
(1974) 04 AHC CK 0014

In the Allahabad High Court

Case No : Civil Miscellaneous Writ No. 6153 of 1973

Mohd. Hanif

APPELLANT

Vs

The State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 24-04-1974

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Citation : (1974) 34 STC 447

Hon'ble Judges : Satish Chandra, J;H.N. Seth, J

Bench : Division Bench

Advocate : S.B.L. Srivastava, for the Appellant; Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

H.N. Seth, J.—This petition under Article 226 of the Constitution is directed against a demand notice dated 27th June, 1973, issued by the Assistant Sugar Commissioner, Moradabad, requiring the petitioner to pay a sum of Rs. 6,787.52 as purchase tax on purchase of sugarcane during the year 1972-73, along with interest, as required by the U. P. Sugarcane Purchase Tax Act, 1961.

2. The petitioner, Mohd. Hanif, holds a licence under the provisions of the U. P. Khandsari Manufacturers Licensing Order, 1967. He claims that as required by Rule 14 of the Sugarcane Purchase Tax Rules, 1961, he submitted returns every month showing the quantity of sugarcane purchased by him during the preceding month, and paid the purchase tax thereon. According to him, he has paid the entire amount of tax due for the year 1972-73 and no amount on that account was outstanding against him. The assessing officer, without complying with the provisions of the Rules, without giving the petitioner an opportunity of being heard, and without serving upon him any assessment order, issued a demand notice dated 27th June, 1973, requiring him to pay purchase tax amounting to Rs. 6,787.52 along with interest. The petitioner then filed an appeal before the Assistant Sugar Commissioner, Moradabad, which is still pending consideration.

While filing the appeal, the petitioner made a request that the proceedings for realisation of the tax, interest and penalty be stayed but respondent No. 2 rejected that request on the ground that it was not possible to do so. In the circumstances, the petitioner was left with no other alternative but to approach this court under Article 226 of the Constitution and to pray for a writ of certiorari for quashing the aforesaid notice of demand.

3. Learned counsel for the petitioner challenged the validity of the impugned notice of demand, *Inter alia*, on the ground that the Uttar Pradesh Sugarcane Purchase Tax Act, 1961, under which the aforesaid notice of demand has been issued, is invalid and unconstitutional. A perusal of the writ, petition shows that the challenge to the constitutionality of the aforementioned enactment can be classed under the following heads:

(1) The State Legislature had no jurisdiction to legislate in respect of purchase tax under item No. 54 of List II of the Seventh Schedule of the Constitution of India.

(2) The provisions of the U. P. Sugarcane Purchase Tax Act, 1961, being inconsistent with those contained in the U. P. Sales Tax Act are inoperative and result in the contravention of Article 14 of the Constitution.

(3) The U. P. Sugarcane Purchase Tax Act otherwise also contravenes Article 14 of the Constitution and is invalid, and

(4) the provisions contained in the U. P. Sugarcane Purchase Tax Act, in respect of penalty and interest leviable thereunder, are against general principles of taxation.

4. In Civil Misc. Writ No. 2791 of 1971, *Basti Sugar Mills v. State of U.P.* decided on 14th February, 1972, a Division Bench of this Court relying upon a Supreme Court decision in the case of *Andhra Sugars Ltd. v. State of Andhra Pradesh* 1868 1 S.C.R. 705 held that the subject-matter of legislation of the U. P. Sugarcane Purchase Tax Act, 1961, is covered by item No. 54 of List II of the Seventh Schedule of the Constitution and, therefore, the State Legislature had ample jurisdiction to enact the same. We are, therefore, of opinion that the Act cannot be struck down on the ground of want of legislative competence.

5. According to the petitioner, it is the U. P. Sales Tax Act which primarily deals with the levy and collection of tax on sales and purchases made in U. P. That Act lays down in detail the procedure and circumstances in which tax on purchase of commodities is to be levied, assessed and collected. Inasmuch as the U. P. Sugarcane Purchase Tax Act, 1961, lays down a procedure different from that laid down in the U. P. Sales Tax Act, it being in derogation of that Act, is invalid. Further, such different provisions in the two Acts result in a discrimination forbidden by Article 14 of the Constitution. In our opinion, there is no substance in this argument. According to Section 13 of the U. P. Sugarcane Purchase Tax Act, 1961, no sales or purchase tax under any other U. P. Act shall be payable in

respect of any transaction of sale or purchase of sugarcane in respect of which tax is payable under this Act. It, therefore, becomes clear that the U. P. Sales Tax Act of 1948 has nothing to do with the purchase tax leviable on transactions of purchase of sugarcane which are covered by the U. P. Sugarcane Purchase Tax Act, 1961. In the circumstances, no question of the provision of the U. P. Sugarcane Purchase Tax Act, 1961, being in derogation of the provisions of the U. P. Sales Tax Act, 1948, or of contravening Article 14 of the Constitution on this ground arises. This objection raised on behalf of the petitioner to the constitutionality of the Act, therefore, has also to be repelled.

6. According to the petitioner, the provisions contained in the U. P. Sugarcane Purchase Tax Act, 1961, violate Article 14 of the Constitution inasmuch as it authorises the levy and collection of purchase tax on sugarcane purchased by sugar factories and units situated in the reserved areas, but does not authorise the levy and collection of purchase tax on purchases of sugarcane made by other purchasers in the reserved areas. Essentially there is no difference in the transactions of purchase of sugarcane made by sugar factories and units situated in the reserved areas on the one hand and that made by others. The classification thus made is arbitrary and offends Article 14 of the Constitution.

7. In the counter-affidavit filed on behalf of the respondents, it is pointed out that in the reserved areas bulk of sugarcane is purchased by owners of sugar factories and units, thereby affecting the production of sugarcane and sugar in the areas. Purchasing of sugarcane by others in the areas is in very small quantity which is quite insignificant when compared to the quantity purchased by factories and units. Taking into consideration, the administrative convenience and cost of tax collection, levy and collection of purchase tax from other persons who consume very small quantity of sugarcane would not have been feasible. In the circumstances, the legislature was justified in exempting persons other than sugar factories and units (as defined in the Act) from the levy and payment of purchase tax on sugarcane. In our opinion, a classification made by a taxing statute, based on administrative convenience and cost of tax collection, is quite rational and does not offend Article 14 of the Constitution.

8. Learned counsel for the petitioner next contended that all the sugarcane purchased by units and factories is not of uniform quality. The U. P. Sugarcane Purchase Tax Act imposes purchase tax at a flat rate on all transactions of purchase of sugarcane, irrespective of its quality. Absence of a classification on this account leads to a discrimination. We are not impressed by this argument. Merely because different varieties of sugarcane are purchased by various units in a reserved area, it does not mean that in order to avoid the objection of discrimination offending Article 14, it was necessary for the legislature to provide different rates of tax in respect of each variety of sugarcane. It is only if, in view of the rate at which tax is levied on the purchase of sugarcane, the purchasers of inferior quality of sugarcane were placed in a more disadvantageous position as compared to the purchasers of sugarcane of superior variety, that a question of

discrimination would possibly arise for consideration. Non-classification of sugarcane in accordance with its quality will not lead to any discrimination, if variation in the quality of sugarcane is not very much and small amount of purchase tax at a uniform rate on its purchase does not, as compared to other purchasers, place any purchaser of sugarcane in a more disadvantageous position. In this case, the petitioner has failed to state facts or figures from which it could be inferred that non-classification of sugarcane in accordance with its quality had, for the purposes of the Act, the effect of placing any person in a more disadvantageous position as compared to any other owner of a factory or unit. We are, accordingly, not satisfied that non-classification of sugarcane in accordance with its quality has resulted in any discrimination which offends Article 14 of the Constitution.

9. Relevant portion of Section 3 of the U. P. Sugarcane Purchase Tax Act (after its amendment by U. P. Act No. 1 of 1971), reads thus

Sections (1)....

(2) The tax levied under Sub-section (2) shall be payable by the owner of the factory or the owner of the unit, as the case may be, and shall be paid on such, date, at such place and in such installments as may be prescribed.

(3) Any tax tendered under this Act if not paid by the date prescribed for the payment thereof shall carry interest at the rate of 12 per cent per annum from such date to the date of payment.

(4) Where any tax payable under this Act or interest or both, as the case may be, remains unpaid for a period of fifteen days beyond the date prescribed for payment thereof, the person liable to pay the same shall, in addition to the amount of arrears of tax and interest thereon, be also liable to pay, by way of penalty a further sum not exceeding 10 per cent of the total sum payable calculated at such rate or rates as may be prescribed.

Explanation.--Interest falling due under this sub-section shall be recovered notwithstanding that no order or notice of assessment, imposition or demand of such Interest is passed or issued by any authority.

(5) Any person aggrieved by an order of assessment under this Act or by an order imposing penalty under Sub-section (4) may within thirty days of the intimation to him of the order prefer an appeal to the Cane Commissioner....

10. Learned counsel for the petitioner urged that the section as it stands provides that in case the tax assessed is not paid by the prescribed date, the assessee becomes liable not only to pay interest at the rate of 12 per cent on the assessed amount but also to pay a penalty which may extend up to 10 per centum of the total amount outstanding. The provision for the levy of interest on the unpaid amount of tax is nothing but a penalty. The Act, therefore, contemplates double penalty which is obnoxious to the fundamental principles of taxing statute. We are unable to countenance this argument. Apart from urging

that a provision in a taxing statute which provides for payment of interest on the amount assessed and for imposition of penalty, if the tax assessed along with interest due on it remains unpaid by a particular date, amounts to a double penalty, which is against the fundamental principles of taxing statute, learned counsel for the petitioner was not able to substantiate his submission either by reference to any provision of law or to any precedent. In our opinion, a provision like the one contained in Section 3, Sub-section (4), of the U. P. Sugarcane Purchase Tax Act providing for payment of interest on the amount assessed and in case it is not so paid by a prescribed date, for imposition of penalty, does not, either amount to double penalty or contravene any fundamental principle of taxation.

11. Learned counsel for the petitioner then contended that the section contemplates a demand for levy of interest on the unpaid amount as also for levy of penalty without affording an opportunity to the person concerned to have his say in the matter. This provision accordingly is unreasonable and is liable to be struck down. In this case we find that running of interest at the rate of 12 per cent, if the tax assessed is not paid by the prescribed date, is automatic. It does not require any adjudication and the amount of interest payable can be worked out by resorting to simple arithmetical calculation. Accordingly, such a provision cannot be branded as unreasonable merely because the assessee is not heard before the amount of interest is quantified and an attempt is made to recover it. We fail to see how such a statutory provision can be said to be invalid. It is not necessary for us to go into the question with regard to the validity of the procedure adopted in levying penalty under Sub-section (4) as we do not find that, under the impugned notice dated 27th June, 1973, the respondents are seeking to recover any amount by way of penalty imposed under Sub-section (4). It is only when the respondents seek to levy and recover such penalty from the petitioner that an occasion to consider the question regarding the validity of the provisions relating to penalty proceedings may possibly arise.

12. In the end, learned counsel for the petitioner urged that he had paid all the tax that was due from him and the respondents were not justified in requiring him to pay an additional sum of Rs. 6,787.52 without making an assessment after notice or communicating the assessment orders to him. The fact that the respondents are seeking to recover the tax without making an assessment after notice to the petitioner or without serving upon him a copy of the assessment order, has been denied by the respondents. According to them, the petitioner was given due opportunity under the law to be heard before making the assessment orders. He did not avail of the opportunity except in the month of December, 1972. Assessment orders for the month of December, 1972, were served upon the petitioner personally on 23rd January, 1973, whereas those made in the months of November, 1972, and March, 1973, were sent to him by registered post acknowledgment due which were received back on 3rd January, 1973, and 27th April, 1973. The assessment order for April, 1973, was also sent under a registered cover acknowledgment due and the acknowledgment has

since been received back. So far as assessment orders for the months of January and February, 1973, were concerned, they were received by the minim of the petitioner. The petitioner has not filed any rejoinder affidavit. In the circumstances, for the purposes of this petition, we accept the case of the respondents that the assessment orders were made after intimation to the petitioner and that they had been served upon him. The recovery proceedings, therefore, cannot be interfered with on this ground either. However, this factual controversy can best be adjudicated in the appeal filed by the petitioner which is pending consideration before respondent No. 2.

13. In the result, we find no force in this petition which is dismissed with costs.