

PETITIONER:
STATE OF PUNJAB & ORS.

Vs.

RESPONDENT:
SUKH DEB SARUP GUPTA

DATE OF JUDGMENT:
29/04/1970

BENCH:
GROVER, A.N.
BENCH:
GROVER, A.N.
SHAH, J.C.
HEGDE, K.S.

CITATION:
1970 AIR 1641 1971 SCR (1) 442
1970 SCC (2) 177

ACT:

East Punjab General Sales Tax Act, 1948---Exemption from tax under Entry 37, Sch. B for alcoholic preparations on which Excise duty was leviable under Punjab Excise Act 1914, -State Act of 1914 superseded by Central Act-Whether exemption still available by virtue of s. 8, General Clauses Act 1897.

HEADNOTE:

The respondent was a manufacturer of medicinal or toilet preparations which fell within the definition of "excisable articles" on which excise duty was payable under s. 3 (6) (c) of the Punjab Excise Act, 1914. Under s. 6 read with Entry 37 in Schedule B of the East Punjab General Sales Tax Act, 1948, all goods on which duty was leviable under the Punjab Excise Act, 1914, were exempt from the levy of sales tax. After the commencement of the constitution, alcoholic preparations which, under the Government of India Act, 1935, were a provincial subject, fell within the Union List and in 1955 the Union Parliament enacted the Medicinal and Toilet Preparations (Excise Duties) Act. This Central Act repealed any State laws corresponding to the Act and brought about uniformity in all States in the imposition of excise duty on alcoholic preparations.

The respondent was assessed to sales tax on alcoholic preparations for the years 1959-60 to 1961-62 as the Sales Tax authorities considered that the respondent could no longer claim the benefit of the exemption contained in Entry 37 of Schedule B of the Act. The respondent challenged the levy of sales tax by a writ petition which was allowed by the High Court on the view that by virtue of s. 8 of the General Clauses Act, 1897, the reference in Entry 37 to the Punjab Excise Act must be taken to be a reference to the relevant provisions of the Central Act.

On appeal to this Court,

HELD:Dismissing the appeal,

The High Court was right in saying that there was nothing in s. 8 of the General Clauses Act to indicate that the words "former enactment" in that provision meant only a Central enactment and not a State enactment. According to s. 3(19) "enactment" shall include any provision contained in any

Act. [444 G-H]

Furthermore it could never be intended that when an Act passed by the Union Parliament repeals a State Act the principle underlying s. 8 should never become applicable. [445 A]

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 528 of 1967. Appeal by special leave from the judgment and order dated April 6, 1966 of the Punjab High Court in Letters Patent Appeal No. 143 of 1965.

4 43

V. C. Mahajan, R. N. Sachthey and B. D. Sharma,, for the appellant.

B. R. L. Iyengar , K. L. Mehta, and S. K. Mehta, for the respondent.

The Judgment of the Court was delivered by Grover, J. This is an appeal by special leave from a judgment of the Punjab High Court holding that medicinal or toilet preparations containing alchemist were exempt from the payment of tax under the East Punjab General Sales Tax Act, hereinafter called "the Act".

The respondent is running a factory for manufacturing spirituous and medicinal preparations containing alcohol at Jind in the district of Sangrur. Before the coming into force of the Constitution of India on January 26, 1950 "medicinal or toilet preparations" fell within the definition of "excisable articles" on which the excise duty was payable under s. 3 (6) (c) of the Punjab Excise Act 1914. The Act came into force in 1948. Under its provisions tax was levied on the sale of goods with the exception of articles exempted under s. 6 of the Act. These articles were given in Schedule B wherein Entry 37 was in these terms "All goods on which duty is or may be levied under the Punjab Excise Act, 1914."

After the enforcement of the Constitution alcoholic preparations which under the Government of India Act 1935 was a provincial subject came to be dealt with in the Union List. Section 3 (6) (c) of the Punjab Excise Act was, therefore, omitted by the Adaptation of Laws Order 1950. However, by virtue of Art. 277 of the Constitution the State Government continued to levy and collect the excise duty on the above articles even after January 26, 1950. In 1955 the Union Parliament enacted the Medicinal and Toilet Preparations (Excise Duties) Act, hereinafter referred to as the "Central Act". Section 21. of the Central Act provided

"If, immediately before the commencement of this Act, there is in force in any State any law corresponding to this Act, that law is hereby repealed."

The effect of the Central Act was to bring about uniformity in all States in the imposition of excise duty on alcoholic preparations. It is common ground that the collection of the duty leviable under the Central Act continued to be done by the State Government and the duty so collected went to the State Exchequer. The respondent was assessed to sales tax on alcoholic preparations on which excise duty was being levied under the Central Act by the

444

State authorities for the years 1959-60, 1960-61 and 1961-62. According to the appellant State it was entitled to levy I sales tax on alcoholic preparations of the nature which were covered by the Central Act, for the reason that

the respondent could no longer claim the benefit of the exemption contained in Entry 37 of Schedule B to the Act. The respondent filed a petition under Art. 226 of the Constitution challenging the levy of sales tax on the alcoholic preparations on which excise duty was being paid under the Central Act. This petition succeeded before a learned Single Judge of the High Court who held that by virtue of s. 8 of the General Clauses Act 1897 in Entry 37 reference to the Punjab Excise Act must be taken to be a reference to the relevant provisions of the Central Act. According to him the State could not levy any sales tax under the Act on the preparations in question. His judgment was affirmed by a division bench and the appeal filed by the State was dismissed.

The short point which falls to be determined is whether s. 8 of the General Clauses Act 1897 would govern the case and whether the respondent could claim the benefit of the exemption in Entry 37 of Schedule B to the Act notwithstanding that the exemption related expressly only to goods on which duty could be levied under the Punjab Excise Act 1914. Section 8(1) of the General Clauses Act provides :-

"8 (1) Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals and reenacts, with or without modification, any provision of a former enactment, then references in any other enactment or in any instrument to the provision so repealed shall, unless a different intention appears, be construed as references to the provision so re-enacted."

According to S. 3 (19) of that Act "enactment" shall include any provision contained in any Act. On behalf of the State it has been argued that the words "former enactment" in s. 8 can refer only to a Central Act or provisions contained therein and they cannot cover Acts passed by the State legislature. Such an argument cannot be entertained because it goes against the express language of s. 3 (19) which does not lay down any such limitation. The obvious meaning of that provision is that enactment would include any Act or provision contained therein passed by the Union Parliament or the State Legislature. The limited meaning sought to be attributed to the word "enactment" cannot be given to it for another reason. It could never be intended that when an Act passed by the Union Parliament repeals a State Act the

44 5

principle underlying s. 8 should never become applicable. The High Court, in our opinion, was right in saying that there was nothing in s. 8 to indicate that the words "former enactment" meant only a Central enactment and not a State enactment and that the courts would not be justified to read in that section words which were not there and to place a narrow and limited construction on the words "former enactment." It has not been disputed on behalf of the appellant that if s. 8 is applicable the respondent would be exempt from payment of tax under the Act on the alcoholic preparations on which excise duty is being levied under the provisions of the Central Act.

The appeal fails and is dismissed with costs.

R.K.P.S.

Appeal dismissed.

446

JUDIS