

M/S. Ram Bharosey Lal Krishan Kumar

Vs

State of U. P. and Others

Civil Appeals Nos. 240 and 241 of 1970

(K.S. Hegde, H.R. Khanna JJ)

21.10.1971

JUDGMENT

HEGDE, J. -

1. These are appeals by certificate. They are by the same appellant and they raise common questions of law. Hence they are considered together.
2. Two questions of law were urged on behalf of the appellant in support of the appeals. The first contention urged was that Section 3-D (1) of the U.P. Sales Tax Act, 1948 (to be hereinafter referred to as the Act) is ultra vires the Constitution, firstly because that under that section excessive legislative power had been delegated to the State Government and secondly on the ground that it discriminates between the registered dealers who made their purchases through licensed dealers and the registered dealers who made their purchases through dealers who are not licensed. The second contention taken was that notification No. ST-7122/X-900 (16)-64, dated October 1, 1964 issued under Section 3-D (1) of the Act imposing purchase tax on oil seeds is invalid as it contravenes Section 3-AA of the Act.
3. We have considered the first ground of attack in Civil Appeals Nos. 362 and 1962 of 1969 (M/s. Sita Ram Bishambhar Dayal etc. v. State of U.P.) (1972) 2 SCR 141 : (1972) 4 SCC 485 : 1974 SCC (Tax) 294) in which we have delivered judgment just now. For the reasons mentioned therein, the contention that Section 3-D(1) is ultra vires the constitution fails.
4. The only surviving question is whether the notification referred to earlier is violative of Section 3-AA of the Act.
5. Before examining that contention, it is necessary to set out the relevant facts.
6. The appellant is a partnership firm. It carries on business as dealers in groundnuts, oil seeds and Arhar. For the assessment years 1965-66, 1966-67, the Sales-tax Officer Rampur assessed the appellant to sales-tax on the turnover of the groundnuts oil manufactured by the appellant and to purchase tax on the turnover of the oil seeds and foodgrains. The appellant unsuccessfully appealed against the assessment orders. Thereafter it took up the matter in revision before the revising authority. There again it substantially failed. Aggrieved by that decision, he moved the High Court of Allahabad for a writ of certiorari quashing the levy of purchase tax imposed on him in respect of his purchases of oil seeds. The High Court rejected those petitions. Hence these appeals.
7. We shall now extract the impugned notification to the extent it is material for the purpose of this

appeal.

It reads thus :

"Noti. No. ST-7122/X-99 (16)-64 dated October 1, 1964.

In exercise of the powers under sub-section (1) of Section 3-D of the Uttar Pradesh Sales Tax Act, 1948 (U.P. Act No XV of 1948), the Governor of Uttar Pradesh is pleased to notify that with effect from October 1, 1964, the turnover of first purchases in respect of goods mentioned below shall be liable to tax under Section 3-D of the said Act.

#-----	Sl. No.	Name of goods	Rate of tax-----
-----	1.	Foodgrains including cereals	1. 5 paise per rupee
-----	2.	Gur	3. paise per rupee
-----	3.	Oil seeds	2. " " x x x"-----

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As per this notification a purchase tax of 2 paise per rupee on the turnover of the first purchases of oil seeds is leviable. It is contended that this notification violates Section 3-AA of the Act. Section 3-AA say :

"Notwithstanding anything contained in Section 3 or 3A, the turnover in respect of the following goods shall not be liable to tax except at the point of sale by a dealer to the consumer, and the rate of tax shall be such, not exceeding the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956, as may be declared by the State Government by notification in the Official Gazette -

# (i) ..... (ii) .....(iii) ..... (iv) ..... (v) .....##

(vi) oil seeds, that is to say, seeds yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soap and the like, or in lubrication, and volatile oils used chiefly in medicines, perfumes, cosmetics and the like.

2. Unless the dealer proves otherwise, every sale by a dealer shall, for the purposes of sub-section (1) be presumed to be to a consumer.

Explanation. - A sale of any of the goods specified in sub-section (1) to a registered dealer who does not purchase them for resale in the same condition in which he has purchased them, or to an unregistered dealer shall, for purposes of this section, be deemed to be a sale to the consumer."

8. This section was incorporated into the Act on April 1, 1956. Under this section, on the goods specified therein, sales tax not exceeding the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956 can be levied by the State Government on the turnover in respect of sales by dealers to the consumers. From an analysis of this provision, we get the following -

1. that tax to be levied is a sales-tax;

2. levy in question is a single point levy;

3. the point of levy is the sale by the dealer to the consumer and

4. the rate to be fixed by the State Government is not to exceed the maximum rate for the time being specified in Section 15 of the Central Sales Tax Act, 1956.

9. If we hold that provisions contained in Section 3-AA continue to be in force in respect of dealing in oil seeds then the appellant's contention that the impugned levy is an invalid levy succeeds. But the question is whether that contention is correct.

10. This takes us to Section 3-D. That section read :

"1. Except as provided in sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in such manner as may be prescribed, of first purchases made by a dealer or through a dealer, acting as a purchasing agent in respect of such goods or class of goods, and at such rates not exceeding two paise per rupee in the case of foodgrains, including cereals and pulses, and five paise per rupee in the case of other goods and with effect from such date, as may, from time to time, be notified by the State Government in this behalf.

Explanation. - In the case of a purchase made by a registered dealer through the agency of a licensed dealer, the registered dealer shall be deemed to be the first purchaser, and in every other case of a first purchase, made through the agency of a dealer, the dealer who is the agent shall be deemed to be the first purchaser.

#2. x x x3. x x x##

4. On the issue of a notification under this section no tax shall be levied under any other section in respect of the goods so notified.

5. The provisions of the second and third proviso to Section 3 and of Section 18, shall mutatis mutandis apply in relation to the tax payable under this Section.

#6. x x x##

7. Unless the dealer proves otherwise to the satisfaction of the assessing authority, every purchase by or through a dealer shall, for the purposes of sub-section (1), be presumed to be the first purchase by such dealer and every sale through a dealer shall, for the purposes of sub-section (2), be presumed to be sale to a first purchaser."

11. For our present purpose, it is not necessary to refer to the second and third proviso to Section 3 and Section 18. It may be noted that Section 3-D was incorporated into the Act on August 1, 1958.

12. The contention on behalf of the appellant was that Section 3-AA is a special provision regarding certain specified class of goods including oil seeds whereas Section 3-D is a general provision. Hence dealings in respect of oil seeds must be held to be governed exclusively by Section 3-AA. In support of his contention, the learned Counsel for the appellant called into aid the rule of construction that a special provision excludes the application of a general provision. On the other hand, it was contended on behalf of the Revenue that power was conferred on the State Government to levy purchase tax in place of sales-tax in respect of any goods that may be notified under Section

3-D(1) subject only to the conditions mentioned therein. According to Dr. Singhvi, learned Counsel for the Revenue, the legislature left the questions whether in respect of a class of goods, the appropriate levy is sales tax or purchase tax as well as what is the appropriate point of levy, to the State Government because a decision on that question has to be taken on an assessment of various factors, some of which are not constant. According to him in view of the language employed in sub-section (4) of Section 3-D, it is not possible to apply the rule of construction that special legislation in respect of any particular topic should exclude the application of general legislation.

13. It may be noted that Section 3-D was incorporated into the Act much later than Section 3-AA. As seen earlier Section 3-AA was incorporated into the Act on April 1, 1956 whereas Section 3-D was added on August 1, 1958. At the time the Legislature incorporated into the Act Section 3-D, it must have been aware of the existence of Section 3-AA but yet in sub-section (4) of Section 3-D, it declared that on the issue of a notification under that section, no tax shall be levied under any other section in respect of the goods so notified. The ambit of this provision is very wide and it clearly takes in goods mentioned in Section 3-AA.

14. Now turning to Section 3-AA, it is important to note that it begins by saying "notwithstanding anything contained in Section 3 or 3-A." The nonobstante clause does not take in Section 3-D. If the Legislature intended to exclude the operation of Section 3-D, in respect of matters covered by Section 3-AA, nothing would have been easier than to say so. It could have said "notwithstanding anything contained in Sections 3, 3-A and Section 3-D". But it did not choose to do that. Therefore there are no grounds to cut down the amplitude of the power conferred on the State Government under sub-section (4) of Section 3-D.

15. The High Court of Allahabad has consistently taken the view that it is open to the State Government to levy purchase tax in exercise of its powers under Section 3-D even in respect of goods covered by Section 3-AA. We are in agreement with that view.

16. In the result these appeals fail and they are dismissed with costs. One set.

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