East India Tobacco Co

Vs

State of Andhra Pradesh

Civil Appeals Nos. 290 & 291 of 1961

(CJI B. P. Sinha, T. L. Venkatarama Ayyar, P. B. Gajendragadkar, K. N. Wanchoo, N. Rajgopala Ayyangar JJ)

06.04.1962

JUDGMENT

VENKATARAMA AIYAR, J. -

These are appeals against the judgment of the High Court of Andhra Pradesh in Petitions Nos. 1172 of 1956 and 56 of 1957 filed under Article 226 of the Constitution questioning the validity of the Andhra Act XIV of 1955 insofar as it imposes a tax on the sale of Virginia tobacco. The appellants are firms doing business in the exports of tobacco. The usual course of that business is stated to be that they first enter into contracts with their customer abroad for the sale of tobacco, that thereafter they purchase the requisite quantities of goods locally and then export them to the foreign purchases in performance of their contracts. Prior to October 1, 1953, the area wherein the appellants carried on business formed part of the State of Madras, and on that date the State of Andhra was constituted, and the area in question fell within that State. The law relating to sales tax in force in that areas is the Madras General Sales Tax Act, IX of 1939. Section 5 of this Act provides for exemption of tax on sales of goods specified therein and section 6 confers on the State Government power to exempt the tax payable on the sale of any specified class of goods or by any specified class of persons. In exercise of the powers conferred by section 6 the Government of Madras issued on March 31, 1953 a notification No. 144 exempting the sales of unmanufactured tobacco form sales tax. After the Andhra State came into existence, the Legislature of that State enacted Act XIV of 1955 hereinafter referred to as "the Amendment Act" whereby it amended section 5 of the Madras General Sales Tax Act by adding as item (viii) the following :-

> "(viii) raw tobacco (except country variety thereof) whether cured or uncured, shall be liable to tax under Section 3, Sub Section 1 only at the point of the first purchase effected in the State of Andhra by a dealer who is not exempt from taxation under Section 3, Sub Section 3 but at the rate of seven and half pied for every rupee on his turnover.
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> Explanation :- For the purpose of this item, country variety of tobacco means variety of tobacco other than Virginia and other similar varieties of tobacco".

As a result of this enactment exemption from tax was limited to sales of what is known as country tobacco (Nattu tobacco) and so far as sales of Virginia tobacco are concerned, they became liable to be taxed. Pursuant to the Amendment Act, the Andhra, Government issued on November 4, 1955, a notification No. 711 cancelling the earlier notification No. 144 dated March 31, 1953.

Acting under the provisions of the Amendment Act, the Additional Commercial Tax Officer, Guntur issued notices to the appellants to produce the account books relating to their business in tobacco for the purpose of assessing sales tax. To this the appellants replied by filing petitions under Article 226 of the Constitution in the High Court of Andhra Pradesh challenging the constitutionality of the Amendment Act on the grounds inter alia that in taxing sales of Virginia tobacco and exempting from tax seals of other tobacco, the Act was discriminatory, and that in consequence it was discriminatory, it was obnoxious to Article 14 of the Constitution and that further it was in contravention of Article 286(I)(b) as it was really a tax on sales in the course of export of tobacco. They accordingly prayed that a mandamus might be issued directing the respondents to forbear from making an assessment on the sales of tobacco. The learned Judges disagreed with these contentions and dismissed the petitions, holding that the impugned Act did not infringe any constitutional provisions, but granted certificate under Art 133 of the constitution. That is how these appeals come before us.

On the arguments addressed to us, two questions arises for our determination :

> (1) Is the impugned Act repugnant Article 14 for the reason that it singles out Virginia tobacco for taxation ?
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> (2) Is the impugned legislation in contravention of Article 286(1)(b) as imposing a tax on sales in the course of export?
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> (1) On the first question the contention of the appellants may be thus stated. All laws must satisfy the requirements of Article 14. Taxation laws are no exception to it. In imposing a tax on the sales of Virginia tobacco and not on other kinds of tobacco the impugned Act is on the face of discriminatory. It is therefore obnoxious to Article 14 and is void.

It is not in dispute that taxation laws must also pass the test of Article 14. That has been laid down recently by this Court in Moopil Nair v. The State of Kerala ([1961] 2 S.C.R. 77.). But in deciding whether a taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting the persons or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others. It is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would be violative of Article 14. The following statement of the law in Willis on "Constitutional Law" page 587, would correctly represent the position with reference to taxing statutes under our Constitution :-

> "A state does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably..... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation".

In the light of these principles, we may now proceed to discuss whether the impugned Act is repugnant to Article 14 of the Constitution. The point for consideration is whether there is in fact a real distinction between Virginia tobacco and other tobacco called country tobacco. 'Nattu tobacco'. If there is, then the Act is valid, if not it must be held of the be unconstitutional. The finding of learned Judges on this point is as follows :-

> "Broadly, there are two types, Virginia and Nattu, differing in taste, light, colour and texture..... There are obvious differences between the two categories of tobacco, in the nomenclature used, in the process of growing, curing and grading, in the market facilities foreign and inland, in the price and in the variety of uses to which they are put and also the class of customers that take to them."

Thus it will be seen that Virginia tobacco has features which distinguish it form country tobacco, and can be treated as a class in itself. It will therefore be within the power of the State to impose a tax on the sales of Virginia tobacco while exempting the country tobacco.

It is argued for the appellants that to repel the charge of discrimination in taxing only Virginia tobacco, and not the country tobacco, it is not sufficient merely to show that there are differences between the two varieties, but that it must further be shown as held in Budhan Choudhry v. The State of Bihar ([1955] I. S.C.R. 1045.) and Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar ([1959] S.C.R. 279.), that the differentia has reasonable relation to the object of the legislation. The difference between the Virginia tobacco and the country tobacco, as found be the learned Judged, are not, it is argued, germane to the levy of sale tax, and so there is no valid classification. We are unable to agree with this contention. If a State can validly pick and chose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subject it to taxation.

It should, in this connection, be remembered that under the law it is for the person who assail a legislation a discriminatory to established that it is not based on a valid classification and it is well settled that this burden is all the heavier when the legislation under attack is a taxing status. "In taxation even more than in other fields" it was observed by the Supreme Court of United States in Madden v. Kentucky ((1940) 309 US 83; 84 L.Ed. 590.) "Legislatures possess the greatest freedom in classification. The burden is on the one attacking the legislative arrangement to negative every conceivable basis which might support it". How wide the powers of the Legislature are in classifying objects for purposes of taxation will be seen from the following resume of the law given by Rottschaefer, in his "Constitutional Law" p. 668 :-

> "The Federal Supreme Court has seldom any classification made in connection with the levying of property taxes. It has sustained the levy of a heavier burden of taxation upon motor vehicles using the public high ways than that levied upon other forms of property, and the imposition of a heavier tax upon oil than upon other property. The equal protection clause does not prohibit the levy of a tax on ores which is not imposed upon similar interests in quarries, forests and other forms of wasting asset, nor even the imposition of a tax upon anthracite that is not levied upon bituminous coal. A statute providing for the assessment of one type of intangible at its actual value while other intangibles are assessed at their face value does not deny equal protection even when both are subject to the same rate of tax. The decision of the Supreme Court in this field have permitted a State legislature to exercise an extremely wide discretion in classifying property for tax purposes so long as it refrained from clear and hostile discrimination against a particular persons or classes".

A decision near to the present case on the facts is C. Heisler v. Thomas Colliery Company (260 US 245; 6 L.Ed. 237.). There the question was whether a law imposing a tax on Anthracite coal and not upon bituminous coal was unconstitutional as violating the equal protection of laws guaranteed by

the 14th Amendment to the Federal Constitution. In upholding the validity of the law, Justice Mckenna observed as follows :-

> "The fact of competition may be accepted. Both coals, being compositions of carbon are of course capable of combustion and may be used as fuels but under different conditions and manifestations and the difference determines a choice between them as fuels. By disregarding that difference and the greater ones which exists and by dwelling on competition alone, it is easy to erect an argument of strength against the taxation of one and not of the other. But this may not be done. The differences between them are a just basis for their different classification; and the differences are great and important. They differ even as fuels, they differ fundamentally in other particulars. Anthracite coal has no substantial use beyond a fuel; bituminous coal has other uses. Products of utility are obtained from it. The fact is not denied and the products are enumerated that the extent of their use. They are therefore incentives to industries that the State in natural policy might well hesitate to obstruct or burden and to yield to the policy or consider it is well within the concession or the power of the State expressed in the cases we have cited. The distinction in the treatment of the respective coals being within the power conceded by the cases to the State it has logical and legal justification and is necessarily, not unreasonable or arbitrary".

In our Judgment the differences which exist between the Virginia and 'Nattu' country tobacco, as found by the learned Judges, are materials on which the State could treat Virginia tobacco as forming a class by itself for purpose of taxation, and the impugned legislation must be held to be not obnoxious to Art. 14 of the Constitution.

> (2) It is next argued that the Amendment Act is ultra vires because in reality it imposes a tax on sales in the course of export and that is hit by Article 286(1)(b). The course of business followed by the appellants has already been set out. It may be assumed for the purpose of the present discussion that the purchases made by the appellants on which the tax is sought to be imposed were made for the purpose of executing specifies orders which they had received from their foreign customers. The question is whether even so the sales in question took place in the course of export for the purpose of Article 286(1)(b). In support of their contention that they did, the appellants rely on the following observations in State of Travancore-Cochin v. The Bombay Co. Ltd. ([1952] S.C.R. 1112, 1118.) :-
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> "A sale by export thus involves a series of integrated activities commencing from the agreement of sale with a foreign buyer and ending with the delivery of the goods to a common carrier for transport out of the country bay land or sea. Such a sale cannot be dissociated from the export without which it cannot be effectuated, and the sale and resultant export forms parts of a single transaction. Of these two integrated activities, which together constitute on export sale, whichever first occurs can well be regarded as taking place in the course of the other".

Now the contention is that the agreement entered into with the foreign purchasers for sale of the Virginia tobacco, the purchase of the same locally by the appellants for performing the contract and their subsequent export to the foreign purchasers must all be held to form one integrated transaction of sale in the course of export.

Now the observations quoted above were made in refutation of the contention that the expression "sale in the course of export or import" meant only a sale which takes place while the goods are actually in movement, in the course of export or import, as for example, when shipping documents are endorsed and delivered when the goods are in transit. This Court held that this was too narrow an interpretation to put on the words in question and that a sale which actually occasions the export or import would fall within Article 286(1)(b). The question whether sales which precede export are sales in the course of export within Article 286(1)(b) arose directly for decision in State of Travancore-Cochin v. Shanmuga Vilas Cashew Nut Factory ([1954] S.C.R. 53.) and it was held that they were not. Explaining, in the course of the judgment, the true scope of the observations in State of Travancore-Cochin's case ([1952] S.C.R. 1112, 1118.) quoted above, Patanjali Sastri, C.J. observed :-

> "The phrase 'integrated activities' was used in the previous decision to denote that 'such a sale' (i.e., a sale which occasions the export) 'cannot be dissociated from the export without which it cannot be effectuated, and the sale and the resultant export from parts of a single transaction'. It is in that sense that the two activities - the sale and the export - were said to be integrated. A purchase for the purpose of export like production or manufacture for export, is only an act preparatory to export and cannot, in our opinion, be regarded as an act done 'in the course of the export of the goods out of the territory of India', and more than the other two activities can be so regarded."

We may refer to two other decisions of this Court where this question has been considered. In The State of Madras v. Guriviah Naidue & Co. Ltd. (A.I.R. 1956 S.C. 158.), the facts were that an assessee secured orders for the supply of untanned hides and skins from London purchasers and then, he purchased them locally in order to implement those orders and exported them, and the question was whether a tax on those purchases was hit by Article 286(1)(b). In holding that it was not, this Court observed :-

> "Such purchases were, it is true, for the purpose of export but such purchases did not themselves occasion the export and consequently did not fall within he exemption of Article 286(1)(b) of the Constitution as held by this court in The State of Travancore-Cochin v. The Bombay Company Ltd. ([1952] S.C.R. 1112). Nor did such purchases in the State by the exporter for the purpose of export come within the ambit of Article 286(1)(b), as held by the decision of the majority in The State of Travancore Cochin v. Shanmuga Vilas Cashew Nut Factory ([1954] S.C.R. 53)."

The point came up again for consideration before this Court in The State of Mysore v. Mysore Spinning & Manufacturing Co. (A.I.R. 1958 S.C. 1002, 1005.) and it was held following the decision cited above that Article 286(1)(b) could be invoked only in respect of the sale which occasions the export, and not of any sales precedent to it.

On these authorities the law must be taken to be well settled that it is only the sale under which the export is made that is protected by Article 286(12)(b), and that a purchase which precedes such a sale does not fall within its purview though it is made for the purse of, or with a view to export. The impugned legislation must accordingly be held not to contravene Article 286(1)(b).

In the result both the contentions urged by the appellants fail and the appeals must be dismissed with costs, one hearing fee.

Appeals dismissed.

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