

PETITIONER:
STATE OF MADRAS

Vs.

RESPONDENT:
S. PADMANABHAN ETC. January 21, 1971

DATE OF JUDGMENT 21/01/1971

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

CITATION:
1971 AIR 2081 1971 SCR (3) 457

ACT:
Tamil Nadu General Sales Tax Act, 1959-Act coming into force on April 1, 1959-Published in Official Gazette on March 18, 1959-G.O. 976 issued under Act on March 28, 1959 authorising notification under s. 17 to be published on April 1, 1959-Notification coming into force on April 1, 1959-Exemption of fresh fruits under earlier Act taken away under notification-Validity of notification whether affected by fact that it was issued before coming into force of Act.

HEADNOTE:
The respondents were dealers in fruits in Tamil Nadu. Originally under the Madras General Sales Tax Act, 1939 the sale of fruits was liable to tax. By means of a notification dated March 25, 1954 the sale of fruits among other commodities was exempted from payment of tax under s. 6 of the Act. The 1939 Act was repeated and re-enacted by the Madras (now Tamil Nadu) General Sales Tax Act, 1959 which was published in the official gazette on March 18, 1959. The State Government passed G.O. No. 976 on March 28, 1959 by which the new Act was to come into force from April 1, 1959. To the G.O. was annexed a notification under s. 17 of the Act which was directed to be published on April 1, 1959 and was to come into force on that date. According to the notification fresh fruits ceased to be exempt from tax under the Act. Subsequently fresh fruits were again exempted with effect from April 1, 1960. Thus it was only during the assessment year 1959-60 that, the respondents were liable to pay tax on the sale of fresh fruits under the provisions of the Act. By the judgment under appeal the High Court struck down notification No. 976 dated March 28, 1959 which was to take effect from April 1, 1959 on the ground that it had been issued before the Act came into force. The respondents were held to be entitled by reason of the saving provision of s. 61 of the Act to invoke the exemption that had been granted under the earlier Act of 1939. By special leave appeals were filed by the State of Madras in this Court.
HELD : The mere fact that the impugned notification bore an earlier date was of no consequence. Section 53(4) of the Act expressly provides that all notifications under the Act shall, unless they are expressed to come into force on a

particular date come 'into force on the day on which they are published. The notification in question was stated to come into 'force on April 1, 1959. Besides it was published on that very day. Therefore in terms of cl. (b) of s. 53(4) of the Act the notification had come into force only on April 1, 1959 and not earlier. No one had challenged nor indeed could it be disputed that on April 1, 1959 a valid notification could be issued under s. 17 of the Act. For this reason alone the validity of the notification must be upheld. [460 B-E]

The appeals must accordingly be allowed.

Bopanna Venkateswaraloo & Ors. v. Supt. Central Jail, Hyderabad, State, [1953] S.C.R. 905, held inapplicable.

JUDGMENT:

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 177 to 183 of 1967.

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Appeals by special leave from the judgment and order dated December 28, 1964 of the Madras High Court in Writ Appeals Nos. 354 to 360 of 1963.

S. T. Desai and A. V. Rangam, for the appellants (in all the appeals).

T. A. Ramachandran, for the respondents (in all the appeals).

The Judgment of the Court was delivered by Grover, J. These appeals by special leave from a judgment of the Madras High Court involve the question of the validity of a notification No. 976 issued under the provisions of the Tamil Nadu General Sales Tax Act, 1959, hereinafter called the Act, which was to come into force on April 1, 1959.

The respondents are dealers in fruits in the State of Tamil Nadu. Originally under the Madras General Sales Tax Act, 1939 the sale of fruits was liable to tax. By means of a notification dated March 25, 1954 the sale of fruits among other commodities was exempted from payment of tax under s. 6 of that Act. The 1939 Act was repealed and re-enacted by the Act which was published in the Official Gazette on March 18, 1959 but which was to come into force, as stated before, on April 1, 1959. On March 28, 1959 the Government passed G.O. No. 976 which was as follows :-

"The Madras General Sales Tax Act, 1959, which will replace the Madras General Sales Tax Act 1939, will come into force from 1st April 1959. The Government have examined the question of continuing or withdrawing the exemption from sales tax or the reductions in rates of sales tax so far granted under the Madras General Sales Tax Act, 1939, and such of them as have been decided to be continued from 1st April 1959 are specified in the notifications annexed to this order:

2. The notifications annexed to this order will be published in the Fort. St. George Gazette. The Controller of Stationery and Printing, Madras, is requested to publish in the notification in the Fort St. George Gazette, dated the 1st April 1959 without fail.

The notification itself may also be reproduced:

"In exercise of the powers conferred by Section 17 of the Madras General Sales Tax Act, 1959 (Madras Act I of 1959) and in supersession of all the notifications issued under S. 6 of the Madras General Sales Tax Act, 1939 (Madras Act IX of 1939) the Governor of

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Madras hereby makes the exemption in respect of the tax payable, under the said Madras General Sales Tax Act, 1959, on the sale or purchase of the goods or class of goods or by the class or persons or institutions in regard to the whole or part of their turnover specified in column (2) of the Schedule, below subject to the conditions and restrictions, if any, specified in the, corresponding entry in column (3) thereof.

This notification shall come into force on the 1st day of April 1959."

In the Schedule which contained the exemptions fresh fruit was not one of the items which was exempted from tax. In other words by virtue of this notification the respondents became liable to pay tax on the sale of fresh fruit with effect from April 1, 1959. It may be mentioned that the exemption with regard to fresh fruits was once again granted with effect from April 1, 1960. It was only during the assessment year 1959-60 that the respondents were liable to pay tax on the sale of fresh fruits under the provisions of the Act. It is unnecessary to refer to the course which the litigation in the shape of writ petitions filed by the respondent took in the High Court. It would be sufficient to mention that by the judgment under appeal the High Court struck down the notification No. 976 dated March 28, 1959 which was to take effect from April 1, 1959. It was held that this notification had been issued before the Act came into force which amounted to an exercise of power which did not exist on the date on which the notification was promulgated. It was further held that the respondents were entitled by reason of the saving provision of S. 61 of the Act to invoke the exemption that had been granted under the earlier Act of 1939.

Section 3 provides for the levy of taxes on sale or purchase of goods. Under the first proviso to sub-s. (1) of that section it was expressly laid down that in case of goods specified therein which included fresh fruits the rate of tax would be 1% on the turnover of a dealer whose total turnover for a year was not less than Rs. 10,000/-. Under the second proviso the dealers dealing exclusively in one or more of the goods enumerated in the first proviso except foodgrains, rice products, wheat products and milk whose total turnover for a year was not more than 30,000/- were not to be liable to pay tax under sub-s. (1). Section 17 empowered the Government by notification to make an exemption or reduction in rate in respect of any tax payable under the Act. Now what the Government did was that it made an order on March 28, 1959 in anticipation of the coming into force of the Act on April 1, 1959. It decided that a notification be published in the Fort. St. George Gazette on April 1, 1959 declaring the exemp-

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tions which would be granted under s. 17 of the Act in supersession of all the previous notifications issued under s. 6 of the Act of 1939. It is not disputed that the impugned notification was actually published in the Gazette on April 1, 1959. On that date the Act had come into force. We are wholly unable to comprehend how the validity of the notification could be impugned when it was actually promulgated on the date on which the Act came into force. The mere fact that it bore an earlier date was of no consequence. Section 53(4) of the Act expressly provided : "(a) All rules made under this Act shall be published in the Fort. St. George Gazette, and unless, they are expressed to come into force, on a particular day shall come into force on the day on which they are so published.

(b) All notifications issued under this Act, shall, unless they are expressed to come into force on a particular day, come into force on the day on which they are published.

The notification in question was stated to come into force on April 1, 1959. Besides, it was published on that very day. Therefore, in terms of clause (b) it came into force only on April 1, 1959 and not earlier. No one has-challenged nor indeed it can be disputed that on April 1, 1959 a valid notification could be issued under s. 17 of the Act. For this reason alone the validity of the notification must be upheld.

On behalf of the respondents our attention has been invited to Boppana Venkateswaraloo & Others v. Superintendent, Central Jail, Hyderabad State(1). The facts in that case were altogether different and have been discussed in the judgment of the High Court. We consider it wholly unnecessary to refer to them as the point which arose there about the validity of certain orders made under the Preventive Detention (Second Amendment) Act 1952 was entirely of a different nature and is not apposite for the purpose of the present case.

In the result the appeals are allowed and the decision of the High Court is hereby reversed. The writ petitions shall stand dismissed. In view of the entire circumstances the parties are left to bear their own costs.

G.C.

Appeals

allowed.

(1) [1953] S.C.R. 905.

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