

Shiva Dayal Jaiswal vs Sales-Tax Commissioner on 13 July, 1951

Equivalent citations: AIR1951ALL858

JUDGMENT

Sapru, J.

1. This is an application Under section 11, Sales- Tax Act With a prayer that the Revising authority be directed to state a case and refer certain questions of law to this Court. The facts which have given rise to it may be stated shortly.
2. The applicant is a business man. He obtained a licence for running a country liquor shop, a drug shop and an opium shop. He had to pay very large licence fees for the said shops. In addition to them, the licensee had to pay an excise duty on the liquor obtained by him from the State Government.
3. On 1-4-1948 the Uttar Pradesh Legislature passed the Sales-Tax Act. In accordance with the provisions of that Act, on 9-12-1948 the Sales-Tax Officer made an assessment on the applicant of the sales-tax from two quarters of the years 1948-49. On that being done, objection was raised by the applicant to the effect that the Sales Tax Act had no application to him. In other words, his contention was that he could not be made to pay the sales tax in addition to the excise duty which he had already paid.
4. This contention was repelled by the Sales Tax Officer. He went in appeal to the appellate authority. That authority upheld the view taken in regard to this matter by the Sales Tax Officer. Thereafter he went in revision to the Revising Authority. His revision was rejected by that authority on 9-12-1949. An application for the statement of the case by the Revising Authority made by him was rejected by that Authority on 21-8-1950. Thereafter the present application Under section 11, Sales Tax Act, was filed in this Court.
5. The point we have to consider is whether there is any question of law such as might well be required to be stated to this Court. We have not been shown any prohibition in the Constitution against the imposition at one and the same time of an excise tax on sales. As we see it, it was competent to the Legislature to levy an excise duty as also a sales tax. As was pointed out by the Federal Court, In the matter of C. P. and Berar Sales of Motor Spirit and Lubricants Taxation Act, 1938, A. I. R. (26) 1939 F. C. 1, there is a distinction between an excise duty and a sales-tax. Speaking broadly the excise duty is levied on manufacture and production of home articles, particularly such as liquor. A Sales-tax is levied on the transaction of sale. These are thus two different taxes which under entries 61 and 54 of List II of Schedule 7, Constitution of India, the

State Legislature is empowered to levy. "Whether it is just or unjust to levy both the taxes simultaneously is a matter of policy on which this Court has no opinions. This being the position we find that there is, on the facts as stated in the petition, no such case as would justify us in asking the Revising Authority to refer it to this Court for decision.

6. The next point argued by learned counsel for the applicant is that in calculating the sales-tax the licence fee should have been deducted from the turnover. Rule 44 framed under the Act lays down that the tax Under section 3 shall be computed on the net turnover. In determining that net turnover the amounts specified shall be deducted if they are found included in the gross turnover. Looking to the amounts which are to be deducted, we find that the licence fee is not one of them. It cannot come under any one of the Sub rules (a) to (g) of R. 44. We consequently find that there is no force in this argument either.

7. For the reasons given above, we hold that there is no force in this application. It is therefore dismissed With costs.

8. Learned Standing counsel shall be entitled to a fee of Rs. 200 from the applicant.