(1986) 03 KL CK 0016

In the High Court Of Kerala

Case No : O.P. No''s. 3301, 3302 and 4273 of 1984

Gujarat Carbon Ltd. APPELLANT

Vs

The State of Kerala and Others RESPONDENT

Date of Decision : 25-03-1986

Acts Referred:
Constitution of India, 1950 — Article 301, 304

Citation : (1986) 62 STC 359

Hon'ble Judges : P.C. Balakrishna Menon, J;M. Fathima Beevi, J

Bench : Division Bench

Advocate : T.L. Viswanatha Iyer, K.K. Ravindranath, P.C. Sasidharan, N. Dharmadan and G. Krishna Kumar, for the Appellant; The Advocate-General and the Additional Advocate-General, for respondent Nos. 1 to 3 and S. Narayanan Poti, B.V. Deepak and S. Ramesh Babu, for the Respondent

Judgement

Balakrishna Menon, J.—By these original petitions as amended, the petitioners seek to quash the notifications, exhibits P1 to P3 in O. P. Nos. 3301 and 3302 of 1984 and exhibits P1 and P3 in O. P. No. 4273 of 1984 issued by the Government under the Kerala General Sales Tax Act, 1963. The petitioners are manufacturers of carbon black. Their manufacturing units are located outside Kerala. The 4th respondent in 0. P. Nos. 3301 and 3302 of 1984 is a company having its factory at Ambalamukal, a place within the State. It had started manufacturing carbon black from January, 1984 onwards.

2. As per exhibit P1 notification produced in O. P. Nos. 3301 and 3302 of 1984, the six items mentioned therein, manufactured within the State and sold for use in the manufacture of tyre within the State, were exempted from liability to sales tax. Carbon black is item 2 in that notification. As per exhibit P2 notification dated 28th February, 1984, sale of carbon black manufactured within the State is exempted from sales tax for a period of three years from the date of the notification. Exhibit P3 notification was issued by the Government shortly after these original petitions were filed. It exempts tax payable under the Act on the

sale of carbon black manufactured by any newly established manufacturing concern which was commenced commercial production on or after the 1st January, 1984 for the first three years commencing from the date of production. The original petitions were amended seeking relief to quash also exhibit P3.

3. The petitioners are not entitled to the benefits of the notification as they have started production of carbon black long prior to the date mentiored in exhibit P3. The 4th respondent in 0. P. Nos. 3301 and 3302 of 1984, as earlier stated, had started manufacturing carbon black from January, 1984 onwards and the benefit of exemption under exhibit P3 notification is available to it for the period upto January, 1987. The petitioners aver that for the reason of the exemption from tax, the 4th respondent is able to sell the commodity in the Kerala market at a much lower price than at which the petitioners are able to sell their products. It is also averred that the 4th respondent is the only manufacturing unit in the State producing carbon black and the notification, exhibit P3, though put in general terms, is intended to benefit only the 4th respondent and to exclude the petitioners who are established manufacturers of carbon black from the Kerala market. Exhibit P3 is challenged as violative of Articles 301 and 304(a) of the Constitution of India.

4. As per Article 301, subject to the other provisions of Part XIII of the Constitution, trade, commerce and intercourse throughout the territory of India shall be free. Article 304(a) authorises the State Legislature to impose a countervailing duty on goods imported from other States where similar goods produced within the State are subject to any tax. The countervailing duty should not, however, be discriminatory between the goods imported and the goods manufactured within the State.

5. Exhibit P3 is in supersession of exhibit P2 and exhibit P2 is no longer in force. Since the benefit of exhibit P3 is available to all manufacturers of carbon black, both within and outside the State if they have started production on or after 1st January, 1984, we fail to see how the exemption from taxation granted to all such manufacturers can be said to be in violation of Articles 301 and 304(a). The submission on behalf of the petitioners is that exhibit P3 is designed to benefit the 4th respondent and it is a colourable exercise of power vested in the Government u/s 10 of the Kerala General Sales Tax Act. The argument is based on the averment that the 4th respondent is the only manufacturer of carbon black within the State. In paragraph 7 of the common counter-affidavit filed on behalf of respondents 1 to 3 in 0. P. Nos. 3301 and 3302 of 1984, it is stated that there are other concerns in India which had started production of carbon black after 1st January, 1984, such as M/s. Ralson Carbon Black (Pvt.) Ltd., Ludhiyana in Punjab, etc. In the counter-affidavit filed by the 4th respondent in O. P. No. 3302 of 1984, it is stated that the 4th respondent is not the only company that had started production of carbon black after 1st January, 1984. It is averred that M/s. Ralson Carbon Black (Pvt.) Ltd., Ludhiyana, had started production of carbon black from August, 1984 onwards. It is also averred that letters of intent

have been issued to M/s. Uttar Pradesh Industrial Development Corporation and to M/s. J K. Industrials for installing plants for the production of carbon black in U.P. and Tamil Nadu respectively. The benefit of exemption from sales tax under exhibit P3 notification is only for a period of three years with effect from the date on which the industrial unit had started production of carbon black. Such notifications are intended to afford some protection to infant industries and manufacturing units against competition from established manufacturers whose products are well-known in the market. Since the benefit of exhibit P3 is not confined to manufacturers within the State and is available to all manufacturers both within and outside the State for the period mentioned in the notification, it cannot be said that the notification is in any way violative of Article 301 or 304(a) of the Constitution. The submission that exhibit P3 is a colourable exercise of power by the Government vested in it u/s 10 of the Act with a view to benefit the 4th respondent, is also not made out in the case for the reason that the benefit of exemption is available also to other manufacturing units who had started production of carbon black in areas outside the State after 1st January, 1984. The benefit of exhibit P3 is only for a limited period of three years and is available to the 4th respondent until January, 1987 only. We do not see any discrimination in favour of the 4th respondent, a manufacturer of carbon black within the State, as against other manufacturers who had started production of carbon black after 1st January, 1984. We do not see any substance in the challenge against exhibit P3. Since exhibit P3 supersedes exhibit P2 and exhibit P2 is no longer in force, the challenge against exhibit P2 should also fail.

6. The notification, exhibit P1, has not been superseded either by exhibit P2 or by exhibit P3. Exhibit P1, in so far as it relates to carbon black, is challenged as violative of Article 301, and not being a legislation imposing countervailing duty, is not entitled to the protection of Article 304(a) of the Constitution. Counsel for the petitioners relies on the decisions of the Supreme Court in Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, , Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, , Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, , Kalyani Stores v. State of Orissa AIR 1966 SC 1686 and H. Anraj Vs. Government of Tamil Nadu, in support of the proposition that Article 301 prohibits discrimination in favour of goods produced within the State as against those manufactured outside the State. It is not shown how the benefit conferred on the manufacturer of goods within the State under the notification, exhibit P1, is entitled to the protection of Article 304(a). As earlier stated, Article 304(a) authorises the Stale Legislature to impose a countervailing duty on articles imported from outside the State to make the duty in conformity with the duty imposed on similar articles produced within the State. In the light of the principle laid down by the Supreme Court in the decisions referred to above, there cannot be any doubt that the notification, exhibit P1, exempting the goods produced within the State from sales tax is clearly violative of Article 301 of the Constitution. Since the challenge is confined to the exemption from sales tax on carbon black manufactured within the State and sold for the purpose of

manufacturing tyres within the State, we quash exhibit P1 in 0. P. Nos. 3301 and 3302 of 1984 in so far as it relates to carbon black.

7. The prayer for quashing exhibits P2 and P3 is rejected for the reasons stated above.

O.P. Nos. 3301 and 3302 of 1984 are allowed to the above extent and dismissed in other respects. O.P. No. 4273 of 1984 is dismissed. There will be no order as to costs.

