

FULL BENCH

before S. S. Sandhwalia, C.J. Surinder Singh & I. S. Tiwana, JJ.

JOG DHIAN VINOD KUMAR —Petitioner.

versus

THE STATE OF HARYANA and another,—Respondents.

Civil Writ Petition No. 3848 of 1972.

August 9, 1982.

Constitution of India 1950—Article 19—Punjab General Sales Tax (Haryana Amendment and Validation) Act (XIX of 1972)—Levy of sales tax with retrospective effect on pumping sets—Whether ultra vires Article 19.

Held, that the levy of sales tax on pumping sets with retrospective effect by virtue of the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1972 is in order and not *ultra vires* Article 19 of the Constitution of India, 1950.

(Para 6).

Petition Under Articles 226 and 227 of the Constitution of India praying that the following reliefs be granted :—

- (i) *A writ in the nature of a Writ of Certiorari be issued calling for the records of the respondents relating to the impugned order, Annexure's 'A' and after a perusal of the same the impugned order, Annexure 'A' be quashed ;*
- (ii) *To declare the Punjab General Sales Tax Act (Haryana Amendment and Validation) Act, 1972, No. 19 of 1972 as ultra vires the Constitution ;*
- (iii) *Any other suitable Writ, Direction or Order that this Hon'ble Court may deem fit in the circumstances of this case be issued;*
- (iv) *An ad interim order be issued staying operation of recovery of tax imposed upon the petitioner by Assessment Order, Annexure 'A' till the final adjudication of the Writ Petition ;*
- (v) *Costs of the petition be allowed to the petitioner.*

R. N. Narula with P. S. Saini, Advocate, for the Petitioner.

P. S. Duhan, D.A.G., Haryana, for the Respondents.

JUDGMENT

S. S. Sandhwalia, C.J.

(1) The meaningful question that has been formulated for consideration by the Full Bench is—

“Whether the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1972, (Haryana Act No. 19 of 1972) is *ultra vires* of the Constitution of India in so far as it imposes retrospectively the Sales Tax on wheat-thresher discs, pumping sets ?”

2. The chequered history of this case giving rise to the issue aforesaid needs recounting, albeit briefly. This writ petition was preferred a full decade ago to challenge *inter alia* the retrospective imposition of sales tax on pumping sets (which were being marketed by the petitioner-firm) by the Punjab General Sales Tax (Haryana Amendment and Validation) Act, 1972 (Haryana Act No. 19 of 1972). Alongwith a number of other writ petitions raising a similar challenge, this writ petition also came up for consideration by Division Bench which by its lucid order dated the 15th of February, 1973, referred the question mentioned at the very outset for decision by the Full Bench.

3. On the 2nd of August, 1976, all the connected writ petitions came up for hearing before a Full Bench of this Court. However, the Government of Haryana had meanwhile by instructions issued on 4th of June, 1974, directed that the levy of sales-tax for the sale of threshers and discs be exempted. Consequently those writ petitions in which the sole challenge was to the imposition of sales tax on wheat-threshers and discs were rendered infructuous in which other contentions were available were referred back to the Division Bench for determination on merits.

4. In the present writ petition the challenge had been rested squarely on Article 19 of the Constitution. However, at the time of the earlier hearing before the Full Bench, because of the proclamation of emergency, the operation of the said Article stood suspended. Consequently it was directed that the present writ petition shall be

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kept pending but the stay order granted in favour of the petitioner was vacated. That is how the matter is before us now.

5. It seems wholly unnecessary to burden this judgment with any digression on principle of detailed discussions of earlier precedents. It suffices to mention that firm reliance on behalf of the respondents was placed on the Division Bench judgment of this Court in *Birla Cotton Spinning and Weaving Mills Ltd. v. The State of Haryana and another* (1). Therein the common question in fifteen writ petitions formulated for decision by the Bench was as under:—

“Whether the retrospective effect given to the definition of ‘dealer’ in section 2(c) of the Haryana General Sales Tax Act, 1973, with effect from the 7th of September, 1955, by virtue of the first clause of sub-section (3) of section 1 thereof suffers from the vice of unconstitutionality?”

After an exhaustive discussion on principle and relying on the binding precedent of the final Court the answer thereto was rendered in the negative and it was held that the retrospectively given by the statute was valid.

6. Faced with the aforesaid impregnable wall of precedent, Mr. R. N. Narula the learned counsel for the petitioner was fair enough to take the stand that he was unable to raise any meaningful challenge to the ratio in *Birla Cotton Spinning and Weaving Mills’* case (supra), nor was it denied that the same would now cover the question before us in favour of the respondents. Accordingly affirming the view in *Birla Cotton Spinning and Weaving Mills’* case we answer the question posed at the outset in the negative to hold that the imposition of the sales-tax with retrospective effect was valid.

7. Mr. R. N. Narula had then candidly stated that no other question in fact now survives. The writ petition is, therefore, dismissed but in view of the very fair stand taken by the learned counsel for the petitioners we decline to burden them with costs.

Surinder Singh, J.—I agree.

H.S.B.

(1) (1979) 43 S.T.C. 158.