Sri Doki China Guruvulu Son and Co. and Another

Vs

Government of Andhra Pradesh and Another

Civil Appeal No. 4879 of 1989

(B. C. Ray, Sabyasachi Mukharji JJ)

07.12.1989

JUDGMENT

SABYASACHI MUKHARJI J. -

1. Leave granted.

2. This is an appeal from the judgment and order of the High Court of Andhra Pradesh, dated November 12, 1986. The appellant challenged the validity of an amendment to the Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called 'the Act'). The appellants are dealers in tamarind in Parvathipuram in Srikakulam district, a border district in Andhra Pradesh. They had purchased tamarind from the State of Orissa paying tax there and incurring expenditure in bringing the said goods to Andhra Pradesh for the purpose of sale. Under the Act tamarind was Item 14 of Second Schedule and was subjected to sales tax at the point of first purchase in the State irrespective of whether it was purchased with in the State or outside the State. The subject matter of challenge in this application under Article 226 of the Constitution before the Andhra Pradesh High Court, was the validity of an amendment to the Scheduled to the Act modifying the point of taxability of tamarind in question. Prior to the amendment tamarind was taxable as mentioned hereinbefore as the first purchase point, being Item 14, in the Second Schedule to the Act. The entry therein read as follows :

> # "Description of Point of levy Rate of tax the goods14. Tamarind (2014) At the point of first 4 paise in purchase in the State the rupee."##

3. By virtue of the amendment, the said entry was amended. Tamarind which is purchased within the State, was retained in Second Schedule while is purchased outside the State was transferred to First Schedule. After the amendment, Item 14 in the Second Schedule and Item 170 in the First Schedule stood as follows :

> # "Second ScheduleS.No. Description of Point of levy Rate of tax goods14. Tamarind when At the point of 4 paise in the purchased within first purchase rupee the State in the State First ScheduleS.No. Description of Point of levy Rate of tax Goods170. Tamarind when At the point of 4 paise in the obtained from out first purchase rupee" side the State in the State##

4. It appears that the result of the said amendment was that tamarind purchased outside the State, was taxable at the point of First sale in the State. It was contended before the High Court that the said amendment brought about a discrimination between tamarind purchased with the State i.e. one

purchased with in the State, and the tamarind purchased outside the State i.e. produced in other States; and that the incidence of tax was more on the tamarind purchased outside the State. It was contended that it violated clause (a) of Article 304 as also Article 14 of the Constitution.

5. Clause (a) of Article 304 states that notwithstanding anything contained in Article 301 or Article 303, the legislature of State may by law impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in the State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced. The question is whether as a result of the said amendment, there has been any infraction of clause (a) of Article 304 of the Constitution. We are unable to accept the contention that there was any such discrimination. The High Court in the judgment under appeal has so held. We are of the opinion that the High Court was right. Both the tamarind purchased within, and outside, the State is taxed uniformly.

6. On behalf of the appellants, reliance was placed of Firm A. T. B. Mehtab Majid & Co. v. State of Madras (14 STC 355 : 1963 Supp 2 SCR 435 : AIR 1963 SC 928), wherein on an analysis of the relevant provisions it was held that the provisions of Rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 (substituted in the place of the old rule with effect from April 1, 1955) discriminate between hides and skins imported from outside the State and those manufactured or produced inside the State and as such contravened the provisions of Article 304(a) of the Constitution, and therefore were invalid. It was reiterated by this Court that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if these are not compensatory taxes or regulatory measures. It was further held that sales tax on hides and skins imposed under the Madras General Sales Tax Act, 1939 and the rules framed thereunder could not be said to be a measure regulating any trade or compensatory tax levied for the use of trading facilities. The similarity contemplated by Article 304(a) is in the nature of the quality and kind of the goods and not with respect to whether they were already the subject of tax or not. There this Court was dealing with Rule 16 of the relevant Madras rules. Sub-rule (a) of Rule 16 provides that in case of untanned (raw) hides and/or skins, the tax under Section 3(1) of the Act was to be levied from the dealer who is the last purchaser in the State. Sub-rule (2) which was in two parts, dealt with tanned hides and skins. Clause (i) of sub-rule (2) provided that in case of hides and skins tanned outside the State, tax shall be levied upon the dealer who in the State is the first dealer. Clause (ii) provided that in case of tanned hides and skins which have been tanned within the State, the tax under Section 3(1) shall be levied upon a person who is the first dealer in such hides or skins. The proviso, however, declared that if the dealer proved that he had already been taxed under sub-rule (1) on the untanned hides and skins, he shall not be subjected to tax under sub-rule (2). It was held by this Court that this rule inevitably brought about a discrimination in the quantum of tax because while the tanned hides and skins which were imported from outside the State and were sold within the State, were taxed at a higher rate, the hides and skins tanned within the State and sold within the State, are taxed at a lower rate by virtue of the proviso. It was, indeed, found that there was a substantial variation between the prices of tanned and untanned goods. This Court pointed out that by virtue of the proviso, the tax on the latter category was, in fact, on the purchase price of the untanned hides and skins - though ostensibly the rate of tax under sub-rule (2) was the same. Hence, the mischief of discrimination was brought about the proviso which said that if hides and skins are taxed within the State at raw (untanned) stage, they shall not be taxed again at the tanned stage. But in view of the facts involved in the instant case, we are unable to accept that the principles of the said decision have any scope of application to the facts of instant case. In the instant case the tamarind purchased within the State and outside the State, are taxed at the same rate. But the point of taxability has necessarily to be different in both the cases. In case of tamarind purchase within the

State i.e. produced within the State, the tax is levied at the point of first purchase, and in case of imported tamarind i.e. purchased outside the State, the tax is levied at the point of the first in the State.

7. It was contended by Mr. P. Rama Reddy, learned advocate for the appellant, that tax in case of imported tamarind would be more because its price will include freight charge and other State taxes. Hence, it was submitted that the sales tax will also be more. That may be so but it cannot be said to be the effect of what law has amended. Tamarind will be imported only when it can be sold in the market here at the same price as the tamarind produced within the State. Only when after bearing the other State tax and freight charges, if it is able to compete with the locally produced tamarind, it will normally be imported from outside the State. If here is any difference in prices because of market conditions and other factors, that cannot be said to be due to discrimination prohibited by clause (a) of Article 304 of the Constitution. In order to ensure this, it would be necessary that imported goods must always be taxed at a lower rate than the corresponding goods within the State because of freight and other charges. That cannot be so. The High Court observed that tamarind is an agricultural produce and that is why it was put in Second Schedule that is to say, purchase point, but where it was imported and sold within the State, there was no reason to tax it at the sale point. We are of the opinion that the High Court was right.

8. It was contended on behalf of the appellants before the High Court that imported tamarind which had suffered tax at the first sale point, will again be taxed at the purchase point when purchased within the State, which would amount to double taxation. Once the imported tamarind is taxed at the first sale point under the First Schedule, there is no occasion for taxing it over again at the sale point under the Second Schedule. The idea of both the Schedules is to tax only at one point though the point of taxability may be different under different schedules.

9. Our attention was drawn on behalf of the appellants to a decision of this Court in Indian Cement Ltd. v. State of Andhra Pradesh ((1988) 1 SCC 743 : 1988 SCC (Tax) 170 : 69 STC 305). There this Court was concerned with Andhra Pradesh General Sales Tax Act. It appears that in exercise of its powers under Section 9(1) of the Act, the State Government had passed a notification on January 27, 1987 reducing the rate of sales tax on sale of cement from 13.75 per cent to 4 per cent in respect of cement manufactured by cement factories situated in the State and sold to 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, cement water and sanitary fittings, concrete poles etc. On the same day the State Government had passed another notification under Section 8 (5) of the Central Sales Tax Act, 1956 reducing the rate of tax on inter-state sale of cement to 2 per cent with or without Form C. On February 28, 1987 the State of Karnataka passed a similar notification reducing the rate of tax on inter-State sale of cement from 15 per cent to 2 per cent. The petitioners, of whom some were manufacturers of cement having their manufacturing units in Tamil Nadu and others, were stockists having places of business in the States of Karnataka, Kerala and Tamil Nadu, filed writ petitions before this Court challenging the validity of these notifications on the ground that these created trade, commerce and intercourse provided for in Article 301 of the Constitution of India. It was held that the variations in the rates of local and inter-State sales tax affected free trade and commerce and created a local preference, which was contrary to the scheme of Part XIII of the Constitution of India; and as such the notifications were bad.

10. This decision was rendered in the peculiar facts of that case. While the principle enunciated by the court in the said decision there can be no dispute that taxation was a deterrent in some cases, against free flow of trade, and as a result of favorable or unfavourable treatment by way of taxation,

the course of flow of trade gets regulated either adversely or favorably, and that if the scheme of Part XIII guarantees has to be preserved in the national interest, it is imperative that the provisions of Article 301 must be strictly complied with, we are of the opinion that the ratio of the said decision in the facts and circumstances of this case would but be relevant. In our opinion, the provisions of the Constitution should be strictly complied with not only with the letter but also with their spirit. Part XIII of the Constitution has to be dealt with the other provisions of the Constitution. Our attention was drawn to the observations of this Court in Associated Tanners, Vizianagaram, A. P. v. C. T. O., Vizianagaram A. P. ((1986) 2 SCC 479 : 1986 SCC (Tax) 403) It was reiterated there that the effect of an imposition of tax may work differently upon different dealers, namely, those who import goods and those who purchase the goods locally. That effect cannot be said to arise directly or as immediate effect of the imposition of tax. It cannot be said that there was any violation of clause (a) of Article 304 of the Constitution.

11. We are of the opinion that in the instant case the difference in rates, if any, between the imported tamarind and locally produced tamarind is not as an immediate or direct result of the imposition of tax. The decision of this Court in Weston Electronics v. State of Gujarat ((1988) 2 SCC 568 : 1988 SCC (Tax) 229 : (1988) 3 SCR 768) dealt, in our opinion, with an entirely different situation and for the purpose of the instant controversy, cannot be of any assistance.

12. Mr. C. Sitaramiah, appearing for the respondents, drew our attention to Rattan Lal & Co. v. Assessing Authority ((1969) 2 SCR 544 : AIR 1970 SC 1742 : (1970) 25 STC 136) wherein this Court had reiterated that when a taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced in the State, Article 304 has no application. So long as the rate is the same Article 304 is satisfied. In the instant case the tax is at the same rate and, hence, tax cannot be said to be higher in the case of imported goods. When the rate is applied the resulting tax may be somewhat higher but that does not contravene the equality contemplated by Article 304 of the Constitution. In the facts and the circumstances of the case, there is no ground to complain about the breach of Article 14 of the Constitution.

13. In the aforesaid view of the matter, we are of the opinion that the High Court was right in the view it took and this appeal must fail. The appeal is accordingly dismissed. In the facts and the circumstances of the case, however, we make no order as to costs.

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