.