
(1999) 02 P&H CK 0091

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ Petition No. 17803 of 1998

Baldev Raj Hari Kishan

APPELLANT

Vs

State of Punjab and others

RESPONDENT

Date of Decision : 12-02-1999

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 2, 31, 5

Citation : (1999) 02 P&H CK 0091

Hon'ble Judges : N.K. Agrawal, J;G.C. Garg, J

Bench : Division Bench

Judgement

G.C. Garg, J.—Petitioner is a dealer registered under the Punjab General Sales Tax Act, 1948 (for short "the Act") with the Assessing Authority, Ludhiana. The petitioner-firm is engaged in the business of purchase and sale of "mungfali" (groundnut and peanut) and "til" (sesamum). As per Schedule C annexed to the Act, the above items are liable to purchase tax since June 18, 1980. The stage at which these items are leviable to tax has been mentioned in Schedule D annexed to the Act, according to which the oil seeds including the above items will be liable to purchase tax in the hands of the last dealer, liable to pay tax under the Act. u/s 31 of the Act the State Government is competent, by issuing a notification, to add to, or delete from Schedule C, any goods by giving 20 days notice of its intention to do so. Similarly, the State Government in exercise of its power u/s 5(3)(b) of the Act can, by issuing a necessary notification, amend Schedule D after giving 200 days notice of its intention to do so.

2. The Government of Punjab issued draft notification, annexure P-1 on August 13, 1998 to amend Schedule C and similarly, also issued another notification of the same date showing its intention to amend Schedule D. In both the notifications, it was mentioned that the proposed amendments will be effective from July 1, 1998. Thereafter, the Government of Punjab issued notifications, annexures P-3 and P-4, which were published in the Punjab Government Gazette

on October 22, 1998, wherein it was mentioned that these will be effective from August 13, 1998. By notification published on October 22, 1998, Schedule C was amended to the effect that item 3 in the said Schedule and the entries relating thereto shall be deemed to have been omitted with effect from August 13, 1998 whereas by notification annexure P-4, published on October 22, 1998, Schedule D was amended to the effect that for the words "Cotton yarn" appearing in column 2 against serial No. 3 in the said Schedule, the items appearing in item 3 and the entries relating thereto in Schedule C shall be deemed to have been substituted with effect from August 13, 1998.

3. In response to notice of motion, written statement has been filed by the respondents. Stand of the respondents in the reply is that State Government has complied with the provisions of sections 31 and 5(3)(b) of the Act. The notifications were issued after it was amply made clear to the public vide notifications dated August 13, 1998 that Schedules C and D would be amended w.e.f. July 1, 1998, but keeping in view the retrospective effect in these draft notifications, the date was later on changed to August 13, 1998 and thus it is not a case of retrospective legislation.

4. Learned counsel for the petitioner by reference to notifications, annexures P-3 and P-4, submitted that these were published in the Punjab Government Gazette on October 22, 1998 but the same have been made operative/effective from a retrospective date. The submission of the learned counsel in other words is that the State Government in exercise of powers delegated to it by the Legislature, cannot amend the Schedules C and D from a date prior to the publication of the final notification unless specifically empowered to do so by the Act. Learned counsel in support of his submission, relied upon *Shashi Kant Vohra v. State of Haryana* 1991 82 STC 148, *Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others*, and *General S. Shivdev Singh and Another Vs. The State of Punjab and Others*, .

5. After hearing learned counsel for the parties we are of the opinion that the contention has merit. There is no dispute that under the provisions of sections 31 and 5(3)(b) of the Act the State Government has been empowered to amend the Schedules C and D by issuing appropriate notifications in that behalf, but the amendments so made cannot be made operative from a retrospective date. Provisions of sections 31 and 5(3)(b) read thus :

"31. Power to amend Schedule C. - The State Government after giving by notification not less than twenty days notice of its intention so to do may by notification, add to, or delete from, Schedule C any goods, and thereupon Schedule C shall be deemed to be amended accordingly."

"5(3)(b). - The State Government, after giving by notification not less than twenty days notice of its intention so to do, may by like notification add to or delete from Schedule D any declared goods and thereupon Schedule D shall be deemed to be amended accordingly."

6. From a reading of the above provisions it is manifestly clear that no power has been conferred on the State Government to amend the Schedules with retrospective effect and thus on this score alone, the action of the State Government in amending Schedules C and D deserves to be declared ultra vires its powers. As regards the legal position on this point, a Division Bench of this Court in Shashi Kant Vohra's case [1991] 82 STC 148 held as under :

"The law, thus, draws a distinction between the powers of the Legislature and the authority which exercises only delegated powers of legislation. The delegates cannot claim same sovereign authority as the Legislature itself."

7. In Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others, the Kerala Government issued a notification dated August 14, 1963, which was published in the Gazette dated August 20, 1963. By the said notification, various revenue officials including the Taluk Tahsildar were authorised to exercise the powers of a Tax Recovery Officer. In the concluding portion of the notification, it was mentioned that the notification shall be deemed to have come into force on April 1, 1962. Subsequent to April 1, 1962 but before April 14, 1963, a Tahsildar had effected an attachment towards recovery of arrears of Income Tax. A question, therefore, arose whether the attachment made by the Tahsildar was valid. The Supreme Court on a consideration of the matter, held as under :

"Under section 2(44)(ii) the State Government could not invest the Tahsildar with the powers of a Tax Recovery Officer with effect from a date prior to the date of the notification and the action taken by the Tahsildar was not sustainable. The legal fiction that the new definition shall be and shall be deemed always to have been substituted could not be extended beyond its legitimate field and could not be construed as conferring power for a retrospective authorisation by the State in the absence of any express provision in section 2(44) of the Act itself."

It was further held :

"The exercise of the power u/s 2(44)(ii) is more an executive than a legislative act."

8. In view of the above, we are of the opinion that the provisions of sections 31 and 5(3)(b) do not empower the State Government to amend the Schedules from a retrospective date. But a question would then arise, whether the notifications, annexures P-4 and P-5, deserve to be declared as invalid. The answer would apparently be in the negative. If the above provisions do not so empower the State Government, it cannot give retrospective effect to the amendment, but the amendment so made would not become invalid merely because retrospective effect has been given to it, even though not permissible. The effect of undoing that action of the State Government would be that the retrospective part of the operation alone, of such notifications would be ineffective. There is no dispute that the petitioner is importing the oil-seeds in question from outside the State of Punjab and as such these oil-seeds were not liable to tax on its turnover as the sale of these goods was not liable to tax.

Purchases were exempt from tax as these oil-seeds were not purchased in Punjab State, but by virtue of these notifications, if the amendments are made operative from a retrospective date, the petitioner will be assessed to tax by the Assessing Authority for the period August 13, 1998 to October 20, 1998. As regards the stand of the respondents that by notifications annexures P-1 and P-2 it was made clear to the public that the above amendments were going to be made, w.e.f. August 13, 1998 suffice to say that it is of no consequence as draft notification cannot be equated with a final notification enforceable in law. A dealer in the absence of a final and effective notification is not in a position to collect tax from the customers and rather if it does so, it is liable to be penalised. A dealer cannot be asked to do which is not possible and permissible in law.

9. For the reasons aforesaid, the writ petition is allowed to the extent that notifications, annexures P-3 and P-4 shall be operative prospectively, i.e., with effect from the date these were published in the official Gazette. It is clarified that these notifications shall not be operative with effect from the date mentioned therein as the State Government in exercise of its subordinate legislative power can issue notification prospectively and not retrospectively as no power has been conferred on the State Government to legislate retrospectively, by the Legislature. No costs.

10. Writ petitions allowed.