

Raghunandan Prasad Mohan Lal vs The State Of U.P. And Ors. on 21 January, 1971

Equivalent citations: AIR1971SC2089, (1972)4SCC339, [1971]27STC469(SC), AIR 1971 SUPREME COURT 2089, 1972 4 SCC 339, 1971 TAX. L. R. 1358, 1974 SCC (TAX) 25, 27 S T C 468, 27 STC 469, 1971 U P T C 203

Author: K.S. Hegde

Bench: J.C. Shah, A.N. Grover, K.S. Hegde

JUDGMENT

K.S. Hegde, J.

1. This is an assessee's appeal by certificate, arising from a writ petition filed by the appellant in the High Court of Allahabad. The appellant is a partnership firm carrying on business of manufacturing flour etc. The dispute in this case relates to the sales tax levy on the appellant for four different periods, viz., from (1) April 1, 1956, to September 30, 1956 ; (2) October 1, 1956, to March 31, 1957 ; (3) April 1, 1957, to March 31, 1958; and (4) April 1, 1958, to March 31, 1959.

2. In the writ petition the assessee challenged the validity of two notifications issued by the Government of U. P. The first of those notifications was published as Notification No. ST-909/X dated March 31, 1956, and the second was published as Notification No. ST-6069/X-1097-56 dated September 30, 1956. The High Court came to the conclusion that though the first notification was struck down by that court earlier, it has now been revalidated by the U.P. Sales Tax (Validation) Act, 1958, and hence the validity of that notification is not open to challenge. It upheld the contention of the appellant that the second Notification No. ST-6069/X-1097-56 dated September 30, 1956, is invalid. But in view of its conclusion that the first notification has been properly revalidated, it held that the appellant was not entitled to any relief. It accordingly dismissed the writ petition.

3. The U.P. Sales Tax Act came into force on April 1, 1948. On June 7, 1948, the Province of U.P. issued Notification No. ST-119/X-928 under Section 4 of that Act exempting atta, maida, sooji and bran and all cereals from payment of sales tax with effect from April 1, 1948. Thereafter the Parliament passed the Essential Goods (Declaration and Regulation of Tax on Sale and Purchase) Act in order to give effect to Article 286(3) of the Constitution. That Act declared cereals, atta, maida, sooji and bran as essential goods. In view of that Act no law of a State Legislature imposing levy or authorising imposition of tax on sale or purchase of essential goods could take effect without the prior assent of the President. The U.P. Sales Tax (Amendment) Ordinance No. 9 of 1956 was promulgated with the prior assent of the President authorising the State Government to impose

sales tax on essential goods from April 1, 1956. Thereafter the State Government issued Notification No. ST-909/X dated March 31, 1956, under Section 3 of the U.P. Sales Tax Act, 1948, imposing sales tax of six pies per rupee on sales of atta, maida and sooji. That notification was to take effect from April 1, 1956. As a result of that notification exemption given to atta, maida and sooji under Notification No. 911/X dated March 31, 1956, was withdrawn. The above Ordinance was replaced by an Act of the U.P. Legislature (Act No. 19 of 1956). That Act was known as U.P. Sales Tax (Amendment) Act, 1956. It was published in the U.P. Gazette extraordinary, dated May 28, 1956. On September 11, 1956, Article 286 of the Constitution was amended thereby taking away the requirement of obtaining the prior assent of the President. On September 30, 1956, the U.P. Government issued Notification No. ST-6069/X-1097-56 dated September 30, 1956, imposing single point tax on atta, maida and sooji with effect from October 1, 1956. That notification was purported to have been issued under Section 3-A of the U.P. Sales Tax Act, 1948. On January 5, 1957, the Central Act No. 52 of 1952 was replaced by the Central Sales Tax Act. U.P. Act No. 19 of 1956 referred to earlier was declared ultra vires the Constitution by the High Court of Allahabad on May 9, 1957. That Act and the notifications issued on March 31, 1956, were attempted to be validated by the U.P. Sales Tax (Amendment) Act, 1957 (Act No. 24 of 1957) which was published in the U.P. Gazette on September 3, 1957, after obtaining the assent of the President on August 31, 1957. That Act again was declared ultra vires the Constitution by the Allahabad High Court. Thereafter the U.P. Sales Tax (Validation) Act, 1958 (U.P. Act No. 15 of 1958) was enacted. It received the assent of the President on May 3, 1958. It was published in the U.P. Gazette on May 6, 1958. It was given retrospective effect as from March 31, 1956. The validity of Act No. 15 of 1958 has been upheld both by the Allahabad High Court as well as by this Court. This in short is the history of the legislations with which we are concerned in this case.

4. In this Court Mr. S.V. Gupte, learned Counsel for the appellant, challenged the validity of Notification No. 909/X dated March 31, 1956. That notification reads:

In exercise of the powers conferred by the second proviso to Sub-section (1) of Section 3 of the U.P. Sales Tax Act, 1948, as amended from time to time, and in supersession of all previous notifications on the subject, the Governor of Uttar Pradesh is hereby pleased to order that with effect from April 1, 1956, the rate of tax on the turnover in respect of the goods specified in the List below shall be six pies per rupee at all points of sale.

LIST

1. Foodgrains including cereals and pulses.

2. Atta, maida and sooji.

5. As mentioned earlier this notification has been validated by Section 3(1) of the U.P. Act No. 15 of 1958.

6. Section 3(1) of that Act reads :

Notwithstanding any judgment, decree or order of any court, the notifications specified in Part A, Part B and Part C of the Schedule shall be deemed to have been issued in exercise of the powers conferred respectively by Section 3, Section 3-A and Section 4 of the U.P. Sales Tax Act, 1948, as if the said sections were in force on the date on which the notifications were issued in the form in which they were in force immediately before the commencement of this Act and all the said notifications shall be valid and shall be deemed always to have been valid and shall continue in force until amended, varied or rescinded by any notification issued under any of the said sections.

7. Item 1 of Part A of the Schedule mentions Notification No. F.D. (A & ST) Notification No. ST-909/X dated March 31, 1956. It is clear from Section 3(1) quoted above that this notification was revived and was given retrospective effect and that section further says that the same shall be in force "until amended, varied or rescinded by any notification issued under any of the said sections". But curiously enough item 1 of Part A of the Schedule reads :

F.D. (A & ST) Notification No. ST-909/X dated March 31, 1956 subject to its supersession by F.D. (A&ST) Notifications No. ST-6068/X-1097-56 dated September 30, 1956 and No. ST-6069/X-1097-56 dated September 30, 1956.

8. One cannot understand how a notification can be revived subject to its supersession by some other notification. Obviously reference to supersession of the Notification ST-909/X dated March 31, 1956, is wholly inconsistent with the language of Section 3(1) of the U.P. Act No. 15 of 1958. It appears to be an error that has crept into the Act. As the intention of the Legislature is clear from the language of the provisions referred to earlier we must hold that Notification No. ST-909/X dated March 31, 1956, is revived with retrospective effect. Further, as seen earlier, Notification No. ST-6069/X-1097-56 has already been struck down by the High Court as invalid. The same has not been revived by the Validation Act. Hence it does not exist in law.

9. For the reasons mentioned above we are in agreement with the High Court that Notification No. ST-909/X dated March 31, 1956, is in force.

10. The next contention taken by Mr. Gupte was that Notification No. ST-6068/X-1097-56 dated September 30, 1956, imposes excise duty and not sales tax and therefore the same is invalid. This question does not appear to have been argued before the High Court. Hence it is not advisable for us to go into that question though from a reading of the notification it is not possible to accede to the contention of Mr. Gupte that the levy in question is an excise duty and not sales tax.

11. The only other contention advanced on behalf of the appellant is that sales tax has been levied on some permit sales and the same was impermissible in law. He tried to base his argument on this part of the case on the decision of this Court in *New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar* [1963] supp. 2 S.C.R. 459; 14 S.T.C 316 (S.C.). The contention that a portion of the turnover related to sales of controlled articles appears to have been taken before the High Court at a late stage; yet the High Court permitted the appellant to place material before it to satisfy the court

that the relevant transactions cannot be considered as sales. From the affidavit filed by the assessee, it is not possible to conclude that the transactions in question are not "sales". The affidavit does not speak of any control over the sales. It merely refers to certain controls over purchases. On the material before us it is not possible to hold that any of those transactions are not "sales".

12. In the result this appeal fails and the same is dismissed. In the circumstances of the case, we direct the parties to bear their own costs. It may be noted that the appellant has been assessed on the basis of Notification No. ST-6069/X-1097-56 dated September 30, 1956. In other words, sales tax has been levied On him at 3 pies per rupee and not 6 pies per rupee as prescribed in Notification No. 909/X dated March 31, 1956. In the circumstances of the case the counsel for the Government has agreed that the Government will not proceed to reopen the assessment and assess on the basis of Notification No. 909/X dated March 31, 1956.