(1963) 03 P&H CK 0035

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 1836 of 1962

Sewak Hotel APPELLANT

Vs

The Assessing Authority and Another RESPONDENT

Date of Decision : 15-03-1963

Acts Referred:

Constitution of India, 1950 — Article 226
Punjab General Sales Tax (Amendment) Act, 1962 — Section 1(2), 3
Punjab General Sales Tax Act, 1948 — Section 11(4), 11(5), 6, 6(1)

Citation : (1963) 2 ILR (P&H) 454

Hon'ble Judges : Daya Krishan Mahajan, J

Bench : Single Bench

Advocate : G.C. Mittal, for the Appellant; M.S. Punnu, D.A.G., for the Respondent

Final Decision : Allowed

Judgement

Daya Krishan Mahajan, J.—This is a petition under Article 226 of the Constitution by Messrs Sewak Hotel, Bhatinda, through Hari Chand partner of the firm, and is directed against the order of the Assessing Authority proceeding to assess the Petitioner-firm to sales tax with effect from the 1st April, 1959, to the 31st March, 1960.

2. Two contentions have been advanced by the learned Counsel for the Petitioner, namely;--

(i) that the Petitioner was exempted from the levy of sales-tax u/s 6 of the Punjab General Sales-tax Act and that the exemption was withdrawn by Punjab Act 8 of 1962, which came into force on the 2nd June, 1962, and, therefore, unless there is a specific provision charging sales-tax retrospectively the firm cannot be made liable to pay the sales-tax retrospectively; and

(ii) that the best-judgment assessment which was made on 21st September, 1962, was made without notice and hence the assessment is in violation of the provisions of Section 11(4) and (5) of the Act, and, therefore, illegal.

3. It is not necessary to deal with the second contention because, in my opinion, the first argument is sound and must prevail. Act No. 8 of 1962, as I have already said, came on the statute book on the 2nd of June, 1962, and by Section 3 of the amending Act, item No. 49 in Schedule B to the Principal Act was omitted and this omission was made retrospective. (Item No. 49 is to be deemed to be omitted with effect from the 1st day of April, 1959, by reason of Section 1(2) of the Amending Act). It is significant that at the time when the exemption was granted, Section 1(2) of the amending Act was not on the statute book. The exemption, therefore, could be and was validly granted. That exemption was enjoyed right up to the date of the amendment which came into force on the 2nd of June, 1962. The exemption was not withdrawn at any stage before 2nd of June, 1962. For the period in dispute the Petitioner has been specifically granted exemption u/s 6(1) of the Act and, by reason of this he was not liable to sales-tax. The effect of the amendment no doubt is to withdraw that exemption. The withdrawal of the exemption by the deeming provision retrospectively cannot in fact obliterate the actual fact, namely, that the exemption has been enjoyed and at the time when the exemption was enjoyed it was lawfully enjoyed. No deeming provision can make what is lawful unlawful. If the Legislature wants to impose a tax retrospectively it would say so. The authorities cannot recover a tax retrospectively by recourse to the deeming provision which merely withdraw the exemption. I cannot attribute to the Legislature an intention to take away the exemptions enjoyed by persons who were lawfully exempted from the tax under the Act. If the Legislature wanted to do so, it would have expressly said so. There is no provision in the amending Act authorising levy of sales-tax retrospectively, and the tax which had not been imposed cannot be deemed to have been imposed by recourse to Section 3 read with Section 1(2) of the amending Act, as is sought to be done by the authorities in this case. In my view, therefore, the contention of the learned Counsel is sound and must prevail. The sales tax cannot be levied for the period in dispute.

4. For the reasons given above, this petition is allowed and the order of the Assessing Authority is quashed. In the circumstances of the case, however, there will be no order as to costs.

