

(1972) 07 MAD CK 0020

In the Madras High Court

Case No : Writ Petitions No"s. 558, 580, 581, 624, 637, 638, 708, 743, 773, 783, 802, 842, 857 to 865, 883 to 887, 903, 962, 1027, 1103, 1119, 1450, 1583, 1584, 1647, 2022, 2625 to 2628, 2675, 2676, 3065, 3221, 3430 and 3437 of 1969 and 85, 86, 125, 157, 286, 287,

M. Ishwarlal and Co. and Others

APPELLANT

Vs

State of Madras and Others

RESPONDENT

Date of Decision : 26-07-1972

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Citation : (1973) 32 STC 377

Hon'ble Judges : Ramaprasada Rao, J

Bench : Single Bench

Advocate : V.K. Thiruvengkatachari, for T.S. Viswanatha Rao and M.S. Sethu, for the Appellant; Government Pleader assisted by T. Sathiadev, Assistant Government Pleader and P. Jayaraman for Central Government Standing Counsel, for the Respondent

Final Decision : Allowed

Judgement

Ramaprasada Rao, J.—In this batch of writ petitions a common question arises. It is agreed that the facts in W. P. No. 558 of 1969 may be

noticed. Excepting for the difference in the amount of tax demanded and the names of the petitioners, the broad aspects are common in all the petitions.

2. The petitioner in this writ petition was carrying on business in the name and style of Ishwarlal and Company during the assessment year 1967-

68. They were dealers in jaggery and gur. They had interState transactions to the tune of Rs. 18,99,237.81 and they reported in their returns such

inter-State turnover. After due check the turnover relating to inter-State sales was reckoned at Rs. 18,99,003.81. On 14th February, 1969, which

notice is challenged in this writ petition, a proposal was made by the respondent to assess the petitioner to Central sales tax in respect of such

inter-State sales referred to above, under the Central Sales Tax Act, 1956. Soon thereafter the petitioner has come up to this court for the issue of

a writ of prohibition restraining the respondent from including such a turnover as above in the assessable turnover and bring it to tax under the

Central Sales Tax Act, 1956. The petitioner's main grievance is that the aforesaid turnover is not assessable to Central sales tax and, therefore, the

attempt to bring it to tax as if it is includible in the assessable turnover is an act without jurisdiction and, therefore, a writ of prohibition should issue

even at the threshold. In some cases writs of mandamus are asked for, but in principle they are seeking for similar reliefs. Whilst the case of the

petitioner is that there is total lack of jurisdiction in the respondent to assess the turnover in question concerning inter-State sales of jaggery and/or

gur, it is contended on behalf of the Government that by virtue of Madras Act 2 of 1968 such a power is available, even though the sales are

exempt from tax under the Central Sales Tax Act by virtue of an exemption granted by the State Government as delegate of Parliament and as the

appropriate authority to grant such exemptions u/s 8(5) of the Central Sales Tax Act.

3. Broadly, the statutory provisions with which we are concerned in the instant case are Section 8(5) of the Central Sales Tax Act and Section 8 of

the Madras General Sales Tax Act. Section 8(5) of the Central Sales Tax Act runs as follows :

Notwithstanding anything contained in this section, the State Government may, if it is satisfied that it is necessary so to do in the public interest, by

notification in the official Gazette, direct that in respect of such goods or classes of goods as may be mentioned in the notification and subject to

such conditions as it may think fit to impose, no tax under this Act shall be payable by any dealer having his place of business in the State in respect

of the sale by him from any such place of business of any such goods in the course of inter-State trade or commerce or that the tax on such sales

shall be calculated at such lower rates than those specified in Sub-section (1) or Sub-section (2) as may be mentioned in the notification.

4. Section 8 of the Madras General Sales Tax Act, 1959, dealing with exemption from tax, says:

Subject to such restrictions and conditions as may be prescribed, a dealer who deals in the goods specified in the Third Schedule shall not be liable

to pay any tax under this Act in respect of such goods.

5. It is common ground that u/s 8(5) a notification has been issued by the State Government as delegate of Parliament nominating certain items of

goods as not being liable to Central sales tax provided that such goods were sold in the course of inter-State trade and commerce. The State

Government u/s 8(5) had not only the power to totally exempt such inter-State sales, but they had also the concurrent power in certain cases to

levy tax at a concessional rate as well in respect of such goods which obviously related to inter-State transactions in relation to such goods. u/s 8,

certain goods specified in the Third Schedule to the Act were not liable to pay any tax under the Act. I shall now consider the relevant notifications

issued from time to time by the State Government as parliamentary delegate u/s 8(5) of the Central Sales Tax Act as also the various notifications

issued and the Acts enacted by the State Legislature with reference to the subject covered by Section 8 of the Madras General Sales Tax Act,

1959.

6. The State Government as delegate of the Parliament and by virtue of the express authority conferred on them u/s 8(5) of the Central Sales Tax

Act, 1956, issued the following Notification G.O. No. 4586, Revenue, dated 12th December, 1957 :

In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Governor

of Madras hereby directs that with effect on and from 13th December, 1957, no tax under the said Act shall be payable by any dealer having his

place of business in the State of Madras in respect of the sales by him to registered dealers from any such place of business of the goods specified

below in the course of inter-State trade or commerce:

(i) all varieties of cloth except cloth made of pure silk or staple fibre;

(ii) sugar ;

(iii) cigars and cheroots sold at less than twelve naye paise per cigar or cheroot and bidis, snuff, chewing tobacco or any other product

manufactured from tobacco; and

(iv) raw tobacco, whether cured or uncured.

7. This was later on amended on 23rd April, 1958. The relevant portion of the amendment, in so far as we are concerned, is with reference to item

(ii) in the above notification. Under the amended notification dated 23rd April, 1958, the item ""sugar"" appearing in the first notification was changed

to ""sugar including jaggery and gur"". This exemption as it were on inter-State sales of sugar including jaggery and gur continued till 20th March,

1969, when, under G.O. P. No. 662, Revenue, dated 21st March, 1969, the earlier notification was cancelled. The notification of cancellation

runs thus :

In exercise of the powers conferred by Sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Governor

of Tamil Nadu hereby cancels the Revenue Department Notification S.R.O. No. A-7614 of 1957, dated the 12th December, 1957, published in

the Extraordinary issue of Part I of the Fort St. George Gazette, dated the 13th December, 1957, as amended by the Revenue Department

Notification S.R.O. No. A-2614 of 1958, published at page 720 of Part I of the Fort St. George Gazette, dated the 23rd April, 1958.

8. Whilst this was the state of affairs, Section 8 of the Madras General Sales Tax Act, 1959, provided for certain exemptions in the matter of intra-

State tax with reference to sale of goods specified in the Third Schedule to the Act. Item 5 is one of those items in the Third Schedule to the

Madras General Sales Tax Act, 1959, with which we are concerned. Originally the item read as ""sugar including jaggery and gur"". But later, by

Madras amending Act 2 of 1968, this item was amended to read ""sugar but not including jaggery and gur"". This was to take effect from 1st

January, 1968. The position therefore is this: Whilst under the provisions of the Central Sales Tax Act the sale of sugar including jaggery and gur

gained an exemption till 20th March, 1969, by virtue of the notification issued by the parliamentary delegate, namely, the executive of the State of

Madras, from payment of Central sales tax in respect of inter-State sales of jaggery and gur, the provisions of the Madras General Sales Tax Act,

1959, at any rate from 1st January, 1968, took away that exemption and brought to local tax the local sales of jaggery and gur in the State. Thus it

follows that during the period commencing from 23rd April, 1958, to 20th March,

1969, inter-State sales of jaggery and gur were exempt from payment of Central sales tax, but during that period in respect of intra-State sales the turnover relevant to such sales were liable to be included in the assessable turnover. In this state of affairs it is contended that by reason of Madras Act 2 of 1968 the exemption which was no doubt available to a dealer in the matter of payment of Central sales tax over inter-State sales of jaggery and gur should be deemed to have been withdrawn, as at or about that time the levy of Central sales tax was to a great extent dependent upon the provisions of the Madras General Sales Tax Act and the imposition of Central sales tax over inter-State sales was largely governed by the incidence of tax over such commodities under the local Act. This argument however misses the main question.

9. The respective fields of activity of the Central Sales Tax Act, 1956 and the Madras General Sales Tax Act, 1959, are totally different and

distinct. u/s 8(5) of the Central Sales Tax Act a parliamentary delegate is created for purposes of granting certain exemptions. If a dealer,

therefore, had inter-State sales of jaggery and gur during the period when the exemption granted under a notification issued u/s 8(5) of the Central

Sales Tax Act was in force, then he is, as a matter of course, automatically entitled to such an exemption unless the statutory authority functioning

u/s 8(5) cancels or withdraws such an exemption. It is common ground that the exemption which was granted in the above circumstances was

withdrawn only on 21st March, 1969, by the delegate of the Parliament who could only act and issue a notification of cancellation of exemption.

The peripheral actions of the State Legislature or its delegate under the provisions of the Madras General Sales Tax Act are entirely different and

they serve a different purpose. For purposes of the levy of intra-State duties, if certain exemptions are granted at one time and taken away at some

other time, that would not have any impact upon the exemption granted by a different statutory authority functioning under the Central Sales Tax

Act as an express nominated delegate of Parliament. I am unable to find any justification for the assumption in the counter-affidavit that when the

very reason which motivated the grant of exemption u/s 8(5) of the Central Sales Tax Act, namely, the grant of exemption under the local Act, was

revoked under Madras Act 2 of 1968, the basis of the notification u/s 8(5) of the

Central Act goes and also for the contention that by the passing of Madras Act 2 of 1968, it impliedly repealed the notification issued by the State Government u/s 8(5) of the Central Act and rendered the said

G.O. inoperative and non-existent. We shall now consider these extreme contentions.

10. It is by now accepted that the motive of the Legislature, either principal or subordinate, in making the law or the rule is an irrelevant

consideration while interpreting the same, as it is the court's duty to apply the plain grammatical meaning of the provisions of law without

unnecessarily straining itself in or attempting to find out the reason behind the same. Ordinarily courts are bound to accept the literal legis as the

exclusive evidence of sententia legis. Therefore, to give up what is said by the Legislature and what was meant by the Legislature, extraordinary

circumstances should appear. Here I have used the word ""Legislature"" as all comprehensive so as to include the subordinate or delegate

Legislature as well. If, therefore, such a delegated authority which has the power to grant an exemption u/s 8(5) continued the exemption during the

period 23rd April, 1958, till 20th March, 1969, then such a state of affairs cannot be set at naught by the purported extraneous influence of an Act

of another totally different legislative body which has nothing to do with the imposition of Central sales tax or granting of exemptions from payment

of such tax over inter-State sales regarding certain specified commodities. As already stated, the delegated authority u/s 8(5) has a particular

function to perform and the local legislature and its delegate in turn have an altogether different legislative function which has no impact of

impingement upon the legislative functions of either the Parliament or its delegate under that Act. In their respective fields, their laws, rules and

notifications shall prevail and operate and are paramount.

11. Once a notification has been made by the appropriate authority u/s 8(5), it can never become inoperative through obsolescence or by an

attempted disturbance of such state of affairs by a totally unconnected and different legislative body. In this view I am unable to agree with the

learned Government Pleader that there was a reason behind the grant of exemption from Central sales tax when the notification dated 23rd April,

1958, was passed and that should be deemed to have been taken away when

Madras Act 2 of 1968 was enacted by the local legislature. No

doubt, *cessante ratione legis cessat ipsa lex*, reason is the soul of the law and when the reason of any particular law ceases, so does the law itself.

Here the exemption was granted for some reason by the delegated authority u/s 8(5) of the Central Sales Tax Act and that reason for the grant

ceased only on 21st March, 1969. So the law granting the exemption also ceased only from that date. It may be that the State of Madras was

functioning both under the Central Sales Tax Act and the Madras General Sales Tax Act for certain stated purposes. But as long as their distinct

legislative functions are borne in mind, one cannot have an impact into the other. The exemption granted under the Central Sales Tax Act was

cancelled only on 21st March, 1969. Therefore, the inter-State sales of jaggery and gur between 23rd April, 1958 and 20th March, 1969, are

exempt from payment of Central sales tax.

12. The second argument is that by reason of Madras Act 2 of 1968 there is an implied repeal of the notification of exemption granted u/s 8(5) of

the Central Sales Tax Act with effect from that date. I am unable to agree. It is only the authority which can grant an exemption that can withdraw

the exemption by exercising the power under the specific provision of the statute which enables them to grant or cancel the exemption. This right

cannot be a matter of extraneous inference. The State Legislature for some reason with which we are not concerned, enacted Madras Act 2 of

1968 and removed jaggery and gur from the exemptible items under the Third Schedule to the said Act. By reason of such removal under the local

Act it does not automatically follow that the exemption gained in respect of inter-State sales of such commodities under the Central Sales Tax Act

should also be deemed to have been removed. It is this aspect which is pressed under the principle of implied repeal. The answer is, can the local

legislature, by enacting an Act of its own, repeal a notification issued by a different legislative body under a different but Central enactment ? I am

afraid it cannot. A repeal of an Act or a rule can be effected either expressly or by necessary implication. Generally the repeal of the Act. wipes

out the prior law. But in the case of implied repeals, the authority claiming to repeal a pre-existing law should have the power to do so. It cannot be

said, that the Madras Legislature had the power to cancel a notification issued by

the delegate of Parliament functioning u/s 8(5) of the Central Sales Tax Act. It is accepted law that all Acts and Rules and notifications having the force of law do not age out or become obsolete by non-user or non-adoption. At page 404 of Craies on Statute Law, Sixth Edition, it is said :

Every statute for which no time is limited is called a perpetual Act and continues in force until it is repealed.

13. It therefore follows that the notification u/s 8(5) continued to be good law till 20th March, 1969. The argument that such a notification or benefit should be deemed to have been impliedly repealed is fallacious, because both the exemption granted u/s 8(5) of the Central Sales Tax Act and the amendment as made under Madras Act 2 of 1968 can function without one having an impact on the other. In such circumstances, the doctrine of implied repeal is completely out of question. Even in cases where the competent legislative authority passes a later enactment or a statutory rule, it cannot be said that the earlier enactment or rule having the force of law has been repealed by implication unless the provisions of the earlier enactment or rule are plainly repugnant to those of the subsequent enactment or rule and the entire subject-matter of the first is taken away by the second. I am invoking this principle for the purpose of argument and on the assumption that the State Legislature can repeal a notification which has the force of law made by the delegate u/s 8(5). I have already stated that this cannot be done. It is not suggested that the application of the notification granting the exemption during the relevant period has become impossible of compliance. There are no compelling circumstances prompting the court to depart from the existing declared rule of exemption as the words ""grant such exemption"" have indicated the intent of the parliamentary delegate and thus the object is clear and not in any way ambiguous. As a matter of fact, it is settled that there is a presumption against an implied repeal unless there are positive circumstances which would compel the court to do otherwise. There is no repugnancy between the two situations posed in this case. The legislature or the delegate legislature is presumed to enact laws and grant exemption with a complete knowledge of all the existing laws pertaining to the same subject- vide Municipal Council Palai Vs. T.J. Joseph and Others, . If the local legislature, to augment the revenue of the State, has withdrawn certain

exemptions in the matter of intra-State sales, that cannot be the foundation or the reason for the automatic withdrawal of the exemption granted by a contemporaneous competent legislative body u/s 8(5) of the Central Sales Tax Act in the matter of inter-State sales. In these circumstances, I am of the view that the petitioners are entitled to a rule prohibiting the respondents from bringing to tax the turnover of inter-State sales of the respective dealers during the period commencing from 1st January, 1968, to 20th March, 1969. The writ petitions are allowed, but there will be no order as to costs.