(1965) 02 P&H CK 0026

In the Punjab And Haryana At Chandigarh

Case No : Civil Writ No. 926 of 1964

Sukh Dev Sarup Gupta APPELLANT

Vs

Punjab State and Others RESPONDENT

Date of Decision : 11-02-1965

Acts Referred:
Punjab Excise Act, 1914 — Section 3(6)

Citation : AIR 1965 P&H 399

Hon'ble Judges : Harbans Singh, J

Bench : Single Bench

Judgement

(1) The facts giving rise to this writ petition which have been very clearly brought out in the petitioners may briefly be stated as under.

(2) Prior to the enforcement of the Constitution on 26th of January, 1950, under clause (c) of subs (6) of S. 3 of the Punjab Excise Act "any medicinal or toilet preparations containing alcohol fell within the definition of "excisable articles" which were subject to the excise duty under the aforesaid Act. Subsequently, the Punjab General Sales Tax Act (hereinafter referred to as sales Tax Act) came into force in 1948, which levied sales tax on sale of goods except articles which were excepted under S. 6 from such tax Act. Entry 37 of this Schedule was in the following terms:--

"All goods on which duty is or may be levied under the Punjab Excise Act, 1914 * *."

As stated above, inasmuch as medicinal or toilet preparations containing alcohol (hereinafter referred to as "alcoholic preparations") were subject to excise duty under the Punjab Excise Act the same were exempt form sales tax. Under the Constitution ''alcoholic preparation'', which under the Government of India Act (which stood repealed by the Constitution) was a Provincial subject was transferred to the Union List. As a result of the enforcement of the Constitution therefore cl (c) of sub-s (6) of S, 3 stood omitted by the Adaptations of Laws

Order 1950. However, Art 227. the Constitution provides as follows:--

"Any taxes, duties, cesses or fees which immediately before the commencement of this Constitution were being lawfully levied by the Government of the State * * for the purposes of the State * * may notwithstanding that those taxes duties cesses or fees are mentioned in the Union List continue to be levied and to be applied to the same purposes until provisions to the contrary is made by Parliament by law."

As a result of this provisions therefore although excise duty on alcoholic preparations became a Union subject yet the Date Government continued to levy this excise duty even after 26th of January, 1950. In 1955 however the Parliament passed Medical and Toilet Preparation (Excise Duties) Act (hereinafter referred to as the Central Act) dealing with the subject of imposition of excise duty on those alcoholic preparations. Obviously the object of this enactment as mentioned in the object clause was to bring about a uniformity in all the States as regard the rate of imposition of excise duty on these 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 as follows:--

"If, immediate before the commencement of this Act there is in force in any State any law corresponding to this Act that law is hereby repealed."

The Schedule to this Central Act provided the rate to which the excise duty was to be levied on various types of alcoholic properties. Though the rate of excise duty was thus made uniform yet the definition of the "collecting Government" which was entitled to collect the excise duty included State Government and the question whether the Central Government was to collect the duty was left to the rules. It is averred in the petitioners and not denied on behalf of the State that notwithstanding the passing of the Central Act the collections of this excise duty continues to be done by the State Government authorities and the duty so collected goes to the State exchequer. Thus the effect of the Central Act was only to achieve uniformity without bringing about nay difference. It is alleged in the petitioners that although prior to be enforcement of the Central act the petitioners paid only the excised duty on the alcoholic preparations manufactured by him and he has exempted form payment of nay sales-tax the sales tax authorities after the enforcement of the Central Act began to demand and collect sales-tax the sales tax authorities after the enforcement of the Central Act began to demand and collect sales-tax on alcoholic preparations so manufactured and sold by him. According to him this was contrary to the law. He was assessed to certain payments for three years namely 1958-60 1960-61 and 1961-62. The State Government in its return has admitted the facts as mentioned above but has taken the plea that the sales-tax is leviable because excise tax non alcoholic preparations is no longer being levied under the Punjab Excise act and consequently entry No. 37 does not exempt such preparations any more.

(3) sub-section (6) of S. 3 of the Punjab Excise Act before amendment was as

follows:--

" ''Excusable article'' means--

(a) any alcoholic liquor for human consumption

or

(b) any intoxicating drug; or

(c) any medicinal or toilet preparation containing alcohol."

Thus reading this sub-section with entry 37 in Schedule B of the Sales-tax Act the relevant entry would in effect be as follows:--

"(a) any alcoholic liquor for human consumption;

(b) any intoxicating drug; or

(c) any medicinal or toilet preparation containing alcohol;

on which duty is levied under the Punjab Excise Act 1914."

This would be the state of affairs till the enforcement of the con when cl (c) was omitted from sub. S (6) of S. 3 of the Punjab Excise Act. However as has been held by a Division Bench of this Court on a reference by the Financial Commissioner in Standard Drugs Court. v. State of Punjab 1960 62 PLR 789 the result of Art. 277 is that even after enforcement of the Constitution the duty which was being levied by the Punjab State on alcoholic preparations was being levied under the Punjab Excise Act.

(4) The sole point now for consideration is as to what is the effect of the enforcement of the Central Act. That Act must be taken to have repealed the preparations. On behalf of the petitioners it was contended that by virtue of S. 8 of the General Clauses Act 1897 inasmuch as the Central Act repeals and re-enacts a provisions of the Punjab Excise Act so far as it relates to the alcoholic preparations reference in the Sales-tax Act to the provisions of the Punjab Excise Act so repealed have to be construed as reference to the provision of the Central Act. I feel that there is force in this argument Relevant portion of sub-s. (1) of S. 8 of the General Clauses Act runs as follows:

"Where * * any Central Act * * repeals and re-enacts with or without modifications any provisions of the former enactment (Punjab Excise Act in its relation to alcoholic preparation) then reference in any other enactment (Punjab General Sales-tax Act and its Schedule) * * be constructed as reference to the provisions so re-enacted Central Act.)"

I have added in brackets the corresponding enactment to which reference in the present case would apply. The only arguments of the learned counsel for the State was that the words ''former enactment'', as used in this sub-section refer only to the Central Acts and not to the State Acts. For this there is no warranty because the word ''enactment'' is defined in clause (19) of S. 3 in general terms an includes "any Act." A Central Act may repeal another Central Act or a State Act. A Central Act may deal with a matter relating to a particular item which was originally contained in the State List under the Government of India Act and subsequently got included in the Union List as in the present case or such a Central Act may deal with a matter contained in the Concurrent List or the Union List. In the first two cases the Central Act may result in the repeal of a State Act while in the third case it would only repeal a Central Act. The effect of repeal in all these cases is dealt with only by S. 8 of the General Clauses Act and there is another section in the said Act dealing specifically with an eventuality where the Central Act repeals a state Act. Obviously therefore S. 8 must be taken to deal with all cases of repeal that can legitimately be done by a Central Act whether the repeal is of an enactment of the Center or the State.

(5) For the reasons given above therefore I have no hesitation in my mind in holding that by virtue of S. 8 of the General Clauses Act in entry 37 in the Schedule to the sales Tax Act so far as clause (c) of sub-s. (6) of S. 3 of the Punjab Excise Act was concerned reference to the Punjab Excise Act must be taken to be a reference to the central Act. As a result of this therefore so far as the exemption from the sales-tax is concerned there has been no change by the replacement of the original provision in the Punjab Excise Act by the Central Act. I am therefore of the view that the demand of sales-tax and its assessment by the Excise Department is illegal and ultra vires and consequently I accept this petitioners make the rule absolute the quash the impugned orders. The petitioners will have his costs from the respondent.

Counsel fee Rs. 150/-

(6) Petition allowed.

