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**(1966) 04 P&H CK 0020**

**In the Punjab And Haryana At Chandigarh**

**Case No :** Letters Patent Appeal No. 143 of 1965

Punjab State and Others

APPELLANT

Vs

Sukh Dev Sarup Gupta

RESPONDENT

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**Date of Decision :** 06-04-1966

**Acts Referred:**

General Clauses Act, 1897 — Section 8

**Citation :** AIR 1967 P&H 416 : (1966) 18 STC 426

**Hon'ble Judges :** D. Falshaw, C.J;H.R. Khanna, J

**Bench :** Division Bench

**Advocate :** C.D. Dewan, Deputy Advocate General, for the Appellant; M.S. Jain and Parkash Chand Jain, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

H.R. Khanna, J.—This appeal under Clause 10 of the Letters Patent by the Punjab State and two others is directed against the order of learned Single Judge whereby he accepted the petition under Articles 226 and 227 of the Constitution of India filed by Sukh Dev Sarup Gupta respondent and quashed the orders of the Sales Tax authorities assessing the respondent with liability to pay sales-tax.

2. The respondent is running a factory for manufacturing spirituous and medicinal preparations containing alcohol at Jind in district Sangrur under the name and style of K. Pharmaceutical Works. Before the coming into force of the Constitution of India on 26th January, 1950 the manufacture of medicinal or toilet preparations containing alcohol was liable to excise duty under Clause (c) of Sub-section (6) of Section 3 of the Punjab Excise Act (1 of 1914). The item of medicinal preparations containing alcohol was included in the Provincial Legislative list at No. 40 in the seventh schedule of the Government of India Act, 1935. Punjab General Sales Tax Act came into force in 1948, and according to its provisions sales-tax was levied on sale of goods except articles which were exempted from payment of such tax. Entry No. 37 of Schedule "B" of the Sales Tax Act exempted "all goods on which duty is or may be levied under the Punjab

Excise Act 1914" from payment of sales tax. As medicinal or toilet preparations containing alcohol were subject to excise duty under the Punjab Excise Act, the same were exempt from sales-tax. Under the Constitution the item of medicinal and toilet preparations containing alcohol was transferred to the Union List at entry No. 84 in List I of seventh Schedule to the Constitution. In view of the provisions of Article 277 of the Constitution the State Government continued to levy excise duty on medicinal and toilet preparations containing alcohol even after 26th January 1950. In 1955 the Union Parliament enacted Medicinal and Toilet Preparations (Excise Duties) Act (hereinafter referred to as the Central Act) dealing with the subject of the imposition of excise duty on medicinal and toilet preparations containing alcohol. The object of this enactment was to bring about a uniformity as regards the rate of imposition of excise duty on alcoholic preparations and to have a uniform procedure and regulation regarding the export and import thereof from one State to another. Section 21 of the Act provided that if, immediately before the commencement of the Act, there was in force in any State any law corresponding to the Act, that law was thereby repealed. Although the rates of excise duty were made uniform by the above Act, the collection of the excise duty continued to be done by the State Government authorities and the duties so collected went to the State exchequer. Notices were issued to the respondent by Sales Tax authorities for assessment of the sales-tax in respect of medicinal preparations containing alcohol and he was assessed for payment of various amounts as sales-tax for the years 1959-60, 1960-61 and 1961-62. The respondent thereupon filed petition under Articles 226 and 227 of the Constitution of India on the allegation that no sales-tax was payable in respect of medicinal preparations containing alcohol as was the position before the enactment of the Central Act.

3. The petition was resisted by the appellants and the only point which seems to have been agitated before the learned Single Judge was about the effect of the enforcement of the Central Act. The case of the appellants was that as the excise duty was being imposed on medicinal preparations containing alcohol not under the provisions of the Punjab Excise Act but under the provisions of the Central Act the respondent could not take advantage of the exemption granted by entry No. 37 in Schedule "B" of the Punjab General Sales Tax Act. This contention was repelled by the learned Single Judge and he in this connection relied upon provisions of Section 8 of the General Clauses Act. The petition of the respondent was, consequently, allowed and the demand notices issued to the respondent as well as the assessment orders were quashed.

4. In appeal Mr. Dewan on behalf of the appellants has argued that the learned Single Judge was in error in relying upon Section 8 of the General Clauses Act. The relevant part of the section reads as under: --

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

According to Mr. Dewan the words ""former enactment" in the portion of the section reproduced above have reference to Central enactment and not to State enactment. As Punjab Excise Act was a State enactment and not a Central enactment, Mr. Dewan concludes, the provisions of Section 8 would not be attracted. There is no force, in our view, in the above-contention. The words of the part of Section 8 reproduced above are of a general character and their effect is that where any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, repeals and re-enacts, whether 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 taken as references to the provision so re-enacted. There is nothing in Section 8 to indicate that the words "former enactment" mean only a Central enactment and not a State enactment, and the Courts would not be justified in reading in that section words which are not there and thereby to place a narrow and limited construction on the words "former enactment". A central enactment can repeal and re-enact the provisions of a previous Central enactment as well as those of a previous State enactment, and we find no valid reason to hold that the words "former enactment" have reference only to the former Central enactment and not to former State enactment. We, therefore, affirm the finding of the learned Single Judge.

5. The appeal, consequently, fails and is dismissed, but, in the circumstances, "we leave the parties to bear their own costs.

D. Falshaw, C.J.

6. I agree.