

Phuman and others
v.
The State of Punjab and others
—
Pandit, J.

the provisions in the Displaced Persons (Debts Adjustment) Act would not be apt, because the scheme of that Act shows that the point of limitation was of considerable importance in that Act and in certain cases even the period of limitation had to be extended, while in others it has to be curtailed.

Learned counsel for the appellants then contended that even if Article 176 of the Limitation Act applied, there was sufficient cause for their clients in not filing the applications for bringing the legal representatives of the deceased within time and they should be given the benefit of section 5 of the Limitation Act.

[Then His Lordship discussed the facts of each case hearing in limitation and dismissed F.A.O.s No.s 92, 93, 99, 100, 101, 102 of 1961, and partly allowed F.A.O. No. 98 of 1961.]

In the circumstances of these cases, however, I will leave the parties to bear their own costs throughout.

Mahajan, J. D. K. MAHAJAN, J.—I agree.

B.R.T.

CIVIL MISCELLANEOUS

Before Daya Krishan Mahajan, J.

M/s. SEWAK HOTEL, BHATINDA,—*Petitioner.*

versus

THE ASSESSING AUTHORITY AND ANOTHER,—*Respondents.*

Civil Writ No. 1836 of 1962

1963
—
March., 15th

Punjab General Sales Tax (Amendment) Act (VIII of 1962)—Ss. 1(2) and 3—Item No. 49 in Schedule B to the Principal Act omitted and omission made retrospective with

effect from 1st April, 1959—Whether valid—Exemption enjoyed before the Act came into force—Whether can be taken away by deeming provision.

The Punjab General Sales Tax (Amendment) Act, 1962 came into force on June 2, 1962 and by section 3 of the Act, item No. 49 in Schedule B to the Principal Act was omitted and this omission was made retrospective with effect from the 1st day of April, 1959, by reason of section 1(2) of the Amending-Act.

Held that during the time item No. 49 remained in Schedule B to the Principal Act, the exemption was granted by the statute and it was enjoyed lawfully by the assessee with the consequence that he was not liable to sales tax. The withdrawal of the exemption by the deeming provision retrospectively cannot in fact obliterate the actual fact, namely, that the exemption has been enjoyed and at the time when the exemption was enjoyed it was lawfully enjoyed. No deeming provision can make what is lawful unlawful. If the Legislature wants to impose a tax retrospectively it would say so. The authorities cannot recover a tax retrospectively by recourse to the deeming provision which merely withdrew the exemption.

Petition under Article 226 of the Constitution of India praying that a writ of certiorari, prohibition, mandamus or any other appropriate writ, order or direction be issued quashing the order of assessment, dated 21st September, 1962 and further praying that the notices for 20th March, 1961 and for 6th March, 1962 and the best judgment assessment proceedings started on 27th June, 1962 be also quashed.

G. C. MITTAL, ADVOCATE, for the Petitioner.

M. S. PUNNU, DEPUTY ADVOCATE-GENERAL, for the Respondents.

ORDER

MAHAJAN, J.—This is a petition under Article 226 of the Constitution by Messrs Sewak Hotel, Bhatinda, through Hari Chand partner of the firm, Mahajan, J.

M/s. Sewak and is directed against the order of the Assessing
 Hotel, Bhatinda Authority proceeding to assess the petitioner-firm to
 v. The Assessing sales tax with effect from the 1st April, 1959, to the
 authority and 31st March, 1960.
 another

Mahajan, J. Two contentions have been advanced by the
 learned counsel for the petitioner, namely;—

- (i) that the petitioner was exempted from the levy of sales-tax under section 6 of the Punjab General Sales-tax Act and that the exemption was withdrawn by Punjab Act 8 of 1962, which came into force on the 2nd June, 1962, and, therefore, unless there is a specific provision charging sales-tax retrospectively the firm cannot be made liable to pay the sales-tax retrospectively; and
- (ii) that the best-judgment assessment which was made on 21st September, 1962, was made without notice and hence the assessment is in violation of the provisions of section 11(4) and (5) of the Act, and, therefore, illegal.

It is not necessary to deal with the second contention because, in my opinion, the first argument is sound and must prevail. Act No. 8 of 1962, as I have already said, came on the statute book on the 2nd of June, 1962, and by section 3 of the amending Act, item No. 49 in Schedule B to the Principal Act was omitted and this omission was made retrospective. (Item No. 49 is to be deemed to be omitted with effect from the 1st day of April, 1959, by reason of section 1(2) of the Amending Act). It is significant that at the time when the exemption was granted, section 1(2) of the amending Act was not on the statute book. The exemption, therefore, could be and was validly

granted. That exemption was enjoyed right up to the date of the amendment which came into force on the 2nd of June, 1962. The exemption was not withdrawn at any stage before 2nd of June, 1962. For the period in dispute the petitioner has been specifically granted exemption under section 6(1) of the Act and, by reason of this he was not liable to sales-tax. The effect of the amendment no doubt is to withdraw that exemption. The withdrawal of the exemption by the deeming provision retrospectively cannot in fact obliterate the actual fact, namely, that the exemption has been enjoyed and at the time when the exemption was enjoyed it was lawfully enjoyed. No deeming provision can make what is lawful unlawful. If the Legislature wants to impose a tax retrospectively it would say so. The authorities cannot recover a tax retrospectively by recourse to the deeming provision which merely withdraw the exemption. I cannot attribute to the Legislature an intention to take away the exemptions enjoyed by persons who were lawfully exempted from the tax under the Act. If the Legislature wanted to do so, it would have expressly said so. There is no provision in the amending Act authorising levy of sales-tax retrospectively, and the tax which had not been imposed cannot be deemed to have been imposed by recourse to section 3 read with section 1(2) of the amending Act, as is sought to be done by the authorities in this case. In my view, therefore, the contention of the learned counsel is sound and must prevail. The sales tax cannot be levied for the period in dispute.

M/s. Sewak
Hotel, Bhatinda
v.
The Assessing
authority and
another
Mahajan, J.

For the reasons given above, this petition is allowed and the order of the Assessing Authority is quashed. In the circumstances of the case, however, there will be no order as to costs.

B.R.T.