Shri Digvijay Cement Co. and Others

Vs

State of Rajasthan and Others

Civil Appeal No. 2145 of 1997 with Nos. 2146 of 2149 of 1997

(CJI A. M. Ahmadi, G. T. Nanavati, S. P. Kurdukar JJ)

21.03.1997

JUDGMENT

NANAVATI, J. –

1. Leave granted.

2. The appellants in these appeals are manufacturers of cement and they have their manufacturing units/factories in the State of Gujarat. The cement manufactured by them is sold throughout India through a network of stockists and dealers. They filed Civil Writ Petitions Nos. 656, 788, 803, 2644 and 2645 of 1994 in the High Court of Rajasthan challenging the Notifications dated 8-1-1990, 27-6-1990 and 7-3-1994 issued by the State of Rajasthan under section 8(5) of the Central Sales Tax Act (for short "CST Act"). The High Court dismissed those writ petitions. Therefore, the appellants have filed these appeals.

3. Prior to the issuance of the impugned notifications the rate of tax payable under Section 5 of the Rajasthan Sales Tax Act on sales of cement was 16%. Even in respect of the inter-State sales of cement to unregistered dealers, the rate of tax was 16%. By the Notification dated 8-1-1990 the State Rajasthan in exercise of the powers conferred by sub-section (5) of Section 8 of the CST Act directed that the tax payable under sub-sections (1) and (2) of Section 8 by any dealer having his place of business in the State, in respect of the sale by him, from any such place of business in the course of inter-State trade and commerce, of cement, to any Central or State Government undertaking or Corporation or an autonomous body under the Government shall be calculated at the rate of 7%. By the second Notification dated 27-6-1990 the State of Rajasthan directed that the tax payable by any such dealer to any/all dealers or any person situated outside the State of Rajasthan shall be taxed at the rate 7%, if the conditions specified therein were satisfied. The said conditions were :

> "(i) The selling dealer shall submit the certificate appended hereto duly filled in and signed by him to his assessing authority within 10 days from the date of delivery of such cement to the carrier.
>
> (ii) The selling dealer shall also enclose with the said certificate, the attested photostat copy of the railway receipt/goods receipt, as the case may be.
>
> (iii) In case the goods are being carried through road transport, a copy of the said certificate shall also be handed over at the exit checkpost of the State of Rajasthan.

CERTIFICATE##

> I/We ... (name of the firm/company/other status) having Registration No. (RST Act/CST Act) ... under the jurisdiction of the Assessing Authority ... certify that ... bags of cement amounting to Rs. ... covered by the challan/cash memo(s) No. ... and the date ... have been manufactured by me/us and are despatched in the course of inter-State trade and commerce vide RR/GR No. ... (specify the number with date) ... to Shri/M/s. ... (full address of the purchaser). Signature ... Name ... Designation ... Seal ... Dated ...."

4. By the third Notification dated 7-3-1994 the State of Rajasthan superseded the earlier Notification dated 27-6-1990 and directed that in respect of inter-State sales of cement made by such dealers tax payable shall be calculated at the rate of 4% without furnishing of declaration in Form C or certificate in Form D on fulfilment of the following conditions :

> "(i) That the dealer shall record the name and full and complete address of the purchaser in the bill or each memorandum for such inter-State sale to be issued by him;
>
> (ii) that the burden to prove that the transaction was in the nature of inter-State sale, shall be on the dealer; and
>
> (iii) that the dealer making inter-State sales under this notification shall not be eligible to claim benefit provided for by the Notification No. F. 4(72) FD/Gr. IV/81-8, dated 6-5-1986, as amended from time to time."

5. The appellants challenged the said notifications on the ground that they created artificial barriers and had the effect of giving preference in the matter of inter-State trade and commerce to the manufacturers and dealers of cement in the State of Rajasthan over the dealers and manufacturers of cement in the State of Gujarat. The rate of tax on sales of cement in Gujarat under the Gujarat Sales Tax Act being 16%, as a result of the impugned notifications, the manufacturers of cement in Gujarat including the appellants were put to disadvantageous position as the purchasers in Gujarat could purchase cement in the inter-State trade or commerce on payment of sales tax at a much lower rate from the dealers in Rajasthan whereas if they purchased cement from dealers in Gujarat they had to pay tax at the rate of 16%. One of the appellants (M/s. Saurashtra Cement & Chemical Co. Ltd.) in its writ petition had given details regarding the increase in despatches from Rajasthan to Gujarat during the years 1992-93 and 1993-94 to support its plea. It was also stated in its petition that taking advantage of the impugned notifications and lowering of the rate of tax the semi-government companies and corporations in Gujarat and also unregistered dealers had opted to purchase or increased their purchases of cement from Rajasthan. The notifications were further challenged on the ground that lowering the rate of tax was not in public interest as contemplated by section 8(5) of the CST Act and that they were also violative of Articles 301 and 303 of the Constitution inasmuch as they had the effect of giving preference to cement manufactured and sold in Rajasthan and discriminate against cement manufactured and sold in Gujarat. On these grounds the writ petitioners wanted the High Court to quash the said notifications and restrain the State of Rajasthan from issuing such/similar notifications in future.

6. The Union of India, though jointed as a part-respondent in the writ petitions, did not choose to appear. The State of Gujarat was one of the respondents in two writ petitions and it substantially

supported the writ petitioners by contending that the impugned notifications created a preference in favour of the manufacturers of cement in Rajasthan. The State of Rajasthan dispute the correctness of the figures given by the writ petitioner regarding increase in despatches of cement from Rajasthan to Gujarat and also disputed that the cement sold by the manufacturers and dealers in Rajasthan was available at a cheaper rate to the purchasers in the State of Gujarat. It denied that the impugned notifications violated any of the constitutional provisions or Section 8(5) of the CST Act.

7. The High Court held that the Notifications dated 8-1-1990 and 27-6-1990 having been superseded they were no longer operative and the writ petitions had become infructuous to that extent and the challenge to those notifications did not survive. It, therefore, confined its consideration to the legality and validity of the last Notification dated 7-3-1994. The High Court was of the view that it was for the writ petitioners to establish that because of reduction in the rate of sales tax by the impugned notifications the cement from Rajasthan was being sold in Gujarat on a larger scale and at a cheaper rate and thereby the interest of the cement manufacturers in Gujarat was being prejudicially affected. It considered the facts and figures relating to increased despatches of cement from Rajasthan to Gujarat and the preference shown by the semi-government bodies and unregistered dealers or the cement manufactures sold in Rajasthan, as ipse dixit of the writ petitioners and, therefore, not credible and trustworthy. Taking this view it held that the writ petitioners had failed to establish that the effect of the impugned notifications was to impede or adversely affect the free flow of inter-State trade and commerce. The High Court distinguished the decision of this Court in Indian Cement v. State of A.P. [(1988) 1 SCC 743 : 1988 SCC (Tax) 170] on the ground that the facts in that case were altogether different from the facts of these cases inasmuch as in that case the rate of Central Sales Tax was reduced to 2% in order to augment the State revenue and to protect the local manufacturers and the notifications which were under challenge did not contain the conditions which are imposed by the Notification dated 7-3-1994. It was also distinguished on the ground that this Court had not considered the effect of transportation charges and handling charges in respect of cement manufactured in one State and sold in another. Taking this view, the High Court dismissed the writ petitions.

8. Mr. Sorabjee, learned Senior Counsel appearing for the appellants, has raised two contentions. His first contention was that the impugned notifications were not legal as they were not issued in public interest which is a condition precedent for exercise of power under section 8(5) of the CST Act. The second contention was that the notifications by reducing the rates of sales tax from 16% to 7% and then to 4% were violative of Articles 301 and 303 of the Constitution as they had the effect of giving preference to goods manufactured and sold in Rajasthan and discriminate against goods manufactured and sold in Gujarat.

9. We will deal with the first contention first. He invited our attention to sub-section (5) of Section 8 of the CST Act which permits the State Government, if it is satisfied that it is necessary so to do in public interest, to direct that no tax, under the CST Act shall be payable or that they shall be payable at lower rates by any dealer having his place of business in the State in respect of sales made by him, in the course of inter-State trade or commerce, from any such place of business of any such goods or classes of goods or to any person or class of persons as may be specified in the notification. He also drew out attention to the observation made by this Court in State of T.N. v. Sitalakshmi Mills [(1974) 4 SCC 408 : 1974 SCC (Tax) 258 : (1974) 3 SCR 1] that the policy of the law is to discourage inter-State trade to unregistered dealers and that the report of the Taxation Enquiry Committee would indicate that "the main reason for enacting the provision was to canalise the inter-State trade through registered dealers over whom the appropriate Government has a great deal of control and thus to prevent evasion of tax". He submitted that by dispensing with the

requirement of furnishing declaration in Form C the impugned Notification dated 7-3-1994, in effect, removed an essential safeguard to check and prevent evasion of sales tax. In order to show the importance of the requirement to furnish Form C he invited out attention to the decision of this Court in State of Rajasthan v. Sarvotam Vegetables Products [(1996) 8 SCC 639 : (1996) 3 Scale 469] wherein this Court has observed that : (SCC p. 643, para 6).

> "The purpose of the C Form is obvious : Parliament wants to tax specified goods purchased for specified purposes [sub-section (3) of Section 8] at a lower rate but anyone wishing to avail of the said lower rate must obtain from his purchasing dealer the 'C' Form and produce it before his assessing officer. Thus, clause (b) of sub-section (1), sub-section (3) and sub-section (4) go together. [Similarly, Section 8(1) (a) and sub-section (4) go together.]. The reason why the 'C' Form requires several particulars to be stated is to ensure that the concessional rate prescribed by Section 8(1) (b) is not misused or abused. With the help of those particulars, the appropriate authority or authorities can verify the truth and correctness of the transaction. Both the selling dealer and purchasing dealer are under an obligation to abide by the said requirements of law; otherwise the very scheme underlying the said provisions breaks down. This crucial significance of the 'C' Form needs to be kept in mind."

He submitted that the conditions specified in the Notification dated 7-3-1994 are not at all an effective submitted for C Form. Condition No. 1 does not cast any obligation on the dealer to send the record made by him to the sales tax authorities. Conditions Nos. 2 and 3 have no bearing at all upon the issue of preventing or checking evasion. The High Court failed to appreciate that under the Notification dated 7-3-1994, cement could be sold by a manufacturer/dealer in Rajasthan to a person in Gujarat who is an unregistered dealer or to a consumer who is not a dealer at all. He also submitted that this challenge was challenges rejected by the High Court by observing that Conditions Nos. 1 and 2 in the Notification dated 7-3-1994 were sufficient to take due care of such remote possibility of tax avoidance/evasion on a large scale and that the "Revenue is the best judge of its interest". The High Court failed to appreciate that sub-section (5) of Section 8, as observed by this Court in Sarvotam Vegetables Products case [(1996) 8 SCC 639 : (1996) 3 Scale 469] is an integral part of Section 8 and the Act as the Act as such. The said power has to be exercised in public interest. The power of exemption is to be guided by and be consistent with the provisions of the Act. The object of the relevant provisions contained in CST Act is "to canalize inter-State trade through registered dealers, over whom the appropriate Government has a great deal of control and thus to prevent evasion of tax 'and' prevention of evasion of tax is a measure in the public interest" as observed by this Court in Sitalakshmi Mills case [(1974) 4 SCC 408 : 1974 SCC (Tax) 258 : (1974) 3 SCR 1] and in State of Madras v. N. K. Nataraja Mudaliar [(1968) 3 SCR 829 : AIR 1969 SC 147 (1968) 22 STC 376]. In view of this correct legal position, it was no answer to say that the Revenue is the best judge of its interest. Public interest being the essential prerequisite for exercise of power under sub-section (5) of Section 8, the State can exercise it only if it is likely to subserve the public interest.

10. It was, on the other hand, contended by Mr. Aruneshwar Gupta, learned counsel appearing for the State Rajasthan, that when a State makes law it has to be presumed that it is made in "public interest". Moreover, it was specifically stated in the impugned notifications that the power under Section 8(5) was being exercised in "public interest" and, therefore, it was for the appellants to prove that the said power was in fact not exercised in public interest. In support of his submission, the learned counsel relied upon the decision in Amrit Banaspati Co. Ltd. v. Union of India [(1995) 3 SCC 335]. Mr. Adhyaru, learned counsel for the State of Gujarat, however, is right in his

submission that though such a presumption can be raised, when the exercise of power is challenged on the ground that it was not exercised in public interest it would become necessary for the State to disclose how it is in public interest.

11. Before the High Court, the State of Rajasthan does not appear to have stated anything in this behalf except that the conditions imposed by the notification were adequate to prevent evasion of tax. In the counter-affidavit filed before this Court, it is stated that the said notifications being based upon policy decision were issued in public interest. In the additional affidavit filed on its behalf it is stated that reduction of rate of sales tax under the impugned notifications was "very much beneficial to the State revenue inasmuch as the respondent-State has increased earnings of the additional revenue percentage of sales tax on cement over the previous years i.e. from 1985 to 1995". It is further stated that : "It is respectfully submitted that after issuing of the Notification dated 8-1-1990, whereby the rate of tax on sale made in inter-State sales was reduced and levied at the rate of 7% the State Government in the Financial Year 1990-91 earned revenue of Rs. 3195.33 lakhs as compared to the previous year i.e. 1989-90 which was Rs. 2710.55 lakhs. The State Government had collected additional revenue of Rs. 484.78 lakhs for the Financial Year 1990-91. Keeping in view the additional revenue earned by the State in the public interest, the State Government vide Notification dated 27-6-1990, in supersession of the earlier Notification dated 3-1-1990, further liberalised the inter-State sales of cement which was earlier restricted to Central or State Government, Undertaking or Corporation or Autonomous Body under the Government .... It is respectfully submitted that after reduction of sales tax on inter-State sales from 7% to 4% vide Notification dated 7-3-1994 the State had collected revenue to the tune of Rs. 7000 lakhs as compared to the previous year i.e. 1992-93, which was Rs. 6069.82 lakhs thereby earned an additional revenue of Rs. 900.18 lakhs for the year 1994-95. The percentage of sales tax revenue of cement for the year 1994-95 was increased to 15.32% as compared to the Financial Year 1993-94 which was 11.52% (increase of 4% approximately). In the last affidavit filed by it the public interest sought to be subserved by the impugned notifications is stated in these terms :

> "It is common knowledge that the material for production of cement i.e. limestone is available in abundance in the State of Rajasthan and in view of availability of raw material the production of cement in the State of Rajasthan is also much higher. Therefore, if the power under Section 8(5) of the Central Sales Tax Act, 1956 is exercised by the State of Rajasthan by providing different rate of tax in respect of inter-State sale and such power is perfectly in public interest and would in fact achieve free flow of trade rather than hampering it."

12. Thus the State of Rajasthan has shifted its stand from time to time as regards the public purpose, for achieving which, the reduction in rate of tax was made. The learned counsel for the State of Rajasthan submitted that public interest contemplated by Section 8(5), insofar as the State of Rajasthan is concerned, would mean interest of the public of Rajasthan and as the increased revenue could be used for the benefit of the people of Rajasthan, the impugned exercise of power must be regarded as in public interest. We cannot accept this contention because public interest in Section 8(5) will have to be interpreted in the context of the CST Act and Articles 301 to 304 of the Constitution. Though increase in revenue and its utilisation for the public of the State can generally be regarded in public interest, in the context in which it is required to be considered, that by itself cannot be regarded as sufficient, if it has the effect of going against the policy of the CST Act and object of the constitutional provisions.

13. We have already stated above the object of the constitutional provisions and the policy of the

CST Act. Sub-section (5) of Section 8 which is in the nature of an exception, permits the State Government to do that which it otherwise could not have done, but only if it is in public interest. Therefore, when exercise of such powers was challenged it was for the State to justify the same by explaining how it had become necessary to subject all inter-State sales to any person or dealer to payment of tax at 4% only and also to explain how it had become necessary for it to dispense with the furnishing of the declaration contemplated by sub-section (4) of Section 8 to the prescribed authority in the prescribed manner. No such attempt was made by the State of Rajasthan before the High Court. Reduction of the rate of tax in respect of all inter-State sales to any dealer and person was sought to be justified by the learned counsel for the State of Rajasthan by submitting that it was likely to increase the revenue of the State and as the increased revenue could be utilised for the public of Rajasthan, the same can be said to be in public interest. As regards dispensing with the requirement of furnishing declaration in C Form he submitted that apart from Condition No. 1 contained in the Notification dated 7-3-1994 a selling dealer in Rajasthan had to fill in Form ST 18 and a dealer-consignor had to submit a declaration in Form ST 18-A. The said forms contains sufficient particulars as to prevent any evasion of payment of tax. He draw our attention to Rule 62-C of the Rajasthan Sales Tax Rules which provides that a registered dealer by whom any goods are despatched from within the State to a place outside the State for sale outside the State shall furnish or cause to be furnished particulars in respect of his registration certificate, and the goods so leaving the State limits in Form ST 18-C. What is overlooked by him is the proviso to sub-rule (1) which lays down that no such form is required to be furnished in respect of the goods notified by the State Government. Admittedly, cement is notified "goods". Therefore, Rule 62-C will obviously have no application. No other provision was pointed out by the learned counsel requiring a dealer of cement in Rajasthan to obtain from the purchaser or even otherwise make a declaration to the sales tax authorities in respect of the inter-State sales made by him. It is therefore difficult to appreciate how the State of Rajasthan could have effectively checked or prevented evasion of payment of tax on inter-State sales of cement. On this ground alone the impugned Notifications dated 27-6-1990 and 7-3-1994 are required to be declared as bad.

14. As regards the second contention that the impugned notifications were violative of Articles 301 and 303 of the Constitution it was submitted by Mr. Sorabjee that Article 301 of the Constitution guarantees freedom of trade, commerce and intercourse throughout the territory of India. Article 302, however, empowers Parliament to 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. This power of Parliament and the State Legislatures is further restricted by Article 303 which provides that neither of them shall have 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. He further submitted that the notifications issued by the State Governments under Section 8(5) of the CST Act would also be subject to the said limitations. He further submitted that the impugned notifications particularly the Notifications dated 27-6-1990 and 7-3-1994 had the effect of giving preference for goods manufactured and sold in Rajasthan and consequent discrimination against the goods manufactured and sold in Gujarat. It was, therefore, incumbent upon the State of Rajasthan to place materials before the court to justify the cause or reason for the said preference and discrimination. In support of his contention he relied upon the following observations made by Hegde, J. in his concurring judgment in State of Madras v. N. K. Nataraja Mudaliar [(1968) 3 SCR 829 : AIR 1969 SC 147 : (1968) 22 STC 376] :

> "... But once it is shown a measure prima facie gives preference to the residents of one State over another State or it makes discrimination between the residents of a

> State and that of another because of the adoption of different rates of tax in different States, then the matter assumes a different complexion in view of Article 303(1). It should be within the knowledge of the Union Government why Parliament adopted different rates in different States. I agree that mere difference in rates is neither showing preference nor making discrimination. But other things being equal, the difference in rates would result in showing preference to some States and making discrimination against others. Hence, in my opinion, difference in rates is a prima facie proof of the preference or discrimination complained of. It is for the State to justify those differences."

He also submitted that the justification offered by the State is that the notifications were issued for earning additional revenue for the State and for increasing the sale of cement manufactured in Rajasthan as it has abundance of raw material necessary for manufacturing cement and consequently production of cement in the State is much higher. He submitted that for such reasons if giving of preference or making discrimination is permitted then that would lead to trade wars or creation of barriers between different States and that would be detrimental to the economic integrity and unity of the nation. He drew out attention to the following observation made by Gajendragadkar, J. in the case of Atiabari Tea Co. Ltd. v. State of Assam [(1961) 1 SCR 809 : AIR 1961 SC 232] :

> "... It was realised that in course of time different political parties believing in different economic theories or 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 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 declaration 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."

15. He also invited our attention to the averments made in the petitions, particularly the petition filed by the Saurashtra Cement Company and the facts and figures given therein. He submitted that the State of Rajasthan in its counter-affidavit filed in the High Court had not denied the correctness of those facts and figures and the only reply given by it was that they were not admitted and were not verifiable. The High Court also accepted this contention of the State of Rajasthan and held that the petitioners had failed to establish that the impugned notifications had the effect of impeding or obstructing the free flow of movement of goods between the States in the course of inter-State trade and commerce.

16. We have already observed earlier that the High Court has very lightly brushed aside the said facts and figures. Some of the facts and figures were stated on the basis of the statistics available with the cement manufacturers of India. Detailed statements showing the names of the parties and quantities of cement purchased by some of them month-wise were filed along with writ petition. It

is, therefore, difficult to appreciate how the said facts were not verifiable or could be regarded as not reliable. The facts and figures were sufficient to show, prima facie, that despatches of cement from the State of Rajasthan to State of Gujarat had increased considerably and that cement produced in the State of Gujarat was placed in a disadvantageous position. It was not proper for the High Court to brush aside that material and hold that the petitioners had failed to establish that because of reduction in the rate of sales tax on inter-State sales of cement by the impugned notifications preference was created in favour of the cement manufactured in Rajasthan and sold in Gujarat and that the cement manufacturers in Gujarat were thus prejudicially affected and put in a disadvantageous position. The High Court had observed that that sales of cement manufactured and sold in Rajasthan might have increased because of the quality of cement, intensive publicity and such other factors. That was not even the case of the State of Rajasthan. In view of the clear and credible material placed on record by the writ petitioners it was incumbent upon the State of Rajasthan to justify that what it had done was really required in the public interest. While conceding that varying rates of tax can prevail in different States and that by itself cannot be said to be violative of Article 303 he submitted that the differentiation can be justified if that is done on account of natural and business factors such as existence of long-standing business relations, availability of communications, credit facilities and such other factors. He submitted that this Court in Nataraja Mudaliar case [(1968) 3 SCR 829 : AIR 1969 SC 147 : (1968) 22 STC 376] has adopted the reasoning of the Australian High Court in R. v. Barger [(1908) 6 CLR 41] that if the pervading idea is the preference of locality merely because it is locality, and because it is a particular part of a particular State and the preference was not based on other considerations, which are dependent on natural or business circumstances, and may operate with more or less force in different localities and has held that where differentiation is based on consideration not dependent upon natural or business factors which operate with more or less force in different localities then Parliament is prohibited from making such discrimination.

17. What the learned counsel for the State of Rajasthan submitted was that unless it was shown that the impugned notifications directly and adversely affected the free flow of trade and business or that the tax reduction was so prohibitive as to become an impediment in the free flow, they could not have been regarded as violative of Articles 301 and 303. In support of his submission he relied upon the decisions of this Court in Atiabari Tea Co. Ltd. v. State of Assam [(1961) 1 SCR 809 : AIR 1961 SC 232) and Amrit Banaspati Co. Ltd. v. Union of India [(1995) 3 SCR 335]. He also submitted that mere imposing or reduction of tax by the State Legislature leading to varying rates of sales tax cannot be regarded as giving preference or making discrimination prohibited by Articles 301 and 304 because the free flow of trade between different States depends not necessarily upon the rates of sales tax, but upon a variety of other factors, such as the source of supply, place of consumption, existence of trade channels, trading facilities, rates of freight, availability of efficient transport and the like. In support of this proposition he cited the decisions of this Court in State of Madras v. N. K. Nataraja Mudaliar [(1968) 3 SCR 829 : AIR 1969 SC 147 : (1968) 22 STC 376], State of Kerala v. A. B. Abdul Kadir [(1969) 2 SCC 363 : (1970) 1 SCR 700], State of T.N. v. Sitalakshmi Mills [(1974) 4 SCC 408 : 1974 SCC (Tax) 258 : (1974) 3 SCR 1] and Video Electronics (P) Ltd. v. State of Punjab [(1990) 3 SCC 87 : 1990 SCC (Tax) 327 : 1989 Supp (2) SCR 731].

18. The scope and ambit of the freedom of trade and commerce throughout India has been examined by this Court in many cases, starting with Atiabari Tea Co. Ltd. [(1961) 1 SCR 809 : AIR 1961 SC 232]. This Court in Video Electronics (P) Ltd. v. State of Punjab [(1990) 3 SCC 87 : 1990 SCC (Tax) 327 : 1989 Supp (2) SCR 731] reviewed the previous case-law and in the context of power to grant exemption from payment of sales tax, has held that the taxes which do not directly or immediately restrict or interfere with trade, commerce and intercourse throughout the territory of

India are excluded from the ambit of Article 301. It was held that : (SCC p. 105, para 22)

> "... It has to be borne in mind that there may be differentiations based on consideration of natural or business factors which are more or less in force in different localities. A State might be allowed to impose a higher rate of tax on a commodity either when it is not consumed at all within the State, or if it is felt that the burden falling on consumers within the State will be more than that and large benefit is derived by the Revenue. The imposition of a rate of sales tax is influenced by various political, economic and social factors. Prevalence of differential rate of tax on sales of the same commodity cannot be regarded in isolation as determinative of the object to discriminate between one State and another."

This Court has also held that : (SCC p. 110, para 30)

> "However the power under article 304 if found to have been exercised in a colourable manner intentionally or purposely to create unfavourable bias by prescribing a general lower rate on locally manufactured goods or in the shape of lower rate of tax, such an exercise of power can always be struck down by the courts."

19. Reiterating that every differentiation is not discrimination this Court further held that if discrimination is made without a valid reason, that is to say, if there are not justifiable and reasonable reasons for differentiation, then that would amount to hostile discrimination. Again, in Amrit Banaspati Co. Ltd. case [(1995) 3 SCC 335] this Court emphasised that it is only when the inter-State or inter-State movement of the persons or goods are impeded directly and immediately as distinct from creating some indirect or inconsequential impediment, by any legislative or executive action, infringement of the freedom envisaged by Article 301 can arise. Without anything more, a tax law, per se, may not impair the said freedom. At the same time, it should be stated that a fiscal measure is not outside the purview of Article 301 of the Constitution.

20. We have, therefore, to examine the validity of the impugned notifications in the context of this settled legal position. As already pointed out above the only reason or justification given by the State of Rajasthan for making the differentiation between the rate of tax on intra-State sales and inter-State sales of cement was that the said reduction was likely to lead and had led to increase in sales of cement and increase in revenue earnings. So the question to be considered is whether those considerations alone can be regarded as sufficient to make the impugned notifications immune from the challenge of hostile discrimination. In the case of Indian Cement [(1988) 1 SCC 743 : 1988 SCC (Tax) 170] this Court has held that the plea that reduction in the rate of sales tax is beneficial to the State Revenue cannot be regarded as sufficient justification for making the discrimination and it would not amount to a reasonable restriction contemplated by Article 304.

21. In the case of Indian Cement [(1988) 1 SCC 743 : 1988 SCC (Tax) 170] this Court also held that reduction in the rate of tax in order to protect the local manufacturers cannot be regarded as a justification permitted by Part XIII of the Constitution. So also in Weston Electroniks v. State of Gujarat [(1988) 2 SCC 568 : 1988 SCC (Tax) 229] this Court has held that reduction in the case of goods manufactured locally in order to provide an incentive for encouraging local manufacturing units cannot be sustained if it adversely affects the free flow of inter-State trade and commerce. We are also of the view that the justification advanced by the State of Rajasthan that as a result of the impugned notifications the State revenue had increased and thus they were beneficial to the State revenue, is not valid as the said notifications had the effect of creating a preference to cement

manufactured and sold in Rajasthan and disadvantage for the sale of cement manufactured and sold in Gujarat and thus had the direct and immediate adverse effect on the free flow of trade. The said notifications, by dispensing with the requirement of furnishing declaration in C Form, had the effect of facilitating evasion of payment of tax and were, therefore, also violative of the scheme of the constitutional provisions contained in Chapter XIII. A five-Judge Bench of this Court in Firm A. T. B. Mehtab Majid & Co. v. State of Madras [1963 Supp (2) SCR 435 : AIR 1963 SC 928 : (1963) 14 STC 355] has also held 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 would be violative of Article 301.

22. We, therefore, hold that the impugned notifications were void and, therefore, they are hereby quashed. These appeals are accordingly allowed. In view of the facts and circumstances of the case there shall be no order as to costs.