

(1978) 12 P&H CK 0005
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 6551 of 1975

Bharat Engineering Co.

APPELLANT

Vs

The Assessing Authority and Another

RESPONDENT

Date of Decision : 18-12-1978

Acts Referred:

Punjab General Sales Tax Act, 1948 — Section 5

Citation : (1980) 45 STC 363

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.C. Mital, J

Bench : Division Bench

Advocate : B.K. Jhingan, for the Appellant; S.C. Mohunta, General, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—This primary and indeed the sole challenge herein is directed against the retrospective amendment of entry No. 34 of Schedule B of the Punjab General Sales Tax Act, 1948, as applicable to Haryana; by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1972, whereby entry No. 34, pertaining to agricultural implements, was substituted and was to be deemed to have always been substituted as under:

Agricultural implements but not including pumping sets, threshers and discs.

2. It is plain and indeed not disputed on behalf of the respondents that retrospectivity has been given to the amendment with effect from 1st May, 1949, when the Punjab General Sales Tax Act, 1948, came into force.

3. The question being primarily legal, the facts giving rise thereto pale into insignificance. The briefest reference thereto consequently suffices. Messrs. Bharat Engineering Company carry on the business of sale and manufacture of agricultural implements at Karnal including therein threshers and disc harrows. The petitioner-firm is a registered dealer under the Punjab General Sales Tax Act. They are primarily aggrieved by the order of the Assessing Authority at Karnal,

dated 10th October, 1975, whereby discs and harrow-frames have been held to be taxable goods and not exempt therefrom as agricultural implements in view of the retrospective amendment introduced in the Act. The claim on behalf of the petitioner-firm is that the aforesaid items of goods cannot be retrospectively brought within the tax-net by the amending Act.

4. Now, it is the common case that the incidence of taxation here is attracted by virtue of Section 5(2)(a)(ii) and the third proviso thereto of the Punjab General Sales Tax Act, 1948 (as existing on 17th October, 1972), when the Haryana Act 19 of 1972 came into force read with Section 9(1)(a)(i) of the Haryana General Sales Tax Act, 1973. At the very outset, it may be highlighted that Mr. B.K. Jhingan, the learned counsel for the petitioner, frankly conceded that he could not even remotely assail the prospective operation of the amendment made in entry No. 34 by the amending Haryana Act 19 of 1972. The sole attack levelled by him, therefore, was to the retrospective operation of the amendment. The counsel contended with considerable vehemence that by making this amendment retrospective with effect from the original enactment of the Punjab General Sales Tax Act, 1948, retrospectivity has been given to the provisions for a period extending over more than two decades. It was contended that during this period neither sales tax nor purchase tax was leviable on agricultural implements, and discs and harrows in which the petitioner-firm deals were undoubtedly within the ambit of the said term till they have been expressly excluded therefrom by the amendment. The primary contention, therefore, was that the long period of retrospectivity given to the amendment was one of the major factors in making it unreasonable and arbitrary and, therefore, within the mischief of being violative of the fundamental right guaranteed under Article 19(1)(f) of the Constitution. Mr. Jhingan was, however, fair enough to concede that the mere length of time by itself was not necessarily enough to render the retrospectivity of a taxing statute void on this ground.

5. An ancillary but nevertheless forceful contention was also raised on behalf of the petitioner that the impugned retrospective amendment had not been made merely to remove any lacuna noticed in the statute or to plug any loopholes for the collection of sales tax. To put it in the picturesque language of an American author, it was the case that the amendment had been made not merely to do "small repairs" to the provisions, but in fact and law, amounted to an altogether fresh levy on pumping sets, threshers and discs, which was therefore unwarranted with such long retrospectivity.

6. It seems to me wholly wasteful to examine the aforesaid contentions raised on behalf of the petitioner in any great detail on the touchstone of principle because they appear to be concluded against it by the binding authorities of the Supreme Court as also the recent Division Bench judgment of this Court in Civil Writ Petition No. 1648 of 1976 (Birla Cotton Spinning and Weaving Mills Ltd., Delhi v. State of Haryana [1979] 43 S.T.C. 158 decided on 9th August, 1978.

7. Adverting first to the argument of the learned counsel for the petitioner that

retrospectivity to a taxing provision can be given only to the limited extent for either removing an ambiguity in the earlier legislation or to provide for a lacuna which may come to notice in the statute, the primary reliance therefore was on the observation of Khanna, J., speaking for the Supreme Court in *Krishnamurthi and Co. etc. Vs. State of Madras*, , and on the Division Bench judgment of the Calcutta High Court in *Bengal Paper Mill Co. Ltd. v. Commercial Tax Officer, Calcutta* [1976] 38 S.T.C. 163 . However, it appears to me as plain that their Lordships of the Supreme Court have equally sanctified an altogether fresh levy of tax with retrospective effect if the legislature is otherwise competent to enact the same. Reference in this connection may be made to *The Government of Andhra Pradesh and Another Vs. Hindustan Machine Tools Ltd.*, and, in particular, to two categoric Supreme Court decisions reported in *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, , and *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, . The combined reading of the last two judgments does not leave me in any manner of doubt that the final court has laid down that a legislature which is competent to levy a tax in prospect is equally capable of doing so in retrospect as well. Therefore, once it is conceded, as it has been on behalf of the petitioner, that the legislation to amend entry No. 34 prospectively was competent, it follows a fortiori that the same could be done with equal competence retrospectively. It is unnecessary to elaborate this aspect further because the identical argument was repelled in greater detail in the *Birla Cotton Spinning and Weaving Mills*" case [1979] 43 S.T.C. 158, to which reference may instructively be made on this point. The aforesaid contention of the learned counsel for the petitioner, therefore, does not hold good.

8. Coming now to the particular grievance made by the petitioner-firm that discs and harrows were earlier not taxable at least from 1948 till the early seventies and have now been brought within the net of taxation, is again the common and the usual one which must arise in all the cases of retrospective taxation. Plainly, it is the inevitable result of retrospective taxation that goods which were earlier free of tax may become exigible thereto even though at the time of the transaction neither the purchaser nor the seller thereof may have any apprehension of such liability. Nevertheless, it has been repeatedly held that a power to tax validly existing in prospect is equally available in retrospect. Therefore, there is nothing exceptional in the case of the petitioner either on the point of law or any peculiar hardship on a point of fact, which would merit relief on this score.

9. I may now advert to the second argument that both in the case of a fresh levy and in a case of "small repairs", if the period of retrospectivity is a relatively short one, the same may perhaps be condoned, but if it is an inordinately long one, it cannot be allowed to pass the muster of constitutionality. The view aforesaid was sought to be supported on the basis of a passing observation in the *Krishnamurthi and Co. etc. Vs. State of Madras*, , whilst their Lordships were viewing a particular statute "under challenge. Here again the matter appears to

be concluded by the categoric observations in *The District Controller of Stores, Northern Railway, Jodhpur Vs. The Assistant Commercial Taxation Officer and Another*, . Therein, apparently the definition of the word "business" in the Rajasthan Sales Tax Act, 1954, was amended and given retrospective effect for a period of more than 11 years by the impugned amendment in 1965. Their Lordships of the Supreme Court considered the issue so plain and beyond challenge as to brush aside all arguments against its retrospectivity rather summarily. If retrospectivity beyond a decade was held in that case as free of any constitutional vice, I am unable to see how merely on the point of time it can be otherwise in the present case as well. Equally it may be recalled that in the *Birla Cotton Spinning and Weaving Mills*" case [1979] 43 S.T.C. 158 retrospectivity given to the definition of "dealer" for a period of nearly 18 years by the Haryana General Sales Tax Act, 1973, has been upheld. I do not think that any sea change would necessarily arise if the period of retrospectivity herein is a little longer than that in the earlier case. This contention also must meet the same fate as the earlier one.

10. For the reasons aforesaid, I am unable to find any merit in this writ petition, which is hereby dismissed. Parties will, however, be left to bear their own costs.

S.C. MITAL, J.

I agree.