

(1983) 06 J&K CK 0002

In the Jammu And Kashmir High Court

Case No : Writ Petition No's. 107 of 1979 and 560 to 605 of 1980

Abdul Karim Thakur and Others

APPELLANT

Vs

State and Others

RESPONDENT

Date of Decision : 24-06-1983

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 301

Citation : (1983) 54 STC 156

Hon'ble Judges : Mufti Baha-Ud-Din Farooqi, C.J.; I.K. Kotwal, J

Bench : Division Bench

Advocate : Z.A. Shah and Sunil Hali, for the Appellant; S.A. Salaria and S. Dutt, for the Respondent

Final Decision : Dismissed

Judgement

I.K. Kotwal, J.—Besides Section 5 of the Jammu and Kashmir General Sales Tax Act, 1962, hereinafter to be referred to as the Act, SRO

No. 267 issued by the Government on 15th May, 1978 and the notices served upon the petitioners pursuant to it, to either submit their accounts

for determining their liability to pay sales tax, or to pay the sales tax already levied by the respondents, have been assailed in all these petitions

which raise common questions of law. These are, therefore, being disposed of by a common judgment.

2. The petitioners in all these petitions are manufacturers of bricks, some of whom also manufacture tiles. They are registered as small-scale

manufacturing units with the Directorate of Industries. By virtue of entry No. 12 under the general head "cement, ceramic and stone industries" of

annexure I to SRO No. 468 issued by the Government on 1st August, 1977, in exercise of its powers u/s 5 of the Act, P.C.C. poles tiles, bricks

and hollow blocks were exempted from payment of sales tax. This SRO was to take effect on 5th July, 1968 and was to remain in force till 31st

March, 1977. On 15th May, 1978, the Government issued another SRO being No. 267, exempting certain goods mentioned in annexure I to it

from the payment of sales tax in exercise of its aforesaid powers u/s 5 of the Act. As per entry No. 12 under the same general head ""cement,

ceramic and stone industries"", whereas P.C.C. poles, tiles and hollow blocks were again exempted from payment of sales tax; bricks were not. By

virtue of these writ petitions, the petitioners seek to challenge the constitutional validity of Section 5 of the Act as well as that of SRO No. 267 as

also the legality of the notices issued pursuant thereto on the grounds : firstly, that Section 5 suffers from the vice of excessive delegation of powers,

in that it gives uncanalised and unguided powers to the Government to select goods for exemption from payment of sales tax and is thus violative of

Article 14 of the Constitution of India, hereinafter to be referred to as the Constitution ; secondly, that Section 5 is violative of Articles 19 and 301

of the Constitution as well; thirdly, that the impugned SRO is violative of Article 14, in that manufacturers of bricks and manufacturers of tiles being

similarly circumstanced and there being also no difference in the process of manufacturing of tiles and that of bricks, the SRO is discriminatory in

character; fourthly, that the notices issued to the petitioners to either submit their accounts or to pay the sales tax with effect from 1st April, 1977,

are illegal, as no tax can be imposed retrospectively ; and fifthly, that SRO No. 468 not having been superseded by the impugned SRO, or for that

matter by the SROs that came to be issued subsequently, the petitioners continue to enjoy exemption under it even in respect of the sale of bricks.

In the premises, they have prayed that Section 5 of the Act and SRO No. 267 be struck down and the respondents prohibited from levying or

recovering any sales tax on the sale of bricks.

3. The respondents' case, however, is that Section 5 cannot be discriminatory in nature, merely because it gives a discretion to the Government in

selecting persons or objects it will exempt from payment of tax, for, in taxing statutes, the legislature has wide powers of classification of such

person or objects. This classification is a matter of details and the power to work these details has to be delegated to the Government. To tax

something, it is not necessary to tax everything. Sections 4 and 5 being inextricably interlinked and constitutional validity of Section 4 having been

already upheld by this court, no challenge can be thrown to the constitutional validity of Section 5 as well. SRO No. 468 having spent its life on

31st March, 1977, there could be no question of levying sales tax on the sale of bricks with effect from 1st April, 1977, retrospectively. SRO No.

267 is neither violative of article 14 nor of Articles 19 and 301. Manufacturers of bricks and manufacturers of tiles cannot be said to be similarly

situated. Brick industry is a sufficiently old industry, which has established its firm roots in the economy of the State. As compared to it, tile industry

is yet to take its roots in the economy of the State and needs adequate incentive at the hands of the Government, more so, when tiles are sold at a

higher price as compared to bricks.

4. Whereas Section 4 of the Act is the charging section, Section 5 empowers the Government to grant exemption in the payment of sales tax.

These sections, in so far as they are relevant for the present discussion, may be extracted as below :

4. Liability to tax under this Ad.'-(1) Subject to the provisions of this Act, every dealer except the one dealing exclusively in goods declared tax-

free u/s 5, shall pay for each year tax on his total turnover at a rate not exceeding twelve per cent of such turnover as may be determined by the

Government and notified by the Government in the Government Gazette and such tax shall be charged on the sale of goods once only:

...

5. Exemption from taxation.-The Government may, subject to such restrictions and conditions as may be prescribed, including conditions as to

licence and licence fees, by order exempt in whole or in part from payment of tax any class of dealers or any goods or class or description of

goods.

5. Constitutional validity of Section 4 was challenged before a Full Bench of this Court in Writ Petitions Nos. 93 and 99 of 1972, titled Glacier

Cold Storage and Ice Mills v. Assessing Authority 1974 JKL 531 , on the ground that it gave unguided and uncanalised powers to the

Government to select the Articles to be taxed and to fix the rate of tax to be charged on them. The Full Bench, relying upon various decisions of

the Supreme Court and the High Courts held Section 4 to be constitutionally valid on the grounds : firstly, that the State does not have to tax

everything in order to tax something secondly, that under a taxing statute the State has wide powers of classification and that the power of working

details regarding the subjects to be taxed and fixation of the rate of tax, which in turn depends upon the social, economic and administrative

considerations, has to be left to the Government; and thirdly, that the maximum rate of tax fixed by a taxing statute by itself provides sufficient

guidelines to save it from the attack of unconstitutionality.

6. Dealing with the question of delegation of powers to Government in taxing statutes, their Lordships in *Hiralal Rattanlal Vs. State of U.P.* and

Another etc. etc., had observed :

The only remaining contention is that the delegation made to the executive u/s 3-D is an excessive delegation. It is true that the legislature cannot

delegate its legislative functions to any other body. But subject to that qualification, it is permissible for the legislature to delegate the power to

select the persons on whom the tax is to be levied or the goods or the transactions on which the tax is to be levied. In the Act, u/s 3 the legislature

has sought to impose multi-point tax on all sales and purchases. After having done that it has given power to the executive, a high authority and

which is presumed to command the majority support in the legislature, to select for special treatment dealings in certain class of goods. In the very

nature of things, it is impossible for the legislature to enumerate goods, dealings in which sales tax or purchase tax should be imposed. It is also

impossible for the legislature to select the goods which should be subjected to a single point sales or purchase tax. Before making such selections

several aspects such as the impact of the levy on the society, economic consequences and the administrative convenience will have to be

considered. These factors may change from time to time. Hence in the very nature of things, these details have got to be left to the executive.

7. The law is thus well-settled that in so far as fixing of the maximum limit of the rate of tax is concerned, it cannot be left to the discretion of the

Government, but has to be fixed by the legislature itself. But, in so far as the persons or the goods to be taxed and the rate of tax to be charged on

them is concerned, it being a matter of details depending upon the ever changing

social, economic, administrative and fiscal conditions, it has to be left to the Government, which in these matters should be a better judge than the legislature. This rule must apply with equal force to the provisions

regarding exemptions as well, for, whom not to tax or what not to tax, necessarily implies granting of exemption from tax.

8. In *Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI)*, , which is an authority direct in point, an almost identical provision had come up

for their Lordships' interpretation. In that case, the constitutional validity of Rule 8 of the Central Excise Rules framed by the Central Government in

exercise of its rule-making power u/s 37 of the Central Excises and Salt Act, 1944, had been challenged by the petitioners. By virtue of Section 38

of the said Act, rules made u/s 37 were given statutory recognition of having the effect as if enacted in the Act itself. Rule 8 read as under :

Power to authorise exemption from duty in special cases.'-(1) The Central Government may from time to time, by notification in the Official

Gazette, exempt subject to such conditions as may be specified in the notification any excisable goods from the whole or any part of the duty

leviable on such goods.

(2) The Central Board of Revenue may by special order in each case exempt from the payment of duty, under circumstances of an exceptional

nature, any excisable goods.

9. The grounds of challenge thrown to this rule were summed up by their Lordships in these words :

...It is contended that Rule 8 of the Central Excise Rules, 1944, under the Act, vests the Government with unguided power wholly or partially to

exempt any goods from the duty leviable under the Act and is, therefore, clearly discriminatory as against the petitioner. The Government

notifications exempting the society, or such other similar societies, as may hereafter come into existence, have the effect of violating the petitioners'

fundamental rights under Articles 14 and 19(1)(f) and (g) of the Constitution. It is also contended that the power conferred upon the Government

under the Rules aforesaid, being unguided and uncontrolled, goes beyond the permissible limits of a valid delegation and is, therefore, void.

10. This challenge was negatived by their Lordships and Rule 8 was held to be constitutionally valid with these observations:

The petition is substantially based upon the contention that Rule 8 suffers from the vice of excessive delegation of powers to the Central

Government to exempt partly or wholly any excisable goods and, secondly, that the power even if constitutional has been invalidly exercised in so

far as the notifications aforesaid containing the exemption operating in favour of the 5th respondent have been made. In our opinion, there is no

substance in either of the two contentions. Rule 8 is as much a part of the statute as Section 37(2), Clause (xvii). It is always open to the State to

tax certain classes of goods and not to tax others. The legislature is the best judge to decide as to the incidence of taxation, as also to the amount

of tax to be levied in respect of different classes of goods. The Act recognises and only gives effect to the well-established principle that there must

be a great deal of flexibility in the incidence of taxation of a particular kind. It must vary from time to time, as also in respect of goods produced by

different processes and different agencies. The same principle has been recognised in Section 23 of the Sea Customs Act (8 of 1878), which has

been applied to excise duty also, by virtue of Section 12 of the Act. The latter section has authorised the Central Government to apply the

provisions of the Sea Customs Act to excise duty imposed by the Act, with such modifications and alterations as it may consider necessary or

desirable to adopt them to circumstances. It is a function of the State, in order to raise revenue for State purposes, to determine what kind of taxes

shall be levied and in what manner. Its function, therefore, is to raise revenues for public purposes. The State naturally is interested in raising all the

revenue necessary for public purposes, without sacrificing the legitimate interests of persons and groups, who deserve special treatment at the

hands of the State for reasons, which the State may determine, entitling them to be placed in a special class....

11. Rule 8 is couched in a language almost identical to the one employed in Section 5 of the Act. This authority is, therefore, a complete answer to

the petitioners' contention that Section 5 is violative of Article 14 of the Constitution. This ground consequently fails.

12. The other ground that Section 5 is violative of Articles 19 and 301 as well, was not pressed during the course of arguments. In fact nothing

was shown to us as to how it contravened these two provisions. This ground also fails.

13. It is well-settled that all are equal before the law and are entitled without any discrimination to equal protection of the law. Class legislation is, therefore, forbidden. But, reasonable classification for giving a differential treatment to some persons or things placed in a group vis-a-vis the others left out of it, is permissible and would satisfy the guarantee of equal protection of the law, provided there exists a nexus between such classification and the object sought to be achieved by the law. In the present case, the petitioners' contention is that brick manufacturers and tile manufacturers are similarly situated, because all of them belong to the same category of small-scale industrial units and there being also no difference in the process of manufacturing bricks and manufacturing tiles, SRO No. 267 has the effect of subjecting the manufacturers of bricks to hostile discrimination by taking away the exemption from the payment of sales tax, in so far as the sale of bricks is concerned. In view of the stand taken by the respondents in their counter-affidavit, however, it is not possible to hold that brick manufacturers and tile manufacturers are similarly situated. The mere fact that manufacturers of bricks and manufacturers of tiles belong to the same category of small-scale industrial units, or that the process for manufacturing bricks and tiles is the same, will not necessarily make them similarly situated. It is in the respondents' counter-affidavit that tile industry in the State is a new industry, which does not have a firm footing in the economy of the State. It, therefore, requires some incentive to boost it so that it is able to stand on its own feet. As compared to it, brick industry is an old one which is now well-established and requires no incentive from the Government. This allegation has not been denied by the petitioners in their rejoinder affidavit. Viewed thus, brick manufacturers and tile manufacturers cannot be said to be similarly situated. Placing the manufacturers of tiles in a separate class cannot also be said to be unreasonable, because industrialisation of the State being the declared policy of the Government, the said classification has a clear nexus with the object sought to be achieved by the impugned SRO, which has been manifestly issued in furtherance of the aforesaid policy of industrialisation. We are, therefore, clearly of the opinion that SRO No. 267 is not violative of Article 14. Consequently, the third ground also fails.

14. Reading Sections 4 and 5 of the Act together, among others, two conclusions can be legitimately drawn. These are : (1) sales tax is chargeable

on every article sold by a dealer, unless it has been specifically exempted from its payment by the Government in exercise of its powers u/s 5 ; and

(2) sales tax shall be charged on each article not so exempted, according to the rate fixed for it by the Government in exercise of its powers u/s 4.

15. Exemption being in the nature of a concession, its grant is entirely in the discretion of the Government and no dealer can claim it as a matter of

right. Exemption once granted can also be withdrawn by the Government later on, though in granting or withdrawing it, the Government will have

to observe the rule of equality enshrined in Article 14 of the Constitution. There can be no such rule : once exemption always an exemption. As

already noticed, SRO No. 468 under which bricks were exempted from payment of sales tax, had to remain in force till 31st March, 1977. There

was, therefore, no question of, rather there was no point in, specifically superseding it by virtue of the impugned SRO No. 267, or for that matter

by virtue of all other SROs issued subsequent to it, for the period posterior to 31st March, 1977. Immediately after SRO No. 468 had ceased to

have any force, brick sellers, including the petitioners, had by force of Section 4 automatically become liable to pay sales tax on the sale of bricks.

In this view even the question of charging sales tax from the petitioners retrospectively with effect from 1st April, 1977, by issuing demand notices

to them after 1st April, 1977, did not arise. So long as the fact remained that sales tax was leviable on the sale of bricks conducted after 31st

March, 1977, charging such tax from them could not become retrospective in effect by reason of the mere fact that notices demanding the tax from

them were issued to them long after 1st April, 1977. There is thus no force in grounds Nos. 4 and 5 as well.

16. All the grounds urged in support of the writ petitions having failed the writ petitions also fail, which are dismissed accordingly, but in the

circumstances of the case without any order as to costs. The stay orders issued by the court earlier, shall stand vacated.

Mufti Baha-Ud-Din Farooqi, C.J.

17. I have had the advantage of going through the judgment proposed to be delivered by my learned brother Kotwal, J. I agree with him that these

writ petitions have no merit in them and must be dismissed. I would, however, like to say a few words of my own as regards the contention that the

impugned SRO is violative of Article 14 of the Constitution of India.

18. Before dealing with the contention, it would be necessary to say a few facts. Tiles and bricks were clubbed together and exempted from

payment of sales tax. The exemption continued till the impugned notification was issued. The impugned notification had the effect of withdrawing

the exemption in so far as it related to the sale of bricks. The argument was that the act of withdrawal was discriminatory and rendered the

impugned notification void and illegal under Article 14 of the Constitution. The settled principle is that Article 14 forbids class legislation, but it does

not prevent reasonable classification of persons or things for giving differential treatment. The law is also well-settled that the classification once

made cannot be treated to be eternal. The State has the power to carry out reclassification of such persons or things from time to time if the

changed circumstances so require. There is a presumption of constitutionality in favour of the classification or reclassification so made by virtue of

any statute or any order or notification made thereunder. The burden lies on the person challenging such classification to show that being

unreasonable it offends Article 14 of the Constitution. The petitioners have not placed on record any material to show that the classification now

made has no reasonable basis to stand upon. In fact, no factual basis has been laid by the petitioners for the claim that the reclassification is

arbitrary or capricious. The petitioners have nowhere placed on record any material to show that the brick industry was still as much

underdeveloped as the tile industry and that they accordingly deserved equal protection. In the absence of such material, the claim that the brick

industry has been discriminated against by withdrawing the exemption that it previously enjoyed along with the tile industry cannot be said to be

well-founded. The contention must fail.