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Court : Allahabad

Decided On : Jan-21-1963

Reported in : AIR1965All124; [1964]15STC631(All)

Judge : M.C. Desai, C.J. and ;R.S. Pathak, J.

Acts : Constitution of India - Article 19(1); Uttar Pradesh Sales Tax Act, 1948 - Sections 8A(6)

Appeal No. : S.T. Ref. No. 38 of 1961

Appellant : State

Respondent : Rustam Glass Works

Advocate for Pet/Ap. : Standing Counsel

Judgement :

Pathak, J.

1. This is a statement of a casesubmitted by the Judge (Revisions) Sales Tax for decision on the following question:

'Whether the second proviso of Section 8-A(6) of the U.P. Sales Tax Act placing a restriction upon the dealers to file a revision against the order of the Sales Tax Officer demanding security, only after depositing the amount of security demanded, offends against the fundamental rights as guaranteed by the Constitution and is an unreasonable restriction against the freedom of carrying on business, calling or profession and is ultra vires of the State Legislature?'

2. The respondent, M/s Rustam Glass Works, Ferozabad is a dealer in glass bangles. It was registered under Section 8-A of the U. P. Sales Tax Act, and the registration certificate was renewed for the year 1959-60. It appears that as it was heavily in arrears of sales tax, it was called upon to furnish security in the sum of Rs. 40,000/- for the continuance of the registration certificate. Thissecurity was not furnished by the respondent and whereupon the Sales Tax Officer made an order dated November 20, 1959 cancelling the registration certificate. The respondent filed a revision application against the order of cancellation. When the revision application came on for hearing apreliminary objection was raised on behalf of the State that the revision was not maintainable inasmuch as the respondent had not furnished the security required by the second proviso to Section 8-A(6). On behalf of the respondent it was contended that this proviso contravened the respondent's fundamental right guaranteed by Article 19(1)(g) of the Constitution and was, therefore, ultra vires.

The contention of the respondent found favour with the Judge (Revisions) who held that the provisions requiring the furnishing of security at the time of filing the revision application amounted (o an unreasonable restriction on the fundamental right guaranteed under Article 19(1)(g) and, therefore, rejected the preliminary objection on behalf of the State. He considered the revision application on its merits and allowed it. The order of cancellation was set aside and the Judge (Revisions) declared that the registration certificate would continue in force. Upon application by the Commissioner of Sales Tax under Section 11(1) of the Act, this statement of the case has been submitted to this Court.

3. We have heard learned counsel for the State. No one appears on behalf of the respondent.

4. Section 8-A requires a dealer to apply for registration to the assessing authority for an assessment year, That application is considered by the assessing authority who may grant a certificate of registration. The consequence of the grant of that

certificate is that a dealer is entitled to certain benefits, among them being his right to realise sales tax from his customers. Section 8-A(6) empowers the assessing authority to require a dealer to furnish security as a condition for the grant of the certificate of registration and also empowers it, even after the certificate has been granted, to require the dealer to furnish security to unable the certificate to continue to have effect, it appears that action was taken by the Sales Tax Officer under Section 8-A(6) and, upon the failure of the respondent to furnish the security called for, the registration certificate renewed earlier was cancelled by the Sales Tax Officer. The first proviso to Section 8-A(6) requires the assessing authority to take action under Section 8-A(6) only after obtaining the previous approval of the Commissioner. The second proviso, with which we are concerned, gives to a person, aggrieved by the order of the assessing authority calling upon him to furnish the security, a right to proceed in revision to the revising authority, but lays down that this right can be exercised only after the applicant has furnished the security.

5. For holding that the second proviso to Section 8-A(6) is ultra vires, the Judge (Revisions) has reasoned that the imposition of the condition requiring the security to be furnished by a person who proceeds in revision is an unreasonable restriction upon the fundamental right of that person under Article 19(1)(g) because thereby that person is unable to question an order, which may be wrong or illegal, refusing to register or cancelling the registration already granted to him. He seems to have takenthe view that an order refusing registration or cancelling registration already granted cannot be challenged in the event of the applicant being required to furnish a prohibitive security and as this would ultimately affect his right to carry on his businesshis fundamental right is contravened.

6. We are unable to agree with the view taken by the Judge (Revisions). The condition requiring the furnishing of security is a condition attached to the filing of a revision application. It is a condition engrafted not on the carrying on of business by a dealer but upon his filing a revision application. The requirement of the Act directing a dealer who is liable to sales tax to obtain a registration certificate is not challenged. The challenge is directed only against a condition imposed upon the filing of the revision application. It appears to us clear that in this context there can

properly be no reference to the right of the dealer to carry on his business. The right of filing a revision application has been conferred by statute. If the statute had not conferred that right, the question raised before us would not have arisen at all. The Legislature was not compelled to confer upon the dealer a right to proceed in revision. If it did confer that right it was also open to it to attach any condition to the exercise of that right.

The right of proceeding in revision was not a right conferred by the Constitution upon the dealer. Had it been a constitutional right, the Legislature would have been bound to provide that right, and even if it had not provided that right by statute the dealer would have been entitled to file a revision application. The right to file a revision application not being a fundamental right, it is not possible to hold that the requirement calling for the security before that right could be exercised amounted to a restriction upon any fundamental right.

7. Accordingly, the question referred to us must be answered in the negative.

8. We direct that a copy of this judgment under the seal of the Court and the signature of the Registrar shall be sent to the Judge (Revisions) Sales Tax and the Commissioner of Sales Tax.

9. As no one has appeared on behalf of therespondent, the parties shall bear their own costs.Counsel's fee is assessed at Rs. 50/-.