

(2010) 09 P&H CK 0360

High Court Of Punjab And Haryana At Chandigarh

Case No: C.W.P. No. 12821 of 2010

Goel Brick Industries and Others

APPELLANT

Vs

State of Haryana and Others

RESPONDENT

Date of Decision: Sept. 14, 2010

Acts Referred:

- Constitution of India, 1950 - Article 14, 16, 245
- Haryana Value Added Tax Act, 2003 - Section 1(3), 4(1)

Citation: (2013) 58 VST 149

Hon'ble Judges: Ajay Kumar Mittal, J; A.K. Goel, J

Bench: Division Bench

Advocate: N.L. Sammi, for the Appellant; Gagandeep Singh Wasu, Senior Deputy Advocate-General, Haryana, for the Respondent

Final Decision: Allowed

Judgement

Adarsh Kumar Goel, J.

This petition seeks quashing of notification dated June 8, 2010, annexure P1, to the extent that it is made operative from October 1, 2009 and not from the date of its issuance. The case of the petitioners is that they are running brick kilns and have opted for the system of payment in lump sum tax based on the production capacity as per the provisions of the Haryana Value Added Tax Rules, 2003. The petitioners paid tax at rates applicable for the period prior to the impugned notification. By way of impugned notification, they have been required to pay higher rates even for the period prior to issuance of the said notification.

2. In response to the notice issued, reply has been filed by the respondents justifying retrospective levy at higher rates on the basis of section 60(1) of the Haryana Value Added Tax Act, 2003 to the effect that the Rules could be retrospective.

3. We have heard learned counsel for the parties.

4. The learned counsel for the petitioners submits that the matter was covered by order passed by this court in CWP No. 11834 of 2010 [Ram Gopal Murli Dhar Juntra Vs. State of Haryana and Others](#), decided on September 6, 2010 holding that higher rate of tax applies from the date of notification.

5. The learned counsel for the State distinguishes the judgment relied upon by submitting that section 60 was not considered therein. He also relies upon the judgment of the honourable Supreme Court in [The Tata Iron and Steel Co., Ltd. Vs. The State of Bihar](#), to submit that legislation could be retrospective and the same could not be set aside only on the ground that the tax was not collected by the dealer for the earlier period.

6. The question for consideration is whether the impugned notification to the extent of retrospectivity can be sustained with reference to article 14 of the Constitution.

7. Before considering the said question, it will be proper to notice the relevant provision which has been relied upon, i.e., section 60(1) of the Act:

The State Government may subject to the provisions of subsection (3) and subject to the condition of previous publication by uploading on the website www.haryanatax.com under the head "legal notices", make rules by notification in the official Gazette for carrying out the purposes of this Act and may give them prospective or retrospective effect.

8. Even though power of Legislature under article 245 of the Constitution is plenary which also includes power to make law with retrospective effect and even subordinate legislation can be allowed to be made retrospectively, subject to certain limitations, exercise of such power has to be consistent with article 14 and if arbitrary, the same can be struck down. When exercise of retrospective power of legislation can be held to be arbitrary, has necessarily to be judged on the merits of the amendment in a given fact situation.

9. In [State of Gujarat and Another Vs. Raman Lal Keshav Lal Soni and Others](#), it was observed:

...The Legislature is undoubtedly competent to legislate with retrospective effect to take away or impair any vested right acquired under existing laws but since the laws are made under a written Constitution, and have to conform to dos and don'ts of the Constitution, neither prospective nor retrospective laws can be made so as to contravene fundamental rights. The law must satisfy the requirements of the Constitution today taking into account the accrued or acquired rights of the parties today. The law cannot say, 20 years ago the parties had no rights, therefore, the requirements of the Constitution will be satisfied if the law is dated back by 20 years. We are concerned with today's rights and not yesterday's. A Legislature cannot legislate today with reference to a situation that obtained 20 years ago and ignore the march of events and the constitutional rights accrued in the course of the 20

years. That would be most arbitrary, unreasonable and a negation of history...

The power and competence of the Parliament to amend any statutory provision with retrospective effect cannot be doubted. Any retrospective amendment to be valid must, however, be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution. The mere fact that any statutory provision has been amended with retrospective effect does not by itself make the amendment unreasonable. Unreasonableness or arbitrariness of any such amendment with retrospective effect has necessarily to be judged on the merits of the amendment in the light of the facts and circumstances under which such amendment is made. In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, it becomes relevant to enquire as to how the retrospective effect of the amendment operates.

10. The above view was reiterated in [Virender Singh Hooda and Others Vs. State of Haryana and Another](#) . After referring to earlier judgments, it was observed:

66. In [Lohia Machines Ltd. and Another Vs. Union of India \(UOI\) and Others](#), on the aspect of reasonableness and arbitrariness of amending law, it was observed that the power and competence of Parliament to amend any statutory provision with retrospective effect cannot be doubted. Any retrospective amendment to be valid must, however, be reasonable and not arbitrary and must not be violative of any of the fundamental rights guaranteed under the Constitution. In considering the question as to whether the legislative power to amend a provision with retrospective operation has been reasonably exercised or not, it becomes relevant to enquire as to how the retrospective effect of the amendment operates.

67. In [Chairman, Railway Board and others Vs. C.R. Rangadhamaiah and others](#), the Constitution Bench while holding that the rule which operates in future so as to govern future rights of those already in service cannot be assailed on the ground of retroactivity as being violative of articles 14 and 16 of the Constitution, observed that a rule which seeks to reverse from an anterior date a benefit which has been granted or availed of e.g., promotion or pay scale, can be assailed as being violative of articles 14 and 16 of the Constitution to the extent it operates retrospectively, (emphasis supplied).

11. Applying the above principles, it is seen that by the impugned notification the rates of tax have been revised which has been given effect for a period of nine months prior to the date of notification. In reply, there is no justification as to what was the relevance of the earlier date for fixing higher rate of tax. Conferment of exercise of power of giving retrospective effect in a subordinate legislation can be justified only if it is reasonable. Retrospective legislation may be justified if a provision is clarificatory or provision is for validating an earlier levy which may have been struck down or for any such purpose which may be permissible. In absence

thereof, mere fact that there is legislative competence to legislate retrospectively cannot by itself be enough to justify retrospective levy.

12. In *Tata Iron & Steel Co. Ltd.* (1958) 9 STC 267 (SC); (1958) AIR SC 452 relied upon on behalf of the State, the position was different. The Bihar Sales Tax Act, 1947 came into force with effect from July 1, 1947 but on account of certain omission, the charging section was not brought into force and to cure the said omission, Ordinance III of 1948 was promulgated from a retrospective date. Upholding validation from retrospective date, it was observed (page 273 in 9 STC):

It should be noted that, although the 1947 Act came into force on July 1, 1947, by virtue of a notification published in the official gazette u/s 1(3) thereof, the charging section quoted above did not come into operation because, by its own terms, it required a further notification in the official gazette to bring it into effect. For some reason, not apparent on the record, the Provincial Government did not issue any notification as contemplated by section 4(1). To cure this omission Ordinance III of 1948, was promulgated by the Governor amending section 4(1)(a) of the 1947 Act. Section 4(1), as amended, read as follows:

Subject to the provisions of sections 5, 6, 7 and 8 and with effect from the commencement of this Act, every dealer, whose turnover during the year immediately preceding the date of such commencement, on sales which have taken place both in and outside Bihar exceeded Rs. 10,000 shall be liable to pay tax under this Act on sales which have taken place in Bihar on and from the date of such commencement.

13. In the present case, the position is different. The retroactivity is not intended to give effect to intention of Legislature already manifested. No other reason for giving retrospective effect has been shown except that there is a power to make a rule retrospectively. Mere existence of power cannot justify exercise of power without any reasonable ground. In view of the above, we allow the writ petition and quash impugned notification to the extent the same is operative for the period prior to issuance.