(2012) 01 P&H CK 0013

In the Punjab And Haryana At Chandigarh

Case No : C.W.P. NO. 14325 of 2002

Birla Tyres — APPELLANT

Vs

State of Punjab and others — RESPONDENT

Date of Decision : 10-01-2012

Acts Referred:
- Constitution of India, 1950 — Article 14, 245
- Punjab General Sales Tax Act, 1948 — Section 10(6), 5, 5(1)

Citation : (2012) 4 RCR(Civil) 124 : (2013) 58 VST 500

Hon'ble Judges : M.M. Kumar, J;Ajay Kumar Mittal, J

Bench : Division Bench

Advocate : S.S. Brar, for the Appellant; Piyush Kant Jain, Addl. A.G. Punjab, for the Respondent

Final Decision : Allowed

Judgement

Ajay Kumar Mittal, J.—This order shall dispose of Civil Writ Petition Nos. 14325 of 2002 and 2794 of 1993 as identical issue has been

raised in both the petitions. CWP No. 2794 of 1993 has been filed by M/s M.R.F. Limited. However, facts have been extracted from CWP No.

14325 of 2002. Brief facts as narrated in CWP No. 14325 of 2002 are that prior to 9.11.1990, the rate of sales tax on motor tyres/tubes was 12

paise in a rupee and 8 paise in a rupee on tractor tyres and tubes. With effect from 9.11.1990, the Punjab Government amended notification dated

2.12.1982 and introduced Clause 13 providing rate of tax on motor tyres and tubes at nine paise in a rupee till March 31, 1992. Notification dated

28.12.1990 was issued fixing the rate of sales tax on the sales of tractor tyres and tubes @ 6% upto March 1992. No fresh notification was issued

after 31.3.1992. However, on 20.8.1992, the Punjab Government in exercise of powers conferred u/s 5(1) of the Punjab General Sales Tax Act, 1948 (in short, ""the Act"") introduced amendment in the notification dated 2.12.1982 to the effect that the rate of tax on motor tyres and tubes shall

be nine paise in a rupee and at the rate of six paise in a rupee on tractor tyres and tubes with effect from 1.4.1992 to 31.3.1994. Further

amendment was made vide notification dated 1.12.1992, Annexure P.5 that reduced rate of sales tax on the items in question was to be effective

from 20.8.1992 and not from 1.4.1992, meaning thereby the amount of tax for the period from 1.4.1992 to 20.8.1992 was to remain 12 paise in

a rupee and not 9 paise in a rupee in so far as tax on motor tyres and tubes is concerned and eight paise in a rupee and not 6 paise in a rupee

relating to tractor tyres and tubes. The Assessing authority vide order dated 30.8.1993 assessed the petitioner''s sales at the enhanced rate of tax

and created additional demand of Rs. 16,97,613/-. The Deputy Excise and Taxation Commissioner (Appeals) dismissed the appeal and the

second appeal before the Sales Tax Tribunal was partly allowed on 29.5.1996 as the order of penalty u/s 10(6) of the Act was quashed.

Application moved by the petitioner for reference was rejected on 7.2.2002. Through the present petition, the petitioner is challenging the validity

of the notification dated 1.12.1992, Annexure P.5 being ultra vires the provisions of section 5 of the Act as the State authorities cannot levy tax

from retrospective date.

2. Learned counsel for the petitioner submitted that the Respondent-State had issued Notification No. S.O. 50/P.A. 46/48/S- 5/82 dated the 2nd

December, 1982 whereby rate of tax on goods specified in Schedule ''A'' to the Act was to be twelve paise in a rupee on motor tyres and tubes

and eight paise in a rupee on tractor tyres and tubes and according to the same, the motor tyres and tubes and tractor tyres and tubes were

exigible to tax at the rate of twelve paise in a rupee and eight paise in a rupee respectively. However, vide Annexure P. 1, notification No. S.O.

57/P.A. 4648/S.5/90 dated 9.11.1990 was issued whereby the aforesaid rate was reduced to nine paise in a rupee on motor tyres and tubes till

31.3.1992. Vide notification No. S.O.P.A. 46/ 48/S.S./90 dated 28.12.1990, the rate was reduced to six paise in a rupee on tractor tyres and

tubes. Subsequently, vide Annexure P.3, Notification No. S.O. 61/P.A. 46/48/S.5/ Amd/92 dated 20.8.1992 was issued extending the validity period of the reduced rates for the period from 1.4.1992 to 31.3.1994. However, on 1.12.1992, the State Government issued notification No.

S.O. 93/P.A. 46/48/S.5/Amd/92 dated 1.12.1992, Annexure P.5 whereby notification Annexure P.3 was made effective from 20.8.1992 instead

of 1.4.1992. In other words, it was contended that by virtue of this, the State had sought to levy sales tax at the enhanced rate for the period from

1.4.1992 to 20.8.1992 which could not be done by retrospectively amending the notification. It was further submitted that the petitioner had acted

on the basis of notification (Annexure P.3) and made the refunds of the amount collected in excess of the sales tax above 9 paise in respect of

Motor tyres and tubes and 6 paise in respect of tractor tyres and tubes in a rupee to various dealers in the State of Punjab amounting to Rs.

10,79,659/-.

3. Controverting the submissions made by learned counsel for the petitioner, learned counsel for the State submitted that aforesaid amendment was

by way of clarification and the same was permissible in law. The notification was not creating any fresh levy as has been sought to be contended by

learned counsel for the petitioner.

4. After giving thoughtful consideration to the respective submissions, we find force in the submissions of learned counsel for the petitioner.

5. This Court in Goel Brick Industries and others v. M/s. Radha Swami Brick Co., (2010) 37 PHT 440, considering the principles whether

notification could be issued retrospectively, in paras 9 and 12, held as under :-

9. Even though power of legislature under Article 245 of the Constitution is plenary which also includes power to make law with retrospective

effect and even subordinate legislation can be allowed to be made retrospectively, subject to certain limitations, exercise of such power has to be

consistent with Article 14 and if arbitrary, the same can be struck down. When exercise of retrospective power of legislation can be held to be

arbitrary, has necessarily to be judged on the merits of the amendment in a given fact situation.

10. & 11. xx xx xx

12. Applying the above principles, it is seen that by impugned notification the rates of tax have been revised which has been given effect for a

period of nine months prior to the date of notification. In reply, there is no justification as to what was the relevance of the earlier date for fixing

higher rate of tax. Conferment of exercise of power of giving retrospective effect in a subordinate legislation can be justified only if it is reasonable.

Retrospective legislation may be justified if a provision is clarificatory or provision is for validating an earlier levy which may have been struck down

or for any such purpose which may be permissible. In absence thereof, mere fact that there is legislative competence to legislate retrospectively

cannot by itself be enough to justify retrospective levy.

6. Adverting to the facts of the present case, the written statement filed by the respondents does not spell out any justification for enforcing the

Notification Annexure P.3 retrospectively from 20.8.1992 instead of 1.4.1992. The respondents vide notification dated 9.11.1990 had amended

the notification dated 2.12.1982 reducing the rate from 12 paise to 9 paise in a rupee on motor tyres and tubes upto 31.3.1992 and vide

notification dated 28.12.1990, the rate of sales tax on tractor tyres and tubes was reduced from 8% to 6% upto 31.3.1992, which was later on

continued upto 31.3.1994 vide notification dated 20.8.1992 (Annexure P.3). However, vide notification cited 1.12.1992, the rate of 9 paise in a

rupee on motor tyres and tubes and 6 paise in a rupee on tractor tyres and tubes has been made effective from 20.8.1992 instead of 1.4.1992

without giving any reasonable ground for adopting such date. Further, the petitioner has refunded Rs. 10,79,659/-on the basis of notification

Annexure P.3 which fact has not been specifically denied by the respondents in the reply. The Notification Annexure P.5, thus, cannot be held to

be valid and is hereby quashed. The respondents cannot be held entitled to charge sales tax at 12 paise in a rupee on motor tyres and tubes and at

8 paise in a rupee on tractor tyres and tubes from 1.4.1992 to 20.8.1992.

7. In view of the above, the writ petitions are allowed. It is held that the petitioners shall be liable to pay sales tax for the period from 1.4.1992 to

20.8.1992 in accordance with the notification Annexure P.3 and the assessing authority shall determine the liability, if any, accordingly. A

photocopy of this order be placed on the file of connected case.

