

## CIVIL WRIT.

*Before Falshaw and Kapur, JJ.*

HARBANS LAL,—Petitioner.

*versus*

THE PUNJAB STATE,—Respondent.

Civil Writ No. 16 of 1953.

*East Punjab General Sales Tax Act (No. XLVI of 1948)—Section 6—Schedule under—Item (i)—wheat flour—Whether includes maida—Constitution of India—Article 226—Writ of Certiorari—Whether can issue when revision pending before the Excise and Taxation Commissioner under the Act and not decided.*

The petitioner was assessed to sales tax on his sales of maida. He filed an appeal on the ground that maida was included in the word wheat flour and was not liable to tax under item (i) of the schedule under section 6 of the Act. The appeal was dismissed. The petitioner filed a revision

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before the Excise and Taxation Commissioner which had not been decided for many months. The Commissioner had issued general instructions to his subordinates that *maida* and *suji*, were not included in wheat flour and were taxable under the Act. The petitioner filed a petition for writ of certiorari praying for the quashing of the orders of assessment.

*Held*, that *Maida* is included in the word 'wheat flour' and is excluded from the sales tax under item (i) of the schedule under section 6 of the East Punjab General Sales Tax Act, 1948.

*Held*, that by issuing general instructions to his subordinates, the Excise and Taxation Commissioner had precluded himself from correctly interpreting the words 'wheat' and its 'flour' and in such a case a writ of certiorari can be issued quashing the orders calling upon the petitioner to pay sales tax.

*Wanchoo's Case* (1), relied on; *Dharam Chand-Kishore Chand v. The Excise and Taxation Commissioner* (2), held not applicable.

*Petition under Articles 226 and 227 of the Constitution of India, praying that a writ of certiorari, or mandamus or any other writ, order or direction in the nature of writ of certiorari or mandamus be issued quashing the following orders :—*

- (a) *The order of the Excise and Taxation Officer, Jullundur, dated the 10th December, 1951, and 12th July, 1952.*
- (b) *The order of the Deputy Excise and Taxation Commissioner, Jullundur, dated the 10th March, 1952.*

*That a writ of prohibition or an appropriate writ or order or direction be issued to the respondents restraining them from taxing the petitioner firm in respect of the transactions of the sales of Maida for the years 1951-52 and 1952-53.*

H. L. SIBAL and C. L. AGGARWAL, for Petitioner.

S. M. SIKRI, Advocate-General, for Respondent.

#### ORDER.

KAPUR, J. This rule is directed against the Punjab State through the Excise and Taxation

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(1) 54 P.L.R. 206

(2) A.I.R. 1953 Punjab 27

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 Commissioner, Punjab, calling upon them to show cause why the order made against the petitioner requiring him to pay Sales Tax in regard to sales of *maida* for the years 1949-50 and 1950-51 should not be quashed.  
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The petitioner is a dealer in wheat flour. In 1942 on his enquiry he was informed by the then Financial Commissioner that the expression 'wheat flour' used in section 5(i)(b) of the Punjab General Sales Tax Act of 1941, should be construed according to its dictionary meaning so as to include *maida*, *Suji* and *rawa*. The petitioner again wrote to the Deputy Excise and Taxation Commissioner, Jullundur, on the 19th of November, 1951, to clarify whether *maida* and *atta* came within the term 'wheat flour' or not. To this the reply of this officer is dated the 24th of November 1951, in which he said that *maida* and *atta* were both exempt from the Sales Tax. The gentleman who wrote this letter is B. L. Ahuja.

On the 10th of December, 1950, and 11th of July, 1951, the petitioner was assessed for the years 1949-50 and 1950-51 on the sales made by his firm during these two years. Appeal was taken by the petitioner to the Deputy Excise and Taxation Commissioner, who was the same B. L. Ahuja and he held in this appeal that "*maida* is a fine product extracted from wheat but it is certainly not wheat flour and as such is not covered by item No. 1 of the schedule of exemptions." And he thereupon dismissed the appeal. The petitioner went in revision to the Excise and Taxation Commissioner, Jullundur, on the 3rd of May, 1952, but this Tribunal has not heard the appeal, and on the 6th of August, 1952, on behalf of the Commissioner one P. K. Kapur, Personal Assistant, said that the application was not ripe for hearing.

The petitioner submits that this is a case which is not covered by the rule laid down by this Court in *Dharam Chand-Kishore Chand v. The Excise & Taxation Commissioner* (1), nor by

the rule which we have laid down today in Civil Writ No. 309 of 1952, but falls within the rule laid down in *V. N. Wanchoo and others v. The Collector of Delhi* (1). The Excise and Taxation Commissioner on the 21st of December, 1951, issued a general instruction in which he stated that *maida* and *suji* are not included in wheat flour and are, therefore, taxable under the Act, and he instructed his subordinates that they should apply this interpretation to their orders of assessment. He has, therefore, precluded himself from giving an unbiassed hearing and deciding the revision petition of the petitioner. And in spite of the fact that the revision petition of the petitioner was filed in May 1952, it has not yet been heard.

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Wheat flour was interpreted by the Financial Commissioner according to the dictionary meaning so as to include *maida*, *suji* and *rawa*. The very gentleman who has dismissed the petitioner's appeal under section 20 of the Sales Tax Act, 1948, himself wrote to the petitioner on the 24th of November, 1951, that *maida* and *atta* were exempt from sales tax. How he has come to a different conclusion is not clear from his order: I am unable to agree with the interpretation put on "wheat flour" by the Excise and Taxation Commissioner. It cannot be said that *maida* is not included in the word 'wheat flour'. Flour according to the dictionary meaning is "the finer portion of meal (wheat or other) which is separated by bolting; and hence the fine soft powder of any substance". *Maida*, therefore, is, according to the dictionary meaning, included in the word 'wheat flour'. I do not know of any definition of the words 'wheat flour' which has ever excluded *maida*. I would, therefore, hold that *maida* is excluded under item 1 of the schedule under section 6.

The petitioner went up in appeal in accordance with the machinery provided for by the Sales Tax Act. He also filed a revision petition which has not yet been heard and it appears that the Excise

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and Taxation Commissioner has by issuing a circular excluded himself from correctly interpreting the words 'wheat' and its 'flour'. And the petitioner's revision petition is not being heard. In this case, therefore, I am of the opinion that the rule in *Wanchoo's case* (1), applies, and I would, therefore, issue a writ of certiorari quashing the order calling upon the petitioner to pay Sales Tax and would make the rule absolute. The petitioner will have his costs. Counsel fee Rs. 100.

Falshaw, J.

FALSHAW, J.—I agree.