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(1975) 04 MAD CK 0012

In the Madras High Court

Case No : Tax Case No''s. 65, 68, 69 and 71 of 1973 and Revision No''s. 48, 51, 52 and 54 of 1973

Orient Pharma Private Ltd. APPELLANT

Vs

The Government of Tamil Nadu RESPONDENT

Date of Decision : 10-04-1975

Acts Referred:

General Clauses Act, 1897 — Section 8
Medicinal and Toilet Preparations (Excise Duties) Act, 1955 — Section 21, 3

Citation : (1976) 37 STC 437

Hon'ble Judges : V. Ramaswami, J;Sethuraman, J

Bench : Division Bench

Advocate : V.K. Thiruvenkatachari, for A.N. Rangaswamy and B.S. Satyanarayanan, for the Appellant; K. Venkataswami, Additional Government Pleader I, for the Respondent

Final Decision : Dismissed

Judgement

V. Ramaswami, J.—The petitioners in these cases are the manufacturers of Woodward''s Gripe Water, Williams After Shave Lotion,

Williams Lectic Shave, Metalin Oral, and allied products. They are carrying on business in the State of Tamil Nadu. For the assessment years

1961-62 to 1967-68, they submitted their returns under the Tamil Nadu General Sales Tax Act, 1959 (hereinafter referred to as the Sales Tax

Act). They had collected the tax payable on the taxable turnover. Their returns were accepted and the assessment orders were made on various

dates.

2. Prior to 1st June, 1961, the excise duty on medicinal and toilet preparations was levied under the Medicinal and Toilet Preparations (Excise

Duties) Act, 1955, on only the alcoholic contents of the preparations. But, with effect from 1st June, 1961, by a Government notification, the

excise duty became payable ad valorem on the entire quantity of the goods and not merely on the alcoholic contents. On 12th July, 1968, on an

appeal preferred by one Messrs. T. T. Krishnamachari & Company, who were dealers, among others, in Woodward''s Gripe Water, the

Appellate Assistant Commissioner, Madras, took the view, purporting to rely on an earlier order of the Tribunal, that by virtue of Section 8 of the

General Clauses Act, 1897, any excise duty levied or leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, should be

equated to an excise duty levied or leviable u/s 18-A of the Madras Prohibition Act, 1937. In that view, he held that the turnover relating to the

sale of Woodward''s Gripe Water in respect of which excise duty had been paid under the Medicinal and Toilet Preparations (Excise Duties) Act,

1955, were entitled for exemption u/s 8 read with item 3 of the Third Schedule to the Sales Tax Act.

3. On 31st December, 1968, the petitioners filed two petitions before the Deputy Commercial Tax Officer, Tambaram, who was the assessing

authority for refund of the tax paid by them in respect of the assessment years 1961-62 to 1967-68. In these petitions, they claimed that the

products sold by them contained alcohol and were exempt from tax u/s 8 read with item 3 of the Third Schedule to the Sales Tax Act and they

have been submitting their returns in respect of the sale of these goods and paying the sales tax as they were not aware, at that time, that the goods

were exempt under the said provision. They also claimed that they came to know of the correct legal position only in January, 1968. It was further

submitted by them that since the payments were made on a mistake of law, the Government cannot appropriate the amounts and that they were

entitled for refund of the tax paid. They also relied on the decision of the Appellate Assistant Commissioner in the case of T.T. Krishnamachari &

Company.

4. The assessing officer rejected these petitions. The appeals filed by the petitioners were also dismissed by the Appellate Assistant Commissioner

as filed out of time, on a mistaken impression that the appeals were against the original assessment orders themselves.

5. On a further appeal, since there is no provision in the Sales Tax Act or the

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Rules framed thereunder for refund of sales tax assessed and

collected, the Tribunal treated these petitions as filed u/s 55 of the Sales Tax Act for rectification of the assessment orders. The petitions relating to

the assessment years 1961-62 to 1963-64 were dismissed by the Tribunal as filed beyond the period of limitation prescribed u/s 55. In respect of

the petitions relating to the assessment years 1964-65 to 1966-67, the Tribunal held that there was no error or mistake of law apparent on the face

of the record, which could have been rectified u/s 55 and, in that view, dismissed those petitions as well.

6. These four tax revision cases related to the rectification petitions for the assessment years 1964-65 to 1966-67, which were dismissed on the

ground that there was no error or mistake of law apparent on the face of the record.

7. u/s 8 read with item 3 of the Third Schedule to the Sales Tax Act, a dealer who deals in ""any goods on which duty is levied or leviable under the

Madras Prohibition Act, 1937 (Madras Act 10 of 1937), or the Opium Act, 1878 (Central Act 1 of 1878), on the entire quantity of such goods

and not merely on any ingredient, which forms part of such goods"" shall not be liable to pay any tax in respect of such goods. The Tribunal dealt

with the question as if the goods were exempt under this provision and proceeded to consider whether the provision of Section 55 is attracted and

held, as already stated, that there was no error or mistake of law on the face of the record, which could be rectified under that provision.

8. But, in these petitions, the learned Government Pleader contended that the goods were not at all exempt u/s 8 read with item 3 of the Third

Schedule and they were correctly assessed. It has, therefore, become necessary to deal with the question as to whether these goods were exempt

at all.

9. The argument of the learned Counsel for the petitioners was that Woodward''s Gripe Water, Williams After Shave Lotion, Williams Lectic

Shave, Metalin Oral and allied products manufactured by the petitioners were ""liquor"" within the meaning of the Madras Prohibition Act, 1937.

The excise duty on the manufacture of these goods was levied and leviable u/s 18-A of the Madras Prohibition Act, 1937. On and from 1st April,

1957, such duty is levied or leviable under the Medicinal and Toilet Preparations

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(Excise Duties) Act, 1955, which repealed Section 18-A and re-

enacted that provision as a levy under a Central Act. Therefore, by virtue of Section 8 of the General Clauses Act, 1897, any reference made to

the excise duty levied or leviable under the Madras Prohibition Act, 1937, in the Sales Tax Act, shall be construed as a reference to the

corresponding provision re-enacted under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. In other words, according to the

learned Counsel, any excise duty levied or leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, shall be deemed to

have been levied or leviable under the Madras Prohibition Act, 1937.

10. Per contra, the learned Government Pleader contended that the Sales Tax Act was enacted and came into force in 1959, long after the

Medicinal and Toilet Preparations (Excise Duties) Act, 1955. But, there was no reference to this Central Act in item 3 of the Third Schedule. On

the other hand, the entry referred to only the duty levied or leviable under the Madras Prohibition Act, 1937. In the absence of any specific

exemption of goods on which the duty is levied or leviable under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the petitioners

are not entitled to ask for exemption.

11. We are proceeding to consider these rival contentions on the assumption that the goods manufactured by the petitioners contained alcohol and,

therefore, satisfied the definition of ""liquor"" under the Madras Prohibition Act, 1937. But, we want to make it clear that the learned Government

Pleader did not concede this point, though the Tribunal also proceeded on the basis that these goods satisfied the definition of ""liquor"" under the

Prohibition Act, 1937. If these preparations were ""liquor"" within the meaning of that definition, the excise duty should have been levied u/s 18-A of

the Madras Prohibition Act, 1937, in respect of the manufacture of these goods.

12. Item 48 of List II in the Seventh Schedule to the Government of India Act, 1935, conferred legislative power on the State Legislatures to levy

duties of excise on medicinal and toilet preparations containing alcohol, manufactured or produced in the State. In exercise of this power, many

State Legislatures had, prior to the Constitution, enacted laws imposing excise duty on these goods. Some States had enacted separate laws on

excise and some others had made these levies as part of their Prohibition Acts.

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13. So far as the State of Tamil Nadu is concerned, Section 18-A was inserted by Madras Act 19 of 1948 in the Madras Prohibition Act, 1937,

authorising levy of excise duty. The relevant portion of this section reads as follows:

An excise duty or countervailing duty of such amount as the State Government may, by notification in the Fort St. George Gazette, specify from

time to time shall, if they so direct, be levied on all liquors and intoxicating drugs permitted to be imported, exported, transported, manufactured,

issued from any manufactory or institution or sold, under the provisions of this Act or any rule, notification, licence or permit issued thereunder.

14. Under the Constitution, the duties of excise on medicinal and toilet preparations containing alcohol manufactured or produced in India had now

been made a Central subject. But, Article 277 provided that any duties, which immediately before the commencement of the Constitution were

being lawfully levied by the Government of any State, notwithstanding that those duties are now mentioned in the Union List, may be continued to

be levied until provision to the contrary is made by Parliament by law. Thus, until Parliament made any law relating to the medicinal and toilet

preparations, the States were permitted to continue the levies of excise on such preparations which they were levying immediately before the

commencement of the Constitution. In order to secure uniformity in the rates of excise duty and for uniform procedure for collection therefor, in

exercise of its legislative power under the Constitution, the Parliament enacted the Medicinal and Toilet Preparations (Excise Duties) Act, 1955.

Section 21 of this Act, which repealed the corresponding provisions in the State Acts, read as follows :

21. Repeals and savings.--If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act,

that law is hereby repealed :

Provided that all rules made, notifications issued, licences or permits granted, powers conferred under any law hereby repealed shall, so far as they

are not inconsistent with this Act, have the same force and effect as if they had been respectively made, issued, granted or conferred under this Act

and by the authority empowered hereby in that behalf.

15. Thus, excise duties are now levied or leviable under this Act only on and from

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1st April, 1957, when the Act came into force.

16. The duties of excise u/s 3(2) of the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, are leviable, where the dutiable goods are

manufactured in bond, in the State in which such goods are released from bonded warehouse for home consumption, whether such State is the

State of manufacture or not, and in other cases the State in which such goods are manufactured.

17. In these cases, it was not the case of the petitioners that the goods are manufactured in bond. Therefore, it is the State of Tamil Nadu, in which

the goods are manufactured, that is entitled to levy the duty. Thus, on and from 1st April, 1957, the excise duties are levied or leviable on these

goods in this State under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. Section 8 of the General Clauses Act, 1897, which was

relied on by the learned Counsel for the petitioners in support of his argument that any excise duty levied or leviable under the Medicinal and Toilet

Preparations (Excise Duties) Act, 1955, should be equated or deemed to be an excise duty levied or leviable under the Madras Prohibition Act,

1937, reads as follows:

Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification,

any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a

different intention appears, be construed as references to the provision so re-enacted.

18. The scope of this section came up for consideration before the Supreme Court in State of Punjab and Others Vs. Sukh Deb Sarup Gupta, . It

was held that the words ""former enactment"" in Section 8 refers to both a Central Act or a provision thereunder, as also a State Act or a provision

contained therein. It follows, therefore, that to the repeal of Section 18-A in so far as it imposed the duty on medicinal and toilet preparations and

the re-enactment of that levy in the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the provision of Section 8 is applicable. But, the

difficulty is in understanding the enactment which is referred to in the words ""references in any other enactment or in any instrument to the provision

so repealed"" in that section. There could be no doubt that this reference is to

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the enactment which came to be made between the ""former

enactment"", which was repealed and the repealing and re-enacting Central Act. The decision of the Supreme Court referred to above also related

to such a case. But, in the instant case, Section 18-A in the Madras Prohibition Act, 1937, was repealed by the Medicinal and Toilet Preparations

(Excise Duties) Act, 1955, but the Tamil Nadu General Sales Tax Act, 1959, which referred to the duty levied or leviable under the Madras

Prohibition Act, 1937, came into force subsequent to the repeal of Section 18-A.

19. The point for consideration is whether the reference to the Madras Prohibition Act, 1937, in the Sales Tax Act can be construed as a

reference to the Prohibition Act as it was in force prior to the repeal of Section 18-A.

20. Thiru V. K. T. Chari, the learned Counsel for the petitioners, while accepting that normally ""references in any other enactment"" referred to in

Section 8 would comprehend within it an enactment which came between the enactment repealed and the Central Act, which repealed and re-

enacted, contended that there is an exception to this normal rule of interpretation. According to the learned Counsel for the petitioners, if the repeal

is not of the whole Act, and was only of a provision, then ""any reference to the former enactment"" in any subsequent enactment, whether such

subsequent enactment was made prior to or after the repealing and re-enacting Act, should be construed as a reference to the provision so re-

enacted.

21. We are unable to agree with this contention of the learned Counsel. When the Tamil Nadu General Sales Tax Act, 1959, referred to the

Madras Prohibition Act, 1937, in the Third Schedule, it can only be a reference to the Act as it was in force on the date when the Sales Tax Act

came into force. There is no possibility of reading the provisions as referring to the Madras Prohibition Act as in force on any other date. Thus, in

item 3 of the Third Schedule, reference to the Prohibition Act could not be interpreted as the Madras Prohibition Act, 1937, as was in force prior

to the Medicinal and Toilet Preparations (Excise Duties) Act, 1955. When an Act is repealed and re-enacted, nobody will refer to the repealed

Act in any subsequent enactment. Nor, is it possible to read the provisions of the Medicinal and Toilet Preparations (Excise Duties) Act into the

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Madras Prohibition Act.

22. We have, therefore, no doubt that the reference to the Madras Prohibition Act in item 3 of the Third Schedule is to the Madras Prohibition

Act, as in force on the date when the Sales Tax Act came into force and not on any date earlier. On the date when the Sales Tax Act came in to

force, the excise duty leviable u/s 18-A had already been repealed and, therefore, if the legislature wanted to exempt any goods that are subject to

excise levy under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the legislature should have made a specific reference in item 3.

In fact, in 1972, by a notification the Government have exempted those goods, which have been subjected to excise duty under the Medicinal and

Toilet Preparations (Excise Duties) Act, 1955, from the levy of sales tax. But, that notification is not applicable to the assessment years in question.

23. We are, therefore, of the opinion that the medicinal and toilet preparations manufactured by the assessees were not entitled to the exemption

u/s 8 of the Sales Tax Act.

24. Since we have come to the conclusion that the goods are not at all exempt from the levy of sales tax, the further question whether there was

any error or mistake of law on the face of the record, which could only be on the basis that the goods are exempt, does not arise.

25. For the foregoing reasons, we dismiss these cases with costs. Counsel''s fee Rs. 150 in each.

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