CIVIL MISCELLANEOUS

Before R. P. Khosla and Inder Dev Dua, JJ.

GULZARI LAL BHARGAVA AND ANOTHER,—*Petitioners*

versus

CHIEF COMMISSIONER, DELHI AND OTHERS,—*Respondents.*

Civil Writ No. 112-D of 1958.

April 25, 1966.

Bengal Finance (Sales Tax) Act (VI of 1941)—S. 6 and item 40 in Schedule II—Denatured spirit—Whether exempt from the payment of sales tax.

Held, that denatured spirit, on which vend fees are levied under the Punjab Excise Act read with Delhi Excise Rules, is not entitled to exemption from sales tax in terms of entry 40 in the schedule of exempted goods drawn up under section 6 of the Bengal Finance (Sales Tax) Act, 1941, as applied to the Union Territory of Delhi.

Petition under Article 226 of the Constitution of India, praying that the order, dated 24th December, 1957 of the Chief Commissioner, Delhi (respondent No. 1), confirming the order of respondent No. 3 (dated 16th July, 1955), be called forth and quashed and the respondents be directed to refrain from charging the said duties and sales tax in respect of the 'Denatured spirit' worth Rs. 22,555/-/3, mentioned therein and the fee so levied and the sales tax recovered from petitioner No. 1 be returned to him. That such other appropriate order or direction as may be necessary in this behalf be passed in the circumstances of this case as may be found just and expedient.

N. S. BINDRA, ADVOCATE, *for the* Petitioners.

S. N. SHANKER, CENTRAL GOVERNMENT ADVOCATE, WITH N. SRINIVASAN RAO, ADVOCATE, for the Respondents.

JUDGEMENT

DUA, J.—Civil Writ No. 112-D of 1958, and Sales Tax Reference No. 2-D of 1958 deal with the same controversy and would, therefore, be disposed of by one order. The main arguments have, as a matter of fact, been addressed only in C.W. No. 112-D of 1958. The

facts necessary for appreciating the controversy, which has given rise to these proceedings may briefly be stated.

Petitioner No. 1, Shri Gulzari Lal Bhargava, Proprietor Gulzar Honey Stores, claims to be carrying on a business in denatured spirit, honey and ammonia, etc., in Delhi for the last several years, having been registered as a dealer in Ward No. 3, Delhi, under the Bengal Finance (Seles Tax) Act, 1941, as extended to Delhi (hereinafter described as the Delhi Act). Petitioner No. 2, Shri Fateh Chand Verma, Proprietor of Shri Chandra Pharmacy, Tis Hazari, Delhi, claims to be carrying on, *inter alia,* business in denatured spirit, both wholesale and retail in Delhi also for the past several years. He is also registered as a dealer in Ward No. V, Delhi under the Delhi Act. Both the petitioners are licence-holders under the Punjab Excise Act, 1914, as extended to Delhi (hereinafter described as the Excise Act), petitioner No. 1 paying a licence fee of Rs. 25 per annum and petitioner No. 2 Rs. 100 per annum. Petitioner No. 2 purchases in wholesale denatured spirit from distilleries in U.P., etc., and sells the same to dealers in denatured spirit in Delhi and elsewhere including petitioner No. 1. The wholesale purchase price of such spirit for distilleries is about Rs. 1-1-0 per imperial gallon. An excise permit fee at the rate of Rs. 3 per imperial gallon is, according to the averment in the writ petition, being charged under the authority of the Chief Commissioner, Delhi (respondent No. 1 in this Court) either under Rule 5.25-A(2) (a) of Delhi Liquor Licence Rules or under Rule 7.2-D of Delhi Liquor Permit and Pass Rules. Petitioner No. 1 as purchaser of denatured spirit for sale in retail is charged Rs. 4-5-0 per imperial gallon by petitioner No. 2. Petitioner No. 1 submitted his quarterly return of his turnover of sales, inclusive of denatured spirit, to the Sales Tax Officer, Ward No. 3, Delhi, under the Delhi Act for the year 1954-55 and claimed exemption of Sales tax on sale of denatured spirit of the value of Rs. 22,555-0-3, but the claim was disallowed on 16th July, 1955, by the Sales Tax Officer, Ward No. 3, Delhi. An apeal against this order was disallowed by the Assistant Commissioner, Sales Tax on 24th October, 1956. A petition for revision was similarly dismissed by the Commissioner of Sales Tax on 17th April, 1957. A further revision preferred with the Chief Commissioner was also dismissed on 24th December, 1957. According to the petitioners case in the writ petition, it is pleaded that it was pointed out to the Chief Commissioner as well as to the subordinate officers that the fee of Rs. 3 per imperial gallon charged as stated above is either a duty or a tax and accordingly the said sales of denatured

spirit were exempt from payment of sales-tax under item No. 40 of Schedule II annexed to the Delhi Act. The claim of exemption, however, was refused. Challenging these orders refusing exemption, the petitioners have in paragraph No. 10 of the writ petition pleaded that the charge of Rs. 3 per imperial gallon levied, as mentioned above, is a tax or a duty and it has no nexus with any special service rendered by the authority concerned. Services rendered in this behalf are indeed charged in the shape of licence fee chaged at the rate of Rs. 25 per annum from petitioner No. 1 and at the rate of Rs. 100 per annum from petitioner No. 2. The so-called "permit fee" or "vend fee" has no reasonable connection with the services rendered in this behalf. The charge of Rs. 3 per imperial gallon on denatured spirit, according to the writ petition, is in substance a "duty" which is not prescribed or permissible under any law for the time being in force. The relief claimed in the prayer clause in the writ petition is in the following terms:—

> "It is prayed that the order, dated 24th December, 1957 of the Chief Commissioner, Delhi, confirming the order of respondent No. 3, dated 16th July, 1955, be called for and quashed and the respondents be directed to refrain from charging the said duties and sales-tax in respect of the 'denatured spirit' worth Rs. 22,555-0-3 mentioned above and the fee so levied and the sales-tax recovered from petitioner No. 1 be returned to him."

In the affidavit of Shri M. P. Bhargava, Sales Tax Officer, filed in answer to the writ petition, it is pleaded by way of preliminary objection that the writ petition is not maintainable because the Chief Commissioner has already referred the subject-matter of the present petition to this Court under section 21 of the Delhi Act. It is denied that petitioner No. 2 deals exclusively in wholesale denatured spirit and it is averred that he sells denatured spirit direct to actual consumers as well. The charge of Rs. 3 per imperial gallon levied by the Chief Commissioner has been described to be a vend fee levied under section 34 of the Excise Act and not an excise duty as provided under Chapter V thereof. It is further pleaded that no excise duty is leviable on denatured spirit because the same is an alcohol unfit for human consumption and is, therefore, not covered by item No. 51 of List II of the Constitution. Charge of vend fee on denatured spirit, therefore, does not exempt it from the levey of

sales-tax under item No. 40 of the Second Schedule appended to section 6 of the Delhi Act. The challenge to the *vires* of the Delhi Liquor Licence Rules and Delhi Liquor Permit and Pass Rules has been controverted and it has been averred that no reasons have been stated in the writ petition as to how these rules are *ultra vires.*

It may at the outset be pointed out that during the arguments in this Court, the learned counsel for the petitioners has expressly dropped the relief in the form of claim to the return of Rs. 3 per imperial gallon realised as a result of the levy by the Chief Commissioner. His main contention has been that the levy of Rs. 3 per imperial gallon was a tax or a duty and, therefore, under section 6 of the Delhi Act, denatured spirit is exempt from tax under this Act. It is desirable at this stage to read Section 6 :—

> "6. Tax-free goods, —— (1) No tax shall be payable under this Act on the sale of goods specified in the Second Schedule, subject to the conditions and exceptions, if any, set out therein.
>
> (2) The Central Government, after giving by notification in the Official Gazette, such previous notice as it considers reasonable of the intention so to do, may by like notification add to or omit from or otherwise amend the Second Schedule and thereupon the Second Schedule shall be deemed to be amended accordingly."

In the Second Schedule, the relevant entry at the relevant time was at Serial No. 40 which was in the following terms:—

> "All goods on which duty is or may be levied under the Punjab Excise Act, 1914, as extended to the State of Delhi or the Opium Act, 1878."

It may be pointed out that this item was added with effect from 19th July, 1952, and was later omitted with effect from 1st April, 1958. Shri Bindra submits that Rs. 3 per imperial gallon was in reality a duty imposed within the terms of this entry and, therefore, sale of denatured spirit falls within the category of exempted goods. Here, I may appropriately read both sections 31 and 34 of the Excise Act. Section 31 falls in Chapter V, which provides for "duties and fees"

and section 34 falls in Chapter VI which provides for "Licences, Permits and Passes". Section 31 providing for duty on excisable articles is in these terms:—

"31. An excise duty or a countervailing duty, as the case may be, at such rate or rates as the State Government shall direct, may be imposed, either generally or for any specified local area, on any excisable article—

(a) imported, exported or transported in accordance with the provisions of section 16; or

(b) manufactured or cultivated under any license granted under section 26; or

(c) manufactured in any distillery established, or any distillery or brewery licensed under section 21:

Provided as follows:—

(i) duty shall not be so imposed on any article which has been imported into India and was liable on importation to duty under the Indian Tariff Act, 1894, or the Sea Customs Act, 1878;

Explanation.—Dutv may be imposed under this section at different rates according to the places to which any excisable article is to be removed for consumption, or according to the varying strengths and quality of such article."

Section 34 dealing with fees for terms, conditions and form of, duration of, licenses, permits and passes reads as under:—

"34. (1) Every license, permit or pass granted under this Act shall be granted—

(a) on payment of such fees, if any;

(b) subject to such restrictions and on such conditions;

(c) in such form and containing such particulars;

(d) for such period, as the Financial Commissioner may direct.

(2) Any authority granting a license under this Act may require the licensee to give such security for the observance of the terms of his license, or to make such deposit in lieu of security, as such authority may think fit."

It would be helpful to point out that during the course of arguments, the position at the bar was somewhat crystallised and while Shri Shanker, claimed that the fee of Rs. 3 was justified as a levy under section 34 read with the rules, according to Shri Bindra, if the relevant rules are valid under section 34, then the levy would be unobjectionable. According to Shri Bindra, however, the impunged levy of Rs. 3 should be held to be either a tax or a duty. As the amount levied has no *quid pro quo* in relation to the services rendered, this levy cannot be treated as a mere fee, argued Shri Bindra. The respondents' learned counsel has concentrated on the contention that the impunged levy was not realised by the Sales Tax Department and the petitioners have not cared to clarify in the writ petition as to whether this imposition operated on the base of the sales tax transaction or some other activity. The petitioners having failed to plead full facts in this respect, the respondents had no occasion or opportunity of placing on the record the relevant material on this point. In these circumstances, according to Shri Shanker, the petitioners must be held to have failed to establish that the impunged levy is either a tax or a duty. Even on the point of *quid pro quo* the respondents have, according to the counsel, not had any opportunity of placing all the relevant data. To appreciate the arguments, it is appropriate to read some other relevant stautory provisions including the rules at this stage.

Rule 7(2) (d) of the Delhi Liquor Permit and Pass Rules added by Notification No. 25 Exercise, dated 3rd January, 1939, and subsequently amended in December, 1955, reads as under:—

> "In respect of permits granted for the import of denatured spirit into the Delhi Province, a fee of Rs. 3 per imperial gallon or Rs. 6 per dozen quart bottles shall be charged:
>
> Provided that the depatured spirit imported on behalf of officers of Government in their official capacity shall be exempted from payment of this fee and that no permit shall be necessary for denatured spirit imported not for sale but for private use in any quantity not exceeding that prescribed in the Delhi Excise Act Licence and Sale Orders as the maximum quantity which may be sold by retail.
>
> This shall take effect from 1st April, 1939."

Rule 5.25-A (I) reads as under:—

Fee and assessed fees—

5.25-A (I) A licence in form L-17 for vend of denatured spirit will be granted on fixed fees in addition to the fees assessed according to the sale thereunder. The following are the rates of fixed fees:—

(i) Rs. 25 per annum for a licence for one year to possess a quantity of five hundred gallons at one time.

(ii) Rs. 100 per annum for a licence for one year to possess quantity exceeding five hundred gallons at one time.

(2) (i) The assessment shall be based on the following scales:—

(a) three rupees per imperial gallon or

(b) six rupees per dozen quart bottles in possession of the licensee

The fixed fee is payable in advance and assessed fee shall be recovered at the time of issue of the permit in form L-32 as prescibed in Delhi Liquor Permit and Pass Rules.

This shall take effect from 1st April, 1939".

It is most unfortunate that no official publication has been made available to us from which these rules can be read. Even the State counsel had no official copy with him because, according to his information, there was only one copy available with the Government Parties have, however, agreed that the two rules as reproduced above, are correct. This Court will have to say something on this aspect before concluding this judgment.

"Denatured" has been defined in section 3(5) of the Excise Act to mean "effectually and permanently rendered unfit for human consumption." "Excisable article",—*vide* section 3(6) means:—

(a) any alcoholic liquor for human consumption; or

(b) any intoxicating drug.

"Intoxicating drug" is defined in section 3(13) but it is unnecessary to reproduce it. 'Excise duty' and 'countervailing duty' as defined in section 3(6-b) have reference to entry 51 of list II in the Seventh Schedule to the Constitution. This entry reads as under:—

"51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the

same or lower rates on similar goods manufactured or produced elsewhere in India;

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics;

but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry."

"Liquor" as defined in section 3(4) of the Excise Act means intoxicating liquor including all liquid consisting of or containing alcohol; also any substance which the State Government may by notification declare to be liquor for the purposes of the Excise Act. Section 59 of the Excise Act authorises the making of rules by notification.

It is obvious from what has been stated above that on the material placed before us, the impugned levy of Rs. 3 can by no stretch be considered to be a sales tax. The question, however, is: is denatured spirit one of the items on which duty is or may be levied under the Excise Act or the Opium Act ? It is nobody's case that the Opium Act has anything to do with the present levy. The learned counsel for the petitioners has failed to point out any provision of the Excise Act under which a duty is or may be levied on denatured spirit. His argument is that the levy of Rs. 3 has apparently been made under the Excise Act, and, therefore, it is for the State to show that it is not a duty but is only a fee and for that purpose, according to Shri Bindra, the State must place on the record all material justifying the conclusion that it is a fee. The petitioner's counsel has made a passing reference to a recent decision of the Supreme Court in the *Town Municipal Committee, Amravati* v. *Ram Chandra Vasudeo Chimote and another* (1), but I am unable to see how the ratio of that judgment helps the petitioners in the present case. Reference has also been made to the *Commissioner, Hindu Religious Endowments* v. *Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* (2), for the purpose of supporting the argument that the levy of Rs. 3 is not a fee. In this decision, distinction has been

(1) (1964) 6 S.C.R. 947.

(2) (1954) 5 S.C.R. 1005.

drawn between a tax and a fee. The former is stated to be a compulsory exaction of money by any public authority for public purposes enforceable by law which is not payment for services rendered, whereas the term "fee" has been generally defined as a charge for a special service rendered to individuals by some governmental agency. It has not been found possible in this decision to formulate a definition of fee that would apply to all cases because there are various kinds of fees. The amount of fee levied, however, is supposed to be based on the expenditure incurred by the Government in rendering the service, though in many cases such expenses are arbitrarily assessed. The distinction between a tax and a fee has also been stated in this decision to lie primarily in the fact that a tax is levied as part of a common burden, while a fee is a payment for a special benefit or privilege.

In my opinion, the consideration of this case has been overlaid with a good deal of subtlety, but in itself it raises on the pleadings before us quite a simple and short point. Without entering upon an interesting and extensive field of speculation as to the meaning, effect and scope of different provisions of the various statutes and statutory instruments referred to above, or upon the problems which may arise in other cases on more precise and elaborate pleas, I am content to say that in this case we are only concerned with the the plain question whether "duty" has been or may be levied on denatured spirit under the Excise Act. Duty under the Excise Act, as shown earlier, is under the Constitution confined to alcoholic liquors for human consumption for the purposes of the present case,—*vide* item No. 51 (a) List II, Seventh Schedule of the Constitutinon read with section 3 (6-b), Excise Act. Denatured spirit indisputably does not fall in this category and cannot constitutionally be subjected to this duty. The levy of Rs. 3 is accordingly not a duty and cannot be assumed to be so. The question whether this levy is otherwise being imposed legally or its imposition is illegal does not arise for our decision in the present case because in the writ petition no foundation has been laid for relief against this levy on this basis. Indeed, Shri Bindra, when faced with his position, had expressly to drop the point relating to the refund of the levy of Rs. 3 and he elected to confine his arguments only to the challenge against the realisation of sales tax. But the levy of duty on denatured spirit being illegal and perhaps unconstitutional, its colourable levy—assuming, without holding, it to be so—would scarcely render the sales tax under the

Delhi Act unlawful, with the result that the main—and perhaps now the sole—purpose for which the present writ petition is meant, cannot be served. I may in this connection point out that item No. 40 in the Second Schedule to the Delhi Act when it speaks of duty which is or may be levied under the Excise Act, must mean the duty levied or capable of being levied lawfully. Shri Bindra has not been able to point out to us any provision of the Excise Act under which duty can be levied lawfully on denatured spirit. If such duty cannot be levied, then obviously this Court will not assume that the impugned levy of Rs. 3 is such a duty. This conclusion seems to me to be indisputable and also inescapable. In the present proceedings, there is neither sufficnent data nor have the petitioners laid any sound and clear foundation in the writ petition for enabling this court to determine what other kind of levy of Rs. 3 can be considered to be. The petitioner, if so advised may raise the point of the legality or properiety of this levy in appropriate proceedings permissible under the law. This petition, however, cannot deserve to succeed.

Before concluding, I would be failing in my duty if I do not point out to the authorities concerned that in this Republic, which is ruled by law, it is of the utmost importance that the provisions of law which the citizens are expected to obey and which affects and controls their daily life and activities, must be easily ascertainable and those provisions must not be kept hidden in a secluded corner of the secretariat. The professional lawyers, the Courts and the citizens concerned are entitled in our set-up to demand that books containing laws in force in this Republic are made easily available to those who may desire to acquire knowledge of those laws, whether in the market or elsewhere. If the citizens are expected and enjoined to regulate their activities and conduct in accordance with law and if the Courts of law and justice are to discharge their sacred and solemn constitutional obligation of interpreting the law to their and to the citizens' satisfaction, then the State must see that books on law are rendered within their reasonable reach. This, in my opinion, is the bounden duty of all democratic States of our pattern. If the State fails to provide this fundamental requirement, then the tender plant of the Rule of law in our infant Republic will fade away and our democracy will be a mere sham and our fundamental principles mere idle words. The present case, I may point out, is not the solitary instance in which the written record of the law has not been made easily available to the Courts and to the

lawyers representing the litigants' causes in Court, at times including even lawyers representing the cause of the State. This, to say the least, is a somewhat unsatisfactory state of affairs even from the point of view of State itself. I have come across more than one instance of the books and documents containing legal provisions which the citizens and the administrative officers are expected to obey, being kept hidden in the archives of some inaccessible record rooms, without the persons vitally affected thereby being afforded reasonable facilities to read them, including on occasions the administrative officers and the State Counsel. This attitude is not only inconsistent with our constitutional set-up but may well have drastic repercussions on our very existence as a law-abiding nation and on our democratic way of life.

For the foregoing reasons, this petition fails and is dismissed with costs.

There is also a Sales Tax Reference (No. 2-D of 1958) made by the Chief Commissioner, Delhi, on 27th February, 1958, the question referred being "whether denatured spirit on which vend fees are levied under the Punjab Excise Act read with Delhi Excise Rules, is entitled to exemption from sales-tax, in terms of entry 40 in the schedule of exempted goods, drawn up under section 6 of the Bengal Finance Sales Tax Act?" No separate arguments were, however, addressed on this reference and it was apperently understood at the bar that the answer in this reference would follow the decision in the writ petition. Our answer, therefore, to the question is in the negative. There would be only one order as to costs both in this reference and the writ petition.

There is one aspect to which I must also refer before finally closing the judgment. Both the writ petition and the reference are of the year 1958 and it has taken 8 years for this controversy to be disposed of by this Court. In taxation matters, it appears to me to be of the utmost importance that the question of a citizen's liability and of the State's rights should be determined within a reasonable period of time, for, whether the citizen is made to pay a tax which may ultimately be found to be unauthorised or whether the State is deprived of its revenue which is ultimately found to be legitimate, in either event, it is better for both that such controversy is not kept pending for an unduly long time. It may in this connection be remembered that the first and paramount necessity for social order,

personal liberty, private property and general national progress is the maintenance of efficient civil Government; and Government cannot exist without revenue. The tax payer too has to adjust his affairs and regulate the economy so as to arrange for his contribution towards the maintenance of civil Government. To speedy determination of such disputes is thus a matter of importance to the society as a whole. I have considered it necessary to elaborate this aspect because my experience shows that due attention has somehow not been paid to it. Cases of this nature deserve priority and it is hoped that this aspect would in future be kept in view.

R. P. KHOSLA, J.—I agree.

B. R. T.

APPELLATE CIVIL

Before R. S. Narula, J.

BARKAT RAM AND OTHERS.—*Appellants*

versus

UNION OF INDIA,—*Respondent*

F.A.O. No. 55-D of 1961.

April 26, 1966.

Resettlement of Displaced Persons (Land Acquisition) Act (XL of 1948)—Provisio to S. 7(1)(e)—Whether ultra vires *S. 299 of the Government of India Act, 1935—Constitution of India (1950)—Arts. 31 and 366—Whether save the Act from being impugned.*

Held, that both the provisos to clause (e) of sub-section (1) of section 7 of the Resettlement of Displaced Persons (Land Acquisition) Act, 1948 are *ultra vires* section 299(2) of the Government of India Act, 1935 and are, therefore, deemed to have never been on the statute book. The impugned provisos having been still-born cannot be brought within the definition of "existing law" as contained in Article 366(10) of the Constitution. Not being an existing law, Article 31(5) does not save the impugned provisions. Clause (6) of Article 31