West Bengal Hosiery Association and Others

Vs

State of Bihar and Another

Write Petition (Civil) No. 611 of 1986

(CJI R. S. Pathak, M. H. Kania JJ)

11.08.1988

JUDGMENT

KANIA, J. –

1. This writ petition is filed under Article 32 of the Constitution of India by the West Bengal Hosiery Association and certain hosiery manufacturers and dealers in the State of West Bengal against the State of Bihar and the Commissioner of Commercial Taxes-cum-Special Secretary, Bihar praying for a direction to the respondents to forbear from levying or imposing or collecting any sales tax on the sale of hosiery goods imported into the State of Bihar from other States for sale during the tenure of Circular No. SO 934 dated August 1, 1984, exempting from such tax sales of hosiery goods manufactured or produced in the State of Bihar and to refund the amount of sales tax levied an collected on the sale of hosiery goods imported into the State of Bihar from other States in India from August 1, 1984. The petitioners have also prayed for a writ of mandamus commanding the respondents to cancel, withdraw or rescind Notification No. SO 934 dated August 1, 1984 by which exemption was granted to hosiery industries of Bihar from the levy of sales tax as set out earlier and the petitioners have also prayed that the respondents should be directed to refrain from making any discrimination between hosiery goods imported into the State of Bihar and hosiery goods manufactured in the State of Bihar in the levy of Bihar sales tax. The writ petition can be very shortly disposed of because the point raised in the writ petition is directly covered by decisions of this Court.

2. By a Notification dated September 30, 1983, on and from October 1, 1983, Bihar sales tax at the rate of 5 per cent ad valorem was imposed on all hosiery goods sold within the State of Bihar irrespective of the place where the hosiery goods were manufactured. On August 1, 1984, a Notification bearing No. SO 934 was issued whereby the hosiery goods manufactured by hosiery industries in Bihar were exempted from the levy of sales tax. the said notification stated that it would remain valid for a period of five years. The reason given for this exemption was the grant of incentives to hosiery industries in Bihar.

3. The contention raised before us by Mr. Sorabji, learned counsel for the petitioners, is that by reason of the said notification all the sales of hosiery goods in Bihar manufactured by hosiery industries outside the State of Bihar are subjected to the levy of sales tax at the rate of 5 per cent whereas the sales of hosiery goods manufactured by hosiery industries in Bihar are exempted form such levy and thus the hosiery industries outside the State of Bihar are clearly discriminated against. It is submitted by learned counsel that this discrimination violates the provisions of Articles 301 of the Constitution of India.

4. The relevant articles to consider in order to appreciate the contention of the petitioner are Articles 301 and 304 of the constitution of India. The said articles run as follows :

> 301. Subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free.
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> 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 :
>
> Provided 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 sanctions of the President.

5. A Plain reading of these article would show that it is not open to any State to levy any tax on goods imported from other States or Union territories so as to discriminate between goods so imported and goods manufactured and produced in that State subject to the limitations contained in clause (b). In the present case, clause (b) has no applications whatsoever because the exemption granted to the sales of hosiery goods manufactured in the State of Bihar has not been granted by any law passed by the legislature of the State of Bihar but by a notification. We find that the contention urged on behalf of the petitioners has been accepted in several decisions of this Court.

6. In H. Anraj v. Government of Tamil Nadu, a Division Bench of this Court comprising Tulzapurkar and Sabyasachi Mukharji, JJ., was called upon to consider whether an amendment made to the Tamil Nadu General Sales Tax Act, 1959 and the orders and notifications issued thereunder whereby, in effect, exemption from the payment of sales tax was granted to lottery tickets issued by the Government of Tamil Nadu but the lottery tickets issued by other governments and sold within the State of Tamil Nadu were subjected to sales tax, was violative of Article 301 read with Article 304 of the constitution. A similar challenge was also made to the validity of the West Bengal Taxation Laws (Second Amendment) Act, 1984 and Notification No. 1020 FT dated March 29, 1984 issued by the State of West Bengal. The court took the view for the purposes of questions raised in that case lottery tickets could be regarded as "goods". The court held that laws imposing taxes can amount to restrictions on trade, commerce and intercourse, if they hampered the free flow of trade and they are not what can be termed to be compensatory taxes on regulatory measures. It was held that the sales tax of the kind in question before the Division Bench could not be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities. Sales tax which had the effect of discriminating between goods of one State and goods of another might affect the free flow of trade and would offend against Article 301 and would be valid only it it came within the terms of Article 304 (a). The real question to be considered was whether the direct and immediate result of the impugned notification was to impose an unfavorable and discriminatory tax burden on the imported goods which in that case were lottery tickets of other State when they were sold within the State of Tamil Nadu and the State of west Bengal as against indigenous goods and that this question had to be considered from the normal business or

commercial point of view. If the question was so considered, it could be seen that the impugned notifications would have to be regarded as directly and immediately hampering the free flow of trade, commerce and intercourse. This view was taken after considering several decisions of this Court and following the decision of this court in Firm A. T. B. Mehtab Majid and Co. v. State of Madras. A similar view has been taken by a Division Bench of this Court comprising Ranganath Misra and M. M. Dutt, JJ., in a judgment delivered as recently as January 12, 1988 in Indian Cement v. State of Andhra Pradesh where it has been observed as follows : (SCC p. 759, para 14)

Variation of the rate of inter-State 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.

7. In the present case, a perusal of the notification referred to earlier show that prima facie a clear discrimination is made against hosiery goods manufactured outside the State of Bihar and sold in the State of Bihar as the sales of such goods are subjected to the levy of sales tax at the rate of 5 per cent whereas the sales of similar goods manufactured by hosiery industries in the State of Bihar are exempted from sales tax. From a commercial or normal point of view, such a discriminatory levy of sales tax is bound to affect the free flow of hosiery goods from outside States into the State of Bihar and would, therefore, amount to hampering the free flow of trade and commerce. The State of Bihar has not chosen to file any counter to the petition or to justify this discriminatory levy as a regulatory measure or a compensatory tax. the result is that the discrimination made must be regarded as violating the provisions of Article 301 read with Article 304 (b) [Sic 304 (a)] of the constitution.

8. This brings us to the question as to the relief to which the petitioners are entitled. This Court in Weston Electronics v. State of Gujarat dealt with a situation like the one in the case before us. In that case the facts were that Section 7 of the Gujarat Sales Tax Act, 1969 provides for the levy of sales tax on the turnover of sales of goods specified in Part A Schedule II of the said Act. Entry 80-A (a) of Part A of Schedule II specifies the rate of tax applicable to the turnover of television sets. The rate was 15 per cent originally and up to 1981; and the entry applied to all television sets, whether manufactured and sold within the State of Gujarat or imported from outside the State. In 1981, while the rate of tax on electronic goods entering the State for sale therein was maintained at 15 per cent, the rate in respect of locally manufactured goods was reduced to 6 per cent. By a Notification dated March 29, 1986, issued under sub-section (2) of Section 49 of the said Act which empowered the State Government to exempt in part or whole, in public interest, any specified class of sales from the payment of the whole or any part of the tax payable under that Act, in 1986, the rate of sales tax in respect of television sets imported form outside the State was reduced form 15 per cent to 10 per cent and for goods manufactured within the State, the rate of sales tax was reduced to 1 per cent. The petitioners before this Court submitted that the notifications specifying a lower rate for local manufactures should be quashed. It was held that the rate prescribed under Section 7 of the Gujarat Sales Tax Act, 1969 is the rate applied generally and it represents the normal standard of levy. The lower rate applied to local manufacturers represents a departure from or exception to the general norm. In such a case the court should, when granting relief, choose the alternative which would give effect to the statutory intention; and, following this principle, it was held that the impugned notification reserving a lower rate of tax for local manufacturers must be quashed. In the case before us we find that the general rate of sales tax on hosiery goods was 5 per cent and it was the exemption for locally manufactured hosiery goods, granted by the said Notification No. SO 934 dated August 1, 1984, which constituted the departure. It is, therefore, really this notification which is discriminatory and which must be struck down.

9. We find that the said Notification No. SO 934 dated August 1, 1984 is void for the reasons set out

earlier and we quash the same, we realise that quashing of this notification on the ground that it was void ab initio might lead to undue hardship for the dealers in the State of Bihar who might have sold locally manufactured hosiery goods without taking into consideration any amount on account of the liability to sales tax in view of the exemption granted by the said Notification dated August 1, 1984. In order to obviate this hardship, we direct that the arrears of sales tax which would become payable by the dealers in the State of Bihar in respect of sales of local hosiery goods made during the period when the said notification was in operation should not be collected.

10. Rule is made absolute to the extent aforestated. However, taking into account the facts and circumstances of the case, we direct that there shall be no order as to costs.

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