(1969) 01 P&H CK 0008

In the Punjab And Haryana At Chandigarh

Case No : Second Appeal From Order No. 46 of 1967

State of Punjab APPELLANT

Vs

Messrs Thakur Dass RESPONDENT

Date of Decision : 10-01-1969

Acts Referred:
East Punjab General Sales Tax Act, 1948 — Section 6

Citation : (1969) 01 P&H CK 0008

Hon'ble Judges : A.D. Koshal, J

Bench : Single Bench

Advocate : H.L. Sibal A.G. Punjab, for the Appellant; S.K. Sanwalka, for the Respondent

Final Decision : Allowed

Judgement

A.D. Koshal, J.—By this judgment I shall dispose of four appeals, Second Appeals from Orders Nos. 46 to 49 of 1967, directed against four different judgments dated the 13th of March, 1967, of Shri Diali Ram Puri, District Judge, Ferozepore, holding that notification No. 3483-E&T-54/713(CH) dated the 5th of August, 1954, issued by the Punjab Government u/s 6 of the East Punjab General Sales Tax Act, 1948 (now known as the Punjab General Sales Tax Act hereinafter to be referred to as the Act) was ultra vires of the provisions of Central Act No. 52 of 1952 and that the civil court, therefore, had jurisdiction to entertain suits brought by the respondents in the four appeals for the recovery of different amounts realized from them by the Sales Tax authorities for the years 1959 to 1962 under that notification.

2. The circumstances leading to the institution of the four appeals may now be stated. The Act came into force on the 15th of November, 1948. Its charging section was in these terms:

5. (1) 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 * *

Section 6 of the Act was to the following effect:

6. (1) No tax shall be payable under this Act on the sale of goods specified in the first column of the Schedule, subject to the conditions and exceptions, if any set out in the corresponding entry in the second column thereof.

(2) The Provincial Government, after giving by notification not less than three months'' notice of its intention so to do, may by like notification add to or delete from the Schedule, and thereupon the Schedule shall be deemed to be amended accordingly.

3. By notification No. 3483-E&T-51-2518 dated the 30th of May, 1951, issued by the Punjab Government, the following entry was added to the Schedule (latter on designated as Schedule B) appended to the Act:

57. Edible oils produced from sarson, toria and til in ghanis but not in hydrogenated form, e.g., vegetable and ghee vanaspati, etc.

4. Thus, an immunity was enjoyed by the dealers in edible oils from the payment of sales tax.

5. On the 9th of August, 1952, Parliament passed the Essential Goods (Declaration and Regulation of Tax on sale or Purchase) Act (Act No. 52 of 1952) and hereinafter called the Central Act), section 3 of which provides:

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.

6. u/s 2 of the Central Act edible oils and oil seeds from which such oils are extracted have been declared to be essential for the life of the community.

7. Section 5 of the Act having given unfettered authority to the State Government to levy sales tax at such rates which it may by notification direct, was considered to be unconstitutional in view of the pronouncement of their Lordships of the Supreme Court in In re Delhi Laws Act, 1912 (1961) S.C.R. 747, and was amended by Punjab Act No. 19 of 1,952 and the amended section with retrospective effect stated that the rate of sales tax would not exceed two naye paise in a rupee. (This rate was further amended by Punjab Act No. 16 of 1961 to read "not exceeding five naye paise in a rupee").

8. Entry No 57 above-mentioned was replaced by the following entry in Schedule B to the Act by notification No. 3483-E&T-54/723(CH) dated the 5th of August, 1954 (hereinafter referred to as the 1954 notification) which, however, was never submitted to the President for assent:

57. Edible oils produced from sarson, toria and til in indigenous Kohlus worked by

animal or human agency when sold by the owners of such Kohlus only.

9. Each of the respondents in the four appeals before me is a firm carrying on business in edible oils not covered by entry No. 57 introduced in Schedule B by the 1954 notification and was assessed to sales tax in respect of such business for the years 1959 to, 1962. The tax was paid. In 1963, however, a Division Bench of this Court consisting of Mehar Singh J. (as he then was) and Shamsher Bahadur J. held in Ganga Pam Suraj Parkash v. The State of Punjab (1963) XIV S.T.C. 476 that the notification last mentioned was a law made by the State Legislature after the enactment of the Central Act and that as it bid not received the assent of the President as required by Article 286 (3) of the Constitution and section 3 of the Central Act, it was ultra vires and invalid. The reasoning adopted was that section 5 of the Act which gave unfettered authority to the State Government to levy sales tax at such rates which it may direct by notification was ultra vires of- the Constitution as it delegated legislative powers to the executive, that it was not separable from the other provisions of the Act which was, therefore, unconstitutional and void in its entirety, that the amendment made by Punjab Act No. 19 of 1952 no doubt validated the Act by doing away with delegation of legislative powers to the executive but that Punjab Act No. 19 of 1952 was itself passed after the Central Act so that any notification made under the Act as amended in 1952 required the assent of the President.

10. The 1954 notification having thus been struck down, the respondents in the four appeals before me brought four separate suits for the recovery of the sales tax paid by them in respect of the years 1959 to 1962. It was contended on behalf of the Punjab Government in each of the suits that the civil courts had no jurisdiction in the matter in view of the provisions of section 19 of the Act which runs as follows:

19. Save as is provided in section 21, no assessment made and no order passed under this Act, or the rules made thereunder by the Commissioner or any person appointed u/s 3 to assist him shall be called into question in any Civil Court, and save as is provided in section 20, no appeal or application for revision shall lie against any such assessment or order.

11. The following issue was tried by the trial Court as a preliminary issue:

Whether the civil court has got jurisdiction to try this suit?

The trial Judge found that although the 1954 notification had been struck down as unconstitutional and invalid, the respondents had a remedy only under the machinery devised by the Act and that the jurisdiction of the civil court was excluded by section 19 thereof. Accordingly, the four suits brought by the four respondents before me were dismissed, the parties being left to bear their own costs.

12. The respondents reagitated the matter in four appeals which were decided by Shri Diali Ram Puri, District Judge, Ferozepore, who, relying, on Ganga Ram

Suraj Parkash v. the Stale of Punjab2 (supra), confirmed the finding of the trial Court that the 1954 notification was unconstitutional and invalid but reversed its other finding that the civil court had no jurisdiction in the matter, following M/S K.S. Venkataraman and Co. (P) Ltd. v. State of Madras AIR 1965 S.C. 1089, he held that where an Authority created by a statute acts on the basis of a provision which is ultra vires, to that extent it would be acting outside the Act and its order would be liable to be challenged in a civil court. He concluded, therefore, that the suits were triable by a civil court and remanded them to the trial Court for a redecision. It is against the judgments of the learned District Judge which, as already stated, are dated the I3th of March. 1967, that the four appeals before me have been instituted by the Punjab Government.

3. It is contended by the learned Advocate General, Punjab that Ganga Ram Suraj Parkash v. The State of Punjab2 (supra) does not lay down good law law in view of the dictum of their Lordships of the Supreme Court in The Corporation of Corporation of Calcutta and Another Vs. Liberty Cinema, , in which it was held that a provision in a statute which leaves it entirely to the executive to fix the rate of tax is not invalid on the ground that it amounts to illegal delegation of legislative functions. With this contention I find myself entirely in agreement. In the authority last cited, their Lordships observed:

It is said that the delegation of power to fix rates of taxes authorised for meeting the needs of the delegate to be valid, must provide the maximum rate that can be fixed, or lay down rules indicating that maximum. We are unable to see how the specification of the maximum rate supplies any guidance as to how the amount of the tax which no doubt has to be below the maximum is to be fixed. Provision for such maximum only sets out a limit of the rate to be imposed and a limit is only a limit and not a guidance.

13. In view of this dictum Ganga Ram Suraj Parkash v. State of Punjab2 (supra) cannot be said to have laid down the law correctly in so far as it struck down section 5 of the Act as unconstitutional on the ground that it delegated legislative functions to the executive merely because it did not provide the maximum rate at which the tax could be levied. And if that be so, the other conclusion arrived at in Ganga Ram Suraj Parkash''s case to the effect that the Act was ultra vires in its entirety must also be regarded as erroneous. The Act being legislation promulgated in 1948 it was prior in point of time to the Constitution and the Central Act neither of which, therefore. affects its validity. It follows that the 1954 notification, which was issued u/s 6 of the Act, must be deemed to have been validly issued in spite of the fact that it was not submitted to the President for assent. The finding to the contrary arrived at by the lower Courts, in support of which learned counsel for the. respondents had nothing at all to urge, must, therefore, be and is hereby set aside.

4. Once the 1954 notification is held to have been validly issued, section 19 of the, Act at once comes into play and excludes the jurisdiction of the civil courts with regard to the matters in dispute which, in fact, become non-existent as the

only ground on which the suits brought by the respondents were based was that the 1954 notification was ultra vires. That being so, the preliminary issue must be decided in the negative. I hold accordingly and reverse the finding of the lower appellate Court with regard to that issue.

5. In the result, the appeals succeed and are accepted. The suits brought by the respondents are dismissed. The parties will, however, bear their own costs of the proceedings throughout.