

State of Punjab and Others

Vs

Sukh Deb Sarup Gupta

Civil Appeal No. 528 of 1967

(J. C. Shah, K. S. Hegde, A. N. Grover JJ)

29.04.1970

JUDGMENT

GROVER, J. -

1. This is an appeal by special leave from a judgment of the Punjab High Court holding that medicinal or toilet preparations containing alcohol were exempt from the payment of tax under the East Punjab General Sales Tax Act, hereinafter called "The Act".

2. The respondent is running a factory for manufacturing spirituous and medicinal preparations containing alcohol at Jind in the district of Sangrur. Before the coming into force of the Constitution of India on January 26, 1950 "medicinal or toilet preparations" fell within the definition of "excisable articles" on which the excise duty was payable under Section 3(6)(c) of the Punjab Excise Act 1914. The Act came into force in 1948. Under its provisions tax was levied on the sale of goods with the exception of articles exempted under Section 6 of the Act. These articles were given in Schedule B wherein Entry 37 was in these terms :

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

After the enforcement of the Constitution alcoholic preparations which under the Government of India Act, 1935 was a provincial subject came to be dealt with in the Union List. Section 3(6)(c) of the Punjab Excise Act was, therefore, omitted by the Adaptation of Laws Order, 1950. However, by virtue of Article 277 of the Constitution the State Government continued to levy and collect the excise duty on the above articles even after January 26, 1950. In 1955 the Union Parliament enacted the Medicinal and Toilet Preparations (Excise Duties) Act, hereinafter referred to as the "Central Act." Section 21 of the Central Act provided :

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the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed."

3. The effect of the Central Act was to bring about uniformity in all States in the imposition of excise duty on alcoholic preparations. It is common ground that the collection of the duty leviable under the Central Act continued to be done by the State Government and the duty so collected went to the State Exchequer. The respondent was assessed to sales tax on alcoholic preparations on which excise duty was being levied under the Central Act by the State authorities for the year 1959-60, 1960-61, 1961-62. According to the appellant State it was entitled to levy sales tax on alcoholic preparations of the nature which were covered by the Central Act, for the reason that the respondent could no longer claim the benefit of the exemption contained in Entry 37 of Schedule B to the Act.

The respondent filed a petition under Article 226 of the Constitution challenging the levy of sales tax on the alcoholic preparations on which excise duty was being paid under the central Act. This petition succeeded before a learned Single Judge of the High Court who held that by virtue of Section 8 of the General Clauses Act, 1897 in Entry 37 reference to the Punjab Excise Act must be taken to be a reference to the relevant provisions of the Central Act. According to him the State could not levy any sales tax under the Act on the preparations in question. His judgment was affirmed by a division bench and the appeal filed by the State was dismissed.

4. The short point which falls to be determined is whether Section 8 of the General Clauses Act 1897 would govern the case and whether the respondent could claim the benefit of the exemption in Entry 37 of Schedule B to the Act notwithstanding that the exemption related expressly only to goods on which duty could be levied under the Punjab Excise Act, 1914. Section 8(1) of the General Clauses Act provides :

"8. (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and re-enacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

5. According to Section 3(19) of that Act "enactment" shall include any provision contained in any Act. On behalf of the State it has been argued that the words "former enactment" in Section 8 can refer only to a Central Act or provisions contained therein and they cannot cover Acts passed by the State legislature. Such an argument cannot be entertained because it goes against the express language of Section 3(19) which does not lay down any such limitation. The obvious meaning of that provision is that enactment would include any Act or provision contained therein passed by the Union Parliament or the State Legislature. The limited meaning sought to be attributed to the word "enactment" cannot be given to it for another reason. It could never be intended that when an Act passed by the Union Parliament repeals a State Act the principle underlying Section 8 should never become applicable. The High Court, in our opinion, was right in saying that there was nothing in Section 8 to indicate that the words "former enactment" meant only a Central Enactment and not a State enactment and that the courts would not be justified to read in that section words which were not there and to place a narrow and limited construction on the words "former enactment". It has not been disputed on behalf of the appellant that if Section 8 is applicable the respondent would be exempt from payment of tax under the Act on the alcoholic preparations on which excise duty is being levied under the provisions of the Central Act.

6. The appeal fails and is dismissed with costs.

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