

11. We are, therefore, of the view that such permission may be sought at any stage and if the Court finds merit in the same it would not be debarred from acceding to such a prayer.

12. No other point has been urged.

13. Finding no merit in this revision petition we hereby dismiss the same but leave the parties to bear their own costs.

H. S. B.

Before S. S. Sandhawalia, C.J. and S. S. Dewan, J.

AVON SCALES COMPANY, SONPAT,—*Petitioner*

versus

STATE OF HARYANA and others,—*Respondents*.

Civil Writ Petition No. 2381 of 1975

August 7, 1978.

Haryana General Sales Tax Act (20 of 1973)—Sections 1(3) and 40—Retrospectivity given to section 40—Whether valid—Statutory remedy of appeal not availed of—Assessee—Whether entitled to relief under the extraordinary writ jurisdiction.

Held, that subject to the constitutional restrictions, power to legislate includes the power to legislate both prospectively as well as retrospectively. Except for the bar aforesaid the Legislature has plenary jurisdiction to give retrospectivity to its provisions. As such, the retrospective operation given to section 40 of the Haryana General Sales Tax Act, 1973 is valid. (Para 6).

Held, that if an impugned order is appealable, the writ petitioner must necessarily be confined to his ordinary remedy by way of appeal. Merely because he had chosen not to resort to the same or had allowed the said remedy to become time barred by preferring the writ petition, is no ground for affording him the extraordinary remedy in the writ jurisdiction merely because of his own default. (Para 7)

Petition under Articles 226 and 227 of the Constitution of India praying that this Hon'ble Court be pleased to :—

- (i) *Send for the records of the respondents relating to the impugned order, Annexure 'P/6' and after a perusal of the same the impugned order, Annexure 'P-6', be quashed:*

Avon Scales Company, Sonapat v. State of Haryana etc.
(S. S. Sandhawalia, C.J.)

- (ii) Declare Section 40 of the Haryana General Sales Tax Act, 1973 as ultra vires the Constitution of India;
- (iii) Issue any other appropriate Writ, Direction or order that this Hon'ble Court may deem fit and proper in the circumstances of this case;
- (iv) An ad interim order be passed staying proceedings pending before the Assessing Authority, in pursuance to the order, Annexure 'P/6', till the final adjudication of the Writ Petition by this Hon'ble Court.
- (v) Exempt the petitioner from serving the prior notices of motion on the respondents, as it is apprehended that the Assessing Authority may finalise the assessment on 12th of May, 1975 or any time thereafter, thus rendering the writ petition as infructuous;
- (vi) Dispense with the filing of originals/certified copies of Annexure 'P/3 & 5' as the same is not readily available with the petitioner;
- (vii) Costs of this petition be awarded to the petitioner.

R. N. Narula, Advocate, for the Petitioner.

S. C. Mohunta, A.G. with Naubat Singh, Sr. D.A.G., for the Respondents.

JUDGMENT

S. S. Sandhawalia, C.J.—

(1) A pretended challenge to the constitutionality of section 40 of the Haryana General Sales Tax Act 1973, both with regard to its prospective and retrospective operation was sought to be raised in this writ petition. The primary grievance of the petitioners, however, centred around the order of the Deputy Excise and Taxation Commissioner, Ambala, whereby he had set aside the order of the Assessing Authority, Sonapat, dated the 22nd January, 1973 and remanded the case for fresh assessment.

(2) In view of what follows it is unnecessary to advert to the facts in any great detail. It suffices to mention that,—*vide* annexure P. 1, the Assessing Authority, Sonapat, assessed the total tax and

penalty due from the petitioners M/s Avon Scale Company, Sonapat at a paltry sum of Rs. 85 and directed the issue of a demand notice against them accordingly. The Deputy Excise and Taxation Commissioner, Ambala, however, acting *suo motu* under the revisional jurisdiction conferred by section 40 of the Haryana General Sales Tax Act, called for the record of the proceedings and the assessment order for the purpose of satisfying himself as to the legality or the propriety of the assessment order. The petitioners were accordingly summoned to appear before the said authority,—*vide* annexure P. 4. One of the partners of the petitioner-firm appeared before the Authority aforesaid on the 6th of January, 1975 and apart from urging the merits of the case prayed for the adjournment of the proceedings because the assessment related to matters, some of which were nearly seven years old. The Deputy Excise and Taxation Commissioner, Ambala, however, on examination of the record, found that the question whether the purchasers of goods from the petitioners had done so on the strength of the registration certificate and were further engaged in the resale of these goods, needed a further probe and consequently remanded the matters to the Assessing Authority for a fresh assessment. The petitioners were directed to appear before the Assessing Authority with the necessary documents and evidence on the 28th of January, 1975 at 10 A.M.

(3) Though the order aforesaid is admittedly appealable, it appears that no appeal was preferred by the petitioners. However, nearly four months thereafter the present petition was moved on the 6th of May, 1975 wherein a fragmentary challenge to the validity of section 40 of the Haryana General Sales Tax Act was also raised.

(4) Before us Mr. R. N. Narula has been singularly unable to raise any contention worth the name against the constitutionality of Section 40 of the Haryana General Sales Tax Act, which is in the following terms :—

“40. *Revision.*—(1) The Commissioner may on his own motion call for the record of any case pending before, or disposed of by, any assessing authority or appellate authority, other than the Tribunal, for the purposes of satisfying himself as to the legality or to propriety of any proceedings or of any order made therein and may pass such order in relation thereto as he may think fit.

Avon Scales Company, Sonapat v. State of Haryana etc.
(S. S. Sandhawalia, C.J.)

(2) The State Government may, by notification, confer on any officer the powers of the Commissioner under sub-section (1) to be exercised subject to such conditions and in respect of such areas as may be specified in the notification.

(3) No order shall be passed under this section which adversely affects any person unless such person has been given a reasonable opportunity of being heard."

It is evident that the revisional powers conferred by the aforesaid provision are identical with innumerable other statutes and their validity has hardly ever been the subject-matter of challenge. Indeed when pressed, learned counsel fairly conceded that the provisions being innocuous and conferring well-known and well-established revisional powers were beyond any serious challenge.

(5) Repelled on the main ground, the counsel then contended that whilst the prospective operation of section 40 may be unassailable yet the retrospectivity given thereto by the statute is not valid. Reference in this connection was made to section 1 of the Haryana General Sales Tax Act wherein under the relevant item of sub-section (3), the provisions of section 40 have been given retrospectivity with effect from the 1st of March, 1978.

(6) On the point of retrospectivity also learned counsel for the petitioners is on equally tenuous ground. As is evident, the Haryana General Sales Tax Act, 1973 was enacted by the legislature of the State of Haryana in 1973 and came into force on 6th of May, 1973. It is well-settled that subject to constitutional restrictions the power to legislate includes the power to legislate both prospectively as well as retrospectively. It has been held times out of number that except for the bar aforesaid the legislature has plenary jurisdiction to give retrospectivity to its provisions. Faced with this proposition, Mr. Narula candidly conceded that even on the point of retrospectivity he had no case to urge.

(7) The primary challenge against the constitutional provisions being out of the way, it is evident that hardly anything else survives in the writ petition. The impugned order of the Deputy Excise and Taxation Commissioner, Ambala, annexure P. 6 being admittedly

appealable, the petitioners must necessarily be confined to their ordinary remedy by way of appeal. Merely because they had chosen not to resort to the same or had allowed the said remedy to become time-barred by preferring the present writ petition after more than four months of the order which was passed in the presence of one of the partners of the petitioners is no ground for affording them extra-ordinary remedy or the writ jurisdiction merely because of their own default.

(8) This apart, it is evident that the end-result of the impugned order is that the whole issue has been remanded back to the Assessing Authority. Undoubtedly there is a hierarchy of appeals and revisions provided by the statute against the original order of assessment. There are even further remedies provided by the culminating reference from the Sales Tax Tribunal to this Court. In this context the petitioners are disentitled to any relief at the hands of the writ Court and are relegated to their ordinary statutory remedies which may as yet be available to them in law. The writ petition appears to us as misconceived and is hereby dismissed with costs.

(9) Mr. R. N. Narula has fairly stated that the position in the connected Civil Writ Petitions Nos. 2382 to 2386 of 1975 is identical and all of them shall be governed by this judgment. All these writ petitions are accordingly dismissed with costs.

N.K.S.

Before S. S. Sandhawalia, C.J. and S. S. Dewan, J.
FAIRDEAL AGENCIES (REGD.) AMBALA CANTT.,—Petitioner.

versus

STATE OF HARYANA and others,—Respondents.

Civil Writ No. 1177 of 1976

August 8, 1978.

Haryana General Sales Tax Act (20 of 1973)—Sections 1(3), 49 and 65(1)—Constitution of India 1950—Seventh Schedule, List II, Entry 54—Section 49 of the Haryana Act—Whether beyond the competence of the legislature—Legislature—Whether competent to give a retrospective effect to the provision—Penalty under section 49—Whether cannot be imposed in view of the saving provision made in the proviso to section 65.