

A

STATE OF PUNJAB & ORS.

v.

DEWAN'S MODERN BREWERIES LTD.

March 16, 1979

B [N. L. UNTWALIA AND R. S. PATHAK, JJ.]

Punjab General Sales Tax Act 1948—Sales effected on permits prescribing price, quantity and the person to whom goods should be sold—Sales tax if could be levied—Tax levied retrospectively—Validity of—Concensuality if lacking where dealer did not know that tax was to be paid.

C The sales tax authorities levied tax on the sales of liquor effected by the respondent who was a whole saler in that commodity. Impugning the levy, the respondent contended in the High Court that when it sold liquor against permits issued by the authorities there was no volition because the price and the quantity of goods to be sold and the person to whom sold were all fixed and therefore there was no sale in the eye of law which would attract tax. The Department, on the other hand, contended that even when goods were sold against a permit there was still an area of volition in that the parties could decide on the quality and brand of liquor, the quantity, whether in bulk or in instalments, the size of the package and so on, all of which showed that there was no restraint on the volition of the parties and therefore there was sale which attracted tax.

D

A single judge of the High Court, following a decision of the Division Bench of the same High Court in *Jagatjit Distilling and Allied Industries Ltd. v. The State* [28 STC 709], quashed the order of assessment. A Division Bench dismissed the appeal *in limine*.

Allowing the State's appeal

HELD : The transactions were sales exigible to tax. [571 G]

F 1. The decision of this Court in *Vishnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer*, [1978] 2 SCR 433 justifies imposition of sales tax on the sale of liquor on permits. A conspectus of the provisions of the Punjab Excise Act and the Rules shows that there is an area of agreement sufficient enough for the parties to bring, by their volition, the impugned transactions within the ambit of sales. [570 G; 571 A]

G *Vishnu Agencies (P) Ltd. etc. v. Commercial Tax Officer & Ors. Etc.*, [1978] 2 SCR 433; followed.

Jagatjit Distilling and Allied Industries Ltd. v. The State, 28 STC 709 overruled.

H 2(a) It is well settled that sales tax could be imposed retrospectively. Therefore, even though in this case the tax was levied retrospectively by a validation ordinance, the respondent would be deemed to have entered the trade and carried it on on the basis that it would be liable to pay sales tax. [571 D]

(b) Even assuming that the respondent carried on the trade thinking that it would not be liable to pay sales tax, the area of concensuality still left for the purpose of agreeing to the final terms of the transactions between the respondent and its retail dealers was quite sufficient for the application of the ratio of *Vishnu Agencies*. [571 F—G]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2028 of 1974.

Appeal by Special Leave from the Order dated 6-9-1975 of the Punjab and Haryana High Court in L.P.A. No. 516/73.

Hardev Singh and *R. S. Sodhi* for the Appellants.

L. N. Sinha, P. P. Singh and *E. C. Agarwala* for the Respondent.

The Judgment of the Court was delivered by

UNTWALIA J.—The respondent-company in this appeal by special leave has a Distillery and Brewery at Jammu. It maintains whole-sale depots at various places in the State of Punjab, the main depot being at Ludhiana. As a whole-seller it supplied Indian made foreign liquor to permit holders on the permits issued by the respective Excise and Taxation Officers, the competent authorities under the Punjab Excise Act and the Rules framed thereunder. Sales tax under the Punjab General Sales Tax Act, 1948 was imposed in respect of the sales aforesaid by an order of assessment dated the 30th November, 1972. The respondent, thereupon filed a Writ Petition in the High Court for the quashing of the said order and to restrain the appellants from recovering the amount of Rs. 46,396.22 paise from the petitioner. The main ground of attack on the imposition of sales tax was that the alleged sales were not sales in the eye of law as the respondent had no volition in the distribution of liquor which was received from the manufacturing concern at Jammu. The prices were fixed by the competent authorities and the respondent had to charge the fixed price from its retailers holding L-2, L-4, L-5 and L-10 licences. The respondent company holds L-1 licence which is meant for whole-sale dealers. The State contested the application and in its counter asserted that the excise trade like many other trades, or even more, had to be regulated and controlled by various Rules and Regulations and inspite of all the restrictions placed thereby an area was still left where the whole-seller and the retail purchaser had to arrive at an agreement by their volition. According to the case of the appellants "the quality and brand of Foreign Liquor, lifting of the specified quantity in bulk liter or in instalments, the size of packages (i.e. Bottles, pints, or Nips) and mode of payment (cash or credit or part payment) and

A the prices, are the matters which are decided by the petitioner and his purchasers and there is no law or rule restricting the volition or liberty of the petitioner in this respect."

Following a Division Bench decision of the Punjab & Haryana High Court in *Jagatjit Distilling and Allied Industries Ltd. v. The State*⁽¹⁾

B a learned single Judge of that Court allowed the writ application and quashed the assessment order. A Letters Patent appeal from the said order was dismissed in limine. Hence this appeal.

This case, in our opinion, is squarely covered by a recent decision of this Court delivered by a Bench of seven Judges in *M/s Vishnu Agencies (Pvt.) Ltd. etc. v. Commercial Tax Officer and others etc.*⁽²⁾

C The High Court in the case of *Jagatjit Distilling and Allied Industries Ltd.* (supra) had mainly relied upon two decisions of this Court to hold that the transactions in that case were not sales. The said decisions are *M/s New India Sugar Mills Ltd. v. Commissioner of Sales Tax, Bihar*⁽³⁾ and *Chittar Mal Narain Das v. Commissioner of Sales Tax U.P.*⁽⁴⁾. In the case of *Vishnu Agencies* (supra) the former case was

D considered in paragraph 36 to 39 of A.I.R. volume at pages 463-464 and it was held that the view expressed in the majority judgment was not good law and the one contained in the minority judgment was approved. *Chittar Mal's* case was also considered in paragraph 44-45 at page 467 and it was distinguished on the ground that the said decision "can be

E justified only on the view that clause 3 of the Wheat Procurement Order envisages compulsory acquisition of wheat by the State Government from the licensed dealer." But then the criticism in that case of the Full Bench decision of the Allahabad High Court in *Commr. Sales-tax, U.P. v. Ram Bilas Ram Gopal*⁽⁵⁾ "which held while construing cl. 3

F that so long as there was freedom to bargain in some areas the transaction could amount to a sale though effected under compulsion of a Statute" was not endorsed. It is, therefore, plain that to that extent *Chittar Mal's* case is also not good law. The decision of the High Court in *Jagatjit's* case is no longer good law.

We have examined the various relevant provisions of the Punjab **G** Excise Act and the Rules framed thereunder. We find that an area of agreement sufficient enough for the parties to cover by their volition to bring the transactions in question within the ambit of sales was left in the field. Broadly speaking the stand taken on behalf of the

(1) 28 S.T.C. 709

(2) [1978] 2 S.C.R. 433=A.I.R. 1978 S.C. 449.

(3) 14 S.T.C. 316=[1963] Suppl. 2 S.C.R. 459.

(4) 26 S.T.C. 344=[1971] 1 S.C.R. 671.

(5) A.I.R. 1970 All. 518.

appellants in their counter was correct, except that in regard to the fixation of price we assume in favour of the respondent-company that the price had been fixed, as usually it is so in the excise trade. Even so the decision of this Court in *Vishnu Agencies* (supra) and the various other previous decisions reviewed therein justifies in law the imposition of sales tax by the impugned order in question.

Mr. Lal Narayan Sinha tried to distinguish the decision in *Vishnu Agencies* (supra) by pointing out that sales-tax for the period in question was imposed by the Punjab General Sales Tax (Amendment and Validation) Ordinance, 1972 which was promulgated on the 15th November, 1972 with retrospective effect. The respondent-company, counsel submitted, cannot be said to have entered into the trade and carried it on during this period by a volition as it did not know that sales-tax would be chargeable for this period and, therefore, it had not realised sales-tax from its customers. He drew our attention to paragraph 33 of the judgment of this Court in *Vishnu Agencies* at page 461. In our opinion the argument of the learned counsel is not sound and for two reasons. Firstly, it is well settled and it was not disputed that sales-tax could be imposed retrospectively. That being so the respondent-company will be deemed to have entered the trade and carried it on the basis that it would be liable to pay sales-tax. Secondly, even assuming it was not so, what has been pointed out in the begining of paragraph 33 as a primary fact of willingness to trade in the commodity strictly on the terms of Control Orders is only one of the reasons which led to the decision that an area of agreement between the parties was left to their consensus. In our opinion such a part of the area as the one hinted at is not very important and does not form the whole and sole basis of the conclusions arrived at in the case of *Vishnu Agencies*. Even assuming in favour of the respondent-company that it did not carry on the trade thinking that it would be liable to pay sales-tax, the area of consensuality still left in the field for the purpose of agreeing to the final terms of the transactions between the company and its retail dealers was quite sufficient for the application of the ratio of *Vishnu Agencies*. Having considered all that was submitted on behalf of the respondent-company we find that there is no escape from the conclusion in this case that the transactions in question were sales exigible to sales-tax.

For the reasons stated above, we allow this appeal with costs in this Court only. The judgment and order of the High Court are set aside.

P.B.R.

Appeal allowed.