

(1956) 09 P&H CK 0010

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 13 of 1954

Prem Narain and Co.

APPELLANT

Vs

The Excise and Taxation Commissioner, Punjab and Another

RESPONDENT

Date of Decision : 11-09-1956

Acts Referred:

East Punjab General Sales Tax Act, 1948 — Section 5

Citation : AIR 1957 P&H 208 : (1957) 8 STC 1

Hon'ble Judges : Bhandari, C.J.;Khosla, J

Bench : Division Bench

Advocate : Man Mohan Singh, for the Appellant; K.S. Chawla, for the Respondent

Final Decision : Dismissed

Judgement

Khosla, J.—This is an appeal under Clause 10 of the Letters Patent against the order of Kapur J., dismissing the appellant's petition in which he challenged the levy of sales tax upon agricultural machinery in which he deals.

2. The petition was dismissed on the ground that the petitioner had not exhausted his remedy under the Sales Tax Act. Kapur J., followed a decision of this Court in Kandhari Oil Mills and Others Vs. Excise and Taxation Commr. and Another, Mr. Manmohan Singh Gujral has, however, brought to our notice certain decisions of the Supreme Court and argued that where the vires of a certain Act are being challenged it is not necessary for the aggrieved party to exhaust all the remedies under the Act before he moves the High Court by means of a petition under Article 226 of the Constitution. We have heard Mr. Manmohan Singh on the merits of the case and we have come to the conclusion that there is no force in the petition or in the appeal.

3. The petitioner deals in agricultural machinery and he was asked to pay sales tax under the Punjab Sales Tax Act on machinery sold by him. His contention is that agricultural machinery is one of the commodities which have been exempted from the levy of sales tax on the ground that this commodity is essential to the

life of the community. He has drawn our attention to Central Act 52 of 1952 by means of which certain goods which are essential for the life of the community have been exempted from sales tax. Agricultural implements and agricultural machinery are among the commodities so exempted.

3a. The Act under which this tax is levied is Act 46 of 1948 (The East Punjab General Sales Tax Act) as amended by Act 19 of 1952. The relevant section of the old Act reads as follows:

"5. Subject to the provisions of this Act, there shall be levied on the taxable turnover every year of a dealer a tax at such rates as the Provincial Government may by notification direct.

* * * * *

Mr. Manmohan Singh argues that this Act gave the Provincial Government complete discretion in the matter of the rate of sale tax and the Act was therefore bad. An amendment was introduced by Punjab Act 19 of 1952. By this amendment some words were added to Section 5 and an upper limit on the tax which could be levied by Government was fixed at two pice in the rupee. The words added were:--

"not exceeding two pice in a rupee".....

and it was provided by the Act that these words "shall be deemed always to have been so inserted". This Act was passed on 20th November, 1952. In the meantime the Central Act 52 of 1952 had been passed and Section 3 of this Act reads :--

"No law made after the commencement of this Act by the legislature of a State imposing, or authorising the imposition of, a tax on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect unless it has been reserved for the consideration of the President and has received his assent."

A Schedule to this Act contains a list of the goods essential for the life of the community and item II is:--

"Fertilisers and manures, agricultural machinery and implements, including parts of such machinery and implements."

The contention of Mr. Manmohan Singh therefore is that no Act which did not fix the exact rate of the sales tax nor fixed the upper limit was bad because it amounted to improper delegation of legislative powers. Central Act 52 of 1952 imposed an embargo on all Acts which taxed agricultural machinery.

The defect in the original act was removed too late by Punjab Act 19 of 1952 and therefore the old Act of 1948 must be deemed to have been enacted in 1952, that is after the embargo on such Acts had been placed by the Central Act 52 of 1952.

4. The amending Act (Punjab Act 19 of 1952) however provided that the upper limit of two pice in the rupee shall be deemed to have been included in the original Act from the very beginning. The defect, if any existed, was therefore removed with retrospective effect. The removal of the defect does not mean that the Act was enacted at the time the amendment was made. The Act which sanctioned the imposition of sales tax had existed since 1948 and the policy of imposing sales-tax had been declared and legalised in 1948. The tax had been levied from traders and had been paid by them regularly without protest.

The validity of this Act was never challenged and when in 1952 the defect was removed, if there was any invalidity attaching to the Act it must be deemed to have been removed retrospectively. Therefore it cannot be said that by virtue of Central Act 52 of 1952 the Punjab General Sales Tax Act of 1948 became invalid. The removal of a defect retrospectively does not render the Act invalid, I am therefore of the opinion that the Act is intra vires and that the levy of the tax from the appellants cannot be held to be illegal merely because of the provisions of the Central Act, 52 of 1952. This appeal must fail and I would dismiss it with costs.

Bhandari, C.J.

5. I agree.