

Collector of Customs and Another

Vs

State of W.B. and Another

Civil Appeal No. 910 of 1992 with SLP (C) No. 13393 of 1997

(S. P. Bharucha, K. Venkataswami JJ)

30.07.1998

ORDER

1. The Union of India is in appeal against the judgment and order of the West Bengal Taxation Tribunal, which is reported in Collector of Customs v. State of W.B. [(1992) 85 STC 121 (WBTT)]. The Tribunal upheld the contention of the respondent-State that the Collector of Customs was a "dealer" within the meaning of the definition of that word in the Bengal Finance (Sales Tax) Act, 1941, when he sold goods confiscated under the provisions of the Customs Act, 1962 because of non-payment of customs duty thereon.
2. Only one contention is advanced before us by learned counsel on behalf of the appellants, and it is, that Article 285 of the Constitution debars the imposition of tax upon property belonging to the appellants.
3. Reliance in this behalf is placed on the judgment of two learned Judges of this Court in State of Punjab v. Union of India [(1990) 79 STC 437 (SC)]. The Punjab High Court in that matter had answered the two questions before it in favour of the Union of India. The second question was whether no sales tax could be levied in view of the provisions of Article 285 of the Constitution on goods purchased by the Railways and sold by the Railways in their Catering Department. This Court said that at the time of their sale, the goods belonged to the Railways. The tax had been imposed on such sale. In view of the provisions of Article 285, such sale was immune from taxation under the State law.
4. It would appear that no real arguments were advanced before this Court by the appellant-State and the judgment of this Court in Sea Customs Act (1878), S. 20(2), Re [AIR 1963 SC 1760 : (1964) 3 SCR 787] was not pointed out. In the Sea Customs Act case [AIR 1963 SC 1760 : (1964) 3 SCR 787] a nine-Judge Bench of this Court opined by a majority, that Article 285 envisaged immunity from direct taxes and not from indirect taxes such as sales tax. With specific reference to sales tax, this Court said :

"We may in this connection contrast sales tax which is also imposed with reference to goods sold, where the taxable event is the act of sale.

Therefore, though both excise duty and sales tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax."

5. The decision in the Sea Customs Act case [AIR 1963 SC 1760 : (1964) 3 SCR 787] was considered by another nine-Judge Bench in the case of New Delhi Municipal Council v. State of Punjab [(1997) 7 SCC 339] and was affirmed.

6. In the circumstances, the Tribunal was right in the view that it took. The appeal is dismissed. No order as to costs.

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7. For the reasons given in the judgment in Collector of Customs v. State of W.B. case [AIR 1963 SC 1760 : (1964) 3 SCR 787] the special leave petition is dismissed.