

with reference to any gradation by the department of sports, on the basis of proficiency in the field of sports.

(9) As regards the petitioner, it deserves note that this Court by its order of November 2, 1982 granted him provisional admission to the Medical College. The petitioner has since passed his M.B.B.S. Examination and has also completed his internship.

(10) Further, on June 1, 1988, the petitioner moved civil miscellaneous application 7584 of 1988, whereby he prayed that the respondent-University be directed to declare the marks obtained by the petitioner in the M.B.B.S. Examination to enable him to get admission for a House job. In dealing with this application, A. L. Bahri, J. on June 10, 1988, directed the respondent-University to send copies of the marks-sheet of the petitioner to the Medical Superintendent, Rajindra Hospital, Patiala and the Director, Health Services, Union Territory, Chandigarh, to enable the petitioner to get a House job, if found otherwise eligible.

(11) Such thus being the situation in the present case, there can be no escape from the conclusion that the petitioner was indeed entitled to admission as claimed. The relief originally sought in this behalf has, however, since been overtaken by subsequent events, namely, the fact that he has since passed his M.B.B.S. Examination and also has completed his internship. A direction is accordingly now issued to the Punjabi University, Patiala to forthwith release and declare the final result of the petitioner for the M.B.B.S. Examination.

(12) This petition is thus hereby accepted with costs. Counsel fee Rs. 500.

R.N.R.

Before V. Ramaswami, CJ and G. R. Majithia, J.

FOOD CORPORATION OF INDIA,—Petitioner.

versus

SALES TAX TRIBUNAL AND OTHER,—Respondents.

Civil Writ Petition No. 421 of 1986.

September 28, 1988.

Punjab General Sales Tax Act (XLVI of 1948)—Section. 20(5)—Petitioner filing appeal against assessment order—Application for exemption from payment of tax also filed—Power of Tribunal to grant such exemption—ground for exemption—non-existing—Assessee having a good case in appeal—Can payment of tax be waived.

**Food Corporation of India v. Sales Tax Tribunal and other
(V. Ramaswami, CJ.)**

Held, that even if the petitioner is well founded in its contention, that as per the decision in *Food Corporation of India and another v. The State of Haryana and others* (1987) 66 STC-7, it may not be liable to pay any tax at all on the disputed turnover, still we are of the view that the Tribunal has no jurisdiction to waive the tax on that ground. The only ground on which the Tribunal can waive the tax is that the assessee, in its view, is not able to pay tax. In this case the Tribunal was of the view that the contention of the Corporation that they are unable to pay tax could not be accepted and that is a finding of fact with which we could not interfere in proceedings under Article 226 of the Constitution. In the circumstances, therefore neither we can substitute the satisfaction of the Appellate Authority on the question whether the dealer is unable to pay tax or not, nor can we in any circumstances modify the provisions of the Act, so as to enable the assessee not to pay tax merely on the ground that he is confident that on merits no tax is liable.

(Para 2).

Writ Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court may be pleased :—

- (i) records of the case may be summoned;
- (ii) to issue a Writ of Certiorari quashing the impugned order, Annexure P-1;
- (iii) to issue a Writ of Mandamus declaring that no tax is leviable on rice procured under the Punjab Rice Procurement (Levy) Order;
- (iv) to issue a Writ of Mandamus declaring that no tax is leviable on the consignment of foodgrains under section 4-B of the Act and also declaring Section 4-B of the Act and also declaring section 4-B as ultra vires of Article 256 List II in the Schedule of the Constitution; and further declaring that no tax can be levied on Bardana;
- (v) a Writ of Mandamus directing the Respondent No. 3 to refund all the taxes already deposited on levy transactions Bardana and on consignments sent to the branches of the petitioner in other States;
- (vi) issue any other appropriate writ, direction or order which this Hon'ble Court may deem fit and proper in the circumstances of the case;
- (vii) filing of certified copies of the Annexure attached to the present Writ Petition be dispensed with; and

(viii) costs of the petition be awarded to the petitioner;

(ix) the typing of the Writ Petition on petition papers may kindly be exempted in view of the shortage of petition papers.

It is further prayed that during the pendency of this Writ Petition a stay order be passed by this Hon'ble Court restraining the Respondents from recovering the amount of Rs. 29,65,551.00 p. from the petitioner, and also restraining the Respondents from dismissing the main Appeal of the petitioner due to non-payment of the above amount, which appeal is pending before the D.E.T.C.(A), Ferozepore Division at Bhatinda.

Sanjeev Walia, Advocate, for the Petitioner.

D. S. Brar, Advocate D.A.G., Punjab, for the Respondent.

ORDER

V. Ramaswami C.J. (Oral).

(1) This is a petition under Article 226 of the Constitution of India praying for quashing of the order of the Sales Tax Tribunal, Punjab, in appeal No. 138 of 1985-86, directing the petitioner to deposit Rs. 29,65,551 as a condition precedent for hearing of the appeal on merits.

(2) The petitioner is a statutory Corporation incorporated under the Food Corporation Act, 1964. They are engaged in the business of trading in foodgrains and other food stuffs. They are also registered dealers both under the Punjab General Sales Tax Act as also the Central Sales Tax Act. For the assessment year 1971-72, they are assessed on gross turnover of Rs. 7,57,59,684.80 and taxable turnover of Rs. 1,50,145.62 and the tax payable was determined at Rs. 97,81,032.58. As against this assessment order they preferred an appeal under section 20 of the Punjab General Sales Tax Act. Along with the appeal they filed an application under section 20(5) the said Act for exempting them or waiving the payment of tax to the extent of Rs. 29,65,551 the rest of it having been paid by them earlier. The petition was filed mainly on the ground that the turnover relating to this disputed tax was not taxable in view of the Division Bench Judgment of this Court reported as *Food Corporation of India and another v. The State of Haryana and others*, (1),

M/s. Vijay Brothers and others v. Union of India and others
(V. Ramaswami, C.J.)

However, probably in view of the fact that the Tribunal had power to waive the tax only if it is satisfied that the dealer is unable to pay the tax, they also raised a ground that they will be unable to pay the tax and the financial situation of the Corporation is so precarious as to require the prayer for waiving of the tax. Even if the petitioner is well founded in its contention, that as per the decision in *Food Corporation of India's case* (supra) it may not be liable to pay any tax at all on the disputed turnover, still we are of the view that the Tribunal has no jurisdiction to waive the tax on that ground. The only ground on which the Tribunal can waive the tax is that the assessee, in its view, is not able to pay tax. In this case the Tribunal was of the view that contention of the Corporation that they are unable to pay tax could not be accepted and that is a finding of fact with which we could not interfere in proceedings under Article 226 of the Constitution. In the circumstances, therefore, neither we can substitute the satisfaction of the Appellate Authority on the question whether the dealer is unable to pay tax or not, nor can we in any circumstances modify the provisions of the Act, so as to enable the assessee not to pay tax merely on the ground that he is confident that on merits no tax is liable.

(3) In the circumstances, the writ petition fails and it is dismissed. However, we direct the Appellate Authority to dispose of the appeal within a period of six months from the date on which it is admitted. The writ petitioner is also given time for depositing the amount within a period of two months. If the amount is deposited within a period of two months, the appeal shall be taken on file and admitted.

P.C.G.

Before V. Ramaswami, C.J., and G. R. Majithia, J.
M/S VIJAY BROTHERS AND OTHERS,—Appellants.

versus

UNION OF INDIA AND OTHERS,—Respondents.

Letters Patent Appeal No. 323 of 1987

August 10, 1988.

Customs Act (LII of 1962)—Ss. 74, 75, 76 and 128—Limitation Act (XXXVI of 1963)—Ss. 14(2) and 29(2)—Bar of limitation—Order refusing draw-back refund—Such order appealable under Section 128—Period spent in pursuing remedies against order in good faith in wrong forum—Exclusion of such period—S. 14 of the Limitation Act—Whether applies to appeals under S. 128 of the Customs Act.