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Court : Andhra Pradesh

Decided On : Feb-14-1958

Reported in : [1958]9STC295(AP)

Judge : P. Satyanarayana Raju

Acts : [Constitution of India](#) - Article 226; ;Andhra Pradesh General Sales Tax Act, 1957

Appeal No. : W.P. No. 279 of 1958

Appellant : Reliance Automobiles

Respondent : State of Andhra

Advocate for Pet/Ap. : C. Mallikarjunarao, Adv.

Disposition : Petition dismissed

Judgement :

1. This is an application, for the issue of a writ of mandamus or any other appropriate writ for directing the Commercial Tax Officer, I Circle, Hyderabad, to forbear from proceeding further against the petitioner in the matter of the assessment for the year 1955-56, on the basis of his notice dated the 10th January, 1958, and to refund the sum of Rs. 65, 763-7-3 collected from him towards the assessment for the years 1954-55 and 1955-56.

2. The petitioner avers that he is a local agent for Hindustan Motors and Willys Jeeps, imported from America, which he purchases from dealers at Calcutta and Bombay. It is stated that for the assessment year 1954-55 the respondent collected Rs. 29, 199-3-6 as sales tax on the sale transactions in automobile parts affected by the petitioner. It is the petitioner's contention that the said levy and collection are not authorised by law.

3. For the year 1955-56 the petitioner submitted monthly returns and paid a sales tax of Rs. 36, 564-3-9 provisionally. On 10th January, 1958, the 2nd respondent issued a notice to the petitioner threatening assessment to the best of his judgment. It is stated by the petitioner that the said assessment is only 'an escaped one which is amenable to assessment' under rule 32 of the Hyderabad General Sales Tax Act of 1950 and he submits that any proceeding for assessment for 1955-56 is barred by time after 31st March, 1957, and more so by 10th January, 1958, the date of first notice issued by the second respondent to the petitioner.

4. The petitioner's claim for refund of the amounts paid by him is not tenable in this writ proceedings.

5. The legal contentions on which the petitioner bases his claim for the other reliefs set out above are that the rules framed under the Andhra Pradesh General Sales Tax Act were made before all the provisions of the said Act came into force and that therefore they are not valid, and that sales tax on automobile parts and pneumatic tyres and tubes is in contravention of the provisions of Articles 301, 302 and 304 of the Constitution. Initially it may be stated that the petitioner has not yet filed any objections in response to the notice issued by the second respondent on 10th January, 1958. Assuming that the petitioner is entitled to raise these objections here even without raising them before the second respondent, I do not find any substance in either of them.

6. The first of the contentions relates to the validity of the rules framed under the Andhra Pradesh General Sales Tax Act. The said Act (VI of 1957) was enacted for the purpose of consolidating and amending the laws relating to the levy of a general tax on the sale or purchase of goods in the State of Andhra Pradesh. Sub-

section (3) of section 1 provides that section 1 shall come into force at once and the rest of the Act shall come into force on such date as the State Government may, by notification in the Andhra Pradesh Gazette, appoint. By means of a notification dated 10th June, 1957, the Government appointed 15th June, 1957, as the date from which the rest of the Act shall come into force. The Andhra Pradesh General Sales Tax Rules, 1957, the validity of which the petitioner impeaches, were published in the Andhra Pradesh Gazette, Part I, dated 15th June, 1957, and they came into force on the same date. The act having come into force on 15th June, 1957, and the rules having been published on the same date, it is not a case of the Government promulgating the rules on a date anterior to the date of the coming into force of the Act. On the other hand, the rules were published and they came into force after the Act was given effect to. I am, therefore, unable to accede to the contention of the learned counsel for the petitioner that the rules are invalid for the reason stated by him.

7. The next contention is that sales tax levied on pneumatic tyres and tubes and automobile parts offends Articles 301, 302 and 304 of the Constitution. These articles read as follows : "301. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.

302. Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.

304. Notwithstanding anything in Article 301, 302 and , the Legislature of a State may by law -

(a) impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest : Provided that no bill or amendment for the purposes of clause (b) shall be

introduced or moved in the Legislature of a State without the previous sanction of the President.'

8. The matters mentioned in clause (b) of Article 304 of the Constitution refer to freedom of trade, commerce or intercourse with or within a State. The States in India have full power of imposing tax subject only to the condition that such tax is imposed on all goods of the same kind produced or manufactured in the taxing State although such taxation is undoubtedly calculated to fetter inter-State trade and commerce. I do not find that there is any substance in this connection either.

9. The above two contentions were only raised before me though the affidavit mentions that the assessment for the year 1955-56 is barred by limitation. Assuming that the contentions of the petitioner are well founded, there is nothing to preclude him from raising them before the second respondent in response to the notice issued to him. The Sales Tax Act provides adequate alternative remedies and if eventually the petitioner's contentions are not accepted, it is open to him to seek the other remedies provided under the Act. On a consideration of all the circumstances of the case, I must hold that the petitioner is not entitled to any relief in the above writ petition and it is, therefore, dismissed.