The Joint Director of Food, Vishakapatnam

Vs

The State of Andhra Pradesh

Civil Appeal Nos. 1393-1398 of 1975

(H.R. Khanna, V.R. Krishna Iyer, N.L. Untwalia JJ)

27.07.1976

JUDGMENT

KRISHNA IYER, J. -

1. This batch of cases between a State Government (Andhra Pradesh) and the Union Government suggests the need for litigative discipline for our governments and a periodical post-auditing in that behalf. And now we make good this inaugural observation by narrating briefly the necessary facts and examining closely the few points common appellant in all these cases.

2. Our Constitution mandates on the State welfare activism and contemplates its undertaking distribution of commodities essential to the life of the community at large through trade and business directly organised or in other suitable ways. Foodgrains and fertilisers are strategic terms and the Union of India has, in fulfilment of high governmental functions, been procuring these vital goods and selling them to the States or their nominees so as to ensure equitable supplies and price discipline. Pursuant to this commendable programme the Central Government constructed an infrastructure and, pertinent to our purpose, appointed, inter alia, a Joint Director of Food stationed in the port town of Visakhapatnam. This officer sold, for the price fixed by his Government, foodgrains and fertilisers to the Andhra Pradesh State and other States. These transactions, in the language of sales tax law, fell within the twin categories of intra-State and inter-State sales. A vigilant States Sales Tax Officer directed the filing of returns by the appellant under the Andhra Pradesh General Sales Tax Act, 1957 (Act VI of 1957) (for short the State Act) and the Central Sales Tax Act, 1956 (for short the Central Act). This was complied with in six returns for the span of three years but was coupled with a plea of immunity from tax on grounds which will be presently discussed. The adverse fate of these contentions at the hands of the Sales Tax Officer and the appellate officer eventuated in further appeals to the Tax Tribunal. The three appeals covered by the Central Act were remanded for the narrow purpose of determining the presence of profit motive in the Central Government while undertaking these dealings as that element is decisive of the appellant being a dealer doing business and therefore liable to tax under the Central Act. The other three appeals were duly dismissed and these successive defeats notwithstanding, the Central Government's Joint Director moved the High Court in all the six cases. Undaunted by discomfiture there, the appellant has arrived here, discretion not being the better part of valour even where public money is involved.

3. The learned Additional Solicitor General has rightly discarded some of the rhetorical but lifeless contentions urged before the High Court based on Part IV of the Constitution. The surviving points pressed before as may now be set out and discussed.

4. A hypertechnical point halfheartedly urged may be mentioned first, it being easy of rejection. Argued Counsel that since, in any view, the sales, were by the Central Government, the Joint Director could not be the assessee. Obviously this official represented his Government in the sales and therefore could legitimately be dealt with for sales tax proceedings as representing the Union Government. The less said about such obstructive contentions on behalf of a public functionary the better. Devoid of presentability we decline to spend more space on this plea.

5. Next in order was the argument that the definition of 'dealer' in Section 2(b) of the Central Act read in implicit harmony with Section 9 excludes the Central Government as an exigible entity. The thrust of the argument, if we may say so, is that the Central Government being the taxing authority may not, without being guilty of grotesqueness, tax itself. Counsel was cautious to concede that legally it was not impossible for the Central Government as a statutorily empowered agency to collect tax that falls due from it as an assessee. Indeed, if the statute clearly states that government is liable to pay tax qua dealer, it is not a legal plea to say that government is also the taxing authority. We have therefore to examine whether there is any necessary exclusion from exigibility or other provision of immunisation which can be spelt out of Section 2 or Section 9. Section 2(b) of the Central Act reads :

> 2 (b) In this Act, unless the context otherwise requires, 'dealer' means any person who carries on the business of buying or selling goods, and includes a Government which carries on such business.

Quite plain is the conclusion from a bare reading of this provision that a government (ergo any government) is by express inclusive definition made a dealer. The Central Government being a government is squarely covered by the definition. Nor does Section 9 rescue the appellant. True it is that the tax shall be levied by the Government of India. But it does so for the benefit of the other State Governments and indeed through the machinery of the State tax agency. Section 9(3) reads :

> The proceeds in any financial year of any tax, including any penalty, levied and collected under this Act in any State (other than a Union Territory) on behalf of the Government of India shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union territories shall form part of the Consolidated Fund of India.

Again Article 269(g) of the Constitution speaks in the same strain, viz., that the real beneficiary of Central sales tax is the State designated in the above provisions, the Union Government being empowered to levy on behalf of and thereafter to assign to the respective States eventually entitled to the tax. We see no flaw in the reasoning of the High Court that the Central Government may tax itself, if it comes to that.

6. A subsidiary contention calculated to insulate the Central Government from liability was set up by the learned Additional Solicitor General to the effect that an undertaking to distribute essential commodities by the State in implementation of its governmental obligations cannot be described as 'trading' activity or carrying on of 'business' without doing violence to the concepts of governmental functions and business operations. Indubitably the State has the power to carry on trade or business as is manifest from Article 19(6)(ii) and other provisions. Indubitably the State distributes essential commodities in a fair and equitable way for the survival of the community under its protection. It does not follow that we cannot harmonize the two functions. It is well on the agenda of State activity that it carries on trade or business in essential commodities because it has the power to do so

and because it is obligated to ensure even distribution of vital goods for the needy sections of the people. We see no difficulty in inferring that the systematic activity of buying foodgrains and fertilisers and selling them by the State although in fulfilment of a beneficent national policy is nevertheless trade or business. Necessarily government becomes a 'dealer' by definition and carries on 'business' within the meaning of the Central Act and the State Act (omitting for a moment the distinction in the two definitions based upon the motive to make gain or profit). The conclusion therefore is inevitable that the appellant, representing the Central Government, is rightly held to be the assessee.

7. We may hasten to mention that the ordinary concept of business has the element of gain or profit whose absence negatives the character of the activity as business in Section 2(b) of the Central Act. A person becomes a dealer only if he carries on business and the Central Government can be designated as 'dealer' only if there is profit motive. This question not having been investigated by the fact-finding authorities has been directed to be gone into by the Tax Tribunal in the three cases revolving round the Central Act. So far as the State Act is concerned, this question does not arise for the straightforward reason that the definition in Section 2(1)(bbb) of that Act expressly includes within the concept of 'business' any trade or any adventure or concern in the nature of trade or commerce carried on or undertaken whether or not 'with a motive to make gain or profit and whether or not any gain or profit accrues therefrom'. Profit-making in the State Act, it was conceded by Counsel for the Union, was irrelevant in contrast to its pertinence in the Central Act. If this be the correct position in law, it follows that the State Sales Tax Officer is entitled to collect sales tax from the appellant in regard to intra-State sales even assuming that there is no profit motive or profit accrual. The reverse is the case so far as Central sales tax is concerned.

8. In the result the orders passed by the Sales Tax Appellate Tribunal in all the six appeals, affirmed as it were by the High Court, are correct and these appeals deserve to be dismissed.

9. We are conscious of the social implications of sales tax being leviable on essential commodities like foodgrains and fertilisers. Both these items are vital to the common man and his fragile budget. Any tax, especially on food, casts an extra burden on the poor who are the ultimate consumers of the article and victims of the impost. But this socially desirable objective can surely be achieved by appropriate notifications and, if need be, necessary legislative direction. The Court has to interpret the law and apply it. The State, through its agencies, makes the law for socially beneficial ends. It is not for the former to salvage the latter from the legal coils which are its own handwork. We make these observations lest it should be felt that judicial construction has contributed to extra food tax. The blame, if any, must belong to the authors of the law.

10. The appeals are dismissed with costs - one set.

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