CIVIL MISCELLANEOUS

Before Inder Dev Dua and Prem Chand Pandit, JJ.

M/S BALLIMAL NAWALKISHORE,—*Petitioner*

versus

THE ASSESSING AUTHORITY UNDER THE PUNJAB GENERAL SALES-TAX ACT AND THE CENTRAL SALES-TAX ACT AND THE STATE OF PUNJAB,—*Respondents*

Civil Writ No. 1004 of 1965

1965

October, 19th

Central Sales-tax Act (LXXIV of 1956)—Scheme of—S. 8—Each inter State sale—Whether to be entered in a separate form—Central Sales-tax (Punjab) Rules (1957)—Rule 7(2A)—Whether ultra vires*—Declaration of a law as* ultra vires *by Court—Matters to be considered stated—Interpretation of statutes—Tax laws—How to be construed—Constitution of India (1950)—Art. 226—Party losing right of redress under the statute by his own conduct—Whether entitled to relief by writ under Art. 226.*

Held, that the scheme of the Central Sales-tax Act, 1956, discloses that the charging section operates on sales effected by the dealer in the course of inter-State trade and each sale transaction has to be separately considered for determining whether it is subject to tax and if so, at what rate. Exemption and rate of tax payable have to be determined in respect of each transaction of sale. The manner of using Form "C" and the manner of furnishing the requisite declaration, as required by section 8(4) of the said Act, falls within the scope, object and meaning of section 13(4)(e) of the Act.

Held, that Rule 7(2A) of the Central Sales-tax (Punjab) Rules, 1957 is not *ultra vires* section 8(4) of the Act nor is it repugnant to any provision of the Central Turnover Rules. Power to tax and the effective exercise thereof are indispensable to the proper functioning of Government because tax measures facilitate good social order; it seems to be all the more so in case of a welfare State of socialistic pattern. The Sales-tax Acts, like the other main taxation measures, are, broadly speaking, based on the theory of self-assessment and this naturally calls for honesty from a great majority of tax-payers in order to make the assessment and collection of tax administratively feasible. It is perhaps an honest desire for effective verification of the return which has prompted the State Government to frame the impugned rule and if it is permissible on the language of the authority delegated to frame this kind of a rule, it is not liable to be struck down on the theory that tax laws should clearly and unambiguously provide for the liability to be taxed.

Held, that if the rules made by delegated authorities are within their respective spheres of agency, then in considering the question

of inconsistency between two sets of rules, and between the Punjab Rules and the Act, the Court must make an attempt to construe them all harmoniously, exerting an earnest effort to see if they can reasonably co-exist as parts of the same statutory instrument intended to promote and effectuate the legislative design and object. It may profitably be kept in view that the actual workable machinery for assessing and collecting tax, even under the Central Act, is entrusted to the administration of the various States concerned. Naturally, therefore, the day-to-day and stage-to-stage working and operation of the statute has quite reasonably, in the interest of efficiency, to be left to the State Government. The power of making rules, therefore, for effectuating this purpose must inevitably be conceded to the State Government concerned.

Held, that the task of declaring a law *ultra vires* or unconstitutional is delicate and it is so, irrespective of the fact that the law is made by a legislative delegate. It is solemn act and the Courts enter on this task both with caution and a sense of deep responsibility. The Courts should declare a law *ultra vires* or unconstitutional only when it is clearly shown to be so and such a declaration is necessary for adjudicating the controversies before them. The Courts merely discharge their duty and function assigned to them under the fundamental law.

Held, that tax laws have to be construed according to their plain meaning. Since the obligation of a citizen to pay a tax arises only from legislative provision, it has become firmly established that such liability must be clear from the statutory language which calls for strict construction. But when the Court is concerned with computation of liability and recovery measures of the tax, then in view of the problems and difficulties involved in the assessment and collection of taxes, a workable approach calculated to promote and achieve the object is called for.

Held, that merely because an aggrieved party has by his own conduct lost his remedy under the statute on account of time lapse, is by itself and without more no ground for invoking the High Court's jurisdiction under Article 226 of the Constitution.

Petition under Articles 226/227 of the Constitution of India praying that a writ of Certiorari, *or any other appropriate writ, order or direction be issued quashing the order of the Assessing Authority.*

R. K. AGGARWAL, ADVOCATE, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL WITH M. R. AGNIHOTRI, ADVOCATE, for the Respondents.

ORDER

Dua, J.

DUA, J.—The short question which falls for determination in this case relates to the *vires* of Rule 7(2A) of the Central Sales-tax (Punjab) Rules, 1957, framed by the

State of Punjab in pursuance of section 13 of the Central Sales-tax Act No. 74 of 1956 (hereinafter called the Central Act). The facts giving rise to the controversy are not in dispute and may here be stated in brief. The petitioner-firm Messrs Ballimal Nawalwishore is a dealer under the Punjab General Sales-tax Act (hereinafter called the Punjab Act) and under the Central Act and is carrying on the business as a commission agent in respect of wool in Panipat and on that account has to get itself registered under section 7 of the Punjab Act. A similar registration under section 7 of the Central Act is also essential in the petitioner's case because the firm deals in inter-State trade, for under section 6 of the Central Act, tax has to be paid on all sales effected in the course of inter-State trade or commerce after the requisite notification. It is not disputed that in the present case tax under the Central Act is payable by the petitioner. As commission agent, the petitioner supplies wool to purchasers both in and outside the State of Punjab, but in the case in hand, the controversy centres round the supply of wool through the petitioner to parties outside Punjab. Indeed, according to the writ petition, the only party whose transactions are the subject-matter of the present controversy, is a firm called Krishna Kapoor & Co. (hereinafter called Krishna Company) of Jaipur and the assessment in question relates to the year 1963-64 under the Central Act. Krishna Company, it may be pointed out, is also registered under the Central Act. The procedure for the sale of raw wool to Krishna Company is that the said Company sends its representatives to Panipat to the petitioner-firm and through the petitioner-firm raw-wool is purchased from time to time as required by Krishna Company. After the purchases have been effected, consignments are sent as soon as possible depending on the availability of transport or railway booking, etc. Goods purchased in one transaction may thus be sent by different consignments or goods purchased by means of several transactions may be sent by one consignment. The orders are usually placed orally either on telephone or through the representative of Krishna Company. These facts may not be strictly necessary for considering the *vires* of the rule, but they have been asserted in the writ petition apparently for the purpose of showing that to comply with the impugned rule would not only mean extreme avoidable hardship to the petitioner-assessee but would also be unworkable in practice.

M/s Ballimal Nawalkishore
v.
The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

To understand the precise narrow controversy involved in the case, it is desirable at this stage to read the impugned rule and the other relevant provisions of both the Punjab and the Central Acts and the rules made thereunder. Relevant portion of Rule 7, Central Sales-tax (Punjab) Rules, reads thus;—

> "7. (1) Any dealer registered under the Act shall apply to the authority to whom he made his application for registration for the grant of declarations in form 'C' prescribed under the Central Sales-tax Act (Registration and Turnover) Rules, 1957, stating clearly his reasonable demand, for not more than three months, disclosing the stock and details of such declaration forms already in hand and also the date on which and the manner in which he was last issued the declaration forms.
>
> * * * * *.
>
> (2A) No single declaration in form 'C' prescribed under the Central Sales-tax (Registration and Turnover) Rules, 1957, shall cover more than one transaction of sale except when the total amount of sales does not exceed five thousand rupees."

Rule 7(2B) lays down that the counterfoil of declaration in form "C" shall be maintained by the registered dealer for a period of three years after the close of the year to which the said form pertains. Section 13 of the Central Act, so far as relevant for the purpose of showing the authority conferred on the Central Government and the State Government for making rules, may now be read:—

> "13. (1) The Central Government may, by notification in the Official Gazette, make rules providing for—
>
> * * * * *;
>
> (d) the form in which and the particulars to be contained in any declaration or certificate to be given under this Act;
>
> * * * *.

M/s Ballimal Nawalkishore v. The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

(2) All rules made by the Central Government under sub-section (1) shall be laid before both Houses of Parliament as soon as may be after they are made and shall be subject to such modifications as Parliament may make during the session in which they are so laid or the session immediately following.

(3) The State Government may make rules not inconsistent with the provisions of this Act and the rules made under sub-section (1), to carry out the purposes of this Act.

(4) In particular and without prejudice to the powers conferred by sub-section (3), the State Government may make rules for all or any of the following purposes, namely:—

* * * * *;

(e) the authority from whom, the conditions subject to which and the fees subject to payment of which any form of declaration prescribed under sub-section (4) of section 8 may be obtained, the manner in which the form shall be kept in custody and records relating thereto maintained, the manner in which any such form may be used and any such declaration may be furnished;

* * * * *."

Section 8(4) to which reference has been made in clause (e) may now be adverted to:—

"8(4). The provisions of sub-section (1) shall not apply to any sale in the course of inter-State trade or commerce unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner—

(a) a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority; or

M/s Ballimal Nawalkishore
v.
The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

(b) if the goods are sold to the Government, not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the Government."

The declaration referred to in section 8(4)(a) is to be in the Form "C" as provided by rule 12 read with rule 2(b) of the Central Sales-tax (Registration & Turnover) Rules, 1957, hereinafter called the Central Turnover Rules, framed by the Central Government under section 13(1) of the Central Act. These rules have been seen by us from the Lahore Law Times, 1957, Part VI, pp. 37 and 38. Form 'C', curiously enough, is not published in this book, though it is a part of the rules. The counsel before us are, however, agreed that the copies of declarations, Annexures A-1 to A-9 attached to the writ petition, are the prescribed forms. Rule 12 of these rules may now appropriately be read:—

"12. The declaration referred to in sub-section (4) of section 8 shall be in Form 'C',"

The first argument strongly pressed by Shri Raj Kumar, learned counsel for the petitioner, is brief and clear-cut. According to him, by virtue of section 8(4) of the Central Act, the petitioner's sales in question would be covered by section 8(1), if a declaration, duly filled and signed by the registered dealer, to whom the goods are sold, containing the prescribed particulars in a prescribed form, is furnished to the prescribed authority in the prescribed manner. This provision of law does not place any restriction or limitation on the number of sales which may be entered in one form. To curtail this right or to put restrictions or limitations on it by means of rules framed by the State of Punjab, would be inconsistent with the Central Act and, therefore, unauthorised and *ultra vires*, being hit by section 8(4). In any event, it is submitted that by virtue of section 13(1)(d) of the Central Act, it is only the Central Government which is authorised to make rules providing for the form in which, and the particulars to be contained in any declaration which is required to be given under the said Act. The rules which the State Government can make by virtue of section 13(3) and (4)(e) of the Central Act must be confined to the purpose specifically mentioned in clause (e) which, according to the

submission does not include the particulars to be contained in a declaration. The general power conferred on the State Government by section 13(3), in the presence of section 13(1) and (2), should not be construed to cover the subject of the particulars to be contained in a declaration, power regarding which has been delegated to the Central Government in specific terms.

Another string in the petitioner's bow of challenge to the impugned rule is that the fixing of rates of tax under the Central Act cannot be, and indeed is not, delegated to the State Government and the State Government, therefore, cannot by an indirect method determine the rate of tax to be imposed on the petitioner. What the State Government cannot do directly, it cannot be held authorised to do indirectly.

It has next been contended that in case of ambiguity, the interpretation of the taxing statute in question should be favourable to the assessee and not to the State.

Lastly, it has been emphasised that Rule 9 of the Central Sales-tax (Punjab) Rules provides a penalty for breach of rules and the second penalty in the form of higher rate of tax under the impugned rule would amount to double jeopardy. Such double penalty should, according to the counsel, be held to be excluded by necessary intendment as it is too harsh to have been intended by the Legislature. During the course of arguments, the petitioner's learned counsel has referred us to the following decisions:—

> *Deputy Commissioner of Commercial Taxes* v. *Stanes Motors (S.I.) Ltd.* (1), *Tika Ramji* v. *State of U.P.* (2), *Stewart* v. *Brojendra Kishore* (3) *and Mangtulal* v. *Radha Shyam* (4).

These arguments have been controverted by the learned Advocate General by submitting, in the first instance, that under section 8(4) of the Central Act, in order to attract the applicability of section 8(1) to a sale,

(1) 1963 Sales-tax Cases 369 (Mad.).
(2) A.I.R. 1956 S.C. 676.
(3) A.I.R. 1939 Cal. 628.
(4) A.I.R. 1953 Pat. 14 (F.B.).

M/s Ballimal Nawalkishore v. The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

the dealer selling the goods has to furnish to the prescribed authority in the prescribed manner the requisite declaration. It is each individual sale to which the applicability or non-applicability of section 8(1) has to be considered and, therefore, there is no right conferred on a dealer to furnish one declaration covering innumerable sale transactions. Stress has also been laid on the point that the impugned rule has been framed for the sole purpose of more effectively checking evasion of tax. An unduly large number of transactions included in one Form, so proceeds the submission, tends to create confusion and renders it difficult for the department to verify and check the position in regard to all the transactions. Such a course is calculated to defeat the purpose of the Act. The petitioner's challenge to the *vires* of the impugned rule has been sought to be met by the submission based on section 13(4)(e) of the Central Act; that the manner in which the form of the declaration prescribed under section 8(4) may be used and furnished is expressly included in the rule-making power conferred on the State Government. Rules thus made must accordingly be considered to be lawful and fully authorised : they are not liable to be ignored merely on the language of section 13(1)(d). Section 8(4), according to his submission, does not contain any provision in regard to the manner in which the form of declaration prescribed by section 8(4) is to be used or furnished with the result that the impugned rule cannot be held to be inconsistent with this provision of the Act. Consistently with section 8(4), so argues Shri Kaushal, the impugned rule made by the Punjab State can operate to its fullest extent and the two provisions can co-exist without coming into conflict with each other. Unless the two provisions are repugnant to or destructive of each other, they should both be given full effect, says the counsel, and for this proposition, he places reliance on:—

The Ambala Ex-Servicemen Transport Co-operative Society, Ltd., Ambala City, etc. v. *The State of Punjab* (5), *Chautala Workers Co-operative Transport Society and another* v. *Punjab State and others* (6), *Zeverbhai Amaidas* v. *State of Bombay* (7), *Om Parkash* v. *State of U.P.* (8),

(5) A.I.R. 1959 Punj. (F.B.)=I.L.R. 1958 Punjab 1590.
(6) I.L.R. (1962)1 Punj. 285=A.I.R. 1962 Punj. 94.
(7) A.I.R. 1954 S.C. 752.
(8) A.I.R. 1957 S.C. 458.

M/s Ballimal Nawalkishore v. The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua. J.

Nambooripad v. *C. D. Board* (9), and *In re A. S. Krishna and others* (10). He has also sought assistance from the Patna decision cited on behalf of the petitioner in *Mangtulal's case* (4). In addition, reference has been made to the Australian decisions reported as *Attorney-General for Queensland* v. *Attorney-General for the Commonwealth* (11), and *Clyde Engineering Co. Ltd.* v. *Cowburn* (12). The learned counsel has further stated from the bar that in almost all the States in the Union, and indeed even in the Union territory of Delhi, rules, similar to the impugned rule, have been framed and this view of the law has uniformally been adopted throughout the country without ever having been challenged, or doubted.

I have devoted my most anxious attention to the arguments addressed at the bar. No direct judicial authority dealing with the precise point calling for determination by us has been brought to our notice. The decisions dealing with the Central Act, which have been cited before us, are clearly distinguishable. Other decisions merely illustrate general proposition of law on the question of repugnancy. The matter in controversy before us has, therefore, to be dealt with in the light and background of the relevant sales-tax legislation which concerns us. The Central Act was enacted, so far as relevant for our present purpose, to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce, etc., to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade, to declare certain goods to be of special importance to inter-State trade or commerce and to specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject. "Prescribed", as used in this Act, has been defined in section 2(e) to mean prescribed by rules made under the Act. Rules under the Act, it may be recalled, may be made both by the Central Government and a State Government, as provided by section 13. Section 6 is a charging section of which sub-section (1) renders every dealer liable to pay tax under the Act on all sales effected by him in

(9) A.I.R. 1956 T.C. 19(F.B.)
(10) A.I.R. 1954 Mad. 993.
(11) 20 Commonwealth Law Reports 148.
(12) 37 Commonwealth Law Reports 466.

M/s Ballimal Nawalkishore
v.
The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

the course of inter-State trade or commerce. Sub-section (2) provides for an exemption of sales subject to a proviso. Section 7 deals with registration of dealers. Section 8, with which we are directly concerned, deals with rates of tax on inter-State sales and fixes the rate on the dealer's turnover. Sub-section (1) fixes a lower rate of tax than sub-section (2). Goods mentioned in sub-section (1)(b) are described in sub-section (3). Then comes sub-section (4) which has already been reproduced. This sub-section is cast in negative form making sub-section (1) inapplicable to "any sale" unless the selling dealer furnishes the requisite declaration to the prescribed authority in the prescribed manner. The declaration has to be duly filled and signed by the purchasing registered dealer and the form is to contain the prescribed particulars. Section 9 deals with levy and collection of tax, etc., by the Government of India. Sub-section (3) of section 9 delegates this power of assessment, collection and enforcing payment to the appropriate State Government on behalf of the Government of India to be exercised in the same manner in which the State exercises similar power in regard to State sales-tax laws. Section 13, as already noticed, confers power to make rules. Section 14 declares certain goods to be of special importance, the tax on the sale of which is subject to restrictions and conditions as laid in section 15.

The scheme of the Central Act seems to me to disclose that the charging section operates on sales effected by the dealer in the course of inter-State trade and each sale transaction has to be separately considered for determining whether it is subject to tax and if so, at what rate. Exemption and rate of tax payable have to be determined in respect of each transaction of sale. Section 6(2) and section 8(4) bring out this aspect; but section 8(4), with which we are immediately and directly concerned, leaves little room for doubt in this respect. The fact that section 8(1) fixes the liability to pay tax at two per cent of the turnover has nothing to do with this aspect. Turning for a moment to the Central Turnover Rules, which apparently seem to cover most of the subjects on which the Central Government is empowered to make rules under section 13(1), Rule 12 read with Form "C" clearly indicates both the form of declaration and the particulars to

M/s Ballimal Nawalkishore v. The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

be contained therein within the contemplation of section 13(1)(d). Whether such a declaration form should be furnished for one or more transactions of sale is a matter which has not been dealt with by these rules. Though the language employed in section 13(1)(d) may from one point of view be held to cover the subject of number of transactions to be included in a declaration form, the language employed in section 13(4)(e) would perhaps seem to be more in point *vis-a-vis* the subject-matter of the impugned rule. But even if the language of both section 13(1)(d) and section 13(4)(e) were to be held to be broad enough to cover this subject, the fact remains that the impugned rule cannot be held clearly to fall outside the terms and scope of section 13(4)(e). The manner of using Form "C" and the manner of furnishing the requisite declaration, as required by section 8(4) may well, plainly and without entailing violation of any recognised rule of statutory interpretation, fall within the scope, object and meaning of section 13(4)(e). The following heading of the Central Sales-tax (Punjab) Rules, beginning with Rule 7, has also some relevance in disclosing the object of making the impugned rule:—

> "Manner of obtaining and use and submission of Declaration Form "C" * * * * prescribed under the Central Sales-tax (Registration and Turnover) Rules, 1957, and keeping account thereof."

This heading unequivocally proves that the rule-making authority was intending to frame the impugned rule for prescribing the manner of using and submitting or furnishing the Declaration Form "C". It is noteworthy, as observed earlier, that on this precise point there is no rule in the Central Turnover Rules made by the Central Government.

To turn now to the question if the impugned rule is inconsistent with section 8(4) or the Central Turnover Rules, it is not denied that in terms, neither section 8(4) nor the Central Turnover Rules contain any provision which may expressly come into direct conflict with or be repugnant to the impugned rule. If this be the position, then *prima facie* the impugned rule can scarcely be considered to be inconsistent either with the Central Act or

M/s Ballimal Nawalkishore
v.
The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

with the rules made by the Central Government thereunder. It has to be borne in mind that the Central Act contains provisions delegating the rule-making power both to the Central Government and to the State Governments on certain specified subjects. The subjects on which power is delegated to the Central Government are undoubtedly limited and also more specific, and the power delegated to the State Government is more widely worded and more comprehensive in its nature and scope. The State Government, it may be remembered, can make rules, not inconsistent with the provisions of the Act and the rules made by the Central Government, "to carry out the purposes of this Act." Without prejudice to this general power, certain specific subjects have been mentioned in section 8 (4) which include, *inter alia*, the manner in which declaration forms under section 8(4) can be used and furnished. The rules made by the Central Government are undoubtedly more solemn and authoritative, in that they have to be laid before both Houses of Parliament and are subject to modification by them. The Punjab rules, on the other hand, though more comprehensive in their extent and scope, play a somewhat subordinate role. But in spite of this understandable difference, which is also logical, the legal position seems to me to be clear, namely, that if the rules made by these delegated authorities are within their respective spheres of agency, then in considering the question of inconsistency between these two sets of rules, and between the Punjab rules and the Act, the Court must make an attempt to construe them all harmoniously, exerting an earnest effort to see if they can reasonably co-exist as parts of the same statutory instrument intended to promote and effectuate the legislative design and object. It may profitably be kept in view that the actual workable machinery for assessing and collecting tax, even under the Central Act, is entrusted to the administration of the various States concerned. Naturally, therefore, the day-to-day and stage-to-stage working and operation of the statute has quite reasonably, in the interest of efficiency, to be left to the State Government. The power of making rules, therefore, for effectuating this purpose must inevitably be conceded to the State Government concerned. The broader principles in this respect must be, and have legitimately been, left to be determined by the Central Government. This also explains the more restricted scope

of the delegated rule-making authority to the Central Government, though it has a superior status; and a comparatively wider scope of rule-making power delegated to the State Governments, though with a comparatively inferior status. In this background, I am clearly inclined to hold that the impugned rule is within the competence of the State Government.

The task of declaring a law *ultra vires* or unconstitutional is, it may be kept in view, delicate, and it is so, irrespective of the fact that the law is made by a legislative delegate. It is a solemn act, in that, it involves a declaration that the persons entrusted with the responsible and sovereign function of making the laws for the people have disregarded the limitation imposed on them, whether consciously and deliberately or as a result of carelessness and improvident act or by an error of judgment. Courts in this task are indeed required, in discharging their judicial function, in a way, to overrule the decision of a co-ordinate department entrusted with making laws : naturally, therefore, they enter on this task both with caution and a sense of deep responsibility. I do not intend by any means to lay down that in case of an *ultra vires* or unconstitutional law, the Courts should feel any hesitation, reluctance or embarrassment in declaring them so. All that I want to say is that the Courts should declare a law *ultra vires* or unconstitutional only when it is clearly shown to be so and is necessary for adjudicating the controversies before them. The Courts merely discharge their duty and function assigned to them under the fundamental law. In the case in hand, the impugned rule does not encroach on the power relating to the particulars to be contained in Form "C" or in the declaration. The particulars to be contained in the declaration have been determined by the Central Government in prescribing Form "C". The Punjab State has in substance merely provided that no single declaration shall cover more than one transaction of sale except when the total amount of sales does not exceed Rs. 5,000. It obviously does not relate to the particulars to be contained in a declaration. This rule, thus, both in substance and form, appears to me to be within the purview of the power given to the State Government and is consistent with the Central Act as well as the rules made by the Central Government

M/s Ballimal Nawalkishore
v.
The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

thereunder. I am unable to find any contradiction or conflict between them.

The petitioner's contention that tax laws should in case of ambiguity or doubt be construed in favour of the citizens seems to me to be misconceived in the instant case. It is undoubtedly common place in the interpretation of tax laws that there is no equity in such laws and no scope for intendment. Tax laws have to be construed according to their plain meaning. Since the obligation of a citizen to pay a tax arises only from legislative provision, it has become firmly established that such liability must be clear from the statutory language which calls for strict construction. But when the Court is concerned with computation of liability and recovery measures of the tax, then in view of the problems and difficulties involved in the assessment and collection of taxes, a workable approach calculated to promote and achieve the object is called for. Power to tax and the effective exercise thereof are indispensable to the proper functioning of Government because tax measures facilitate good social order; it seems to be all the more so in case of a welfare State of socialistic pattern. The Sales Tax Acts, like the other main taxation measures, are, broadly speaking, based on the theory of self-assessment and this naturally calls for honesty from a great majority of tax-payers in order to make the assessment and collection of tax administratively feasible. It is perhaps an honest desire for effective verification of the return which has promoted the State Government to frame the impugned rule and if it is permissible on the language of the authority delegated to frame this kind of a rule, it is not liable to be struck down on the theory that tax laws should clearly and unambiguously provide for the liability to be taxed.

The assertion at the bar by the learned Advocate-General that in most of the States, similar rule has been framed and that the administrative departments have all along construed section 13(4)(e) of the Central Act to confer this power is not wholly irrelevant. The construction placed on the provisions dealing with the machinery for assessing and realising tax by the administrative departments can legitimately be taken into account to an extent.

M/s Ballimal Nawalkishore v. The Assessing Authority under the Punjab General Sales-tax Act and the Central Sales-tax Act and the State of Punjab

Dua, J.

I may at this stage advert to another aspect. During the course of arguments, we put to the petitioner's learned counsel as to why he should not be directed to seek relief by way of appeal or revision under the statute. At the time of admission, a suggestion was thrown that there was no right of appeal against the impugned order of assessment, but during arguments, it became clear that the impugned order would be open to challenge on appeal, review, revision and references. etc. The petitioner's learned counsel, however, stated that the period for going up in appeal had by now expired and the relief under the statute may, therefore, not be efficacious. He also laid stress on the submission that the question raised by him relates to the *vires* of a statutory rule and, therefore, the proceedings by way of writ are more appropriate than the remedies provided by the statute. I should like at this stage to point out that merely because an aggrieved party has by his own conduct lost his remedy under the statute on account of time lapse, is by itself and without more no ground for invoking this Court's jurisdiction under Article 226 of the Constitution. In the present case, we have gone into the merits of the objection to the *vires* of the impugned rule as a special case, but I express no opinion on the question whether or not the assessee could have come to this Court by means of a reference and raised the question of the invalidity of the impugned assessment on the ground that the impugned rule is inconsistent with the Central Act and the rules made by the Central Government thereunder.

For the foregoing reasons, this petition fails and is hereby dismissed but without costs.

Pandit, J.

PREM CHAND PANDIT, J.—I agree.

R. S.

CIVIL MISCELLANEOUS

Before R. S. Narula, J.

M/S RADHA KISHAN-HOSHIAR SINGH,— *Petitioners*

versus

SARUP LAL AND ANOTHER,—*Respondents*

Civil Miscellaneous No. 1287 of 1963

1965

October 20th.

Punjab Gram Panchayat Act, 1952 *(IV of* 1953)—*S.* 52—*Claim for wages—Whether triable by Panchayat—Payment of Wages Act (IV of* 1936)—*S.* 22*(d)—Whether bars the jurisdiction of the Panchayat—Order of Panchayat based on material collected* ex parte—*Whether vitiated.*