

SUPREME COURT OF INDIA

Loharn Steel Industries Ltd.

Vs.

State of A.P.

C.A.No.827 of 1992

(A. M. Ahmadi, C.J.I. and Mrs. Sujata V. Manohar J.)

20.12.1996

JUDGEMENT

Mrs. SUJATA V. MANOHAR, J.: -

1. Leave granted in S. L. P. (C) No. 14547 of 1992.

2. Appellant No. 1 is a registered dealer under the Andhra Pradesh General Sales Tax Act. 1957. The appellant is a dealer in iron and steel. It purchases iron and steel scrap and ingots in the State of Andhra Pradesh. Iron and steel scrap and ingots are sent by the first appellant to its re-rolling mill which is situated in the State of Karnataka. The raw material is re-rolled into rounds and flats in the re-rolling mills of the appellant. The re-rolled products are brought back to Andhra Pradesh and are sold in Andhra Pradesh.

3. The iron and steel scrap and ingots which are purchased by the appellants are subject to tax in the

State of Andhra Pradesh under the Andhra Pradesh General Sales Tax Act, 1957. Under an exemption notification issued under the Andhra Pradesh General Sales Tax Act, 1957 bearing G. O. Ms. No. 88 Revenue, dated 28-1-1977 which came into effect from 1st of April, 1976 re-rolled finished products of steel sold in Andhra Pradesh were made exempt from tax payable under the Andhra Pradesh General Sales Tax Act provided tax had already been levied under the said Act on the sale or purchase of any of the materials specified in Item 2 of Schedule III to the said Act which included the raw material purchased by the assessee. The relevant text of the exemption notification as amended by G.O. Ms. No. 2458 Revenue, dated 3-6-1980 and in force retrospectively from 1st of April, 1976 is as follows :-

"In exercise of the powers conferred by sub-section (1) of Section 9 of A.P.G.S.T. Act, 1957 (Act VI of 1957) the Governor of Andhra Pradesh hereby makes an exemption with effect from 1st of April, 1976, the re-rolled finished products of steel re-rollers from the tax payable under the said Act, subject to the condition that the tax has been levied under the said Act on the sale or purchase of any of the material specified in Item 2 of Schedule III to the said Act."

4. By G. O. Ms. No. 1373 Revenue, dated 28-8-1981 the above G. O. Ms. No. 88 was amended. By the amendment, after the words 're-rolled finished products of the steel re-rollers' the following words were added to G.O. Ms. No. 88 :-

"Situated within the Andhra Pradesh State".

The result was that exemption under G.O. Ms. No. 88 became available only to those re-rolled finished products of steel re-rollers, which were situated in the State of Andhra Pradesh. Since the appellants re-roller mills were situated outside Andhra Pradesh the re-rolled products of the appellants became ineligible for this exemption which was made available to local products.

5. The amended G.O. Ms. No. 88 was cancelled with effect from 4-2-1982. Thereafter, another notification bearing G.O. Ms. No. 498 Revenue, dated 20-3-1984 has been issued under which once again exemption from tax leviable under Section 6 of the Andhra Pradesh General Sales Tax Act, 1957, on ingots or billets or re-rolled finished products manufactured from iron and steel scrap on which tax has been paid under the said Act is granted only to those re-rolled finished products which are manufactured from steel plants-cum-re-rollers situated within the State of Andhra Pradesh and sold inside the State. The appellants have challenged both these notifications as being violative of Article 304(a) of the Constitution of India.

6. The appellants contend that in the impugned notifications there is a clear discrimination between the goods which have been manufactured in the State and goods which have been manufactured

outside the State in levying tax under the Andhra Pradesh General Sales Tax Act of 1957, Article 304 of the Constitution is as follows :-

"304. Restrictions on trade, commerce and intercourse among States - Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law -

(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

(b)"

7. Article 304 thus enables the Legislature of a State to impose tax on goods manufactured within the State as also goods imported from other States into the State. But in doing so the State cannot discriminate between goods so imported and goods manufactured or produced locally. This article came up for consideration before this Court in the case of Firm A.T.B. Mehtab Majid and Co. v. State of Madras, (1963) Supp (2) SCR 435 : (AIR 1963 SC 928). The Court said that sales tax which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Article 301 and will be valid only if it comes within the terms of Article 304(a). In the above case by virtue of Rule 16 which had been framed under the Madras General Sales Tax (Turnover and assessment) Rules, 1939, tanned hides and skins imported from outside the State and sold within the State were subject to a higher rate of tax than hides or skins tanned and sold within the State. This Court upheld the contention of the appellant that such an imposition would violate Article 304(a) of the Constitution and would be bad in law.

8. This decision has been re-affirmed by this Court in the case of Andhra Steel Corporation v. Commissioner of Commercial Taxes in Karnataka 1990 Supp SCC 617. In this case the appellant who was a registered dealer under the Karnataka Sales Tax Act purchased iron scrap from dealers inside the (State) and outside the State of Karnataka for the purpose of manufacturing iron ingots, steel rounds and tor-steel. These manufactured goods were sold mostly within the State. A provision in Section 5(4) of the Karnataka Sales Tax Act which granted exemption to sales of finished goods manufactured out of locally purchased raw material while denying it to the sale of finished goods manufactured out of imported raw material was held to be unconstitutional and contrary to Article 304(a) of the Constitution. This Court distinguished the decisions in State of Madras v. N. K. Nataraja Mudaliar, (1968) 3 SCR 829 : (AIR 1969 SC 147) and Rattan Lal and Co. v. Assessing Authority, (1969) 2 SCR 544 : (AIR 1970 SC 1742) and re-affirmed its decision in A.T.B. Mehtab's case (AIR 1963 SC 928) (supra).

9. In the present case the appellants have purchased the raw material in the State of Andhra Pradesh and tax has been paid under the Andhra Pradesh General Sales Tax Act on this raw material. We do

not see any reason why the finished products from the re-rolled mills which are sold in Andhra Pradesh should be subjected to discrimination on the ground that these products have been manufactured outside the State and not inside the State. There is clear violation of Article 304(a) in the present case.

10. It was, however, contended before us by the department that the exemption notification must be read as a whole and, therefore, if we find the exemption notification to be violative of Article 304(a) the entire exemption notification will have to be struck down and not just a portion of it which is discriminatory as contended by the appellants. This question in relation to a taxing statute has been considered by this Court as far back in 1953 in the case of *State of Bombay v. United Motors (India) Ltd.*, 1953 SCR 1069 at 1097 : (AIR 1953 SC 252 at p. 263). If the taxing statute imposes tax on subjects which are divisible in their nature and if the covered subjects which are exempted by the Constitution, are wrongly taxed, the entire taxing statute need not be declared as ultra vires because it is feasible to separate taxes levied on authorised subjects from those levied on exempted subjects and to exclude the latter in the assessment to tax.. In such cases this Court has said the statute itself should be allowed to stand. The taxing authority can be prevented by injunction from imposing the tax on subjects exempted by the Constitution. In the present case exemption notification as it originally stood exempted if re-rolled finished products sold in the State of Andhra Pradesh from tax provided tax had been paid in the State of Andhra Pradesh on the raw material. This exemption is still available to re-rolled products which are manufactured within the State . No exception can be taken to this part of the notification. Only the portion of exemption notification which discriminates against goods manufactured outside the State violates the provisions of Article 304(a). In the words denying this exemption to goods manufactured outside the State were expressly and specifically added to the original exemption notification by the amending G.O. Ms. No. 1373 of 28-8-1981. It is this amendment alone, which is clearly severable that offends Article 304(a). It can, therefore, be struck down. The subsequent notification of 20-3-1984 proceeds on the same basis. There is no need, therefore, to strike down the entire tax exemption which is granted to all re-rolled steel products sold in the State of Andhra Pradesh and manufactured out of tax paid raw material purchased in Andhra Pradesh. The discriminatory provision is clearly severable and can be struck down.

11. The appeals are, therefore, allowed and the judgments and orders of the High Court of the Sales Tax Appellate Tribunal in Civil Appeal No. 16901 of 1996 (Arising out of S.L.P. (C) No. 14547 of 1992) are set aside. The respondents shall pay to the appellants costs of the appeals.

Appeals allowed.