PETITIONER:
CHIEF COMMISSIONER UNION TERRITORY, CHANDIGARH

Vs.

RESPONDENT:
SIALKOT SILK STORES, CHANDIGARH

DATE OF JUDGMENT23/10/1978

BENCH:
UNTWALIA, N.L.
BENCH:
UNTWALIA, N.L.
CHANDRACHUD, Y.V. ((CJ)
SHINGAL, P.N.

CITATION:
1979 AIR 435 1979 SCR (2) 134
1979 SCC (1) 255

ACT:
Punjab General Sales Tax Act, 1948-S. 6-State Government issued a notification of its intention to amend Schedule but did not issue a second notification amending the Schedule as required by s. 6-State reorganised in the meanwhile and the Union Territory of Chandigarh formed-Earlier notification if "law in force"-Newly formed Union Territory-If could avail of the earlier notification and amend the schedule.

HEADNOTE:
Section 6 of the Punjab General Sales Tax Act, 1948 provides that the State Government, after giving by notification, not less than three months' notice of its intention so to do, may, by like notification add or delete from Schedule and thereupon Schedule shall be deemed to be amended accordingly.

The State Government of the composite State of Punjab issued a notification under s. 6 giving its intention to delete from Schedule pure silken fabrics from the list of tax-free goods. Before the issue of any further notification, however, the composite State was reorganised and the Union Territory of Chandigarh was formed. The Government of the Union Territory of Chandigarh issued a notification amending item 30 of Schedule as intended to be amended by the notification issued by the former government.

In a writ petition filed before the High Court the respondent challenged the notification as invalid on the ground that the earlier notification could not be availed of by the new Government for amending Schedule B. The appellant claimed that the earlier notification was "law in force". But the High Court repelled this argumenet It allowed the respondent's writ

Dismissing the appeal,

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HELD: 1. There was no "law in force" enabling the newly formed Union 'Territory of Chandigarh to levy any sales tax on pure silken fabrics.

2. The notification merely notifying the intention of the State Government to add or delete from Schedule any article by itself had no force of law until and unless, on

the expiry of the period of three months, a like notification was issued amending the Schedule. The erstwhile State Government of Punjab could not issue the second notification in respect of the Union Territory after it ceased to be a part of the State of Punjab. Sales Tax could not be charged on pure silken fabrics by the said State Government merely by virtue of the notification. It was therefore not a law in force when the composite State was reorganised. [136D-E]

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3. No provision is to be found in the Act to show that by a legal fiction the A first notification of intention issued by the erstwhile State Government could be deemed to be a notification issued by the new Government. [137 B]

M/s. Rattan Lal and Co. and another etc. v. The Assessing Authority, Patiala and another, etc. AIR 1970 S.C 1742 held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 364 of 1969.

From the Judgment and order dated 7-8-1968 of the Punjab and Haryana High Court in Civil Writ No. 2199/68.

S. N. Anand and R. N. Sachthey for the Appellant.

Arvind Minocha for the Respondent.

The Judgment of the Court was delivered by

UNTWALIA, J. The Chief Commissioner, Union Territory, Chandigarh, has preferred this appeal by certificate from the decision of the High Court of Punjab & Haryana allowing the Writ Petition of the respondent and declaring the amendment of item 30 in Schedule to the Punjab General Sales Tax Act, 1948, hereinafter referred to as the Act, invalid.

The composite and the then existing State of Punjab was re-organised by the Punjab Re-organisation Act, 1966, Central Act 31 of 1966. The Union Territory of Chandigarh was carved out as one of the States on and from November 1, 1966. Under section 6 of the Act no tax was payable on the sale of goods specified in Schedule B. The State Government could amend this Schedule and at the relevant time the power so conferred on the State Government was in the following terms:-

> "The State Government after giving by notification not less than three months' notice of its intention so to do may, by like notification add or delete from Schedule and there upon Schedule shall be deemed to be amended accordingly."

Item 30 of Schedule exempted from sales tax:

> "All varieties of cotton, woollen or silken textiles, including rayon, artificial silk or nylon, whether manufactured by handloom or powerloom or otherwise, but not including car pets, druggets, woollen durees and cotton floor durees."

On August 24, 1966 the State Government of the composite State of Punjab issued a notification giving three months' notice of its intention to amend Schedule to exclude pure silken fabrics from the list of tax; free goods. But before the expiry of three months and before

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any further notification could be issued by the State Government as required by section 6 of the Act, the Union Territory of Chandigarh came into existence on November 1, 1966. The Government of the Union Territory issued a notification dated January 4, 1968 amending item 30 as

intended to be amended by the notification dated August 24,1966 issued by the State Government of the composite State of Punjab. The respondent filed a writ petition in the High Court challenging this notification as being invalid on the ground that the earlier notification could not be availed of by the new Government for amending Schedule B. The stand taken on behalf of the appellant was that the earlier notification was a "law in force" within the meaning of section 88 of Central Act 31 of 1966. The High Court repelled this argument, and in our opinion, rightly.

It is plain on the wordings of section 6 of the Act, extracted above, that a notification merely notifying the intention of the State Government to add or delete from Schedule any article, by itself, had no force of law until and unless on the expiry of the period of three months a like notification was issued amending the Schedule. The erstwhile State Government of Punjab could not issue a second notification in respect of the Union Territory after it ceased to be a part of the State of Punjab. Sales tax could not be charged on pure silken fabrics by the said State Government on October 31, 1966 merely by virtue of the notification dated August 24, 1966. It was, therefore, not a law in force when the composite State was re-organised. Section 88 of the Punjab Re-organisation Act, 1966 runs as follows:-

> "The- provisions of Part II shall not be deemed to have f effected any change in the territories to which any law in force immediately before the appointed day extends or applies, and territorial references in any such law to the State of Punjab shall, until otherwise provided by a competent . Legislature or other competent authority, be construed as meaning the territories within that State immediately before the appointed day."

It is clear that there was no law in force on November 1, 1966, which could enable the Union Territory to levy any sales tax on pure silken fabrics.

Mr. S. N. Anand endeavoured to attack the judgment of the High Court by taking a new stand in this Court that the notification dated August 24, 1966 could enure to the benefit of and be availed by the Union Territory Government. But he failed to point out any provision L in Act 31 of 1966 or any other law to substantiate this argument. No
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"deeming" provision could be brought to our notice, as there is none, to show that the notification issued by the erstwhile State Government of Punjab could be deemed to be one issued by the new Government of the Union Territory. For many other purposes there are "deeming" provisions in Central Act 31 of 1966 e.g. sections 59(1), 74(1) and 92. But no provision is to be found to show that by a legal fiction the first notification of intention issued by the erstwhile State Government could be deemed to be a notification issued by the new Government. 'The argument thus presented by Mr. Anand must be rejected.

Learned counsel for the appellant placed reliance upon the principle of law enunciated in paragraph 12 at page 1749 in the decision of this Court in M/s. Ratan Lal and Co. and another etc., v. The Assessing Authority, Patiala and another, etc.(1). The principle stated therein is that the new legislature of the new State after the re-organisation of the composite State could amend the existing law retrospectively from a date anterior to the date of reorganisation. Obviously the view expressed in the decision

aforesaid is so very different that it cannot be of any help to the appellant in this case.

For the reasons stated above, we dismiss the appeal with costs.

P.B.R. Appeal dismissed.

(1) A.I.R. 1970 S.C., 1742

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