
(1967) 10 P&H CK 0024

In the Punjab And Haryana At Chandigarh

Case No : Letters Patent Appeal No. 257 of 1963

The State of Punjab and Another

APPELLANT

Vs

Sewak Hotel

RESPONDENT

Date of Decision : 19-10-1967

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1968) 21 STC 276

Hon'ble Judges : Shamsheer Bahadur, J; S.B. Kapoor, J

Bench : Division Bench

Advocate : R.N. Narula, for the Appellant; G.C. Mittal, for the Respondent

Final Decision : Dismissed

Judgement

S.B. Kapoor, J.—This Letters Patent Appeal is by the State of Punjab and the Assessing Authority, Excise and Taxation Officer, Bhatinda, and is directed against the order of the learned Single Judge, dated the 15th March, 1963, allowing the writ petition under Article 226 of the Constitution of India by M/s. Sewak Hotel, Bhatinda (now respondent).

2. In the writ petition, the order of the Assessing Authority proceeding to assess the respondent to sales tax with effect from 1st April, 1959 to 31st March, 1960, was challenged, and as would appear from the judgment of the learned Single Judge, two contentions were advanced before him, namely-

(i) that the petitioner was exempted from the levy of sales tax u/s 6 of the Punjab General Sales Tax Act and that the exemption was withdrawn by Punjab Act 8 of 1962, which came into force on the 2nd June, 1962, and, therefore, unless there is a specific provision charging sales tax retrospectively the firm cannot be made liable to pay the sales tax retrospectively; and (ii) that the best judgment assessment which was made on 21st September, 1962, was made without notice and hence the assessment is in violation of the provisions of Section 11(4) and (5) of the Act and, therefore, illegal.

3. He did not deal with the second contention because in his view the first contention was correct. The respondent-firm during part of the period to which the assessment proceedings related, enjoyed exemption from the levy of sales tax on account of item 49 of Schedule B to the Punjab General Sales Tax Act, 1948 (Punjab Act No. 46 of 1948), hereinafter referred to as the "Act" read with Section 6 of that Act. This section is as follows :-

6. (1) No tax shall be payable on the sale of goods specified in the first column of Schedule B subject to the condition and exceptions, if any, set out in the corresponding entry in the second column thereof and no dealer shall charge sales tax on the sale of goods which are declared tax-free from time to time under this section.

(2) The State 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 Schedule B and thereupon Schedule B shall be deemed to be amended accordingly.

4. It is not denied that but for the exemption contained in item 49, the respondent-firm would have been liable to pay sales tax according to the provisions of the Act and the rules made thereunder.

5. Subsequent to the period for which the respondent-firm was sought to be assessed, the Act was amended by the Punjab General Sales Tax (Amendment) Act, 1962 (Punjab Act No. 8 of 1962) which received the assent of the Governor on 28th May, 1962, and was published in the Punjab Gazette (Extraordinary) Legislative Supplement, Part I, dated 2nd June, 1962. Sub-section (2) of Section 1 of the amended Act runs as follows:-

It shall be deemed to have come into force on the first day of April, 1959.

6. The learned Single Judge while holding that the Legislature could validly impose a tax retrospectively, was of the view that the authorities could not recover a tax retrospectively by recourse to the deeming provision which merely withdrew the exemption and that he could not attribute to the Legislature an intention to take away the exemption enjoyed by persons who were lawfully exempted previously from the payment of tax under Act. This precise argument was considered by the Bench of this Court in *Bhagwan Hotel v. Assessing Authority, Rohtak*, and Anr. [1964] 15 S.T.C. 319 decided on 3rd December, 1963. The judgment of the learned Single Judge now under appeal was cited before the Bench in support of the assessee but that judgment was specifically overruled. "Mehar Singh, J., (as he then was) speaking for the Bench, observed at page 324-

If I may say so with respect to the view expressed by the learned Judge in *Sewak Hotel's case*, See [1963] 14 S.T.C. 524, the amending Punjab Act 8 of 1962 has been made expressly operative by Section 1(2) of it on and from 1st April, 1959. The Legislature in this respect could not possibly have expressed

itself in any other clearer language. The effect of Section 1(2) of this amending Punjab Act 8 of 1962 is to withdraw the exemption in item 49 of Schedule B of the principal Act on and from 1st April, 1959. This is an express statement in this amending Act. The Legislature has power to grant exemption as also to withdraw an exemption.

7. Mr. G. C. Mittal, learned counsel for the respondent-firm, submitted that the judgment of the Bench possibly required reconsideration by a larger Bench and the only argument put forward by him in this connection was that by Sub-section (2) of Section 6 of the Act, before any notification is issued for adding or deleting any item from Schedule B, the State Government must give not less than three months' notice of its intentions so to do, but in this case no such notice of three months was given. This argument, however, proceeds from some misconception because the deletion of item 49 from Schedule B in this case was by an Act of the Legislature and so the provisions of Sub-section (2) cannot help the respondent.

8. The appeal is, therefore, allowed and the case sent back to the learned Single Judge for determining the second contention raised before him which he considered unnecessary to deal with.

9. In these circumstances, there will be no order as to costs in this appeal.

Shamsher Bahadur, J.

I agree.

10. The case came on for final hearing before D. K. Mahajan, J., and the learned Judge passed the following order on 27th November, 1967.

ORDER

D.K. Mahajan, J.

11. This order be read in continuation of my earlier order in this very case dated the 15th of March, 1963 See [1963] 14 S.T.C. 524 (sc) Two questions were raised before me; and after deciding the first question, I allowed the petition. The matter was taken to the Letters Patent Bench ; and the Letters Patent Bench took a different view on the first question and has reversed my decision.- As the second question was not decided, the case has been sent back to me for decision of the second question.

12. The second question is stated below :-"that the best judgment assessment, which was made on 21st September, 1962, was made without notice and hence the assessment is in violation of the provisions of Section 11(4) and (5) of the Act and, therefore, illegal.

13. Mr. G. C. Mittal, learned counsel for the petitioner, has also tried to urge another point, namely, that there is no evidence which would sustain the best judgment assessment. So far as the new contention of the learned counsel is

concerned, this matter can only be set right in appeal which is provided under the Act; and ultimately the matter can be brought to this Court by a reference u/s 22 of the Act; and this was so held in *National Motors and Another Vs. The Joint Excise and Taxation Commissioner, and Sales Tax Officer, Jodhpur, and Anr. v. Shiv Ratan G. Mohatta* [1965] 16 S.T.C. 599(Raj). Moreover, this contention was not raised, when the petition was decided by me earlier. I, therefore, repel this contention.

14. This leaves the second contention that was raised. On that matter, it is admitted in the petition that the petitioner received a notice to appear on the 20th of March, 1961, before the Assessing Authority, Bhatinda, and to produce the accounts of the assessment years 1958-59 and 1959-60 and that the petitioner did not appear because he thought that he was not liable to pay any tax. In spite of this, the petitioner was served with another notice by the Assessing Authority to appear on 6th of March, 1962, and was asked to produce the relevant accounts for the years 1958-59 and 1959-60. The petitioner again did not appear, but sent a registered letter informing the authority that he was not liable for any tax. In this situation, the Assessing Authority proceeded to arrive at an ex parte assessment which would, in other words, be best judgment assessment. The petitioner was given ample opportunity by the authority to represent his case. The petitioner did not avail of it. Therefore, no case is made out for interference under Article 226 of the Constitution of India. The petitioner's proper remedy is to move the authorities under the Act by way of appeal.

15. For reasons recorded above, this appeal fails and is dismissed; but there will be no order as to costs.