

Engineering Traders Vs. the State of Uttar Pradesh and ors.

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Court : Allahabad

Decided On : Nov-13-1975

Reported in : [1976]38STC502(All)

Judge : K.B. Asthana, C.J. and ;A. Banerji, J.

Appeal No. : Civil Misc. Writ No. 909 of 1975

Appellant : Engineering Traders

Respondent : The State of Uttar Pradesh and ors.

Advocate for Def. : The Standing Counsel

Advocate for Pet/Ap. : R.R. Agarwal and ;R.P. Tripathi, Advs.

Disposition : Petition dismissed

Judgement :

K.B. Asthana, C.J.

1. We have heard Sri R. R. Agarwal in support of this petition. By an amendment of the Sales Tax Act the rate of tax chargeable on the sale of water-pumps was retrospectively enhanced from 2 per cent to 6 per cent. Consequently, the Sales Tax Officer issued a notice to the petitioner under Section 21 of the U. P. Sales Tax Act calling upon the petitioner to show cause why assessment be not reopened and tax at the rate of 6 per cent be charged for the previous years also

which were covered by the impugned law. The petitioner, as an assessee, in response to the notice raised objections as to the jurisdiction and competence of the Sales Tax Officer to reopen the proceedings. The objections were repelled and the Sales Tax Officer in pursuance of the impugned law levied the tax at the rate of 6 per cent. However, it appears that the petitioner had filed appeals against the original assessment made at the rate of 2 per cent which are pending before the appellate authority.

2. Three points were raised on behalf of the petitioner. The first point was that the retrospective levy of the tax at the rate of 6 per cent amounts to a colourable exercise of the powers for the reason that the tax becomes extortionate and confiscatory in nature and when applied retrospectively would expropriate the business of the petitioner in the commercial sense. We are not impressed with this argument. It is not disputed by Sri R. R. Agarwal that prospective levy of tax at the rate of 6 per cent on water-pumps is in no way unreasonable or extortionate. That being the position mere retrospective application of the law would not make the tax extortionate and confiscatory.

3. The second point was that there are limitations on the legislature to give retrospectivity to a tax measure beyond the life of its own existence and the U. P. Legislature which amended the law had no power to give retrospective effect to the law beyond the date on which it had come into existence. This is a very far-fetched argument. The U. P. Legislature as constituted under our Constitution is in existence since 1952 when the first elections took place and the retrospectivity given to the impugned Act is from the year 1956. It cannot be said that the amended law takes effect from a date beyond the life and the existence of the legislature. It is too good an argument to be accepted that the life of the present legislature would start from the date when it was elected. Moreover, we think that when a legislature has power to make retrospective laws there is no legal limitation on it as to the date from which it would affect retrospectively the right of the citizens.

4. The third point was that since appeals are pending against the original assessments made at the rate of 2 per cent it would be the appellate authority

under Section 9(3) of the Act which will enhance the assessment in accordance with the amended law if applicable and the Sales Tax Officer had no jurisdiction to reassess the petitioner by a notice under Section 21 of the Act. This is a fallacious argument. It is settled law that the appellate authority while exercising its jurisdiction under Section 9(3) of the Act does not take into consideration new circumstances and new material; it is confined to the material on the record.

5. This petition has no force. It is dismissed.

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