Hindustan Gum and Chemicals Ltd.,

Vs

State of Haryana and Others

Civil Appeal No. 598 (N) of 1972

(E. S. Venkataramiah, R.B. Misra JJ)

19.08.1985

JUDGMENT

VENKATARAMIAH, J. -

1. The appellant in this appeal by certificate is a limited company having its registered office at Calcutta. It is carrying on the business of processing guar at its factory situated at Bhiwani, formerly within the State of Punjab and now in the State of Haryana, and exporting the outer shell to the United States of America. The inner part of guar is used as fodder for cattle in India. For the purpose of processing, the appellant has to bring into its factory premises guar from outside mandis.

2. Prior of August 10, 1965, the appellant's factory was situated outside the local limits of the Municipal Committee of Bhiwani but with effect from that date by reason of the extension of the local limits of the said Municipal Committee by the Notification No. MCII (XIII) - II-61/31330 dated August 10, 1965 issued under Section 5(3) of the Punjab Municipal Act, 1911 (Punjab Act III of 1911) (hereinafter referred to as 'the Act') by the then Punjab Government, the factory premises came within the municipal limits of Bhiwani. The said notification was published in the Punjab Government Gazette dated August 13, 1965 and with effect from that date the Municipal Committee of Bhiwani commenced to impose and collect octroi from the appellant in respect of the guar imported by the appellant into its factory within the extended municipal limits of Bhiwani from outside. The appellant resisted the levy of Octroi. When its attempts to get exemption from payment of octroi failed, it filed a writ petition under Article 226 of the Constitution before the High Court of Punjab and Haryana in Civil Writ 2743 of 1968 questioning the imposition of octroi on several grounds one of them being that without complying with the legal of the municipality, it was not open to the Municipal Committee to levy octroi on guar brought by the appellant into its factory from outside. The petition was contested by the State Government and the Municipal Committee of Bhiwani. That petition was dismissed by the High Court of Punjab and Haryana by its judgment dated May 18, 1970. Aggrieved by the judgment of the High Court, the appellant has filed the above appeal after obtaining the necessary certificate under Article 133(1)(a) of the Constitution from the High Court.

3. Section 5 of the Act, as it stood at the relevant time, read as follows :

> 5 (1) The State Government may, by notification published in the Official Gazette and in such other manner as it may determine, declare its intention to include within a municipality any local area in the vicinity of the same and defined in the notification whether such local are is a municipality or a notified area under this Act or not.

(2) Any inhabitant of a municipality or local area in respect of which a notification has been published under sub-section (1) may, should he object to the alteration proposed, submit his objection in writing through the Deputy Commissioner to the State Government within six weeks from the publication of the notification in the Official Gazette; and the State Government shall take such objection into consideration.

(3) When six weeks from the publication of the notification have expired, and the State Government has considered the objections if any which have been submitted under sub-section (2) the State Government may, by notification, include the local area in the municipality.

(4) When any local area has been included in a municipality under sub-section (3) of this decision, this Act, and, except as the State Government may otherwise by notification direct, all rules, bye-laws, orders, directions and powers made, issued, or conferred under this Act and in force throughout the whole municipality at the time, shall apply to such area.

4. Before the High Court the appellant relied upon the decision of this court in Bagalkot City Municipality v. Bagalkot Cement Co. (1963 Supp 1 SCR 710 : AIR 1963 SC 771) in support of its contention that when an area of any municipality was extended there could be no automatic imposition of octroi which was in force within the limits of municipal area before such extension in the extended area unless the procedure prescribed by Section 62 of the Act was complied with. The High Court distinguished the above decision from the present case by relying upon sub-section (4) of Section 5 of the Act which prescribed that when any local area was included in a municipality under sub-section (3) of Section 5 of the Act, and, except as the State Government may otherwise by notification direct all rules, bye-laws, orders, directions and powers made, or conferred under the Act and in force throughout the whole municipality at the time, would apply to such area. The High Court noticed that in the Bombay District Municipal Act, 1901 which governed the Bagalkot City Municipality case (1963 Supp 1 SCR 710 : AIR 1963 SC 771) there was no provision corresponding to sub-section (4) of Section 5 of the Act and it took the view that by virtue of Section 5(4) of the Act all taxes, Octroi etc. which were being levied within the municipal limits of Bhiwani before the extension of the municipal limits came to be applicable automatically to the extended area of the municipality. On the above basis the writ petition was dismissed on May 18, 1970. Along with the said writ petition the High Court also dismissed some other writ petitions which had been filed by some other petitioners carrying on business at Sonepat town against the State of Haryana and the Municipal Committee of sonepat in which a similarly contention had been raised. One of those writ petitions was Civil Writ 2014 of 1967 on the file of the High Court of Punjab and Haryana filed by the Atlas cycle Industries Limited, Sonepat. The Atlas Cycle Industries Limited preferred an appeal against the said common judgment but that appeal came to be disposed of by the decision of this Court on August 11, 1971 in Atlas Cycle Industries Ltd. v. State of Haryana ((1972) 1 SCR 127 : (1971) 2 SCC 564). By that decision this Court reversed the judgment of the High Court and allowed the appeal holding that the High Court was wrong in holding that the municipality in that case was competent to levy and collect octroi from the appellant therein by virtue of the provisions contained in Section 5 (4) of the Act. A writ in the nature of mandamus was issued to the Sonepat Municipality, the respondent in that case, restraining it from levying against and collecting from the appellant therein any octroi in respect of raw materials components and parts imported by it into its factory under the notification levying octroi which was in force in the said local area before its limits were extended. In reaching the above conclusion, this Court observed at pages 133-135 thus : (SCC pp. 568-69, paras 20 to 24)

Section 62(10) of the Act indicates that there is imposition of tax only when the State Government shall notify the imposition of the tax and shall in the notification specify a date on which the tax shall come into force. In the absence of imposition of tax by a notification under Section 62(10) of the Act the municipality is not competent to impose, levy or collect tax. Section 62 (12) of the Act enacts that a notification of the imposition of tax shall be conclusive evidence that the tax has been imposed in accordance with the provisions of the Act. It is the notification under the statute which is conclusive evidence of the imposition of tax.

The controversy in the present appeals is solved by finding out as to whether the notification, dated November 3, 1942, imposing octroi within the limits of the Sonepat Municipality became applicable by reason of the provisions contained in Section 5(4) of the Act. It is noticeable at the outset that Section 5(4) of the Act speaks of rules, bye-laws, orders, directions and powers and does not significantly mention 'notifications'. It is apposite to consider Sections 6, 7 and 8 of the Act which deal with the effect of exclusion of local area from the municipality. In the case of exclusion of an area from the municipality it is provided in Section 8(1)(a) of the Act that "This Act and all notifications, rules, bye-laws, orders, directions and powers issued, made or conferred under the Act, shall cease to apply thereto". When the Act provided for notifications ceasing to apply in the case of exclusion of local areas, and in the immediately preceding Section 5 refrained from using the word 'notifications' becoming applicable in the case of inclusion of areas the legislative intent is unambiguous and crystal clear that notifications could not become applicable to an included area on the strength of Section 5(4) of the Act.

The word 'notification' cannot be said to be synonymous with rules, bye-laws, orders, directions and powers for two reasons. First, the Act in the present case speaks of notifications for imposition of tax and used the word 'notification' separately from the other words "rules, bye-laws, orders directions and powers". In the case of exclusion of areas, the Act speaks of notification ceasing to apply to excluded areas whereas in the case of inclusion of areas of Act significantly omits any notification being applicable to such area. Secondly, the General Clauses Act in Section 21 speaks of power to issue notifications, orders, rules or bye-laws and it is, therefore, apparent that the power to issue notifications, orders, rules or bye-laws refers to different and separate methods of expression of exercise of power under the statute. Section 62(10) of the Act speaks of notification of the imposition of tax. Such a notification is the statutory basis of imposition and levy of tax.

Bye-laws are entirely different from notifications imposing tax as will be manifest from Section 188 of the Act. Under that section the committee may by bye-laws as mentioned in clause (g) thereof fix limits for the purpose of collecting octroi where collection of octroi has been sanctioned and may prescribe routes by which articles which are subject to Octroi may be imported into municipality. Bye-laws fixing the limits and prescribing the routes by which articles which are subject to octroi may be imported obviously cannot be equated with notification of imposition of octroi.

..... In the first place, a taxing provision always receives a strict interpretation for the obvious reason that there must be clear and express language imposing a tax and the date from which such tax shall come into effect. Notifications under the Act are the

only authority and mandate for imposition and charge of tax. Notifications are not made applicable to included areas under Section 5(4) of the Act.

5. Following the above decision of this Court which was delivered on August 11, 1971 we should have allowed this appeal and issued directions similar to those issued in the above decision to the respondents in this case also. But after the above decision of this Court, the State Legislature of Haryana proceeded to amend the Act by passing the Punjab Municipal (Haryana Amendment and Validation) Act, 1971 (hereinafter referred to as "the Amending Act"). The Amending Act was published in the Haryana Government Gazette on November 16, 1971. Section 2 and Section 4 of the Amending Act are material for purposes of this appeal. By Section 2 of the Amending Act the Legislature substituted the word 'rules' in sub-section (4) of Section 5 of the Act by the words and sign "rules, notification" and further providing that those words and sign should be deemed always to have been substituted. By reason of this amendment the expression 'notification' should be deemed always to have been present in Section 5(4) of the Act including the date on which the municipal limits of Bhiwani were extended bringing within them the factory of the appellant also. By Section 4 of the Amending Act, the levy of octroi against and collection from the appellant and other within the extended limits of all the municipalities in Haryana were validated. Section 4 of the Amending Act read thus :

> 4. Validation. - (1) Notwithstanding any judgment, decree or order of any court of other authority to the contrary .... any octroi levied, charged or collected or purporting to have been levied, charged or collected before the commencement of this Act and any action taken or thing done before such commencement in relation to such assessment, re-assessment, levy or collection under the provisions of the principal Act and the rules made thereunder shall be deemed to be as valid and effective as if such assessment, re-assessment, levy or collection or action or thing had been made, taken or done under the principal Act as amended by this Act and the rules and bye-laws made thereunder and accordingly -
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> (a) all acts, proceedings or things done or taken by the Committees or by the officers of the Committees or by any other authority in connection with the assessment re-assessment, levy or collection of such tax or octroi shall, for all purposes, be and or octroi shall, for all purposes, be deemed to be and to have always been done or taken in accordance with law;
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> (b) no suit or other proceedings shall be maintained or continued in any court or before any authority for the refund of any such tax or octroi; and
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> (c) no court shall enforce any decree or order directing the refund of any tax or octroi.
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> (2) For the removal of doubts, it is hereby declared that nothing in sub-section (1) shall be construed as preventing any person, -
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> (a) from questioning in accordance with the provisions of the principal Act, as amended by this Act, any assessment, re-assessment, levy or collection of tax or octroi referred to in sub-section (1); or
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> (b) from claiming refund of any tax or octroi paid by him in excess of the amount

> due from him by way of tax or octroi under the principal Act, as amended by this Act.

6. Reliance is now placed by the respondents on the amendment of section 5(4) of the Act made with retrospective effect and the validating provisions contained in the Amending Act in support of their case. It is now well settled that it is permissible for a competent Legislature to overcome the effect of a decision of a court setting aside the imposition of a tax by passing a suitable legislation amending the relevant provisions of the statute concerned with retrospective effect, thus taking away the basis on which the decision of the court had been rendered and enacting an appropriate provision validating the levy and collection of tax made before the decision in question was rendered. In Shri Prithvi Cotton Mills Ltd. v. Broach Borough Municipality ((1970) 1 SCR 388 : (1969) 2 SCC 283 : AIR 1970 SC 192), a Constitution Bench of this court has laid down the requirements which a validating law should satisfy, in order to validate the levy and collection of a tax which had been declared earlier by a court as illegal. Hidayatullah, C.J. speaking for this Court observed in the above decision at pages 392-393 thus : (SCC pp. 286-87, para 4)

> When a Legislature sets out to validate a tax declared by a court to be illegally collected under an ineffective or an invalid law, the cause for ineffectiveness or invalidity must be removed before validation can be said to take place effectively. The most important condition, of course, is that the Legislature must possess the power to impose the tax, for if does not the action must ever remain ineffective and illegal. Granted legislative competence, it is not sufficient to declare merely that the decision of the court shall not bind for that is tantamount to reversing the decision in exercise of judicial power which the Legislature does not possess or exercise. A Court's decision must always bind unless the conditions on which it is based are so fundamentally altered that the decision could not have been given in the altered circumstances. Ordinarily, a court holds a tax to be invalidly imposed because the power to tax is wanting or the statue or the rules or both are invalid or do not sufficiently create the jurisdiction. Validation of tax so declared illegal may be done only if the grounds of illegality or invalidity are capable of being removed and are in fact removed and the tax thus made legal. Sometimes this is done providing for jurisdiction where jurisdiction had not been properly invested before. Sometimes this is done by re-enacting retrospectively a valid and legal taxing provision and then by fiction making the tax already collected to stand under the re-enacted law, Sometimes the Legislature gives its own meaning and interpretation of the law under which the tax was collected and by legislative fiat makes the new meaning binding upon courts. The Legislature may follow any one method or all of them and while it does so it may neutralise the effect of the earlier decision of the court which becomes ineffective after the change of the law. Whichever method is adopted it must be within the competence of the Legislature and legal and adequate to attain the object of validation. If the Legislature has the power over the subject-matter and competence to make a valid law, it can at any time make such a valid law and make it retrospectively so as to bind even past transactions. The validity of a validating law, therefore, depends upon whether the Legislature possesses the competence which it claims over the subject-matter and whether in making the validation it removes the defect which the courts had found in the existing law and makes the courts had found in the existing law and makes adequate provisions in the validating law for a valid imposition of the tax.

7. In the instant case the only ground on which this Court had found the levy of octroi in the extended area of a municipality to be invalid was that the provisions of Section 5(4) of the Act were inadequate in the absence of a reference to the notifications issued under the Act also in that sub-

section. By the Amending Act the word 'notification' had been inserted in sub-section (4) of section 5 of the Act with retrospective effect. If the expression 'notification' had been there in that sub-section on the date on which the municipal limits were extended, this court would have upheld the levy and collection of octroi in its judgment in Atlas Cycle Industries Ltd. Case ((1972) 1 SCR 127 : (1971) 2 SCC 564). This court found that sub-section (4) of section 5 which did not contain the word 'notification' was inadequate for the purpose of upholding the levy and collection of octroi in the extended local area. Since the word 'notification' has now been inserted in Section 5 (4) of the Act with retrospective effect, the basis on which the said decision was rendered has been removed because the deficiency in Section 5(4) noticed by this court has been made good and the levy and collection of octroi have also been validated. The Amending Act satisfies the tests laid down this Court in the decision in Shri. Prithvi Cotton Mills case ((1970) 1 SCR 388 : (1969) 2 SCC 283 : AIR 1970 SC 192) for overcoming an earlier decision of a court in such circumstances. The Amending Act thus neutralises the effect of the decision in the case of Atlas Cycle Industries Ltd. ((1972) 1 SCR 127 : (1971) 2 SCC 564) Which can no longer be relied upon by the appellant after the amendment of the Act as stated above. There is no other contention urged by the appellant in support of its appeal. The levy and collection of octroi in the area which was included within the municipal limits of Bhiwani with retrospective effect from August 10, 1965 in accordance with the notification issued earlier are, therefore, no longer open to question.

8. In the result this appeal fails and the order of dismissal of the writ petition passed by the High Court is affirmed but of a ground different from the ground on which the High Court had dismissed it. There shall, however be no order as to costs.

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