Before V.K. Bali & N.K. Agrawal, JJ

M/S RAJA RAM CORN PRODUCTS,—*Petitioner*

versus

THE STATE OF PUNJAB—*Respondent*

G.S.T.R. No. 9 of 1992

25th February, 1997

Central Sales Tax Act, 1956—Punjab General Sales Tax Act, 1948—Edible Oil—Maize Oil—Sold for being used in the manufacture of vanaspati—Such oil not meeting the specifications laid under the Prevention of Food Adulteration Act—Such oil whether an edible oil.

Held that the assessee-company is not selling maize oil directly to the consumers for direct consumption but it is selling the same to the manufacturers of vegetable oil. The Central Government permitted the use of maize oil in the manufacture of vegetable ghee. The notification dated 12th November, 1988 issued under the Vegetable Oil Products Control Order, 1947 declared maize (corn) oil as an edible oil to be used in the manufacture of vegetable oil. Whatever specifications have been laid down in the Prevention of Food Adulteration Rules, 1955, those are meant to meet different requirements with a different object. Therefore, it cannot be said that the assessee-company should also manufacture maize oil of the same standards and specifications and then only its product can be treated to be edible oil for the purposes of taxation. In the broad and general sense and in common parlance, the oil produced by the assessee-company, if used as a major constituent of vegetable Ghee, can be treated to be within the realm and ambit of edible oil.

R.P. Sawhney, Sr. Advocate with Rajesh Bindal, Advocate, *for the Petitioner.*

Amarjeet Singh, D.A.G. Punjab, *for the Respondent.*

JUDGMENT

N.K. Agrawal, J.

(1) The following question of law has been referred by the Sales Tax Tribunal, Punjab, to this Court for opinion.

> "Whether, on the facts and in the circumstances of the case, the maize oil manufactured and sold by the applicant is an edible oil?"

(2) The assessee is a private limited company and is a registered dealer under the Central Sales Tax Act, 1956 (for short, "the Act") and the Punjab General Sales Tax Act, 1948. The assessee-company is engaged in the manufacturing of corn products like maize starch and maize (corn) oil. The assessee had sold maize oil for Rs. 17,87,797/-. The assessee's plea was that the maize oil, sold by the assessee, was liable to tax at the concessional rate of one per cent as an edible oil. However, the assessing authority, while making assessment for the assessment year 1981-82, declined to treat maize oil as edible oil and levied sales tax at the higher rate of 4 per cent instead of one per cent on the inter-state sale of maize oil. An additional demand of Rs. 1,02,521/- was created.

(3) Edible oil has not been defined in the Punjab General Sales Tax Act. The assessing authority took the view that maize oil was not an edible oil on the ground that it was sold by the assessee in crude form and it required further processing in order to meet the requisite standards prescribed in the Prevention of Food Adulteration Act, 1954. Since it was sold in its crude form, it was said to be not fit for human consumption. The assessee went in appeal first before the Deputy Excise and Taxation Commissioner and then before the Sales Tax Tribunal but did not succeed.

(4) Mr. R.P. Sawhney, Learned Senior Counsel for the assessee, has argued that maize oil was marketed in India as well as foreign countries as an edible oil. It is increasingly and widely being now used in the manufacture of *vanaspati*. Earlier, maize oil was used in manufacturing non-edible industrial products but, in recent years, on account of scarcity of edible oils and keeping in view that maize oil contained nutritious fat, it was commonly used as edible oil, especially in the manufacture of *vanaspati* oil.

(5) Since edible oil has not been defined in the Punjab General Sales Tax Act nor in the Central Sales Tax Act, it would be useful to look to the use of the term "edible oil" in other enactments. The

Pulses, Edible-Oil Seeds and Edible Oils (Storage Control) Order, 1977, was issued by the Central Government in exercise of its powers under section 3 of the Essential Commodities Act, 1955. The said Order was amended by the Central Government by notification dated 13th September, 1990. Sub-paragraph (g) of paragraph 2 of the Order was substituted by the aforesaid amendment. Under the amended provisions,

"edible oil" has been defined as under :—

"(g) "Edible Oil" means any oil used, directly or after processing, for human consumption and includes hydrogenated vegetable oil."

(6) A bare perusal of the aforesaid definition leads one to conclude that any oil, which can be used for human consumption, shall be treated to be edible oil. The definition explicitly makes it clear that the processing of oil was not necessary for treating it as an edible oil if an oil could be used directly for human consumption. It would be thus clear that even a crude oil can be said to be an edible oil if it is found that if can be used for human consumption directly.

(7) The Ministry of Food and Civil Supplies, Government of India, *vide* notification GSR No. 1068 (E) dated 12th November, 1988, has declared maize (corn) oil as an edible oil for being used in the manufacture of vegetable oil. The said notification has been issued by the Central Government in exercise of the powers conferred by clause (4) of the Vegetable Oil Products Control Order, 1947. As per the said Order, maize oil has been permitted to be used in the manufacture of vegetable oils.

(8) Certain specifications have been laid down in Appendix 'B' of the Prevention of Food Adulteration Rules, 1955, regarding various foods. In item 17.14 in the said Appendix 'B', standards regarding maize (corn) oil have been laid down as under :—

"(a) Butyro refracometer reading at 40°C.	56.7 to 62.5
(b) Saponification value	187 to 195
(c) Iodine value	103 to 128
(d) Unsaponifiable matter	Not more than 1.5 per cent
(e) Free fatty acides	Not more than 1.0 percent as oleic acid."

(9) Shri Sawhney has argued that whatever specifications and standards have been laid down in the Prevention of Food Adulteration Rules, those are not relevant for the purposes of the present controversy in as much as stringent requirements for the purposes of prevention of adulteration in food are aimed at ensuring good health for the citizens. The degree and standard of purity of an oil may be different in respect of different individuals, looking to the health requirements. For the purposes of preventing adulteration in food and for ensuring good health for the public, the Government specified hardened and stringent standards of purification in the Prevention of Food Adulteration Rules. The broad question, for the purpose of determining whether an oil was an edible oil under a tax law, needs determination not in the light of the standards and specifications laid down under the Prevention of Food Adulteration Rules but in the light of the principle as to how the term is used in common parlance. If maize oil is widely and generally used for the manufacture of *vegetable Ghee* as an important raw material, it should be, in the opinion of Shri Sawhney, treated to be an edible oil. It is pointed out by Shri Sawhney that the buyers have certified in respect of the maize oil produced by the assessee that it contained less than 5 per cent free fatty acides (F.F.A.) or less than 10 per cent acide value. Copies of purchase orders and certificates have been placed on record to bring home the point that the assessee was required to supply such maize oil which contained less than 5 per cent F.F.A. and less than 10 per cent acid value. In the face of such evidence, there was nothing otherwise on record which would lead one to conclude that the maize oil, sold by the assessee, was other than edible oil. The sales have been made to the manufacturers of vegetable oil. The purchase orders issued by PFIZER Limited, Chandigarh, to the assessee laid down the requirement that the assessee must supply maize (corn) oil "with F.F.A. less than 5 per cent, absolutely clear from any sludge and/or other impurities". In some purchase orders, the requirement was specified as "F.F.A. less than 4 per cent. M/s. Ballarpur Industries Ltd., Vanaspati Division, New Delhi, another buyer, required the assessee to supply maize oil with 2 to 2.5 per cent F.F.A. though, for one *ex* Bangalore factory, the acceptable limited for F.F.A. was kept at 4 per cent. Since the buyers had clearly specified the standard, there was nothing to raise a presumption that what the assessee sold was impure crude oil not fit for human consumption.

(10) The word "edible" came to be examined by the Allahabad

High Court in *Chandausi Oil Mills, Chandausi, Muradabad* v. *Sales Tax Commissioner* (1). It was noticed that the word "edible" had been used in clause 2 of the U.P. Oil Seeds and Oil Seeds Product Control Order, 1945, to mean "fit to be eaten as food". The Court took the view that the word, used in the notification issued under the said Control Order, may be given the same meaning, i.e., "fit to be eaten as food". The specific question which had arisen for determination was whether Linseed oil was an article fit for being eaten as food and was thus an edible oil. There was no mention that the mixture of Linseed oil in mustard oil made the mixture unfit for consumption as food. It was, therefore held that Linseed oil was fit for being eaten as food and was an edible oil.

(11) A question, whether washed cotton-seed oil was an edible oil or not, came to be examined by this Court in *Milkhi Ram Oil and Dall Mills* v. *State of Punjab and others* (2). It was observed that the standards prescribed under the Prevention of Food Adulteration Act, 1954, were not required to be invoked. The petitioner was not facing a case for violation of that Act or the Rules framed thereunder. It was held that washed cotton-seed oil was processed and used for human consumption and was, therefore, an edible oil.

(12) The words "charcoal" and "coal" were examined by the Supreme Court in *Commissioner of Sales Tax, Madhya Pradesh* v. *Jaswant Singh Charan Singh* (3). It found that; under the Madhya Pradesh General Sales Tax Act, the word "coal" had been used but the word "charcoal" had not been used. It was observed that the test that would be applicable was, what is the meaning which persons dealing with coal and consumers purchasing it as fuel would give to that word. A sales-tax statute, being one levying tax on goods, must, in the absence of a technical term or a term of science or art, be presumed to have used an ordinary term as "coal" according to the meaning ascribed to it in common parlance. Viewed from that angle, both the merchant dealing in coal and a consumer wanting to purchase it, would regard coal not in its geological sense but in the sense as ordinarily understood and would include "charcoal" in the term "coal".

(13) Shri R.P. Sawhney argued that, since the words "edible

(1) (1961) 12 S.T.C. 310
(2) (1992) 84 I.T.R. 206
(3) (1967) 19 S.T.C. 409

oil" have not been defined under the Punjab General Sales Tax Act, it would be appropriate to examine the words in the light of their common use in the country. If maize oil is being used, with certain specifications, in the manufacture of vegetable oil, it would be only appropriate to treat maize oil as an edible oil. Though the assessee was not selling the maize oil directly to the consummers for direct consumption, it sold its product to the manufactuters of the vegetable oil as the basic raw material. It would naturally be a part of the edible oil and must, therefore, be treated to be nothing but edible oil.

(14) A question, whether washed cotton-seed oil constituted "edible oil" came to be examined by the Supreme Court in *Bharat General and Textile Industries Ltd.* v. *State of Maharashtra and others* (4). The facts in that case were that the Government of Maharashtra had, in exercise of its powers under section 41 of the Bombay Sales Tax Act, issued certain notifications so as to grant exemption in appropriate cases from payment of sales tax or purchase tax or both. One of such notifications was for granting full tax exemption for the purchasers of inputs and the sales of finished goods of new units set up in the backward areas of the State. Exemption benefits were accorded to the industries by way of incentives for development of industries in backward areas. The industries engaged in the production of edible as well as non-edible oil, set up in backward areas, came to enjoy the benefits of exemption from paying purchase tax/sales tax. Subsequently, the Government modified the scheme and restricted the benefit of the exemption to the industrial units engaged in the manufacture of non-edible oil. Thus, tax exemption benefit was withdrawn so far as the edible oil units were concerned. It was noticed by their Lordships of the Supreme Court that the benefit had been withdrawn from the edible oil units by a notification issued under an Act of State Legislature. The Government had specified in the trade-circular issued by it as to which units shall be treated to be engaged in manufacturing edible oils. It was also clarified that the Act would not be applicable to units producing and selling edible oils and that the units manufacturing and selling washed cotton-seed oil, Soyabeen raw oil, Grade I, and unrefined sun-flower cake oil would not fall under the category of units manufacturing edible oil. The aforesaid units were, therefore, held entitled to avail of the tax benefits under the amended scheme also. It was, therefore,

(4) (1989) 72 S.T.C. 354

held that washed cotton-seed oil, sold without further processing, did not constitute edible oil. Since the legislative enactment in that case had specified non-edible oils, the said decision of the Supreme Court, relied upon by the learned counsel for the respondent herein, does not help.

(15) Rice bran oil has been treated to be not an edible oil by this Court in *Chhatar Extractions Pvt. Ltd.* v. *The Excise and Taxation Commissioner, Punjab, Chandigarh, and another* (5). It was noticed that the constituents of the oil were not necessarily edible. The rice bran oil became edible after it was refined. The learned counsel for the Revenue, drawing strength from the said observations of this Court, has argued that, in the present case of the assessee herein, the maize oil was not fit for human consumption directly, because it was sold for further processing to the vegetable oil producers. Therefore, as per the learned counsel for the Revenue, the unprocessed oil sold by the assessee-company did not constitute edible oil.

(16) From the use of the maize oil in the manufacture of vegetable *Ghee* and oil, it would be apparent that it is being used as edible oil, As was already been seen, the assessee-company is not selling maize oil directly to the consumers for direct consumption but it is selling the same to the manufacturers of vegetable oil. The buyers had required the assessee-company to supply maize oil with specified percentage of F.F.A. or acide value. The Central Government permitted the use of maize oil in the manufacture of vegetable *Ghee* as would appear from the notification dated 13th September, 1990 issued under the Pulses, Edible-Oil Seeds and Edible Oils (Storage Control) Order, 1977. That would imply that there was no prohibition against the use of the maize oil as a constituent of the vegetable oil. Similarly, the notification dated 12th November, 1988 issued under the Vegetable Oil Products Control Order, 1947, declared maize (corn) oil as an edible oil to be used in the manufacture of vegetable oil. Whatever specifications have been laid down in the Prevention of Food Adulteration Rules, 1955, those are meant to meet different requirements with a different object. it is the health of the people which is a primary concern while laying down standards and specifications under those Rules. Therefore, it cannot be said that the assessee-company should also manufacture maize oil of the same standards and specifications and then only its product can

(5) (1986) 61 S.T.C. 314

be treated to be edible oil for the purposes of taxation. In the broad and general sense and in common parlance, the oil produced by the assessee-company, if used as a major constituent of vegetable Ghee, can be treated to be within the realm and ambit of edible oil Therefore, maize (corn) oil produced by the assessee-company is to be treated as edible oil.

(17) The question, reproduced in the first paragraph of this order, is answered in the affirmative, i.e. in favour of the assessee and against the Revenue.

S.C.K.

Before H.S. Brar, K.S. Kumaran & Swatanter Kumar, JJ

RAJ PAL CHABRA,—*Petitioner*

versus

STATE OF HARYANA & OTHERS,—*Respondents*

CWP 10116 of 1995

5th August, 1998

Constitution of India, 1950 (74th Constitution amendment)—Arts. 226, 243-P, 243-R, 243-ZG & 251—Haryana Municipal Act, 1973 (as amended by Act 3 of 1995)—Ss. 9 & 21—Haryana Municipal Rules, 1978-Rl. 72-A—Motion of no confidence—Resolution passed prior to coming into force the amended Act on 15th July, 1995—Amended provisions are not retrospective and existing rights not taken away & will not effect the validity or otherwise of resolution of no confidence passed earlier—Delegated legislation—Art. 243-R providing for representation in municipalities of persons falling in sub-clauses (i) to (iv) of clause 2-A—Members nominated under clause (i) have no right to vote, however, the elected representatives of the House of people to Parliament and State Assembly as members of the Committee cannot be denied right to vote—The expression "2/3rd members of the Committee" to include those elected as well as nominated by the State Government—Haryana amendment Act taking away right to vote 2nd proviso to S.9(3) of the Haryana Act is ultra vires the Constitution and its basic structure—Doctrine of severality