



At the instance of the assessee, the High Court called for a reference and held that as the respondent was obliged to follow the instructions of the concerned authority in regard to the purchase of wheat, or the extraction of maida, suji and rawa as well as in regard to the distribution and disposal of such products, it followed the decision in *Food Corporation of India & Another v. State of Punjab & Others* [1971] 27 S.T.C. 582 and took the view that there was no 'sale'.

In the appeal to this Court on the question whether the transaction affected by the respondent fall within the definition of "sale" under Clause (h) of Sec. 2 of the Punjab General Sales Tax Act, 1948.

Allowing the appeals

**HELD:** In *Vishnu Agencies (Pvt.) Ltd. etc. v. Commercial Tax Officer & Others etc.* [1978] 2 S.C.R. 433, this Court held that notwithstanding the conditions imposed by the statutory framework of the Control Order within which the dealer operated the transaction effected by him must clearly be regarded as sales. The instant case is covered by that decision. The transactions effected by the respondent are 'sales' liable to tax. The Judgment of the High Court is set aside. The question referred to the High Court is answered in the affirmative in favour of the appellant and against the respondent. [19 D-F]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 404-407 of 1978.

From the Judgment and Order dated 13.10.1976 of the Punjab and Haryana High Court in General Sales Tax Reference No. 15,17, 18 and 19 of 1974.

P.A. Francis, S.P. Nayar and Miss A. Subhashini for the Appellant

S.T. Desai and R.S. Sodhi for the Respondent.

The Judgment of the Court was delivered by

PATHAK, J. These appeals by special leave are directed against the judgment of the High Court of Punjab and Haryana disposing of four references under the Punjab General Sales Tax Act, 1948.

A The respondent firm, Messrs. Amrit Roller Flour Mills, carries on business at Chandigarh. It is registered as a dealer under the Punjab General Sales Tax Act, 1948 (hereinafter called the "Act"). It holds a licence under the Wheat Roller Flour Mills (Licensing and Control) Order, 1957 (hereinafter referred to as the "Control Order"). Wheat is supplied to the respondent under the orders of the Government of India. The respondent B grinds the wheat and supplies the atta, maida and suji emerging from that process to the holders of permits issued by the District Food and Supplies Officer under the Control Order.

C The respondent was assessed for the years 1964-65 to 1967-68 to sales tax under the Act on the turnover of the supplies effected by it. During the assessment proceedings it contended that the transactions entered into by it did not constitute sales within the meaning of the Act and consequently no sales tax could be levied. The contention was rejected. The assessing authority relied on **The Excise and Taxation Officer (Assessing Authority), Hissar and Another v. Jaswant Singh**. [1971] 27 S.T.C. 582. The assessment orders were maintained in appeal and thereafter in second appeal also. At the instance of D the assessee, the High Court called for a reference on the following question of law in each of the four cases:

E "Whether on the facts and in the circumstances of the case, the sale of wheat products against permits issued by the District Food and Supplies Controller, Chandigarh, is liable to be taxed under the Punjab General Sales Tax Act, 1948?"

F The High Court referred to the provisions of s.3 of the Essential Commodities Act, 1955, under which the Control Order had been issued, and to clause V of the Licence under which the respondent carried on his business, and holding that the respondent was obliged to follow the instructions of the concerned authority in regard to the purchase of wheat, or the extraction of maida, suji and rawa as well as in regard to the distribution and disposal of such products, the High Court took the view that there was no sale. In adopting that view the High Court preferred to follow G its decision in **The Food Corporation of India and Another v. State of Punjab and Others** [1976] 38 S.T.C. 144.

H In these appeals by the Union Territory of Chandigarh, the sole question is whether the transactions effected by the respondent fall within definition of "sale" under the Act. Clause(h)

of s.2 of the Act defines a "sale" to mean "any transfer of property in goods .....for cash or deferred payment or other valuable consideration, but does not include a mortgage, hypothecation, charge or pledge." The broad basis on which the High Court has proceeded is that a sale necessarily implies the freedom to contract, and that all the four elements, that is to say, that the parties should be competent to contract, that there should be mutual assent, that property or goods should pass from the seller to the buyer and that the price in money should be paid or promised must all exist together, and that inasmuch as they do not so exist in the transactions in question, it must be held that there is no sale.

The Essential Commodities Act, 1955, under which the Control Order was issued, is an Act to provide, in the interest of the general public, for the control of the production, supply and distribution of and trade and commerce in, certain commodities. Sub-s.(1) of s.3 empowers the State Government to make orders providing for regulating or prohibiting the production, supply and distribution of an essential commodity, and trade and commerce in such commodity, if it is of opinion that it is necessary or expedient so to do for maintaining or increasing supplies of such essential commodity, of securing its equitable distribution and availability at fair prices or for securing such essential commodity for the Defence of India or the efficient conduct of military operations. Sub-s.(2) of s.3 details that an order under sub-s.(1) may provide for controlling the price at which any essential commodity may be bought or sold, and for regulating by licences, permits or otherwise the storage, transport, distribution, disposal, acquisition, use or consumption of any essential commodity and for requiring any person holding in stock, or engaged in the production, or in the business of buying or selling, of any essential commodity, to sell the whole or a specified part of the quantity held in stock or produced or received by him, or likely to be produced or received by him, to the Central Government or a State Government or such other person as may be specified in the Order. In the exercise of that power the Central Government made the Control Order with which we are concerned. Clause 3 of the Order provides that no owner or person in charge of a roller mill shall manufacture, or cause to be manufactured, any wheat product except under and in accordance with the terms and conditions of a licence issued under that Order. The licence was to be in Form II. It was an annual licence renewable from year to year, and liable to suspension or cancellation in the event of a contravention of the Control Order

A or any of the conditions of the licence. Paragraph V of the licence required the licensee to abide by any directions issued by the licensing authority in regard to the purchase of wheat, the extraction of maıda, suji and rawa and also in regard to the distribution or disposal of the wheat products.

B Now the High Court considered the matter and found itself obliged to follow its decision in **The Food Corporation of India** (supra). That was a case under the Punjab Rice Procurement (Levy) Order, 1958 where rice was procured by the State Government and its officers from licensed dealers and licensed millers and then supplied to the Food Corporation of India, which in turn made supplies to various State Governments. The Food Corporation of India was assessed to sales tax under the Punjab General Sales Tax Act. The High Court held that the chain of transactions between the miller and the dealer on the one hand and the State Government on the other and thereafter between the State Government and the Corporation and then between the Corporation and the other States was a single composite process originating in an arrangement between the Central Government and the State Governments under which the State Governments were required to contribute to a central pool a certain percentage of foodgrains intended for supply to deficit States through the agency of the Corporation, that there was no profit motive at any stage and the Corporation did not act as a dealer in the legal sense when it passed on the goods to other States. Accordingly, the Food Corporation of India, the High Court concluded, could not be said to sell the rice and was therefore not liable to pay sales tax, there being no freedom of contract within the meaning of the law laid down in **Salar Jung Sugar Mills Ltd. v. State of Mysore** [1972] 29 S.T.C. 246 and the element of mutual assent, implicit or explicit, being non-existent. The High Court observed that the facts of the case brought it within the law explained by this Court in **Chittar Mall Narain Das v. Commissioner of Sales Tax**, [1970] 26 S.T.C. 344.

G We think that the case before us is distinguishable from **The Food Corporation of India** (supra). It is a case which falls more appropriately within the rule laid down by this Court in **Vishnu Agencies (Pvt.) Ltd. etc. v. Commercial Tax Officer & Ors. etc.** [1978] 2 S.C.R. 433 where the majority judgment discussed the entire case law on the subject, including the earlier decisions in **Salar Jung Sugar Mills Ltd.**(supra) as well as **Chittar Mall Narain Das** (supra). The appellants in **Vishnu Agencies (Pvt.) Ltd.** (supra) had carried on business as agents

and distributors of cement in the State of West Bengal. The distribution of cement was regulated by the West Bengal Cement Control Act, 1948 and by the Control Order made thereunder. Sub-s.(1) of s.3 of the Cement Control Act is framed in language analogous to sub-s.(1) of s.3 of the Essential Commodities Act, 1955. And under the Cement Control Order, 1948 issued under that Act, no sale or purchase of cement can be made, except in accordance with conditions contained in a written order issued by a specified statutory authority and at a price not exceeding the notified price. The appellant, who was a licensed stockist of cement was permitted to stock cement in its godown and to supply it to persons in whose favour allotment orders were issued and at the price stipulated and in accordance with the conditions in the permits issued by the authorities. Pursuant to the allotment orders the appellant supplied cement to various allottees from time to time in accordance with the terms of the licence obtained by it. The appellant was assessed to Sales tax, and in appeal it contended that there was no sale because having regard to the stringent provisions of the Cement Control Order no violation or bargaining power was left to it and there was no element of mutual consent or agreement between it and the allottees. This Court came to the firm conclusion that notwithstanding the conditions imposed by the statutory framework within which the dealer operated the transactions effected by it must clearly be regarded as sales. After the decision by this Court in **Vishnu Agencies (Pvt.) Ltd.** (supra) we do not feel called upon to enter into the question arising in the present case in any detail. We are satisfied that upon the facts of the present case the question is concluded by the view taken by this Court in **Vishnu Agencies (Pvt.) Ltd.** (supra) and that the transactions effected by the appellant must be regarded as sales.

Accordingly, we allow the appeals, set aside the judgment of the High Court of Punjab and Haryana and answer the question referred to the High Court in the affirmative, in favour of the Union Territory of Chandigarh and against the respondent. In the circumstances, there is no order as to costs.

N.V.K.

Appeals allowed.