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Court : Allahabad

Decided On : Aug-22-1955

Reported in : [1956]7STC219(All)

Judge : M.L. Chaturvedi, J.

Appeal No. : Civil Miscellaneous Writ No. 238 of 1955

Appellant : Jograj Singh and ors.

Respondent : The State of U.P. and anr.

Advocate for Def. : The Standing Counsel

Advocate for Pet/Ap. : S.C. Khare, Adv.

Disposition : Petition dismissed

Judgement :

1. This is a petition under Article 226 of the Constitution.

2. The petitioners Nos. 1 to 3 are said to be cultivators, who also prepare khandsari sugar out of sugar-cane grown by them. The other petitioners purchase sugar-cane juice and prepare khandsari sugar and molasses out of that juice. The State Government has imposed a sales tax on the sale of khandsari sugar at the rate of 6 pies per rupee acting under the provisions of Section 3A of the U.P. Sales

Tax Act. Under Section 4 of that Act, certain articles have been exempted from the sales tax by the Act itself and a power is given to the State Government to exempt any other goods from the payment of sales tax by a notification published in the Official Gazette. In 1948 the State Government exempted khandsari sugar from sales tax. But by the notification of the 1st October, 1952, a single point tax on khandsari sugar had been levied at the rate of 6 pies per rupee. The present petition challenges the validity of that portion of Section 4 which gives power to the State Government to exempt any goods, which it considers proper, from the imposition of sales tax and it further asserts that the imposition of sales tax on khandsari sugar is by itself an act of improper discrimination against the industry.

3. As regards the question whether the power conferred by Section 4 of the Act is an uncontrolled and unguided arbitrary power so that it may be said to be an unreasonable restriction on the petitioner's right to trade, it appears that this is not a power of imposing any disability on the petitioners or on anybody else but a power to exempt certain articles from the imposition of sales tax. Even if the power is held to be invalid, it would not help the petitioners in any manner but would only result in the articles, which have been exempted from the tax, being held liable to pay sales tax. None of those articles is such as to be considered an article competing with the petitioners in the business of manufacture and sale of sugar. Both kinds of sugar, khandsari and that produced by vacuum pan factories, have been subjected to the same amount of sales tax. The above consideration would disentitle the petitioners to obtain a declaration of the invalidity of the provisions of Section 4 either under Article 14 or Article 19 of the Constitution.

4. I also think that the power is of such a nature that it had to be conferred on the Government or some one of its officers, because it might involve the consideration of so many matters that it may not be possible to lay down any guiding principles by the legislature itself.

5. As far as the other ground is concerned, a number of articles have been mentioned in paragraph 8 of the affidavit, filed along with the petition, which have been exempted from payment of sales tax. Those articles are of a different kind and the considerations that apply to those articles may not apply to the case of

sugar. In paragraph 14 of the affidavit it has been said that the State Government have exempted gur, shakkar, jaggery and rab from sales tax. These articles are similar to sugar. But it is well known that these articles are consumed only by poorer classes, who are not able to use sugar and the considerations that apply to these articles also are very different. I am unable to hold that the petitioners have been able to prove that all the circumstances concerning the articles, which have been exempted, and khandsari sugar are similar and the Government is guilty of an act of discrimination in exempting the other articles from sales tax but not sugar, it is said that there is general policy of encouraging cottage industry and it is said that the articles mentioned in paragraph 8 have been exempted in furtherance of this policy. It may be that there is a policy to encourage cottage industry. That does not mean that every cottage industry must necessarily be exempted from the payment of sales tax. The producers of sugar may be able to make higher profits and the Government thought that they should pay sales tax of 6 pies per rupee. The fact that there has been an improper discrimination has been denied in the counter-affidavit and, on the facts and circumstances proved in the case, I am unable to hold that the petitioners have succeeded in proving that the State Government has committed any act of improper discrimination in imposing sales tax on khandsari sugar. This petition fails and is dismissed with costs.

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