

The State of Madras and Another

Vs

S. Padmanabhan Etc.

Civil Appeals Nos. 177-183 of 1967

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

21.01.1971

JUDGMENT

GROVER, J. -

1. These appeals by special leave from a judgment of the Madras High Court involve the question of the validity of Notification No. 976, issued under the provisions of the Tamil Nadu General Sales Tax Act, 1959, hereinafter called the Act, which was to come into force on April 1, 1959.

2. The respondents are dealers in fruits in the State of Tamil Nadu. Originally under the Madras General Sales Tax Act, 1939, the sale of fruits was liable to tax by means of a notification, dated March 25, 1954 the, sale of fruits amount other commodities was exempted from payment of tax under Section 6 of that Act. The 1939 Act was repealed and re-enacted by the Act which was published in the Official Gazette on March 18, 1959, but which was to come into force, as stated before, on April 1, 1959. On March 28, 1959 the Government passed G.O. No. 976 which was as follows :

"The Madras General Sales Tax Act, 1959, which will replace the Madras General Sales Tax Act, 1939, will come into force from April 1, 1959. The Government have examined the question of continuing or withdrawing the exemption from sales tax or the reductions in rates of sales tax so far granted under the Madras General Sales Tax Act, 1939, and such of them as have been decided to be continued from April 1, 1959, are specified in the notifications annexed to this order.

2. The notifications annexed to this order will be published in the Fort. St. George Gazette. The Controller of Stationery and Printing, Madras, is requested to publish in the notification in the Fort St. George Gazette, dated April 1, 1959, without fail."

The notification itself may also be reproduced :

"In exercise of the powers conferred by Section 17 of the Madras General Sales Tax Act, 1959 (Madras Act 1 of 1959) and in supersession of all the notifications issued under Section 6 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939), The Governor of Madras hereby makes the exemption in respect of the tax payable, under the said Madras General Sales Tax Act, 1959, on the sale or purchase of the goods or class of goods or by the class or persons or institutions in regard to the whole or part of their turnover specified in column (2) of the Schedule below subject to the conditions and restrictions, if any, specified in the corresponding entry

in column (3) thereof.

This notification shall come into force on the 1st day of April, 1959."

In the Schedule which contained the exemptions fresh fruit was not one of the items which was exempted from tax. In other words by virtue of this notification the respondents became liable to pay tax on the sale of fresh fruits with effect from April 1, 1959. It may be mentioned that the exemption with regard to fresh fruits was once again granted with effect from April 1, 1960. It was only during the assessment year 1959-60 that the respondents were liable to pay tax on the sale of fresh fruits under the provisions of the Act. It is unnecessary to refer to the course which the litigation in the shape of writ petitions filed by the respondent took in the High Court. It would be sufficient to mention that by the judgment under appeal the High Court struck down the Notification No. 976, dated March 28, 1959, which was to take effect from April 1, 1959. It was held that this notification had been issued before the Act came into force which amounted to an exercise of power which did not exist on the date on which the notification was promulgated. It was further held that the respondents were entitled by reason of the saving provision of Section 61 of the Act to invoke the exemption that had been granted under the earlier Act of 1939.

3. Section 3 provides for the levy of taxes on sale or purchase of goods. Under the first proviso to sub-section (1) of that section it was expressly laid down that in case of goods specified therein which included fresh fruits the rate of tax would 1% on the turnover of a dealer whose total turnover for a year was not less than Rs. 10,000/-. Under the second proviso the dealers dealing exclusively in one or more of the goods enumerated in the first proviso except foodgrains, rice products, wheat products and milk whose total turnover for a year was not more than Rs. 30,000/- were not to be liable to pay tax under sub-section (1). Section 17 empowered the Government by notification to make an exemption or reduction in rate in respect of any tax payable under the Act. Now what the Government did was that it made an order on March 28, 1959, in anticipation of the coming into force of the Act on April 1, 1959. It decided that a notification be published in the Fort. St. George Gazette on April 1, 1959, declaring the exemptions which would be granted under Section 17 of the Act in supersession of all the previous notifications issued under Section 6 of the Act of 1939. It is not disputed that the impugned notification was actually published in the Gazette on April 1, 1959. On that date the Act had come into force. We are wholly unable to comprehend how the validity of the notification could be impugned when it was actually promulgated on the date on which the Act came into force. The mere fact that it bore an earlier date was of no consequence. Section 53(4) of the Act expressly provided :

"(a) All rules made under this Act shall be published in the Fort St. George Gazette, and unless, they are expressed to come into force on a particular day shall come into force on the day on which they are so published.

(b) All notifications issued under this Act, shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are published."

The notification in question was stated to come into force on April 1, 1959. Besides, it was published on that very day. Therefore, in terms of clause (b) it came into force only on April 1, 1959 and not earlier. No one has challenged nor indeed it can be disputed that on April 1, 1959, a valid notification could be issued under Section 17 of the Act. For this reason alone the validity of the notification must be upheld.

4. On behalf of the respondents our attention has been invited to Bopanna Venkateswaraloo and Others v. Superintendent Central Jail, Hyderabad State. ((1953) SCR 905.) The facts in that case were altogether different and have been discussed in the judgment of the High Court. We consider it wholly unnecessary to refer to them as the point which arose there about the validity of certain orders made under the Preventive Detention (Second Amendment) Act, 1952, was entirely of a different nature and is not apposite for the purpose of the present case.

5. In the result the appeals are allowed and the decision of the High Court is hereby reversed. The writ petitions shall stand dismissed. In view of the entire circumstances the parties are left to bear their own costs.

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