

State Of U.P. and Another

Vs

Laxmi Paper Mart and Others

Civil Appeal No. 1833 of 1977

(B. P. Jeevan Reddy, K. S. Paripoornan JJ)

04.02.1997

JUDGMENT

B.P. JEEVAN REDDY, J.

A simple measure by the State of Uttar Pradesh has invited the wrath of Article 301 read with Article 304(a) of the Constitution of India. Two notifications were issued by the Government of Uttar Pradesh on 1-12-1973. The effect of these two notifications was that exercise books made from paper purchased within Uttar Pradesh were exempt from sales tax whereas all other kinds of exercise books were liable to sales tax @ 5%. The High Court dealt with three categories of cases, (1) exercise books made from paper purchased within Uttar Pradesh (sale of paper within Uttar Pradesh attracted sales tax @ 5%), (2) exercise books made outside the State of Uttar Pradesh and brought into and sold in Uttar Pradesh and (3) exercise books made in Uttar Pradesh but out of the paper purchased from outside the State of Uttar Pradesh. The High Court has held that insofar as the second category is concerned, it is hit by Article 301 read with Article 304(a). So far as the third category is concerned, the High Court did not find fault with it. It declared that "Notification No. 6624 insofar as it imposes sales tax on the import of exercise books is violative of Article 301 of the Constitution and is unenforceable". Since there is no appeal by the dealer, we need not consider the question whether the decision of the High Court with respect to third category is correct or not. We confine our attention only to category (2), i.e., exercise books made outside the State of Uttar Pradesh and brought into and sold in Uttar Pradesh.

2. In our opinion, the High Court was right in holding that exempting the exercise books produced in the State and subjecting the exercise books produced outside the State but sold in Uttar Pradesh to sales tax @ 5% is discriminatory and, therefore, offends clause (a) of Article 304. The decision of this Court in *Firm A.T.M. Mehtab Majid & Co. v. State of Madras* [1963 Sup (2) SCR 435 : AIR 1963 SC 928] clearly governs the issue. The said decision considered a situation where the State of Madras subjected the tanned hides and skins imported from outside the State of Madras and sold within the State of Madras to a higher rate of tax than the tax imposed on hides or skins tanned and sold within the State. (It had also subjected the hides or skins imported from outside the State after purchase in their raw condition and then tanned inside the State to a higher rate of tax than the hides or skins purchased in raw condition in the State and tanned in the State.). The following holding in the said decision is relevant :

"It is therefore now well settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulatory measures. Sales tax, of the kind under consideration here, cannot be said to be a measure regulating any trade or

a compensatory tax levied for the use of trading facilities. 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).

Article 304(a) enables the Legislature of a State to make laws affecting trade, commerce and intercourse. It enables the imposition of taxes on goods from other States if similar goods in the State are subjected to similar taxes, so as not to discriminate between the goods manufactured or produced in that State and the goods which are imported from other States. This means that if the effect of the sales tax on tanned hides or skins imported from outside is that the latter becomes subject to a higher tax by the application of the proviso to sub-rule (2) of Rule 16 of the Rules, then the tax is discriminatory and unconstitutional and must be struck down."

3. Clause (a) of Article 304 has recently been considered in *Shree Mahavir Oil Mills v. State of J&K* [(1996) 11 SCR 39 : JT (1996) 10 SC 837] wherein it was pointed out that clause (a) of Article 304

"though worded in positive language has a negative aspect. It is, in truth, a provision prohibiting discrimination against the imported goods. In the matter of levy of tax - and this is important to bear in mind - the clause tells the State Legislatures : 'tax you may the goods imported from other States/Union Territories, but do not, in that process, discriminate against them vis-a-vis goods manufactured locally'. In short, the clause says : levy of tax on both ought to be at the same rate. This was and is a ringing declaration against the States creating what may be called 'tax barriers' - or 'fiscal barriers', as they may be called - at or along their boundaries, in the interest of freedom of trade, commerce and intercourse throughout the territory of India guaranteed by Article 301".

Once the discrimination is made out, the enquiry by court ends. The price structure of the imported goods vis-a-vis the locally manufactured goods or the economics of the importer need not be gone into.

4. The appeal is accordingly dismissed. No order as to costs.