

(1986) 03 MAD CK 0017

In the Madras High Court

Case No : Writ Petition No's. 5800 of 1979

E.I.D. Parry India Ltd. and Others

APPELLANT

Vs

Union of India and Another

RESPONDENT

Date of Decision : 14-03-1986

Acts Referred:

Constitution of India, 1950 — Article 13, 14, 19(1), 201
Electricity (Supply) Act, 1948 — Section 46, 49
Sales of Goods Act, 1930 — Section 64
Tariff Act, 1934 — Section 4

Citation : (1987) 27 ELT 64

Hon'ble Judges : Sathiadev, J

Bench : Single Bench

Advocate : S. Ramasubramaniam, King and Patridge and K. Alagiriswami, for the Appellant; P. Narasimham, Addl. Govt. Standing Counsel and S. Ramalingam, for the Respondent

Judgement

1. In all these writ petitions, petitioners have sought for issue of a writ of Mandamus to forbear respondents from demanding and collecting the

Central Excise Surcharge of three paise per unit as provided in Part V of Tamil Nadu Act I of 1979, as the said levy is ultra vires and void and for

consequential directions to be issued.

2. Petitioner in W.P. No. 5800 of 1979 claims as follows :- It is engaged in manufacturing different products in its factories at Ennore, Ranipet and

Nellikuppam and for availing of high tension current supply, it had entered into agreements with Tamil Nadu Electricity Board. Tariff rates have

been fixed based on S. 46 of the Electricity Supply Act, 1948. Section 49 thereunder provides as to what are the factor that should be taken into

account for fixing tariffs. Along side the said Act, Tamil Nadu Government had

enacted Tamil Nadu Act 14 of 1946 declaring electricity as one of the essential articles. This Act was replaced by Tamil Nadu Act 29 of 1949 known as Tamil Nadu Essential Articles Control and Regulationing (Temporary Powers) Act, 1949, which came into force on 30.9.1950, and therein electricity is a notified article. Based on the tariff fixed under the said Act, petitioner had been paying consumption charges. While so, by Finance Act 1978, Central Excises and Salt Act was amended by including two new items, being 11(D) and (E) to the Schedule of the said Act. Item 11(E) makes electricity as an excisable goods within the meaning of the said Act and stipulates an excise duty of two paise per kilo watt of power. This finance Act came into force from 1.3.1978 and, therefore, the said duty has become payable by the purchasers of electricity. It is to recover the said duty from the customers, Tamil Nadu Government enacted Tamil Nadu Revision of Tariff Rates on Supply of Electrical Energy Act 1978 (Tamil Nadu Act 1 of 1979) which received the assent of the President on 23.2.1979, but by Section 1(2) it has been given retrospective effect on and from 1.3.1978. The sole object in enacting the said Act, as stated in its statement of objects and reasons, is to give retrospective effect, so that the excise duty which has become recoverable from 1.3.1978, could be recovered. Except to provide for Central Excise Surcharge of three paise per unit, in all other respects no change had been brought about by the said Act regarding tariffs recoverable under Tamil Nadu Act 29 of 1949.

3. Although electricity falls under items 38 of List 3 to Schedule VII to the Constitution, as the Union Government had enacted the Electricity Supply Act 1948, prescribing the norms and guidelines for a uniform Grid Tariff to be evolved, and the State Act being repugnant to the Central Act, it is invalid. Regarding the assent claimed to have been received from the President under Art. 201, it is void, because no reasons have been made out as to why a different law from the existing Central Law should obtain in Tamil Nadu. The impugned Act is also hit by Art. 13, 14 and 19(1)(g) of the Constitution. When a demand was made on 3.9.1979, for the month of August, 1979 which included the so-called arrears relating to Central Excise Surcharge, petitioner pointed out the as Special tariffs govern the supply of energy, the demand is not proper. Fourth respondent

has sent a communication on 15.10.1979, reiterating that the surcharge of three paise per unit is leviable on and from 1.3.1978 and if not paid

service connection would be disconnected, and therefore, petitioner had to institute this writ petition. The Special tariff prescribed in the impugned

Act is unconstitutional for the reasons stated above, and if really the intention was to recover the Central Excise payable by the Board, it could

have invoked Section 64-A of the Sale of Goods Act and need not have enacted this legislation. The Excise Duty having been fixed at two per

cent per unit, under the impugned Act, the recovery of Central Excise surcharge is fixed at three paise per unit and, therefore, the recovery of one

per cent in excess with retrospective effect is patently illegal.

4. On behalf of the second respondent, it is stated that as Tamil Nadu Act 29 of 1949 did not expressly provide for retrospective revision of tariff

rates, Tamil Nadu Act 1 of 1979 was enacted for the purpose of recovering the excise duty from the consumers on and from 1.3.1978. The

Legislature was competent to enact the said Act under Entry 53 to List 2 being "Taxes on consumption or sale of electricity" as well as under Entry

38 in List 3 being "electricity". Apart from recovering 2 per cent being the excise duty, as Central Excise duty is payable on coal and expenses are

also incurred in laying pipe line, etc. the levy was fixed at three per cent.

5. Respondents 3 and 4 reiterate the stand taken by second respondent and would state that the Board had also to make good the loss suffered by

it due to loss of energy on the transmission and also to cover Central Excise duty on coal and to meet expenses in laying lines, etc. As for

repugnance, it is stated that the assent having been received under Art. 201, Tamil Nadu Act 1 of 1979 would prevail over Electricity Supply Act

1948 and that Legislation had been undertaken for the purpose of retrospective levy. On the petitioner relying upon Section 64-A of the Sale of

Goods Act, it is stated that he cannot question the wisdom of State legislature in passing the enactment, even though a provision exists in Sale of

Goods Act for recovering the amounts paid by Electricity Board towards Central Excise.

6. Mr. S. Ramasubramaniam, learned Counsel appearing for some of the petitioners, take the following points :

(i) Retrospective application under Tamil Nadu Act 1 of 1979 is invalid hereinafter

referred to as "Tariff Act".

(ii) There are no guidelines prescribed under the said Act for fixation of Tariff.

(iii) When excise duty was fixed at two paise per unit, to recover it at the rate of three paise per unit is illegal and has no legal sanction under the

Central Excises and Salt Act.

7. Mr Alagiriswami, learned counsel appearing for some of the petitioners, submits that the validity of the Act is not questioned, but while under

Excise Act, items 11(E) having provided only for two paise, under the Tariff Act, it could not be collected at three paise, particularly when the

Schedule to the Act clearly states that the demand at this rate is towards "Central Excise Surcharge". Amount expended towards loss of energy or

cost incurred in laying power lines etc. would not come within the description of "Central Excise Surcharge" and hence, even the assent granted

under Art. 201 would not serve the Tariff Act.

8. On the first point regarding retrospective applicability of the Tariff Act, in J.K. Jute Mills Co. Ltd. Vs. The State of Uttar Pradesh and Another,

, it was held that in exercise of the power conferred on a Legislature to enact a law with reference to a topic entrusted to it under Schedule VII to

the Constitution, it will be competent for the legislature to enact a law, which is either prospective or retrospective. S.C. 2037, it was held that the

power of the Legislature to pass a law postulates the power to pass it prospectively as well as retrospectively the one no less than the other, and

that would be within the scope of the legislative competence of the legislature and subject to other Constitutional limitations, the power of the

Legislature to enact laws is plenary. in the same volume at page 2299 (Smt. Indira Nehru Gandhi v. Raj Narain) dealing with a retrospective

amendment giving effect to the definition of the word "candidate" and making it retrospective in its application, it was held it is within the

unquestionable powers of Parliament to legislate prospectively or retrospectively, with regard to election matters. There are several other decisions

holding that the Legislature has the power to make laws retrospectively. Hence, on the first point, it was held that retrospective effect given to

Tariff Act is not invalid.

9. On the second contention that there are no guidelines prescribed under Tariff Act, Section 4 of the Act provides as follows :

Power of State Government to amend the Schedule - The State Government may, after taking into account the cost of production of energy, and such other matters as may be prescribed, by notification, amend the provisions of the Schedule to this Act.

The State Government had not published any notification and therefore the one factor which is indicated therein to be taken into account, is the cost of production. It is one of the guidelines indicated and as already held in W.P. 8260 of 1985 etc. dated 3.2.1986, there are sufficient guidelines available under the said Act in fixing tariff.

10. On the next point that more than two paise could not be collected, no doubt in the Tariff Act, the expression used is not quite apposite and

appropriate. Petitioners would state that enabling the levy of excise duty of two per cent under Excise Act to be recovered from consumers would

not authorise the State Government to collect one paise over and above the excise duty. Nothing precluded the State Government from stating that

the three paise demanded is for reimbursing the excise duty suffered by the Board. Apart from paying the excise duty of two paise covered by item

11(E) of Excise Act, the Board was also liable to pay excise duty on coal. The calculation sheet produced will show that Board has taken into

account the excess rate it had to pay to Neyveli Lignite Corporation and the increase in escalation charges, payable to Neyveli Lignite Corporation

and other incidental charges. The entirety of one paise collected is no doubt not covered only by excise duty levied, but when the intention was to

recover the excess of excise incidence beyond two paise suffered by the Board, it had rounded off the recovery of three paise, by including within

it factors which would come within Section 4. It has the power in working out the cost of production, to take into account factors which are

mentioned in the data sheet produced before Court and increase the tariff rates. The amount expended as against them, would come directly u/s 4

of the Act, is clear. A little more precision, if attempted at, would have prevented petitioners from challenging in this way. A precise break up of

how this three paise is constituted should have been indicated in the schedule, instead of the misleading Caption "Central Excise Surcharge". In this

manner, when the collection of one paise more is made up of legally recoverable constituents, this point fails.

11. Learned counsel for petitioners put forth an impressive submission about the existence of Section 64A in the Sale of Goods Act and stated that

it would have enabled the recovery of the excise duty which had become payable by the Board, in the counter affidavit filed by second respondent,

this aspect significantly remains untouched. As to why the Law Department has not considered this provision as sufficient for recovering the excise

duty, had not been satisfactorily explained. An attempt had been made by the Board, to refer to the wisdom of the Legislature.

12. For the reasons stated above, all these writ petitions are dismissed with costs. Counsel's fee Rs. 250 in each petition. One half of it to be paid

to second respondent and the other half to respondents 3 and 4.