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**(1972) 12 AP CK 0001**

**In the Andhra Pradesh High Court**

**Case No : Writ Petition No. 3464 of 1971**

Associated Tanners

APPELLANT

Vs

Commercial Tax Officer (OFA)

RESPONDENT

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**Date of Decision : 14-12-1972**

**Acts Referred:**

Constitution of India, 1950 — Article 226, 301, 302, 303, 304

**Citation : (1974) 33 STC 588**

**Hon'ble Judges : Gopal Rao Ekbote, C.J.;Chennakesav Reddy, J**

**Bench : Division Bench**

**Advocate : P. Babulu Reddy and M.V. Ramana Reddy, for the Appellant; The Fifth Government Pleader, for the Respondent**

**Final Decision : Dismissed**

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## **Judgement**

Gopal Rao Ekbote, C.J.—This is an application filed under Article 226 of the Constitution for the issue of a writ declaring that item 9(b) of the Third Schedule to the Andhra Pradesh General Sales Tax Act, 1957, is unconstitutional and void; further to declare that no tax can be levied under the Central Sales Tax Act on the inter-State sales of tanned hides which have already suffered tax at the untanned stage. A further declaration is sought prohibiting the respondents from enforcing the assessment order of the 1st respondent dated 30th January, 1969, and to direct the respondents to refund the amount already collected.

2. The facts relevant for our purposes are that the petitioner is a tanner who has his tannery at Vizianagaram and is a dealer. The petitioner purchases raw hides and skins in this State and tans the same. He mostly sells such tanned hides in the course of inter-State trade.

3. The 1st respondent by his order dated 30th January, 1969, assessed the petitioner's inter-State sales turnover at Rs. 16,23,194.29 and levied a tax of Rs. 48,695.82 under the Central Sales Tax (Amendment) Act, 1969, hereinafter called "the Central Act". The local purchase turnover of raw hides was assessed

on a turnover of Rs. 7,92,585 and a tax of Rs. 23,777.66 was also levied.

4. The petitioner filed W.P. No. 3236 of 1969 challenging the validity of the Central Sales Tax (Amendment) Act of 1969. The petition, however, was withdrawn in view of the judgment in a batch of writ petitions of this court given in January, 1971. The petitioner now has filed this writ petition in which the validity of the Amendment Act is not challenged. He, however, contends that he is not liable to tax under the Central Amendment Act.

5. The principal contention, which this petitioner raises, is whether item 9(b) of the Third Schedule of the State Act discriminates between hides and skins imported from outside the State and those manufactured or produced in the State. The contention was that item 9(b) provides for the levy of tax on the sale of hides and skins brought from outside the State and tanned inside the State, whereas if the raw hides and skins are locally purchased and tanned, there is no tax leviable on the tanned hides and skins as the untanned hides and skins in such cases alone are taxed. The result of this taxation scheme, it is urged, is that a dealer who brings raw hides and skins from outside the State and tans them locally is taxed on the amount of the sale of such tanned hides and skins, whereas the locally purchased raw hides and skins and tanned are taxed on the amount of the purchase of the raw hides and skins, the price of which compared to the price of tanned hides and skins would be very insignificant. Such taxation scheme, therefore, discriminates against the import of raw hides and skins for bringing them inside the State. This discrimination is offensive to Article 304(a) inasmuch as the goods manufactured or produced locally get a more favourable treatment than the goods imported from other States. Strong reliance was placed upon a decision of the Supreme Court in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*,

6. Now Section 14(iii) of the Central Act declares "hides and skins, whether in a raw or dressed state" as of special importance in the course of inter-State trade. It is thus a declared goods.

7. Section 15(a) of the Central Act would, therefore, be attracted to such declared goods and the State shall not be entitled to tax such hides and skins at more than one stage and at the rate of more than 3 per cent.

8. Item 9 relates to hides and skins. Untanned hides and skins, according to it, can be taxed at the rate of 3 paise in the rupee when purchased by a tanner in the State at the point of purchase by the tanner and in all other cases at the point of purchase by the last dealer, who buys them in the State.

9. Tanned hides and skins, which were not subjected to tax as untanned hides and skins, according to item 9(b) are taxed at the rate of 3 paise in the rupee when purchased by a manufacturer in the State at the point of purchase by the manufacturer and, in all other cases, at the point of purchase by the last dealer who brings them into the State.

10. It will immediately be plain that tanned hides and skins are made taxable only in cases where untanned hides and skins from which they are made had not been subjected to tax. It follows that all cases where raw hides and skins are locally purchased by a tanner will be subjected to the tax under item 9(a). If the same untanned hides and skins are tanned by him, then the tanner is not required to pay a further tax under item 9(b) because of the express exclusion provided in that provision as well as because of Section 15 of the Central Act read with Section 6 of the State Act. The case in regard to untanned hides and skins (sic) purchased by a local tanner from outside the State and tanned within the State are taxed on the tanned hides and skins. Although the rate of tax in both the cases is the same, the quantum of tax paid would very much differ. The quantum of tax on the locally purchased untanned hides and skins and then tanned would be only on the purchase price of raw hides and skins which would be comparatively very much less than the price of tanned hides and skins made out of untanned hides and skins purchased from outside the State. The resulting discrimination in levying the tax is not because of the rate of tax but because of the enormous difference between the turnovers of the two commodities taxed as above. It cannot, therefore, be doubted that locally tanned hides and skins made out of locally purchased raw material in the result gets a more favourable treatment than the tanned hides and skins made out of imported untanned hides and skins. The question is, therefore, whether the said discrimination offends Article 304(a) of the Constitution.

11. Before we consider the principal contention it is better to get out of our way the contention raised by the counsel for the revenue. His contention was that the discrimination is the necessary result of Section 15 of the Central Act. The State Legislature was compelled to discriminate because of the restriction imposed on it by Section 15 of the Central Act. The submission was that since the Legislature could not have levied the tax at more than one stage on the hides and skins, whether in a raw or dressed state, and not at more than 3 per cent, it was compelled to make this discrimination. Since the discrimination is not made by the State on its own but is made because of the compelling restrictions imposed by Section 15 of the Central Act, the provision cannot be said to have offended Article 304(a) of the Constitution. Reliance in support of this contention was placed on *Anwaraula AM. Ghouse and Company v. State of Tamil Nadu* [1971] 28 S.T.C. 610, a decision of the Madras High Court.

12. No doubt the learned Judges in that case observed that:

As a result of the import of this restriction on the State Legislature, where it provides for levy of tax at the point of the last purchase of raw hides and skins, it is not competent to impose a further tax on the first sale of dressed hides and skins made out of raw hides and skins which had suffered tax earlier. But for this restriction, the single point levy on declared goods could not be effectuated. We are of the opinion, therefore, that while the State would perhaps very much wish to levy tax on the dressed hides and skins as well, it was unable to do so

because of the restriction forged upon it by the terms of Section 15(a) of the Central Act. If this resulted in a discrimination, as has been contended for the petitioners, it is not one which is made by the State Legislature, and it is not one which the State Legislature can help. It is the indirect result of the impact of Section 15 read with Section 14 of the Central Act on the State's power to tax sale or purchase of declared goods.

13. The learned Judges therefore held that the impugned provision did not offend Article 304(a) of the Constitution. The learned Judges concluded thus:

While, therefore, the two commodities are distinct and different, viewed as declared goods and because of the restriction on the local Legislature forged by Section 15 of the Central Act, it cannot be said that there is any discrimination such as inhibited by Article 304(a).

14. Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, was relied upon by the petitioner. The following observation in the said judgment alone was referred to and that too in support of the contention that the two commodities are different:

We do not consider that the mere circumstance of a tax having been paid on the sale of such hides or skins in their raw condition justifies their forming goods of a different kind from the tanned hides or skins which had been imported from outside.

15. It was further observed in the abovesaid Madras High Court case:

It does not appear that the impact of sections 14 and 15 of the Central Act on the scheme of local taxation of declared goods was brought to the notice of the Supreme Court. With due respect, we are inclined to think, in that case, the Supreme Court was looking at the matter from an entirely different angle and not from the standpoint of the two sections we mentioned in the Central Act.

16. With due respect to the learned Judges of the Madras High Court we find it difficult to share this view. Merely because the Supreme Court did not refer to sections 14 and 15 of the Central Act, we do not think that would have made any difference in the opinion of the Supreme Court. The real question is whether the impugned provision cannot be said to offend Article 304(a) merely because Section 15 of the Central Act imposes certain restrictions on the power of the State to regulate inter-State commerce.

17. Article 301 ensures freedom of trade, commerce and intercourse not only of inter-State but of intra-State as well. That is of course subject to the provisions of Part XIII. The object is only to ensure that the unity of India should not be broken up by any internal barriers or restrictions which directly and immediately affect the free flow of trade, commerce and intercourse.

18. Article 302, however, relaxes the limitation in favour of Parliament by empowering it to impose such restrictions on the freedom guaranteed by Article

301 "as may be required in the public interest", except that it cannot give any preference to any State over another or discriminate between one State and another, unless such preference or discrimination is necessitated by a situation arising from scarcity of goods in any part of India [see Article 303(2)]. In other words, while Article 302 provides a relaxation from the limitation imposed upon Parliament by Article 301, a restriction is put upon that relaxation by clause (1) of Article 302, while clause (2) of Article 303 carves out an exception to the restriction imposed by clause (1) of that article.

19. In so far as State Legislature is concerned, apart from the limitation imposed by Article 301, clause (1) of Article 303 imposes a further limitation, namely, that it cannot give preference or make discrimination between one State and another.

20. Article 304, however, provides two exceptions. The first is that it may impose on goods imported from other States any tax to which similar goods manufactured or produced in its own State are subject, but "not so as to discriminate between the imported goods and the goods manufactured and produced in the State". We are not concerned here with the second relaxation. Article 304(a) therefore stripped the States of ability to advance their own commercial interest at the expense of the nation. It seems to put an end to the economic autarchy of the States. If there were no provisions like Article 304, each State could shut out the products of other States or admit them only on conditions. But this is precisely the sort of balkanization of the economy that the Constitution sought to end. It is not for the States, in pursuit of their local interests, to decide what products from without may cross their boundaries or to admit products on condition that they satisfy local economic policy. While the States may impose permissible tax but they lack power to retard, burden or counteract the flow of commerce for their economic advantage. The Constitution in the apt words of Cardozo, J., "was framed upon the theory that the peoples of the several States must sink or swim together, and that in the long run prosperity and salvation are in union and not division".

21. The basic principle is that the States are not separable economic units, which may place themselves in positions of economic isolation. The State therefore cannot legislate inimically to the national commerce. The provisions of Part XIII are clearly intended to promote a system of free trade among the States, and to do so by denying to the States the power to impede the free flow of commerce from State to State.

22. What is thus plain is that while Article 302 relaxes the restriction placed by Article 301 in favour of Parliament, nevertheless Article 303 restricts that relaxation referred to in Article 302. Article 303 enjoins that no preference can be given to one State over another nor any discrimination made between one State and another.

23. Section 15 of the Central Act has, therefore, to be viewed in the background of these articles. So seen, it would be plain that the Central Act can in no case

permit the State Legislature to discriminate between one State and another by its taxation policy, because the Parliament itself is inhibited from making any discrimination between one State and another. If Article 304(a) itself forbids State action "by its own force", how is it that the Parliament by its consent can give that action validity? What follows therefore is that the restrictions imposed by Section 15 on the State Legislature would not amount to authorising the State to make discrimination in its tax statute between one State and another. Nor the Parliament, is empowered to so authorise as it itself cannot make discrimination between one State and another. The restriction not to make such discrimination except in certain circumstances is not only imposed by the Constitution on the Parliament by Article 303, but a similar restriction is put upon the State Legislatures by Article 304. Thus any restrictions imposed upon the State Legislature validly by the Parliament acting within its power would not absolve the State Legislature from avoiding any conflict with Article 304(a). The State Legislature therefore has not only to comply with the restrictions imposed by the Parliament within its power but also has to satisfy the requirement of Article 304(a). In other words, the State Legislatures must have to legislate without incurring displeasure of Section 15 of the Central Act on the one hand and without inviting the wrath of Article 304(a) on the other. Legislation has to be made by the States within these restrictions. Any amount of consent even granted by the Parliament would not validate a State Act which is in conflict with Article 304(a).

24. We do not, however, consider that Section 15 of the Central Act either authorises or gives consent to the State Legislature to enact a law in the face of Article 304(a) without it being challenged as inconsistent with Article 304(a).

25. The result is that even if the State Legislature can be said to have been forced to make a law of the kind of item 9(b) of the Third Schedule of the State Act because of Section 15 of the Central Act, even then the validity of such provision can be challenged under Article 304(a). It may satisfy the requirement of Section 15 of the Central Act, but, if it fails to stand to the test of Article 304(a), it has to be struck down as an unconstitutional piece of legislation. We are, therefore, not inclined to accept the contention that since item 9(b) of the Third Schedule has been enacted because of Section 15 of the Central Act, it is immune from the attack under Article 304(a) of the Constitution.

26. We have then to consider the principal contention of the counsel for the petitioner referred to above.

27. The Supreme Court in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, was concerned with a similar question as is posed by this case. Rule 16(2) of the Madras General Sales Tax Rules was being attacked as violative of Article 304(a) on the ground that although the rate of tax for raw hides and skins purchased in the State and the tanned hides and skins prepared out of raw hides and skins purchased and brought from outside the State is the same, nevertheless in effect the sales tax on tanned hides or skins imported from

outside is made subject to a higher tax because of the value of the tanned hides and skins, it is discriminatory and unconstitutional. The Supreme Court upholding that contention said:

The grievance arises on account of the amount of tax levied being different on account of the existence of a substantial disparity in the price of the raw hides or skins and of those hides or skins after they had been tanned, though the rate is the same u/s 3(1)(b) of the Act. If the dealer has purchased the raw hides or skins in the State, he does not pay on the sale price of the tanned hides or skins; he pays on the purchase price only. If the dealer purchases raw hides or skins from outside the State and tans them within the State, he will be liable to pay sales tax on the sale price of the tanned hides or skins. He too will have to pay more for tax even though the hides and skins are tanned within the State, merely on account of his having imported the hides and skins from outside, and having not therefore paid any tax under Sub-rule (1).

28. Observing that if the quantum of tax had been the same, there might have been no case for grievance by the dealers of the tanned hides and skins, which had been tanned by bringing the raw materials from outside the State, the Supreme Court opined that "the provisions of Rule 16(2) discriminate against the imported hides or skins which had been purchased or tanned outside the State and that therefore they contravene the provisions of Article 304(a) of the Constitution".

29. Thus the test applied was the quantum of tax which is required to be paid in the two situations which would make it discriminatory although the rate of tax may be the same.

30. The underlying principle of the said Supreme Court decision seems to us to be that Part XIII was not only designed or intended to outlaw a State tax bearing directly on inter-State commerce but it is also designed to exclude the tax which has the effect of blocking or impeding it. The State tax in that case was held to produce such effects. In other words, the basic goal of those provisions was considered to be to place inter-State and local commerce, so far as possible, upon a plane of tax equality. It was intended to prevent an inter-State transaction from being saddled with an aggregate tax burden higher than it would have been if it had taken place in the same volume and even the same distance within a single one of the pertinent States. It is under this approach that the tax levied by the Madras Sales Tax Act which when levied by the State was found to have been more heavy upon inter-State commerce than upon the local commerce. In other words, in determining the question whether the tax is discriminatory within the meaning of Article 304(a), the Supreme Court took into account the "effect" of the tax on the flow of the goods from outside the taxing State.

31. If this decision had remained unaffected by subsequent decisions, we would have had no difficulty whatsoever in holding, in view of the similarity of the

provisions, that the said Supreme Court decision completely governs the instant case and, therefore, we could have declared item 9(b) of the Third Schedule as discriminatory and unconstitutional. There are, however, at least two subsequent Supreme Court decisions, which though not expressly discard the test applied by the said Supreme Court decision, but after explaining it away they applied altogether a different test which in effect disapproves and negatives the test applied in the said case. These decisions, which we will consider immediately, apply the test of the similarity in rate of tax rather than the "quantum" of tax which is required ultimately to be paid on the transactions in the two situations. If the rate of tax is the same, they seem to hold that it would not be discriminatory even though the amount of tax may substantially differ from one with the other.

32. In *State of Madras Vs. N.K. Nataraja Mudaliar*, the Supreme Court observed that the somewhat tortuous scheme of levying tax on inter-State transactions and making it available to the State which levied it, in effect countenances levy of different rates of tax on inter-State transactions in similar goods. It is upon the prevalence of different rates of tax which, subject to adjustments, and incorporated in the Central Sales Tax Act, that the argument of the assessee was considered. Referring to *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, and *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, the Supreme Court said:

It must be taken as settled law that the restrictions or impediments which directly and immediately impede or hamper the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301 and, subject to the other provisions of the Constitution, they may be regarded as void." 33. The argument was then advanced that by imposing tax on sales no restriction hampering trade is imposed. Referring to the passage from *Gajendragadkar, J.*'s opinion in *Atiabari Tea Co. Ltd. v. The State of Assam and, Ors.* [1961] 1 S.C.R. 800, and a passage from the opinion of *Bachawat, J.*, in *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, the Supreme Court observed:

It must, therefore, be regarded as settled law that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so.

34. The Supreme Court further observed:

The flow of trade does not necessarily depend upon the rates of sales tax: it depends upon a variety of factors, such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on trade.

35. The Supreme Court then said:

Prevalence of differential rates 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.

36. Since the High Court had placed reliance on two decisions interpreting Article 304(a), the Supreme Court considered them. It is these two decisions that were relied upon by the counsel for the petitioner before us also.

37. The first case considered by the Supreme Court was *Firm A.T.B. Mehtab Majid and Company v. State of Madras and Anr.* [1963] 14 S.T.C. 335 (S.C.). The Supreme Court referred to the contention of the taxpayer in that case and observed as follows:

The taxpayer contended in *Firm A.T.B. Mehtab Majids case* [1963] 14 S.T.C. 335 (S.C.), that the tanned hides and skins imported from outside and sold inside the State were under Rule 16 of the Madras General Sales Tax Rules subject to a higher rate of tax than the rate imposed on hides and skins tanned and sold within the State and this discriminatory system of taxation offended Article 304(a) of the Constitution. This court accepted the contention and held that Rule 16(2) discriminated against imported hides or skins which had been purchased or tanned outside and, therefore, it contravened Article 304(a) of the Constitution.

38. We are bound to say that in *Firm A.T.B. Mehtab Majid's case* [1963] 14 S.T.C. 335 (S.C.), the rate of tax both on the undressed hides and skins and the tanned hides and skins purchased from outside the State or the raw material being purchased from without but tanned inside the State was the same. It is already noticed that in that case although the rate of tax in both the cases was the same, the provision was found discriminatory because the effect of the tax on tanned hides and skins brought from outside was substantial and found hampering the flow of the goods from outside the taxing State.

39. The second case considered by the Supreme Court was *A. Hajee Abdul Shakoor and Company Vs. State of Madras*, which was decided almost on the same lines as *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, Commenting upon these two decisions, the Supreme Court said:

Imposition of differential rates of tax by the same State on goods manufactured or produced in the State and similar goods imported in the State is prohibited by that clause. But where the taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Article 304(a) has no application.

40. In *Rattan Lal and Co. and Another Vs. The Assessing Authority and Another*, the Supreme Court again reiterated that "where the rate of sales tax is the same for imported goods and local goods, Article 304 of the Constitution is not violated. Because imported goods might be more expensive by reason of freight, etc., or intermediate sales having taken place and the burden of tax will consequently be heavier is not inequality caused as a result of the tax but in their importation". *State of Madras Vs. N.K. Nataraja Mudaliar*, was followed. 41.

The Supreme Court said:

Here also the tax is at the same rate and therefore the tax cannot be said to be higher in the case of imported goods. It may be that when the rate is applied the resulting tax is somewhat higher but that does not offend against the equality contemplated by Article 304. That is the consequence of ad valorem tax being levied at a particular rate. So long as the rate is the same, Article 304 is satisfied. Even in the case of local manufacturers if their cost of production varies, the net tax collected will be more or less in some cases but that does not create any inequality because inequality is not the result of the tax but results from the cost of production of the goods or the cost of their importation. This ground, therefore, has also no substance.

42. Two conclusions flow from the abovesaid two decisions of the Supreme Court. First: every tax does not interfere with the freedom of trade guaranteed by Article 301; it does so only if it "directly and immediately" restricts or hampers the free flow of trade, commerce or intercourse. The discrimination must be direct and arise out of the taxing provisions themselves. Any discrimination arising out of any indirect effect is not within the purview of Article 304(a). In other words, a State law with respect to taxation cannot be said to infringe the Constitution merely because it operates unequally in the different States -- not from anything done by the law-making authority, but on account of inequality of conditions obtaining in the respective States. Thus, if a general rule laying the rate of tax is made applicable to imported as well as local goods alike but which operates or may operate unequally and with different results in the several States, it does not offend against the provisions against discriminating taxation. Second: If the rate of tax is the same, Article 304(a) would be satisfied.

43. It can be seen that it is the rate of tax to which one must look to and not the operation of the tax in practice or the result of the tax. What must necessarily follow from these two decisions is that since sales tax is imposed on the transaction of sale of goods and not on their movement, normally it does not directly impede the free movement of goods and would not offend against Article 301. But by reason of Articles 303(1) and 304(a), a sales tax, whether imposed by the Union or by a State, cannot discriminate between one State and another. The rate of tax, if it is the same for imported as well as local goods, then as the taxation does not directly and immediately restrict or hamper the free flow of trade, commerce or intercourse, it is not offensive to Article 304(a). The effect of the result of the operation of such tax cannot make out a case for discrimination.

44. The result, therefore, is that the two later Supreme Court decisions displace the earlier decision in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*. True the said decisions do not expressly say so but the way in which that decision was considered and explained and when the two abovesaid propositions are quite contrary to the one laid down in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, it cannot be said to be thereafter holding the field or effective. Respectfully following the later Supreme Court

decisions, we do not experience any difficulty in holding that item 9(b) of the Third Schedule of the State Act is not discriminatory and does not offend Article 304(a) inasmuch as the same rate of tax, i. e., 3 per cent, is applicable to both the commodities, local and brought from outside.

45. For the reasons given, we would dismiss the writ petition with costs. Advocate's fee Rs. 100.