

Punjab, Patiala v. M/s. National Bakery, Hoshiarpur (Mahajan, C.J.)

Before D. K. Mahajan, C.J. & P. S. Pattar, J.

THE STATE OF PUNJAB, THROUGH THE EXCISE AND TAXATION COMMISSIONER, PUNJAB, PATIALA,—Petitioner.

versus

M/S. NATIONAL BAKERY, HOSHIARPUR,—Respondent.

General Sales Tax Reference No. 19 of 1972.

April 24, 1974.

Punjab General Sales-tax Act (No. 46 of 1948)—Schedule 'B', items Nos. 18 and 63—Baker selling bakery goods and eggs—Whether exempt from sales-tax on bakery goods.

Held, that where a dealer being a small baker using no power sells bread, which is exempt from sales-tax, as well as eggs which are also exempt, he does not become liable to sales-tax on bakery goods merely because he is not selling these goods exclusively. Both the items are exempt from sales-tax under items 18 and 63 of Schedule 'B' of Punjab General Sales Tax Act, 1948, and the mere fact that a dealer sells two exempted goods will not make the dealer selling goods under item No. 63, liable to Sales-tax merely because he is selling another tax-free goods. It would nullify both the exemptions if the dealer is allowed to be taxed for selling bakery goods under item 63.

Reference under section 22(1) of the Punjab General Sales tax, 1948, made by Sales Tax Tribunal, Punjab, Chandigarh to this Hon'ble Court for opinion on the following question of law arising out of the Tribunal's order dated November, 11, 1971 in appeal No. 247 of 1970-71 regarding the assessment year 1966-67.

"Whether, a baker who is not exclusively dealing in bakery goods, but selling eggs as well, is eligible for exemption from Sales-tax on the sale of bakery goods in view of the conditions and exemptions imposed in column 2 of item 63 of Schedule 'B' ?"

D. N. Rampal, Assistant Advocate-General, Punjab, for the petitioner.

L. K. Sood, Advocate, for the respondent.

JUDGMENT

Judgment of the Court was delivered by:—

MAHAJAN, J.—The Sales Tax Tribunal, Punjab, has referred the following question of law for our opinion:

"Whether, a baker who is not exclusively dealing in bakery goods, but selling eggs as well, is eligible for exemption

from Sales-tax on the sale of bakery goods in view of the conditions and exemptions imposed in column 2 of item 63 of Schedule 'B'?"

(2) The facts are not in dispute. The assessee is a small baker using no power and sells bread and eggs. The Department seeks to take advantage of the expression, "dealing exclusively", appearing in item 63 of Schedule 'B' of the Punjab General Sales Tax Act, 1948, (hereinafter referred to as the Act) to tax him. Item 63 of Schedule 'B' of the Act reads as follows:—

"Bakery goods prepared without using power at any stage When sold otherwise than in containers and packets by bakers dealing exclusively in such goods."

As regards eggs, item 18 in the same Schedule, reproduced below, may be noticed:

"Meat, fish and eggs. Except when sold in tins, bottles or cartons."

(3) Both items Nos. 18 and 63 are exempt from Sales-tax. The mere fact that a dealer sells two exempted goods will not make the dealer selling goods under item No. 63, liable to Sales-tax merely because he is selling another tax-free goods, namely, eggs. If the interpretation sought to be placed is accepted, it would nullify both the exemptions and this result cannot be envisaged. In this view of the matter, the question referred to us must be answered in the affirmative, that is, **in favour** of the assessee and against the Department. There will **be no order** as to costs.

B.S.G.

Before P. C. Pandit and R. N. Mittal, JJ.

NAND SINGH (DECEASED) REPRESENTED BY HIS L.Rs.,—

Plaintiff-Appellant.

versus

NACHHATAR SINGH & OTHERS,—*Defendants-Respondents.*

L.P.A. No. 189 of 1970.

April 29, 1974.

Hindu Succession Act (No. XXX of 1956)—Section 14—Hindu Widow in possession of husband's property on the basis of a gift,