Indian Cement and Others

Vs

State of Andhra Pradesh and Others

Writ Petition (Civil) No. 422 of 1987

(Ranganath Misra, M.M. Dutt JJ)

12.01.1988

JUDGMENT

RANGANATH MISRA, J. –

1. The Indian Cement Limited, Chettinad Cement Corporation, Dalmia Cement (Bharat) Limited and Tamil Nadu Cement Corporation Limited being petitioners 1, 6, 9 and 12 in this application under Article 32 of the Constitution are manufacturers of cement, each of them having its manufacturing unit as also registered offices located within the State of Tamil Nadu; petitioners 2, 7 and 10 are shareholders of petitioners 1, 6 and 9 respectively and are citizens of the India, while the remaining petitioners are authorised stockists of the different manufacturers having their places of business at different places located in the States of Karnataka, Kerala and Tamil Nadu. Manufacturer-petitioners have been selling their cement in the States of Karnataka and Kerala and for such purpose they have places of business within those States. The State of Andhra Pradesh in exercise of powers conferred under sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 made an order on January 27, 1987 (Annexure-A) reducing the rate of tax on sale of cement made to the manufacturing units of cement products in the State of Andhra Pradesh. That order runs thus :

> In exercise of the powers conferred by sub-section (1) of Section 9 of the Andhra Pradesh General Sales Tax Act, 1957 (Andhra Pradesh Act 6 of 1957), the Governor of Andhra Pradesh hereby directs that the tax leviable under clause (a) of sub-section (2) of Section 5 read with item 18 in the First Schedule to the said Act, shall, in respect of cement manufactured by cement factories situated in the State and sold to the manufacturing units situated within the State for the purpose of manufacture of cement products such as cement sheets, asbestos sheets, cement flooring stones, cement concrete pipes, hume pipes, cement water and sanitary fittings, concrete poles and other cement products, be at the reduced rate of four paise in the rupee at the point of first sale in the State with effect on and from January 1, 1987.

2. On the same day, another order was made to the following effect :

> In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), Governor of Andhra Pradesh hereby directs that the tax leviable under the said Act, shall, in respect of the sales of cement in the course of inter-State trade or commerce be at a lower rate of two per cent with or without 'C' Form, with effect from January 1, 1987.

3. The State of Karnataka issued the following notification on February 28, 1987 :

> In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Government of Karnataka, being satisfied that it is necessary so to do in public interest, hereby reduces with immediate effect the rate of tax payable under the said Act on the sale of cement made in the course of inter-State trade or commerce from 15 per cent to 2 per cent.

4. Petitioners in this application challenge the vires of Section 8(5) of the Central Sales Tax Act, 1955 (Central Act 74 of 1956) and the notification referred to above as ultra vires the provisions contained in Pat XIII of the Constitution providing that trade, commerce and intercourse throughout the territory of India shall be free. According to the petitioners the three orders referred to above create trade barriers and directly impinge upon the freedom of trade, commerce and intercourse provided for in Article 301 of the Constitution.

5. Since the vires of Section 8(5) of the Central Act 74 of 1956 had been assailed, notice had been issued to the Union of India and learned Attorney General. Notice was also directed to all the States. Pursuant to the notice, the State of Madhya Pradesh and Sikkim have filed their affidavits with reference to the challenge against Section 8(5) of the Act. At the hearing of the writ petition, however, learned counsel for the petitioners gave up that challenge. In that view of the matter, reference to the counter-affidavits of the States of Madhya Pradesh and Sikkim become irrelevant and the petition has to be confined to the challenge against the two notifications of the State of Andhra Pradesh and the lone notification of the State of Karnataka.

6. The return to the rule nisi on behalf of the State of Andhra Pradesh is made by the Commercial Tax Officer, Company Circle II, Hyderabad. He has stated that the State of Andhra Pradesh has surplus production of cement. In 1986-87, the production of cement was around six million tonnes out of which local consumption was to the tune of about three million tonnes. In 1987-88 and 1988-89, production was likely to go up by 1.5 million tonnes and 3 million tonnes respectively and the local consumption was estimated to be within the range of 40 per cent of the production. 60 per cent of the manufactured cement had, therefore, to be marketed out. Within the State there were certain bulk consumers of cement who use the commodity as raw material for manufacturing cement sheets, asbestos sheets, hume pipes, cement bricks, tiles etc. Such bulk consumers found products of cement from outside the State to be cheaper in view of the higher incidence of local State tax. In this background government considered it necessary to reduce the tax rate under the Andhra Pradesh General Sales Tax Act to help the cement industries in easing out their marketing difficulty. Keeping in view the fact that marketing of indigenous cement had to be inside the State, government decided to reduce the rate of tax under the Andhra Pradesh General Sales Tax to 4 per cent. That is how the first notification was made reducing the rate of tax in respect of sale of cement to local manufacturers as aforesaid. Government by the second notification reduced the rate of tax leviable under the Central Sales Tax Act in course of inter-State trade or commerce to 2 per cent with or without 'C' Form with effect from January 1, 1987. In another place of the same affidavit, it has been pleaded :

> The classification of the manufacturers and dealers in cement of Andhra Pradesh vis-a-vis the other States is a reasonable classification and it is not violative of Articles 14 and 19(1)(g).

The concession in the rate of tax extended by the State of Andhra Pradesh to the manufacturers and

dealers of Andhra Pradesh is well within the statutory powers of the State. It does not affect the business interest of the manufacturers and dealers of other States. It is the policy of the State of Andhra Pradesh to help the cement industries to organise the marketability of their full production to improve the overall industrial activity of the country. Hence this contention tenable (sic).

As already mentioned earlier, the notifications were issued in public interest and in the interest of State revenue.

7. Yet at another place in the return, it has been stated :

> The contention that the policy of the legislature is to promote sales only through registered dealers is not based on correct appreciation of the law. Any law to that effect would impose a restriction on the rights of the common man and would result in the violation of the provisions of the Constitution which ensures certain fundamental rights to the common man.

8. The State of Karnataka chose not to make any return to the rule nisi but its counsel joined at the hearing and contended that the order made by the Karnataka State did not affect the provisions in Part XIII of the Constitution.

9. In view of the fact that counsel for the petitioners gave up the challenge to the vires of Section 8(5) of the Central Sales Tax Act, learned Attorney General confined his submissions to the scope of Part XIII of the Constitution and the effect of the notifications on the scheme contained in that Part.

10. In case the notifications operate against the provisions of Article 301 of the Constitution, they have got to satisfy the requirements contained in that Part. We shall now refer to the relevant Articles and to several decisions of this Court which are binding precedents. The title of Part XIII is "Trade, Commerce and Intercourse within the Territory of India". The relevant articles in that Part are Articles 301, 302, 303 and 304. We may now reproduce them :

> 301. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of Indian shall be free.
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> 302. Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest.
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> 303. (1) Notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.
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> (2) Nothing in clause (1) shall prevent Parliament from making any law giving, or authorising the giving of, any preference or making, or authorising the making of, any discrimination if it is declared by such law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India.

> 304. Notwithstanding anything in Article 301 or Article 303, the legislature of a State may by law -
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> (a) impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
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> (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest :
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> Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the legislature of a State without the previous sanction of the President.

11. Judicial authority in regard to interpretation of the Part of the Constitution is abundant. We shall presently refer to some of the decision of this Court. In Atiabari Tea Co. Ltd. v. State of Assam ((1961) 1 SCR 809 : AIR 1961 SC 232), a Constitution Bench of this Court was testing the validity of the Provision of the Assam Taxation (On Goods Carried by Roads and Inland Waterways) Act, 1954 by applying the provisions of this Part of the Constitution. At page 830 of the Reports, Sinha, C.J., stated :

> Article 301, with which Part XIII commences, contains the crucial words "Shall be free" and provides the key to the solution of the problem posed by the whole Part. The freedom declared by this article is not an absolute freedom from all legislation. As already indicated, the several entries in the three Lists would suggest that both Parliament and State legislatures have been given the power to legislate in respect of trade, commerce and intercourse, but it is equally clear that legislation should not have the effect of putting impediments in the way of free flow of trade and commerce. In my opinion, it is equally clear that he freedom envisaged by the article is not an absolute freedom from the incidence of taxation in respect of trade, commerce and intercourse, as shown by entries 89 and 92-A in List I, entries 52, 54 and 56 to 60 in List II and entry 35 in List III. All these entries in terms speak of taxation in relation to different aspects of trade, commerce and intercourse. The Union and State legislature, therefore, have the power to legislate by way of taxation in respect of trade, commerce and intercourse, so as not to erect trade barriers, tariff walls or imposts, which have a deleterious effect on the free flow of trade, commerce and intercourse. That freedom has further been circumscribed by the power vested in Parliament or in the legislature of a State to impose restrictions in public interest. Parliament has further been authorised to legislate in the way of giving preference or making discrimination in certain strictly limited circumstances indicated in clause (2) of Article 303. Thus, on a fair construction of the provisions of Part XIII, the following propositions emerge : (1) trade, commerce and intercourse throughout the territory of India are not absolutely free, but are subject to certain powers of legislation by Parliament or the legislature of a State; (2) the freedom declared by Article 301 does not mean freedom from taxation simpliciter, but does mean freedom from taxation which has the effect of directly impeding the free flow of trade, commerce and intercourse; (3) the freedom envisaged in Article 301 is subject to non-discriminatory restrictions imposed by Parliament in public interest (article 302); (4) even discriminatory or preferential legislation may be made by Parliament for the

> purpose of dealing with an emergency like a scarcity of goods in any part of India [Article 303(2)]; (5) reasonable restrictions may be imposed by the legislature of a State in the public interest [Article 304 (b)]; (6) non-discriminatory taxes may be imposed by the legislature of a State on goods imported from another State or other States, if similar taxes are imposed on goods produced or manufactured in that State [Article 304 (a)]; and lastly (7) restrictions imposed by existing laws have been continued, except insofar as the President may by order otherwise direct (Article 305).

Gajendragadkar, J., as he then was, at page 843 of the Reports observed :

> In drafting the relevant articles of Part XIII, the makers of the Constitution were fully conscious that economic unity was absolutely essential for the stability and progress of the federal policy which had been adopted by the Constitution for the governance of the country. Political freedom which had been won, and political unity which had been accomplished by the Constitution, had to be sustained and strengthened by the bond of economic unity. It was realised that in course of time different political parties believing in different economic theories of ideologies may come in power in the several constituent units of the Union, and that may conceivably give rise to local and regional pulls and pressures in economic matters. Local or regional fears or apprehensions raised by local or regional problems may persuade the State legislatures to adopt remedial measures intended solely for the protection of the regional interests without due regard to their effect on the economy of the nation as a whole. The object of Part XIII was to avoid such a possibility. Free movement and exchange of goods throughout the territory of India is essential for the economy of the nation and for sustaining and improving living standards of the country. The provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character; it is not also a mere statement of a Directive Principle of State Policy; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country.

Then came the case of Automobile Transport (Rajasthan) Limited v. State of Rajasthan ((1963) 1 SCR 491, 516-519 : AIR 1962 SC 1406). Das, J. who spoke for the Constitution Bench referred to the views expressed in Atiabari Tea Company case ((1961) 1 SCR 809 : AIR 1961 SC 232) and proceeded to say :

> We have tried to summarise above the various standpoints and views which were canvassed before us and we shall now proceed to consider which, according to us, is the correct interpretation of the relevant articles in Part XIII of the Constitution. We may first take the widest view, the view expressed by Shah, J. in the Atiabari Tea Company case ((1961) 1 SCR 809 : AIR 1961 SC 232), a view which has been supported by the appellants and one or two of the interveners before us. This view, we apprehend, is based on a purely textual interpretation of the relevant articles in Part XIII of the Constitution and this textual interpretation proceeds in the following way. Article 301 which is in general terms and is made subject to the other provision of Part XIII imposes a general limitation on the exercise of legislative power, whether by the Union or the States, under any of the topics - taxation topics as well

as other topics - enumerated in the three lists of the Seventh Schedule, in order to make certain that "trade, commerce and intercourse throughout the territory of India shall be free". Having placed a general limitation on the exercise of legislatures, Article 302 relaxes that restriction in favour of Parliament by providing that that authority "may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest". Having relaxed the restriction in respect of Parliament under Article 302, a restriction is put upon the relaxation by Article 303(1) to the effect that Parliament shall not have the power to make any law giving any preference to any one State over another or discriminating between one State and another by virtue of any entry relating to trade and commerce in List I and III of the Seventh Schedule. Article 303(1) which places a ban on Parliament against the giving of preferences to one State over another or of discriminating between one State and another, also provides that he same kind of ban should be placed upon the State legislature also legislating by virtue of any entry relating to trade and commerce in Lists II and III of the Seventh Schedule. Article 303(2) again carves out an exception to the restriction placed by Article 303(1) on the powers of Parliament, by providing that nothing in Article 303(1) shall prevent Parliament from making any law giving preference to one State over another or discriminating between one State and another, if it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India. This exception applies only to Parliament and not to the State legislatures. Article 304 comprises two clauses and each clause operates as a proviso to Articles 301 and 303. Clause (a) of that article provides that the legislature of a State may "impose on goods imported from other States and any tax to which similar goods manufactured or produced in that State are subject so, however, as no to discriminate between goods so imported and goods so manufactured or produced". This clause, therefore, permits the levy on goods imported from sister States any tax which similar goods manufactured or produced in that State are subject to under its taxing laws. In other words, goods imported from sister States are place on a par with similar goods manufactured or produced inside the State in regard to State taxation within the State allocated field. Thus the States in India have full power of imposing what in American State legislation is called the use tax, gross receipts tax etc., not to speak of the familiar property tax, subject only to the condition that such tax is imposed on all goods of the same kind produced or manufactured in the taxing State, although such taxation is undoubtedly calculated to fetter inter-State trade and commerce ... Now clause (b) of Article 304 provides that notwithstanding anything in Article 301 or 303, the legislature of a State may by law impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. The proviso to clause (b) says that no bill or amendment for the purpose of clause (b) shall be introduced or moved in the legislature of a State without the previous sanction of the President. This provision appears to be the State analogue to the Union Parliament's authority defined by Article 302, in spite of the omission of the word 'reasonable' before the word 'restrictions' in the latter article. Leaving aside the prerequisite of previous Presidential sanction for the validity of State legislation under clause (b) provided in the proviso thereto, there are two important differences between Article 302 and 304 (b) which require special mention. The first is that while the power of Parliament

> under Article 302 is subject to the prohibition of preferences and discriminations decreed by Article 303(1) unless Parliament makes the declaration contained in Article 303(2), the State's power contained in Article 304(b) is made expressly free from the prohibition contained in Article 303(1), because the opening words of Article 304 contain a non obstante clause both to Article 301 and Article 303. The second difference springs from the fact that while Parliament's power to impose restrictions under Article 302 upon freedom of commerce in the public interest is not subject to the requirement of reasonableness, the power of the States to impose restrictions on the freedom of commerce in the public interest under Article 304 is subject to the condition that they are reasonable.

The next authority to which we may now refer is the case of State of Madras v. N. K. Nataraja Mudaliar ((1968) 3 SCR 829 : AIR 1969 SC 147 : (1968) 22 STC 376). Shah, J., as he then was referred to Part XIII of the Constitution at page 839 of the Reports. On page 841 of the Reports, the learned Judge proceeded to say :

> Tax under the Central Sales Tax Act on inter-State sales, it must be noticed, is in its essence a tax which encumbers movement of trade or commerce, since by the definition in Section 3 of the Act a sale or purchase of goods is deemed to take place in the course of interstate trade or commerce, if it - (a) occasions the movement of goods from one State to another; (b) is effected by a transfer of documents of title to the goods during their movement from one State to another. The question which then falls to be determined is whether the tax imposed in the present case is saved by the operation of the other provisions of Part XIII. Article 302 of the Constitution provided that Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Thereby the Parliament is, notwithstanding the protection conferred by Article 301, authorised to impose restrictions on the freedom of trade, commerce or intercourse in the public interest. The expression "between one State and another" does not imply that it is only intended to confer upon the Union Parliament the power to remove the fetter upon legislative authority only so as to keep trade, commerce or intercourse free between one State Government and another. It is intended to declare trade, commerce and intercourse free between residents in one State and residents in another State. That is clear because Article 302 expressly provides that on the freedom of trade restrictions may be imposed not only as between one State and another, but also within any part of the territory of India. As we have already observed, Article 301 does not merely protect interstate trade or operate against interstate barriers : all trader is protected whether it is intra-State or interstate by the prohibition imposed by Article 301, and there is nothing in the language or the context for restricting the power of the Parliament which it otherwise possesses in the public interest to impose restrictions on the freedom of trade, commerce or intercourse, operative only as between one State and another as two entities. There is also no doubt that exercise of the power to tax may normally be presumed to be in the public interest.

It is worthwhile to refer to the observations made by Hegde, J. At page 855 of the Reports, the learned Judge observed with reference to Section 8(5) of the Central Sales Tax Act as follows :

> Sub-section (5) of Section 8 provides for giving individual exemptions in public

> interest. Such a power is there in all taxation measures. It is to provide for unforeseen contingencies. Take for example, when there was famine in Bihar, if a dealer in Punjab had under taken to sell goods to a charitable society in that State at a reasonable price for distribution to those who were starving, it would have been in public interest if the Punjab Government had exempted that dealer from paying sales tax. Such a power cannot immediately or directly affect the free flow of trade. The power in question cannot be said to be bad. If there is any misuse of that power, the same can be challenged.

The true purpose of the provisions contained in Part XIII of the Constitution, as elucidated in the different decisions of the Constitution Benches, is that the restriction provided for in Article 301 can within the ambit be limited by law made by the Parliament and the State legislature. No power is vested in the executive authority to act in any manner which affects or hinders the very essence and thesis contained in the scheme of Part XIII of the Constitution. It is equally clear that the declaration contained in Part XIII of the Constitution is against creation of economic barriers and/or pockets which would stand against the free flow of trade, commerce and intercourse.

12. There can be no dispute that taxation is a deterrent against free flow. As a result of favourable or unfavourable treatment by way of taxation, the course of flow of trade gets regulated either adversely or favourably. If the scheme which Part XIII guarantees has to be preserved in national interest, it is necessary that the provisions in the article must be strictly complied with. One has to recall the farsighted observations of Gajendragadkar, J. in Atiabari Tea Co. case ((1961) 1 SCR 809 : AIR 1961 SC 232) and the observations then made obviously apply to cases of the type which is not before us.

13. The two notifications of the Andhra Pradesh Government may now be referred to. Under the first notification made under Section 9(1) of the Andhra Pradesh General Sales Tax Act, the rate of tax has been reduced to 4 per cent in respect of sales made by indigenous cement manufacturers to manufacturers of cement products. Admittedly, the Tamil Nadu producers have sales officers in Andhra Pradesh and in regard to their sale to such manufacturers of cement products the benefit of reduced rate of taxation is not applicable. The prescribed rate of tax under the Andhra Act is 13.75 per cent on cement. Thus under the Andhra notification in regard to the local tax the indigenous producers of cement have a benefit of 9.75 per cent. The return made to the court admits of the position that preference has been shown to local manufacturers. Two reasons have been advanced by way of justification. One is that it is beneficial to the State revenue and secondly it protects that local manufacturers too. The counsel for the State Government has not been able to demonstrate to us how the reduction in the rate of sales tax is beneficial to the State revenue. The other justification is what provisions of Part XIII of the Constitution do not permit. The reasonable restrictions contemplated in Part XIII have to be backed by law and not by executive action provided the same are within the limitations prescribed under the scheme of Part XIII.

14. Coming to the second notification relating to inter-State transactions, the justification pleaded by the State of Andhra Pradesh has already been extracted by us. We may usefully refer to the decision of the Constitution Bench in the case of Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. v. Assistant Commissioner of Sales Tax ((1974) 2 SCR 879 : (1974) 4 SCC 98 : 1974 SCC (Tax) 226 : AIR 1974 SC 1660). At page 883 of the Reports, Khanna, J. speaking for the court observed : [SCC pp. 102-03 : SCC (Tax) pp. 230-31, paras 3 and 4]

> It has been argued on behalf of the appellants that the fixation of rate of tax is a

> legislative function and as the Parliament has, under Section 8(2)(b) of the Act, not fixed the rate of central sales tax but has adopted the rate applicable to the sale or purchase of goods inside the appropriate State in case such rate exceeds 10 per cent, the Parliament has abdicated its legislative function. The above provision is consequently stated to be constitutionally invalid because of excessive delegation of legislative power. This contention, in our opinion, is not well founded. Section 8(2)(b) of the Act has plainly been enacted with a view to prevent evasion of the payment of the central sales tax. The Act prescribes a low rate of tax of 3 per cent in the case of interstate sales only if the goods are sold to the government or to a registered dealer other than the government. In the case of such a registered dealer, it is essential that the goods should be of the description mentioned in sub-section (3) of Section 8 of the Act. In order, however, to avail of the benefit of such a low rate of tax under Section 8(1) of the Act, it is also essential that the dealer selling the goods should furnish to the prescribed authority in the prescribed manner a declaration duly filled and signed by the registered dealer, to whom the goods are sold, containing the prescribed particulars in prescribed form obtained from the prescribed authority, or if the goods are sold to the government not being a registered dealer, a certificate in the prescribed form duly filled and signed by a duly authorised officer of the government. In cases not falling under sub-section (1), the tax payable by any dealer in respect of interstate sale of declared goods is the rate applicable to the sale or purchase of such goods inside the appropriate State vide Section 8(2) of the Act. As regards the goods other than the declared goods, Section 8(2)(b) provides that the tax payable by any dealer on the sale of such goods in the course of interstate trade of commerce shall be calculated at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher.

The question with which we are concerned is whether the Parliament is not fixing the rate itself and in adopting the rate applicable to the sale or purchase of goods inside the appropriate State has not laid down any legislative policy and has abdicated its legislative function. In this connection we are of the view that a clear legislative policy can be found in the provisions of Section 8(2)(b) of the Act. The policy of the law in this respect is that in case the rate of local sales tax be less than 10 per cent, in such an event the dealer, if the case does not fall within Section 8(1) of the Act, should pay central sales tax at the rate of 10 per cent. If, however, the rate of local sales tax for the goods concerned be more than 10 per cent, in that event the policy is that the rate of the central sales tax shall also be the same as that of the local sales tax for the said goods. The object of law thus is that the rate of the central sales tax shall in no event be less than the rate of local sales tax for the goods in question though it may exceed the local rate in case that rate be less than 10 per cent. For example, if the local rate of tax in the appropriate State for the non-declared goods be 6 per cent, in such an event a dealer, whose case is not covered by Section 8(1) of the Act, would have to pay central sales tax at a rate of 10 per cent. In case, however, the rate of local sales tax for such goods be 12 per cent, the rate of central sales tax would also be 12 per cent because otherwise, if the rate of central sales tax were only 10 per cent, the unregistered dealer who purchases goods in the course of interstate trade would be in a better position than an intra-State purchaser and there would be no disincentive to the dealers to desist from selling goods to unregistered purchasers in the course of interstate trade. The object of the law apparently is to deter interstate sales to unregistered dealers as such interstate sales would facilitate evasion of tax. It is also not possible to fix the maximum rate under Section 8(2)(b) because the rate of local sales tax varies from State to State. The rate of local sales tax can also be changed by the State legislatures from time to time. It is not within the

competence of the Parliament to fix the maximum rate of local sales tax. The fixation of the rate of local sales tax is essentially a matter for the State legislatures and the Parliament does not have any control in the matter. The Parliament has therefore necessarily, if it wants to prevent evasion of payment of central sales tax, to tag the rate of such tax with that of local sales tax, in case the rate of local sales tax exceeds a particular limit.

Reference may also be made to another decision of the Constitution Bench in the case of State of Tamil Nadu v. Sitalakshmi Mills ((1974) 3 SCR 1 : (1974) 4 SCC 408 : 1974 SCC (Tax) 258 : AIR 1974 SC 1505). At page 6 of the Reports, Mathew, J. stated : [SCC pp. 413-14 : SCC (Tax) pp. 263-64, paras 10 and 11]

> As already stated, Section 8(2)(b) deals with sale of goods other than declared goods and it is confined to interstate sale of goods to persons other than registered dealers or governments. The rate of tax prescribed is 10 per cent or the rate of tax imposed on sale or purchase of goods inside the appropriate State, whichever is higher. The report of the Taxation Inquiry Committee would indicate that the main reason for enacting the provision was to canalize interstate trade through registered dealers, over whom the appropriate government has a great deal of control and thus to prevent evasion of tax :
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> Where transactions take place between registered dealers in one State and unregistered dealers or consumers in another, this low rate of levy will not be suitable, as it is likely to encourage avoidance of tax on more or less the same scale as the present provisions of Article 286 have done. If this is to be prevented, it is necessary that transactions of this type should be taxable at the same rates which exporting States impose on similar transactions within their own territories. The unregistered dealers and consumers in the importing State will then find themselves unable to secure any advantage over the consumers of locally purchased articles, nor of course will they, under this system, be able to escape the taxation altogether, as many if them do at present (See Report of the Taxation Enquiry Commission, 1953-54, Vol. 3, p. 57).

In other words, it was to discourage interstate sale to unregistered dealers that Parliament provided a high rate of tax, namely 10 per cent. But even that might not serve the purpose if the rate applicable to intra-State sales of such goods was more than 10 per cent. The rate of 10 per cent would then be favourable and they would be at an advantage compared to local consumers. It is because of this that Parliament provided, as a matter of legislative policy that the rate of tax shall be 10 per cent or the rate applicable to intra-State sales whichever is higher.

If prevention of evasion of tax is a measure in the public interest, there can be no doubt that Parliament is competent to make a provision for that purpose under Article 302 even if the provision would impose restrictions on the interstate trade or commerce.

Variation of the rate of interstate sales tax does affect free trade and commerce and creates a local preference which is contrary to the scheme of Part XIII of the Constitution. The notification extends the benefit even to unregistered dealers and the observations of Hegde, J. on this aspect of the matter are relevant. Both the notifications of the Andhra Pradesh Government are, therefore, bad and are hit by the provisions of Part XIII of the Constitution. They cannot be sustained in law.

15. Now coming to the notification of the Karnataka State, we have already pointed out that no return has been made and no attempt has been made, therefore, to place facts and circumstances to justify the action. The notification suffers from the same vice as the second notification of the State of Andhra Pradesh suffers and no distinction can be drawn. We accordingly hold that the notification of Karnataka Government is also bad in law. It may be pointed out that the rate of sales tax in Karnataka is 19.5 per cent in regard to intra-State sales.

16. In view of what we have indicated above, the writ petition has to succeed and the two impugned notifications of the Andhra Pradesh Government and the impugned notification of the Karnataka Government are quashed. The writ petition is accordingly allowed with costs. Hearing fees is assessed at Rs. 5000 and this shall be shared equally by the States of Andhra Pradesh and Karnataka.

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