(1951) 04 AP CK 0002

In the Andhra Pradesh High Court

Case No : Misc. Petns No''s. 56 and 106 of 1951

M.A. Ganapathy Iyer and Another — APPELLANT

Vs

Hyderabad State — RESPONDENT

Date of Decision : 13-04-1951

Acts Referred:

Constitution of India, 1950 — Article 206(3), 283(3), 286(3), 288(3)
Essential Supplies (Temporary Powers) Act, 1946 — Section 2

Citation : (1951) 04 AP CK 0002

Hon'ble Judges : Srinivasachari, J;Qamar Hasan Aid, J

Bench : Division Bench

Advocate : Gopalrao Tuljapurkar, Pandit Venkat Rao and Pandit Hanmant Rao, for the Appellant; B. Narahari Sastri, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Srinivasachari, J.—A common question of law relating to the validity of a provision of the Hyderabad Sales Tax Act has arisen in the above two cases and so arguments were heard together ill the above cases and one order is passed to cover both the cases.

2. The Petitioners in the above cases are the proprietors of hotels and they have filed applications for the issue of Writs of Certiorari quashing the order of the Sales Tax Commissioner in so far as toe has directed the levy of tax on certain establish the Hyderabad General Sales Tax Act was passed on 14th April 1950. The items.

in the Schedule which according to the Petitioners are exempt from the levy of Sales-tax are given in Schedule I u/s 2(f) of the above Act. Section 2(f) defines exempted goods and such goods have been mentioned in Schedule 1 of the Act. The Petitioners before us contend that the items of serial Nos. 1 to 16 in the above Schedule are items which are exempt from sales-tax, it is contended that the items mentioned in. the Schedule are only indicative of the articles which are exempt from sales-tax and the list is not exhaustive. It. is argued that rice is mentioned in the Schedule as one of the items which are exempt from sales-tax & when rice has been exempted from the levy of sales-tax, any form of rice such as ''idlies'' and ''Dosas'' which only amount to a change in the form of rice should also be deemed to be exempt from the levy of sales-tax. Likewise it is argued by the Petitioners in petition No. 2 that flour has been exempted from the levy of sales-tax and conversion of flour into biscuits and pastries should not make any change in so far as levy of sales-tax is concerned.

3. It is a well recognised principle of law in relation to the interpretation of Statutes that where it has not been provided for in the Statute that the particular commodity would -be exempted from sales-tax exemption cannot be claimed by way of analogy or a priori reasoning. Conviction cannot be supplied by implication or by analogy.

4. The next argument which might be regarded ''as an argument of some import and which was advanced before us is that under Article 286, sub-article (3) of the Constitution of India no State could pass a legislation

Authorising the imposition of a tax on the sale or purchase of any of such goods which have been declared by Parliament by law to be essential for the life of the community unless it has been reserved for the consideration of the President and has received his assent.

The learned Advocates who represented the Petitioners in the above two cases elaborated their arguments by contending that the Essential Supplies Temporary Powers Act, Act 24 of 1946 has been applied to Part B States by Act No. 52 of 1950. Essential Commodities have been defined in Section 2 of the aforesaid Act and in Section 2(c) food stuffs have been included. Therefore it was urged that inasmuch as food stuffs have been, included among the essential commodities in the Essential Supplies Temporary Powers Act the State legislature could not pass any law which purported to levy a tax on a commodity which had been declared to be an essential commodity. There could not be a more fantastic argument than this.

The law relied upon by the learned Advocates, namely, the Essential Supplies Temporary Powers Act is a law which relates to the regulation, control, production, supply and distribution of essential commodities, while what is contemplated under Article 288(3) of the Constitution of India is the prohibition against the levy of tax on goods which have been declared to be essential to the life of the community. For example in the list of goods which have been classed as essential supplies, iron, steel and mica have been mentioned. Other commodities which are not essential for the life of the community have also been included in the list of essential goods. These goods surely cannot be regarded as goods which are essential for the life of the community. Therefore it is a fallacious argument to say that the essential goods mentioned in Act No. 24 of 1946 are the same as the essential commodities necessary for the life of the community mentioned in Article 283(3). No analogy can be drawn from Act No.

24 of 1946. The purpose of Act No. 14 of 1943 is entirely different from the Act which would relate to the essential commodities for the life of the community. They are not statutes in ''pari materia''.

In this connection the Advocates for the Petitioners have failed to show what goods Parliament has declared by law to be essential for the life of the community to attract the provisions of Article 206, sub-article (3). Therefore, no goods other than those mentioned in the Schedule to the Sales Tax Act can be exempted from the levy of the tax. It is only where Parliament declares any particular commodity as being essential for the life of the community that the State legislature would be incompetent to levy tax on such commodity, otherwise not. Therefore the articles in respect of which it is sought to get exemption from the levy of sales-tax are not goods which are under tire law declared to be essential for the life of the community and hence not exempt from the levy of sales-tax. It is well known that exemption under Kales Tax should be strictly construed and cannot be extended. Analogical principles cannot be invoiced for claiming exemption from taxation where such exemption is not specifically provided for. Therefore unless the Petitioner can bring the articles for which they claim exemption under any of the items mentioned in the exempted articles under the Sales Tax Act they are not entitled to exemption. In the result the applications for the issue of writs of CERTIORARI fail and are dismissed with costs. Advocate''s Fee Rs. 50/- in each case.