(1959) 03 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Review Application No. 240 of 1958 in Civil Miscellaneous Writ No. 3086 of 1956

Adarsh Bhandar, Aligarh — APPELLANT

Vs

Sales Tax Officer, Aligarh — RESPONDENT

Date of Decision : 17-03-1959

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 47 Rule 1, 104
Constitution of India, 1950 — Article 226, 245, 254
Uttar Pradesh Sales Tax (Validation) Act, 1958 — Section 4

Citation : AIR 1959 All 557 : (1959) 29 AWR 274 : (1959) 10 STC 364

Hon'ble Judges : O.H. Mootham, C.J;Raghubar Dayal, J;A.P. Srivastava, J

Bench : Full Bench

Advocate : Hari Swarup, Behariji Das and R.K. Garge, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an application made u/s 4 of the U. P. Sales Tax (Validation) Act, 1958, (U. P. Act No, XV of 1958) for the review of an order of this Court dated 5-5-1957. The respondents- contend that Section 4 is ultra vires of the State Legislature and that the application is accordingly not maintainable.

2. The relevant facts are these. On the 31st March, 1956, the Governor of Uttar Pradesh in purported exercise of his powers u/s 3A of the U. P. Sales Tax Act, 1948, issued a Notification, No. ST-905/X. By this Notification the Governor was pleased to declare, inter alia, that the turnover in respect of certain specified classes of goods imported from outside Uttar Pradesh would, with effect from 1-4-1956, be taxed at the rate of one anna per rupee. The classes of goods subject to sales tax at this rate included vegetable ghee, cloth and sugar. The respondent firm carried on business in Aligarh, and on the 14th September, 1956, it was provisionally assessed to sales tax amounting to Rs. 75,000/- on an estimated turnover of Rs. 12,00,000/- on the ghee, cloth and sugar imported by it from outside Uttar Pradesh at the rate of one anna per rupee. A demand notice

in respect of this amount dated 15-9-1956, was thereafter served on the firm.

3. The respondent firm thereupon filed a petition in this Court under Article 226 of the Constitution in which it challenged the validity of the assessment order and subsequent notice of demand. That petition was allowed by this Court by its order dated 5-5-1957, Adarsh Bhandar Vs. Sales Tax Officer, and a writ in the nature of certiorari was directed to issue quashing the assessment order dated the 14th September and the demand notice dated 15-9-1956. As a consequence of this order the State Legislature enacted the U. P. Sales Tax (Validation) Act, 1958, which came into force on 6-5-1958. Sections 3 and 4 of that Act are material and they read as follows:

"3. Validation of certain notifications and action taken in pursuance thereof.-- (1) Notwithstanding any judgment, decree or order of any court, the notifications specified in part A, Part B and Part C of the Schedule shall be deemed to have been issued in exercise of the powers conferred respectively by Section 3, Section 3-A and Section 4 of the U. P. Sales Tax Act, 1948 as if the said sections were in force on the date on which the notifications were issued in the form in which they were in force immediately before the commencement of this Act and all the said notifications shall be valid and shall be deemed always- to have been valid and shall continue in force until amended, varied or rescinded by any notification issued under any of the said sections.

(2) Anything done or any action taken (including any order made, proceeding taken direction issued, jurisdiction exercised, assessment made or tax levied or collected) purporting to have been done or taken in pursuance of any of the notifications specified in the Schedule shall be deemed to be, and to have been, validly and lawfully done or taken.

4. Review or proceedings in certain cases. --Where before the commencement of this Act, any Court or authority has in any proceeding, set aside or modified any assessment, levy or collection of any tax merely on the ground that the assessing authority had no jurisdiction to assess, levy or collect any tax in pursuance of any notification specified in the Schedule, any party to the proceeding or the Commissioner of Sales Tax may, within ninety days, from the date of the commencement of this Act, make an application to such court or authority for a review of the proceeding and thereupon, such court or authority shall review the proceeding and may make such order varying or revising the order previously made, as may be necessary, to give effect to the provisions of this Act."

4. Thereafter follows a Schedule, Part B of which specified Notification No. ST. 905/X, dated 31-3-1956. The validity of Section 3 of the Act has been challenged in other proceedings which are now pending; and in the circumstances the argument before us has proceeded, and the present order is made, on the assumption that Section 3 is valid. The respondent firm challenges the validity of Section 4 on the ground that by it the State Legislature has sought to impose a

fetter on this Court on the exercise of its jurisdiction under Article 226 of the Constitution and that is beyond its powers.

5. There are two features of Section 4 which require notice. First, by using the word "shall" the section compels the Court or authority concerned, including the High Court, to reopen the proceedings. Secondly, after the proceedings have been reopened the section makes it obligatory on the Court or authority to reverse its earlier decision and to pass an order giving effect to the provisions of the validating Act. The Court or authority has to hold the assessment to have been validly and lawfully done. Section 3 (2). It has no alternative.

6. The section is addressed to all Courts and authorities which have in any proceeding set aside or modified any assessment, levy or collection of tax on the ground specified in the section. As the order sought to be reviewed in the present case was passed in the exercise of the writ jurisdiction of this Court we confine our consideration to the question whether the State Legislature was competent to legislate in this manner in respect of matters covered by Article 226 of the Constitution.

7. The Legislature derives its power to legislate from Article 245 of the Constitution and that Article specifically makes the power subject to the provisions of the Constitution which include Article 226. Learned counsel for the State therefore concedes that it is not open to the legislature to enact any law which either directly or indirectly affects the powers conferred by Article 226 of the Constitution on the High Court. As Section 4 of the Validation Act leaves no discretion with the High Court in the matter of agreeing or refusing to review its previous order and, after a review is granted, makes it obligatory on the High Court to pass a particular order, it is obvious that it seriously affects those powers. In enacting this provision the legislature, in our opinion, clearly exceeded its authority and contravened Article 245 of the Constitution.

8. The learned Counsel for the State, however, urged that even under Article 226 the Court was bound to follow the law and the law which it had to follow was the law laid down by the legislature. Within the range of its competency therefore the legislature could lay down any law which it considered proper and the High Court could not refuse to enforce it. What Section 4 enacted could, he contended, be considered to relate either to sales tax or to the power of review -- a matter of procedure to be followed by Courts. The former is covered by Item No. 54 of List II of the Schedule VII of the Constitution and the latter by Item No. 13 of List III.

9. There can he no doubt that sales tax and matters incidental to it are subjects on which the State Legislature can legislate, but in so legislating it cannot override or contravene the other provisions of the Constitution. While legislating on the subject of sales tax therefore it cannot be open to the State legislature to pass a law on the subject of Sales Tax affecting in any way the powers of the High Court under Article 226.

10. The power of the High Court to review an order passed by it under Article 226 of the Constitution is either included in the power conferred by the article itself or can be exercised under the CPC in case the proceeding is treated as a civil proceeding. In the former case the provisions of Section 4 by taking away the discretion to refuse to review if the High Court is of the opinion that review should not be granted and by requiring the High Court to pass a particular order and no other indirectly curtails the power conferred by the Constitution and the State Legislature had no authority to do so. In the latter case the provisions of compulsory review on a ground not mentioned in Section 104 or Order XLVII, Rule 1 of the CPC come into conflict with those provisions of law enacted by the Centre and must on that account be held to be void in view of Article 254 of the Constitution.

11. From whatever angle the matter is looked at, therefore we are of opinion that Section 4 of the U. P. Sales Tax (Validation) Act, 1958, is, in its application to the High Court in exercise of its jurisdiction under Article 226 of the Constitution, invalid. That being the only provision under which the present application for review has been filed the application cannot succeed. It is accordingly dismissed with costs which we assess at Rs. 200/-.

