

(1978) 10 P&H CK 0010
In the Punjab And Haryana At Chandigarh
Case No : Civil Writ Petition No. 1343 of 1974

Shiv Shankar Dall Mills

APPELLANT

Vs

The Assessing Authority and Another

RESPONDENT

Date of Decision : 23-10-1978

Acts Referred:

Constitution of India, 1950 — Article 19
Punjab General Sales Tax Act, 1948 — Section 10

Citation : (1979) 43 STC 191

Hon'ble Judges : S.S. Sandhawalia, C.J.; S.C. Mital, J

Bench : Division Bench

Advocate : R.P. Sawhney, for the Appellant; S.C. Mohunta, Advocate-General, for the Respondent

Final Decision : Dismissed

Judgement

S.S. Sandhawalia, C.J.—The retrospectivity accorded to item No. 34 in Schedule B of the Haryana General Sales Tax Act, 1973, with effect from 20th May, 1955, is the primary and indeed the sole subject-matter of challenge in this writ petition.

2. It is unnecessary to advert to the facts in detail and indeed the learned counsel for the petitioner-firm himself hardly adverted to them. It suffices to mention that the petitioner-firm which is engaged in the business of commission agency and sale of foodgrains, including the chhilka of food-grains, was assessed to sales tax by two separate assessment orders with regard to the sale of the latter commodity. The petitioner-firm challenged the imposition of sales tax on the sale of chhilka of foodgrains by way of appeal and following a Division Bench judgment of this Court, the Appellate Tribunal held that no sales tax was leviable thereon and in consequence thereof, the petitioner secured a refund of Rs. 3,696.99 in respect of sales tax on the sale of chhilka of foodgrains by it during the relevant years of 1969-70 and 1970-71. Meanwhile, the Haryana General Sales Tax. Act, 1973, was promulgated and by virtue of Section 1(3) thereof,

item No. 34 in Schedule B thereof was given retrospectivity with effect from 20th May, 1955. The Assessing Authority, Jind, thereupon issued the following notice to the petitioner-firm directing it to redeposit the amount already refunded:

Haryana Government has amended item No. 34 appended to the Schedule B of the Haryana General Sales Tax Act with effect from 20th May, 1955, as a result of which chhilka of foodgrains became liable to tax with retrospective effect, i.e., 20th May, 1955. In view of validation made by the Haryana Government, you are required to redeposit the amount already refunded to you on account of sale of chhilka sold by you during the years 1969-70 and 1970-71.

Please take notice and appear in person or through your authorised agent on 8th February, 1974, at 9-00 A. M. at Jind and state as to why the amount be not recovered from you on this account. The amount is tabulated as under:....

If you fail to comply as directed, ex parte decision would be made and recovery would be effected according to law.

3. Aggrieved by the above, the petitioner preferred the present writ petition to challenge the notice and the retrospectivity of the provisions on which it is based.

4. As would appear hereinafter, the matter appears to us as concluded against the petitioner by a Division Bench judgment of this Court which is on all fours. It, therefore, suffices to briefly indicate the grounds of the challenge and the manner in which they stand repelled in the said judgment.

5. Section 6(1) of the Haryana General Sales Tax Act, 1973 (hereinafter called as the Act), specifies the incidence of taxation whilst the proviso thereto lays down that Sub-section (1) shall not apply to a dealer who deals exclusively in goods specified in Schedule B. Item No. 34 in the said schedule, the retrospectivity whereof is under challenge, reads:

Fodder of every type (dry or green) but not including oil-cakes, guar giri and chhilka of foodgrains and pulses.

6. By virtue of the fast item u/s 1(3) of the Act, this item would be deemed to have come into force with effect from 20th May, 1955.

7. The mare of legislative changes with regard to the goods covered by the aforementioned item No. 34, which had preceded the enforcement of the Act on 5th May, 1973, is so tangled that it can hardly be noticed in all its details. It suffices to mention that in the predecessor statute of the Punjab General Sales Tax Act, 1948, the precursor of the aforesaid item was item No. 54 of Schedule B, which was in the following terms:

Fodder of every type (dry or green).

8. In the said schedule, item No. 15 pertains to husk of all foodgrains and pulses. On the formation of the State of Haryana on 1st November, 1966, the aforesaid provisions of the Punjab General Sales Tax Act were also extended to the newly

created State of Haryana. However, by Notification No. S. O. 218/P. A. 46/48/S. 6/70 dated 21st August, 1970, an amendment was made in Schedule B, whereby item No. 15 in the aforesaid statute was deleted and item No. 54 was substituted by the following :

Fodder of every type (dry or green) but not including chhilka of food-grains and pulses.

9. Later, by Haryana Act No. 19 of 1972, the aforesaid item No. 54 was again amended, whereby chhilka of foodgrains was again excluded from the net of taxable items. Then followed the Haryana General Sales Tax Act, 1973, wherein the corresponding item now is No. 34 in Schedule B thereof which, as already noticed, has been given retrospective effect from 20th May, 1955.

10. Having noticed the legislative history, one may now briefly advert to the nature of challenge laid to the constitutionality of the retrospective effect given to item No. 34. Mr. Sawhney had contended that in fact this amounted to an altogether fresh levy of tax on goods which were otherwise not exigible to sales tax. It was further assailed on the ground of the length of retrospectivity which, according to the counsel, was of an inordinately long period of nearly 18 years. On these premises, it was submitted that prima facie this was a wholly unreasonable and unguided inroad into the petitioner's fundamental right to carry on its business and profession and was, therefore, violative of Article 19(1) (f) and (g).

11. To our mind, it is unnecessary to advert to these contentions seriatim or in any way in detail. A conclusive answer is provided to all the contentions by the binding precedent of their Lordships of the Supreme Court in *Hiralal Rattanlal Vs. State of U.P. and Another etc. etc.*, . Nearer home, the matter is equally concluded by the Division Bench judgment in *Punjab Copra Crushing Oil Mills v. State of Punjab and Ors.* 1973 R.L.R. 698. Therein, the virtually identical retrospective effect given to item No. 54 of the Punjab General Sales Tax Act with effect from its date of commencement in 1948 by the Punjab General Sales Tax (Amendment and Validation) Act, 1972, was put under challenge. Section 10(1) of the Punjab General Sales Tax (Amendment and Validation) Act, 1972, was in the following terms :

The amendments made in Schedules A and B of the principal Act by Notifications No. S. O. 7/P. A. 46/48/S. 5/71 dated the 15th February, 1971, and No. S. O. 8/P. A. 46/48/S. 6/71 dated the 15th February, 1971, respectively, shall be deemed to be in force during the period commencing on the 18th day of July, 1967, and ending on the 14th day of February, 1971, and amendment made in Schedule B by Notification No. S. O. 3/P. A. 46/48/"S. 6/ Amd./72 dated the 18th January, 1972, shall be deemed to be in force from the date of commencement of the principal Act.

(Emphasis supplied).

12. The penultimate part of the aforesaid sub-section gave retrospective effect to the amending notification of 18th January, 1972, with effect from the date of the commencement of the principal Act. Notification No. S. O. 3/P. A. 46/48/S. 6/Amd./72 dated 18th January, 1972, amended items Nos. 44 and 54, as follows :

In the said schedule, for items 44 and 54, the following items shall be substituted respectively, namely :-

"44. Fertilizer except oil-cakes.

54. Fodder of every type (dry or green) except oil-cakes."

13. Reading Section 10(1) of the aforesaid Act along with the amended item No. 54 (which admittedly is similar to the impugned item No. 34 of Schedule B of the Haryana Act), it is plain that retrospective effect of nearly 24 years was given to this provision by virtue of the legislative changes. This retrospectivity was made the subject-matter of pointed challenge before the Bench in Punjab Copra Crushing Oil Mills" case 1973 R.L.R. 698. In an elaborate and exhaustive judgment, Dhillon, J. (with whom Pandit, J., concurred), repelled every conceivable constitutional challenge to the said provisions and dismissed all the writ petitions. The observations in the aforesaid case appear to cover the present one on all fours. In our view, it would be wasteful to tread the same ground all over again. Following the said judgment, we repel the contentions raised on behalf of the petitioner and uphold the retrospectivity of item No. 34 of Schedule B of the Haryana General Sales Tax Act, 1973.

14. The petitioner, however, would not be precluded by this judgment from prosecuting any statutory remedies which may be available to it strictly by virtue, of Section 58 of the Constitution (42nd Amendment) Act, 1976, against the notice, annexure P-I. The writ petition being without merit is hereby dismissed. The parties, however, will bear their own costs.

S.C. Mital, J.

15. I agree.