

Before : G. C. Mital & G. S. Chahal, JJ.

LAXMI RICE MILLS, AMBALA CITY AND OTHERS,—Petitioners.

versus

STATE OF HARYANA AND OTHERS,—Respondents.

Civil Writ Petition No. 5553 of 1989

6th September, 1990

Constitution of India, 1950—Art. 226 & 227—Haryana General Sales Tax Act (XX of 1973)—No tax levied on rice meant for export outside India—Rice and Paddy are different marketable Commodities—Paddy—Whether exempted from tax.

Held, that paddy and rice are two different marketable commodities and if there is no tax on the export of rice it cannot be said that paddy out of which rice was produced was not liable to purchase tax.
(Para 6)

Petition under Articles 226/227 of the Constitution of India praying that the records of the case be called for and after perusing the same this court may be pleased to issue:

- (i) *an appropriate writ or direction be issued to the respondents not to charge tax on the rice which is exported outside India;*
- (ii) *rule 24A of the Haryana General Sales Tax Rules be declared ultra vires the Act so far as it allows the refund of tax to the subsequent buyer of rice only and not to the dealer who manufacture rice from paddy and pays tax on paddy;*
- (iii) *advance service of notice on respondents be dispensed with;*
- (iv) *cost of the petition be awarded;*
- (v) *or such other appropriate order, orders or direction as this Hon'ble Court deems fit under the circumstances of the case be issued in favour of the petitioners and against the respondents herein.*

It is further prayed that during the pendency of the writ petition this Hon'ble Court may be pleased to stay the recovery of the tax on the transactions, under the Haryana Sales Tax Act.

Rajesh Bindal, Advocate, for the Petitioner.

S. C. Mohunta, A.G. Haryana with S. K. Sood, D.A., for the Respondents.

ORDER

Gokal Chand Mital, J.

(1) In this bunch of writ petitions the question involved is whether paddy and rice are one and the same commodity or two different commodities for the purposes of State and Central Sales Tax Act. Our answer is that they are two different commodities.

(2) The petitioners are the last purchasers of paddy. They husk paddy and produce rice. The rice produced by them is sold either within the State or in *inter state* sale or exported out of country.

(3) It is not disputed that the rice which is exported out of the country is not leviable to tax. On this very analogy the claim of the petitioner is that the paddy out of which such rice is produced is not liable to purchase tax. We have to consider this point alone in these writ petitions, which have been filed before the Assessing Authority proceeded to frame the assessment. The writ petitions were filed either on the receipt of notices from the Assessing Authority or without receipt of any notice. In view of the interim orders passed by this Court the assessments could not be framed.

(4) It has been settled by the highest Court in *Ganesh Trading Co. Karnal v. State of Haryana* (1), and *Babu Ram Jagdish Kumar and Co. v. The State of Punjab* (2), that paddy and rice are two different commodities in the ordinary parlance and on dehusking change in the commodity of goods is brought out and that if paddy and rice are taxed it cannot be said that there is double taxation.

(5) Similarly, in *Ben Gorn Nilgiri Plantations Co. v. The Sales Tax Officer, Special Circle, Ernakulam* (3), and *Sterling Goods v. The State of Karnataka* (4), (1986) 63 S.T.C. 239, the highest Court has held that processing changes the identity of goods. All processing may not change the identity but paddy and rice are two marketable commodities and rice cannot be called paddy and *vice versa*.

(6) Without dilating any further, in view of the aforesaid decisions we hold that paddy and rice are two different marketable

(1) 32 (1973) S.T.C. 623.

(2) (1979) 44 S.T.C. 159.

(3) (1964) 15 S.T.C. 753.

(4) (1986) 63 S.T.C. 239.

Mohan Lal Maitray v. State of Punjab and others (G. C. Mital, J.)

commodities and if there is no tax on the export of rice it cannot be said that paddy out of which rice was produced was not liable to purchase tax.

(7) For the reasons recorded above, Civil Writ Petition Nos. 2669, 3017 to 3019, 3111, 3112, 3371, 3372, 3760, 4283, 4409, 4479, 4480, 5207, 5553, 5680, 5766, 7577, 10027 to 10033, 12352, 12559, 16990 and 16991 of 1989, are dismissed with no order as to costs. While the Assessing Authority will proceed to make assessment in accordance with law, it will be open to the petitioners to raise all other points before the Assessing Authority and in appeals therefrom.

P.C.G.

Before : G. C. Mital & G. S. Chahal, JJ.

MOHAN LAL MAITRAY,—*Petitioner.*

versus

STATE OF PUNJAB AND OTHERS,—*Respondents.*

Civil Writ Petition No. 1267 of 1990.

12th September, 1990.

Constitution of India, 1950—Art. 14 & 226—Punjab Educational Service (College Cadre) (Class-II) Rules, 1976—Punjab Colleges (Security of Service) Act, 1974—Retirement age of Government lecturers at 58 years getting benefits of pension, gratuity and leave encashment—Private managed college teachers retiring at 60 years with no benefits—Recruitment under different service rules—Different service conditions—Whether discriminatory.

Held, that the method of recruitment into the two services is governed by the respective service Rules. The two services cannot be equated. Since they are governed by two different Rules, the petitioners cannot be allowed the retirement age of 60 years by avoiding the discrimination and if this was to be done, while enhancing the superannuation age to 60 years, we will have to avoid the discrimination for the teachers in the private colleges by allowing them pension, gratuity and leave encashment benefits. Such like matters are matter of Service Conditions and Rules, under which employment is taken and one cannot be said to be discriminatory to the other. This would mean that the Court would be re-writing the Service Rules, which is not permissible.

(Para 4)