

The Indian Law Report

CIVIL MISCELLANEOUS

Before Bal Raj Tuli, J.

M/s. KRISHAN LAL BAJAJ & Co., AND OTHERS,—Petitioners

versus

THE ASSESSING AUTHORITY AND OTHERS,—Respondents

Civil Writ No. 2067 of 1967

September 9, 1970

The Punjab General Sales Tax Act (XLVI of 1948)—Sections 5 and 6—Notification amending the Schedules—Such amendment modified by subsequent notification issued by way of corrigenda without following the procedure under sections 5 and 6—Whether valid.

Held, that where a notification is issued by the Government amending items in the Schedules to Punjab General Sales Tax Act, 1948, after following the procedure under sections 5 and 6 of the Act, such amendment cannot be modified by subsequent notification issued by way of corrigenda without following the said procedure. The previous amendment stands and the subsequent notification is invalid. (Pora 2)

Petition Under Article 226 of the Constitution of India praying that a writ in the nature of Mandamus, Prohibition or any other writ, order or directions be issued annulling the notifications dated 11th August, 1967 (Annexures 'C' and 'D') and prohibiting respondent No. 1 not to insist on the payment of sales tax on the Indian made foreign liquor and further praying that pending the decision of the writ petition by this court, the payment of sales tax on Indian made foreign liquor be stayed.

BHAGRATH DASS, SENIOR ADVOCATE WITH B. K. JHINGAN & S. K. HIRAJEE, ADVOCATES, for the petitioners.

D. N. RAMPAL, ASSISTANT ADVOCATE-GENERAL, PUNJAB, for the respondents.

JUDGMENT

B. R. TULI, J.—(1) The petitioner firm held L. 2 licence for the wholesale and retail sale of foreign liquor and beer for the year 1967-68 at Ludhiana. This licence was auctioned on March 20, 1967, and was for one year from April 1, 1967 to March 31, 1968. At that time sales tax was leviable on foreign liquor and Indian made foreign

liquor under entry (24) in Schedule 'A' to the Punjab General Sales Tax Act, 1948 (hereinafter called the Act). Notification No. S.O. 212 P.A. 46/48/S. 5/66, dated September 30, 1966, which had been published in Punjab Gazette Extraordinary, dated October 1, 1966, effected two amendments—one in Schedule 'A' and the other in Schedule 'B' to the Act, Amendment of Schedule 'A' was as under :—

“In the said Schedule, after entry (23), the following new entry shall be added, namely:—

(24) Liquor (foreign liquor and Indian made foreign liquor).”

The amendment in Schedule 'B' was of item 37 and read as under:—

“In the said Schedule, in item 37, in column 1, after the word “goods”, the words “except Indian made foreign liquor” shall be inserted.”

Schedule 'A' to the Act enumerates luxury goods on which sales tax at the rate of ten per cent is leviable, while Schedule 'B' enumerates the goods which are exempted from the payment of sales tax. The effect of the amendment made by the notification, dated September 30, 1966, set out above was that sales tax was payable on liquor (foreign liquor and Indian made foreign liquor) at the rate of ten per cent.

“Foreign liquor” is not defined in the Act, but is defined in the Punjab Excise Liquor Definitions, 1954, as under:—

“(2) “Foreign liquor” means—

- (a) all liquor imported by sea into India (other than rectified spirit, denatured spirit and perfumed spirit), on which Customs duty is leviable under the Indian Tariff Act (VIII of 1894) or the Sea Customs Act, 1878;
- (b) all liquor manufactured in India (other than rectified spirit, denatured spirit, and perfumed spirit) on which duty at a rate higher than that levied on Country liquor is leviable ;
- (c) all beer (including ale, port and stout) manufactured in India or abroad; and
- (d) all sacramental wine prepared from pure dried grapes by a process of fermentation only without the addition of alcohol or any other ingredient.”

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(2) The Punjab Government issued two notifications, dated March 6, 1967, containing proposed amendments in Schedules 'A' and 'B' of the Act. The purport of these notifications was to substitute item No. (24) in Schedule 'A' to the Act as under:—

“Foreign liquor” as defined in sub-para 2 of paragraph 2 of the Punjab Excise Liquor Definitions, 1954,”

and to amend entry 37 in Schedule 'B' to read as under:—

“All goods, except foreign liquor as defined in sub-para 2 of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878.”

These notifications were published in pursuance of sections 5 and 6 of the Act, which provide a notice of at least three months to be given by the Government of its intention to make the amendments in the said Schedules. In pursuance of those notifications, after the expiry of three months, notifications were issued on July 18, 1967, amending item No. (24) in Schedule 'A' and item No. 37 in Schedule 'B' as under :—

“In Schedule 'A', for item No. (24), the following item shall be substituted :—

“(24) Foreign liquor as defined in sub-para (2)(a) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954.”

In Schedule 'B', for item No. 37, the following item shall be substituted :—

“37. All goods, except foreign liquor as defined in sub-para (2) (a) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, on which duty is or may be levied under the Punjab Excise Act, 1914, or the Opium Act, 1878”.

From these notifications, it is clear that the sales tax at the rate of ten per cent was leviable only on all liquor imported by sea into India (other than rectified spirit, denatured spirit and perfumed spirit) on which Customs duty is leviable under the Indian Tariff Act (VIII of 1894) or the Sea Customs Act, 1878, and all liquor manufactured in India, all beer and all sacramental wine mentioned in clauses (b), (c) and (d) of sub-para (2) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, were exempted from the payment of any sales tax. This amendment in Schedules 'A' and 'B' was to the benefit

of the liquor licensees and the purchasers of the Indian made foreign liquor, beer and wines as the sales tax on these items was abolished. The State Government realised the mistake in issuing those notifications and issued notifications, dated August 11, 1967, to the effect that letters and brackets "(a)" shall be omitted in the first line of item (24) as substituted in Schedule 'A' and in the second line of item 37 as substituted in Schedule 'B'. These notifications were issued without following the procedure prescribed in sections 5 and 6 of the Act, that is, issuing a notification of intention to amend item (24) in Schedule 'A' and item 37 in Schedule 'B', but they are sought to be justified on the ground that they were issued to correct a typographical mistake which had crept in the notifications, dated July 18, 1967, and that the notifications, dated August 11, 1967, were by way of corrigenda. I regret to agree to the submission made on behalf of the respondents. The definition of "foreign liquor" contains four items separately mentioned in clauses (a), (b), (c) and (d) of sub-para (2) of paragraph 2 of the Punjab Excise Liquor Definitions, 1954, and the effect of the notifications issued on September 30, 1966, was to levy sales tax on all foreign liquor mentioned in that sub-para and it is not understood why it was felt necessary to amend entry (24) in Schedule 'A' and entry 37 in Schedule 'B' by the notifications, dated March 6, 1967, unless it was meant to clarify those entries with reference to the definitions contained in the Punjab Excise Liquor Definitions, 1954, or to exempt some item of foreign liquor defined in paragraph 2(2) of the Punjab Excise Liquor Definitions, 1954, from the payment of sales tax. It has been stated on behalf of the petitioner that the liquor licensees had represented that Indian made foreign liquor should be exempted from the payment of sales tax and the notifications issued on July 18, 1967, exempting Indian made foreign liquor from the payment of sales tax, were in pursuance of that demand. This fact is not admitted by the respondents, but the fact remains that the effect of the notifications, dated July 18, 1967, was to exempt Indian made foreign liquor from the levy of sales tax and if it was intended to re-impose sales tax on Indian made foreign liquor, the Government had to follow the procedure prescribed in sections 5 and 6 of the Act, that is, it had to issue notifications of its intention to amend item (24) in Schedule 'A' and item 37 in Schedule 'B', as was done on March 6, 1967. The amendment could not be made by issuing corrigenda, as has been done in the present case. After issuing notifications, dated March 6, 1967, it was open to the Government not to give effect to the entire proposed amendment in the notifications, dated July 18, 1967. I, therefore, hold

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that notifications, dated August 11, 1967, are illegal and have to be quashed, the effect of which is that item (24) in Schedule 'A' and item 37 in Schedule 'B' shall be deemed to have remained as inserted by notifications, dated July 18, 1967, and the petitioners are not liable to pay sales tax on Indian made foreign liquor.

(3) This petition is, therefore, accepted with costs and the impugned notifications, dated August 11, 1967, copies of which are Annexures 'C' and 'D' to the writ petition are hereby quashed. Counsel's fee Rs. 100.

N.K.S.

APPELLATE CIVIL

Before D. S. Tewatia, J.

DALIP SINGH,—Appellant

versus

DHARMAN AND OTHERS,—Respondents

Regular Second Appeal No. 1206 of 1966

September 16, 1970

Hindu Adoption and Maintenance Act (LXXVIII of 1956)—Section 13—Whether confers right of alienation on the adoptive father where none exists under the general law governing him.

Held, that section 13 of the Hindu Adoption and Maintenance Act, 1956, does not confer a right of alienation of property where it does not exist under the general law and for that matter it has to be seen whether the parties are governed by Hindu law or Customary law. Where an adoptive father is governed by Customary law which prohibits the alienation of ancestral property, section 13 of the Act does not give him the right to alienate such property. (Para 3)

Regular Second Appeal from the decree of the Court of Shri K. S. Sidhu, Additional District Judge, Rohtak, dated the 25th day of June, 1966, affirming that of Shri Shiv Dass Tyagi, Sub-Judge, 1st Class, Jhajjar, dated the 13th September, 1965, dismissing the plaintiff's suit. Both the Courts left the parties to bear their own costs.

S. P. JAIN, ADVOCATE, for the appellant.

K. L. SACHDEVA, ADVOCATE, for the respondents.