
(1993) 08 SC CK 0080

In the Supreme Court Of India

Case No : Civil Appeal No. 2776 Of 1980

Siddho Mal Paper Conversion Co.

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 25-08-1993

Acts Referred:

Citation : (1995) 3 SCC 239 Supp

Hon'ble Judges : S. P. Bharucha, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. THIS appeal by special leave impugns the judgment of the High court at Allahabad whereby the writ petition filed by the appellant was dismissed and the U. P. Sales of Motor Spirit, Diesel Oil and Alcohol Taxation (Amendment) Act, 1976 was upheld.
2. The appellant carries on the business of printing and processing wrappers used as flexible packing material. For the purposes of such printing and processing the appellant purchases and uses denatured spirit, which is an alcohol.
3. ON 23/4/1974 the governor of the respondent-State issued an Ordinance (9 of 1974 called the U.P. Sales of Motor Spirit, Diesel Oil Taxation (Amendment) Ordinance whereby alcohol was added as a taxable commodity in the U.P. Sales of Motor Spirit, Diesel Oil and Alcohol Taxation Act, 1939 and tax was sought to be levied on the first sale of alcohol with effect from 2/5/1974. This Ordinance, later on enacted as U.P. Act 12 of 1974, amending the Act of 1939, was challenged by M/s Kesar Sugar Works Limited before the Allahabad High court. On 11/7/1975 the Allahabad High court held inter alia that the said Ordinance and Act of 1974 insofar as they referred to alcohol were bad in law and quashed the same.
4. ON 16/4/1976 the governor of the respondent-State gave his assent to the U. P. Sales of Motor Spirit, Diesel Oil and Alcohol Taxation (Amendment) Act, 1976 ,

and it is this validating Act which was challenged by the appellant in the writ petition filed before the Allahabad High court. The Allahabad High court rejected the contentions of the petitioner and upheld the said Act.

5. LEARNED counsel for the appellant submitted that the retrospective levy of the purchase tax on alcohol by the said Act with effect from 2/5/1974 was, in the facts and circumstances of the case, confiscatory in nature because the appellant had not collected as part of the price of its finished products the element of the purchase tax. It was also submitted that in the absence of Rules, as required by the charging section of the said Act, the levy and collection thereunder was without authority of law.

6. IN the first place, it must be pointed out that the original Ordinance and Act of 1974 imposed purchase tax on the first sale of alcohol with effect from 2/5/1974 and these provisions were in operation until the Allahabad High court struck them down on 11/7/1975. The appellant was, therefore, in a position to include the element of the purchase tax in the price of its products, had it so desired, for the said period. In any event, that the appellant was unable to pass on the element of the purchase tax to the purchasers of its products is not a ground for holding that the levy is confiscatory in nature and, therefore, outside the purview of the State's power to levy and collect tax.

7. INSOFAR as the second contention is concerned, learned counsel for the appellant drew our attention to the judgment of this court in Kantilal Babulal v. H.C. Patel, STO. This was a case where neither the provisions of the statute nor any rule framed under the statute contemplated any enquiry whereat the dealer could satisfy the taxation authorities that their presumptions were erroneous. It was held that, in such a situation, the forfeiture which the statute provided for, prima facie, infringed Article 19(1)(f) and it was for the taxation authorities to satisfy the court that the concerned provision of the statute was a reasonable restriction. The judgment has no application to the instant case.

8. The section of the said Act (Section 3, insofar as it is relevant, reads thus:

"The RE shall be levied with effect from 2/5/1974 (a) * * * (b) at the point of first purchase of alcohol in the State a tax at the rate of 40 paise per litre for the million litres and at the rate of 20 paise per litre for the remainder, payable by the purchaser and which shall be collected and paid in the prescribed manner to the State government."

9. IT is, therefore, clear that the section itself provides the point of time at which the purchase tax is attracted and the rate at which it has to be paid. The section provides that it "shall be collected and paid in the prescribed manner to the State government". That the Rules, being in the prescribed manner, were not gazetted until 24/1/1977 can make no difference to the validity of the levy. It is not even the appellant's case that any attempt was made to collect the purchase tax from the appellant prior thereto so that he may have any grievance on that score. Counsel drew our attention to other provisions of the Act which make breach of

the provisions thereof an offence. It is no one's case, once again, that these provisions have been invoked at any time prior to the publication of the Rules on 24/1/1977. Having regard to the terms of Section 3 of the said Act we do not find any substance in the second contention.

10. LEARNED counsel for the appellant desired to urge arguments which, admittedly, had not been made before the High court. We do not think that there is any justification in the instant case for allowing him so to do.

11. LEARNED counsel for the appellant submitted that the respondents should not be allowed to invoke the bank guarantees which have been furnished by the appellant pursuant to the interim orders of this court as a condition of stay and that the appellant should be permitted to make payment of the arrears to the respondents by instalments. We do not think that we would be justified in granting the request.

12. IN the result, the appeal is dismissed with no order as to costs. The respondents shall be entitled to encash the bank guarantees given by the appellant pursuant to the orders of this court.