(1961) 09 AHC CK 0009

In the Allahabad High Court

Case No : Civil Misc. Writ No''s. 2620 and 2713 of 1957

Suraj Bhan Hari Shanker APPELLANT

Vs

Sales Tax Officer and Another RESPONDENT

Date of Decision : 18-09-1961

Acts Referred:

Constitution of India, 1950 — Article 286(3)
Uttar Pradesh Sales Tax Act, 1948 — Section 4

Citation : AIR 1963 All 16 : (1962) 13 STC 409

Hon'ble Judges : Brijlal Gupta, J

Bench : Single Bench

Advocate : V.P. Misra and K.D. Pande, for the Appellant; Gopal Behari, for the Respondent

Final Decision : Dismissed

Judgement

Brijlal Gupta, J.—These are two writ petitions under Article 226 of the Constitution. They raise common points and can be conveniently disposed of by a common judgment.

2. By means of these writ petitions the petitioners have challenged the levy of sales tax on their turnover of Gur in the assessment year 1956-57. Gur was exempt from the levy of sales tax u/s 4 of that Act prior to the 1st of April 1956. The State legislature by U. P. Sales Tax (Amendment) Act XIX of 1955 deleted Gur from Section 4 of the U. P. Sales Tax Act. The effect of deletion of Gur from that section was that Gur no longer remained an exempted commodity and became liable to tax. Accordingly by the impugned assessment orders, tax was levied in respect of the turnover of Gur also as stated above.

3. Two points have been raised before me in these writ petitions by Mr. Misra learned counsel for the petitioners. The first point taken by learned counsel is that Gur was an essential commodity as declared by the Essential Goods (Declaration and Regulation of Tax), Act, 1952. Having regard to this declaration, it became necessary by reason of Article 286(3) of the Constitution that a State

law imposing or authorising the imposition of tax on such a commodity could not have effect "unless it has been reserved for the consideration of the President and has received his assent". U. P. Act XIX of 1956, which had the effect of imposing tax on Gur by removing Gur from the list of commodities which were exempt from tax came into force on the 1st of April 1956. It was reserved for the assent of the President, but the assent was received only on the 9th of May 1956. The point made by Mr. Misra is that as the assent was received only on the 9th of May 1956, the Act could, it at all, operate only from that date in respect of a commodity like Gur and not from an earlier date, namely 1st April 1956.

I see no force at all in this submission. All that is required by Article 286(3) is that the State legislation in respect of a particular kind of goods mentioned in that Act should have been reserved for the assent of the President and that it should have .received his assent. The date on which the assent is received is wholly immaterial. The Act of the State legislature would operate from the date mentioned in that Act as the date of its operation. The operation will not be postponed to the date of the signature or assent of the President. To my mind, here there is no question of the prospectivity or retrospectivity of the date of the assent of the President. The date of the assent only makes the particular enactment operative in regard to particular commodities. Bate of the assent has nothing whatsoever to do with the date of the operation of the Act. Mr. Misra has not cited any authority in support of his submission, nor has he invited my attention to any law or other provision in support of his contention. I see no force in this submission and I reject it.

4. The second point made by Mr. Misra is that, the Sales Tax Act is a pre-Constitution legislation having been enacted in the year 1948. On the 26th of January 1950 when the Constitution came into force, its ''provisions had to be justified- in the light of the provisions of the Constitution. In 1952 when the Essential Goods (Declaration and Regulation of Tax) Act, 1952 was enacted, Gur was a commodity in respect of which the State legislature could pass no legislation imposing a tax, as Gur was declared an essential commodity under that Act. Accordingly the mention of Gur in Section 4, which exempted the levy of tax on certain commodities under the Sales Tax Act merely became a superfluous provision. Even if there was no exemption in respect of Gur in Section 4 Gur could not be taxed under the U. P. Sales Tax Act. U. P. Sales Tax (Amendment) Act, iS5B, when it deleted Gur from section 4 of the U. P. Sales Tax Act, merely did something, which was in essence a superfluous act because even without such deletion, by reason of the Essential Goods (Declaration and Regulation of Tax) Act, 1952, Gur could not be taxed under the U. P. Sales Tax Act. Mr. Misra gees on to argue that If a valid law had to be passed taxing Gur, then something positive shou!4 have been done, and not merely something superfluous by deleting Gur In Section 4. In the absence of a specific provision In the charging section or in a notification issued under the charging section, Gur could not be made a taxable commodity tinder the Amending Act XIX of 1956. In support of this submission also no authority or any provision of the law was

shown to me. I see no force In this submission also.

5. It is obvious that the deletion of Gur from Section 4 had the result of making Gur a taxable commodity under the U. P. Sales Tax "Act, and the deletion of this exemption had the assent of the President under Article 286(3) of the Constitution. It follows that the President assented to Gur being no longer exempt but being taxable under the provisions of the U. P. Sales Tax Act. To my mind, this was quite sufficient to make Gur taxable as a result of the Amending Act XIX of 1956. It follows that sales tax was rightly levied on the turnover of Gur from the 1st April 1956.

6. No other point was pressed.

7. These writ petitions have no force and are dismissed with costs.