

State of Punjab

Vs

Assessing Authority, Chandigarh

Civil Appeal No. 1419 (NT) of 1975

(S. Ranganathan, K. Ramaswamy JJ)

(K.N. Singh, K.N. Saikia, Kuldip Singh JJ)

09.11.1990

JUDGMENT

1. The Hospitality Organisation, Punjab was running canteens at various places and it was assessed to sales tax for the assessment year 1963-64. This assessment was confirmed by the Deputy Excise and Taxation Commissioner on first appeal and then by the Sales Tax Tribunal, Chandigarh on second appeal. The assessment was levied under the Punjab General Sales Tax Act, 1948 (hereinafter called 'the Act'). The tribunal held that the activity of manufacture of goods for sale by the Hospitality Organisation was a business and that it had been correctly held to be a 'dealer' within the meaning of the said Act. An application was made to the Tribunal to refer two questions of law said to arise out of the order of the Tribunal for the decision of the High Court. These questions were:-

1. Whether the directions of the Union of India contained in Memo. No. F. 121(5)-B/66 Vol. II dated 7-3-1990 bars the assessment and recovery of the Sales Tax in the present case?

2. Whether the Hospitality Organisation is a dealer within the meaning of section 2 (d) of the Punjab Sales Tax Act?

The Tribunal dismissed this application.

2. When the matter came to the High Court under S. 22(2) of the Punjab General Sales Tax Act seeking a direction to the Tribunal to refer the two questions earlier set out for the decision of the Court disposed of the petition on a totally new ground. It will be noticed that the Hospitality Organisation was a department of the State Government of Punjab, whereas the taxing authority was the Union Territory of Chandigarh. In the view of the High Court, the dispute being one between two State Governments, the petition filed before it was not maintainable as such a dispute can be adjudicated upon only by the Supreme Court under Art. 131 of the Constitution. The High Court, referred, in its order, to the decision of a Division Bench of the High Court in Govt. Medical Store Depot, Karnal v. State of Haryana, AIR 1972 Punj & Har 287.

3. The State of Punjab has preferred this appeal on behalf of the Hospitality Organisation. We are of the opinion that the High Court erred in disposing of the petition before it on the ground mentioned

in the judgment which had not been before, or considered by the sales tax authorities and the Tribunal. The, application filed before it was one under S. 22(2) (b) of the Punjab General Sales Tax Act. Its scope was limited to examining whether any question of law arose out of the order of the Sales Tax Tribunal or not. In our opinion, a question of law did arise out of the order of the Tribunal as to whether the Hospitality Organisation had been rightly treated as a 'dealer' within the meaning of S. 2(d) of the Act. In our opinion, therefore, the High Court should have called for a reference from the Tribunal on the questions sought for by the appellant.

4. In this situation, we would normally have set aside the order of the High Court and directed the Tribunal to refer a case to the High Court on the questions above mentioned. However, considering that the High Court disposed of the reference application on an extraneous ground, we propose to adopt a different, rather unusual, course in the peculiar circumstances of this case. This is for the reason that, on the merits, this Court has already held in *Government Medical Store Depot, Karnal v. State of Haryana*, (1986) 3 SCR 450: (AIR 1986 SC 1902), reversing the decision of the Punjab High Court in the AIR 1972 Punj & Har 287 earlier referred to, that a Government Medical Store was not liable to be treated as a dealer within the meaning of S. 2(d) of the Act because it did not carry on business with any profit motive. The same principle clearly applies to the Organisation in the present case. In other words, as a result of the decision of this Court above cited, it is obvious that the Hospitality Organisation could not have been assessed to tax under the Act. In view of this settled position we think it would be appropriate and expedient in the interests of justice to short-circuit the normal procedure of directing the High Court to call for a reference and then apply the decision of this Court - and decide the matter finally here .itself. With this end in view, we shall treat the present appeal (condoning the delay involved) as one preferred to this Court from the order of the Tribunal dated 31-1-72 deciding that the appellant-organisation was a dealer. We set aside the order of the Tribunal and hold that the Hospitality Organisation was not a dealer under the Act liable to sales tax for the assessment year 1963-64. We direct the Tribunal to proceed to give effect to this judgment. We need not formally pass orders setting aside the High Court's order rejecting the petition under S. 22(2) as non-maintainable as it has not affected the Tribunal's order. The appeal is allowed accordingly, but in the circumstances we make no order as to costs.

Appeal allowed.

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