
(2007) 08 RAJ CK 0068
In the Rajasthan High Court

Hyderabad Industries Ltd.

APPELLANT

Vs

State of Rajasthan and Others

RESPONDENT

Date of Decision : 02-08-2007

Acts Referred:

Constitution of India, 1950 — Article 14, 142, 301, 303, 304

Citation : (2007) 4 RLW 3462

Hon'ble Judges : R.S. Chauhan, J; R.M. Lodha, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

R.M. Lodha, J.—On 9th March, 2007, the Government of Rajasthan, in exercise of the powers conferred by Sub-section (3) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (for short, "Rajasthan VAT Act") issued the following notification:

S.O. 377. -In exercise of the powers conferred by Sub-section (3) of Section 8 of the Rajasthan Value Added Tax Act, 2003 (Rajasthan Act No. 4 of 2003), the State Government being of the opinion that it is expedient in the public interest so to do, hereby exempts from payment of tax, the sale of asbestos cement sheets and bricks manufactured in the State having contents of fly ash twenty five percent or more by weight on the following conditions, namely:

(i) that the goods shall be entered in the registration certificate of the selling dealer.

(ii) that the exemption shall be for such goods manufactured by the dealer who commenced commercial production in the State by 31.12.2006; and

(iii) that the exemption shall be available upto 23.1.2010.

2. Sub-clauses (ii) and (iii) of this Notification are impugned in the writ petition. The principal contention is that these sub-clauses are violative of Article 304(a) of the Constitution of India as by granting exemption to the manufacture of

asbestos cement sheets and bricks having contents of fly ash twenty five percent or more by weight in the State of Rajasthan, the discrimination is being done to the import of that product from other states.

3. The counsel for the petitioner submitted that prior to the present writ petition, the petitioner filed writ petition No. 7987/2006 challenging the Sub-clauses (ii) and (iii) of the Notification dated July 5, 2006; the Sub-clauses (ii) and (iii) of the Notification dated July 5, 2006 are identical to Sub-clauses (ii) and (iii) of the Notification dated 9th March, 2007 and that writ petition has been admitted and the interim order granted. To buttress his argument that Sub-clauses (ii) and (iii) of the Notification dated 9th March, 2007 are violative of Article 304(a) of the Constitution of India, the counsel relied upon the following judgments of the Supreme Court namely: (one) Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, (two) Shree Mahavir Oil Mills and Another Vs. State of Jammu & Kashmir and Others, (three) State of Uttar Pradesh and another Vs. M/s. Laxmi Paper Mart and others, and (four) Loarn Steel Industries Ltd. and another etc. Vs. State of Andhar Pradesh and another,

4. The counsel for the State Government, on the other hand, submitted that Section 8 of the Rajasthan VAT Act empowers the State in the public interest, by Notification in the Official Gazette, to exempt, prospectively or retrospectively, from tax the sale or purchase as mentioned in Schedule-II with or without condition as may be specified in the Notification. The Notification dated 9th March, 2007 has been issued in exercise of that power. He would submit that the State Government in exercise of the powers conferred u/s 15 of the Rajasthan Sales Tax Act, 1994 had already issued Notification on January 24, 2000 in the public interest exempting tax on the sale of asbestos cement sheets and bricks manufactured in the State by an industrial unit having fly ash as its main raw material on the conditions namely; (i) that such fly ash constituted 25% or more in the contents by weight and (ii) that the unit commenced commercial production by 31.12.2001. That Notification was to remain operative upto 23rd January, 2010. The time for commencement of commercial production was extended from time to time and by the Notification issued on 16th March, 2005 the State Government extended the commencement of production by 31st of December, 2006. It was, thus, submitted that the Notification dated 9th March, 2007 impugned in the present writ petition came to be issued by the State Government after coming into force of the Rajasthan VAT Act. The counsel would submit that it is always open to the State Government to grant exemption to boost industrialization in the State and that the exemption so granted is not violative of Article 304(a) of the Constitution of India. Strong reliance was placed by the counsel on the judgment of the Supreme Court in the case of Video Electronics Pvt. Ltd. and Another and Weston Electronics Ltd. and Another Vs. State of Punjab and Another, and Shree Digvijay Cement Company Limited and Ors. v. State of Rajasthan and Ors. 117 (2000) STC 395.

5. In the case of Firm A.T.B. Mehtab Majid and Company, the Supreme Court was

concerned with the question of the validity of Rule 16 of the Madras General Sales Tax (Turn Over and Assessment) Rules 1939. The said Rule was attacked on the ground of discriminatory taxation offending the provision of Article 304(a) of the Constitution. The Supreme Court in paragraphs 10, 11 and 12 of the report held thus:

(10) It is therefore now well settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulatory measures. Sales tax, of the kind under consideration here, cannot be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities. Sales tax, which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Article 301 and will be valid only if it comes within the terms of Article 304 (a).

(11) Article 304(a) enables the Legislature of a State to make laws affecting trade, commerce and intercourse. It enables the imposition of taxes on goods from other States if similar goods in the State are subjected to similar taxes, so as not to discriminate between the goods manufactured or produced in that State and the goods which are imported from other States. This means that if the effect of the sales tax on tanned hides or skins imported from outside is that the latter becomes subject to a higher tax by the application of the proviso to Sub-rule (2) of Rule 16 of the Rules, then the tax is discriminatory and unconstitutional and must be struck down.

(12) We do not agree with the contentions for the respondents. The contention that Article 304(a) is attracted only when the impost is at the border, i.e. when the goods enter the State on crossing the border of the State, is not sound. Article 304(a) allows the Legislature of a State to impose taxes on goods imported from other States and does not support the contention that the imposition must be at the point of entry only.

6. The issue before the Supreme Court in the case of Shree Mahaveer Oil Mills (supra) related to exemption from the levy of sales tax on the manufacture of edible oil in the Jammu and Kashmir as the manufacturers of edible oil in the nearby States challenged that such exemption was violative of Article 304(a) of the Constitution of India. The Supreme Court considered its previous decisions and held that exemption granted to local manufacturers/producers of edible oil was violative of the provisions contained in Sections 301 and 304(a) of the Constitution of India but at the same time invoking its powers under Article 142 issued direction that despite the said declaration, the appellant would not be entitled to claim any amount by way of refund and that the declaration on invalidity shall be prospective w.e.f. 1st April, 1997. This is what the Supreme Court said in paragraphs 25 and 26 of the report:

25. Now, what is the ratio of the decisions of this Court so far as Clause (a) of Article 304 is concerned? In our opinion, it is this: the States are certainly free to

exercise the power to levy taxes on goods imported from other States/Union Territories but this freedom, or power, shall not be so exercised as to bring about a discrimination between the imported goods and the similar goods manufactured or produced in that State. The clause deals only with discrimination by means of taxation; it prohibits it. The prohibition cannot be extended beyond the power of taxation. It means in the immediate context that States are free to encourage and promote the establishment and growth of industries within their States by all such means as they think proper but they cannot, in that process, subject the goods imported from other States to a discriminatory rate of taxation, i.e., a higher rate of sales tax vis-a-vis similar goods manufactured/produced within that State and sold within that State. Prohibition is against discriminatory taxation by the State. It matters not how this discrimination is brought about. A limited exception has no doubt been carved out in *Video Electronics* but, as indicated hereinbefore, that exception cannot be enlarged lest it eat up the main provision. So far as the present case is concerned, it does not fall within the limited exception aforesaid; it falls within the ratio of *A.T.B. Mehtab Majid* and the other cases following it. It must be held that by exempting unconditionally the edible oil produced within the State of Jammu and Kashmir altogether from sales tax, even if it is for a period of ten years, while subjecting the edible oil produced in other States to sales tax at eight per cent, the State of Jammu and Kashmir has brought about discrimination by taxation prohibited by Article 304(a) of the Constitution.

26. We are unable to see any substance in the objection raised by Shri Verma that not having attacked the exemption notification when the rate of tax was four per cent, the appellants should not be allowed to question the same when the rate of tax has climbed to eight per cent. There can be no question of any acquiescence in matters affecting constitutional rights or limitations. Similarly, the argument that the volume of trade of the appellants has not shown a downward trend in spite of the said exemption is equally immaterial apart from the fact that an explanation is offered therefore by Shri Salve. Yet another contention of Shri Verma that the principle of classification applicable under Article 14 is equally applicable under Articles 301 and 304(a) is of little help to the respondent-State. Article 14 speaks of equality; Article 301 speaks of freedom and Article 304(a) speaks of uniform taxation of both the imported goods and the locally produced goods by the States. According to Shri Verma, edible oil produced and sold in the State of Jammu and Kashmir and the edible oil produced in other States and sold in the State of Jammu and Kashmir fall in two different classes and that the said classification is designed to achieve the objective of industrialisation of the State. We find it difficult to appreciate how can the concept of classification be read into Clause (a) of Article 304 to undo the precise object and purpose underlying the clause. Shri Verma repeatedly stressed that the object underlying the impugned measure is a laudable one and, that it seeks to serve and promote the interest of the State of Jammu and Kashmir which is economically and industrially an undeveloped State, besides

being a disturbed State. We may agree on this score but then the measures necessary in that behalf have to be taken by the appropriate authority and in the appropriate manner. Part XIII of the Constitution itself contains adequate provisions to remedy such a situation and there is no reason why the necessary measures cannot be taken to protect the edible oil industry in the State in accordance with the provisions of the said Part. Keeping the said aspect in view, we invoke our power under Article 142 of the Constitution and mould the relief to suit the exigencies of the situation.

7. In the case of *State of U.P. and Anr. v. Laxmi Paper Mart and Ors.* (supra), the Supreme Court held that the exemption of exercise books produced in the State of U.P. and subjecting the exercise books produced outside the State but sold in Uttar Pradesh to sales tax @ 5% was discriminatory and violative of Clause (a) of Article 304.

8. The issue concerning exemption of the sales tax on re-rolled finished products by the Andhra Pradesh State Government under A.P. General Sales Tax Act, 1957 manufactured by Steel Re-rollers out of State and sold in State and manufactured within the State of Andhra Pradesh came up for consideration before the Supreme Court in the case of *Lohara Steel Industries*. It was held that the Notification dated 1st April, 1976 was violative of Article 304(a) of the Constitution of India. This is what the Supreme Court said in paragraphs 7 and 8 of the report:

7. Article 304 thus enables the Legislature of a State to impose tax on goods manufactured within the State as also goods imported from other States into the State. But in doing so the State cannot discriminate between goods so imported and goods manufactured or produced locally. This article came up for consideration before this Court in the case of *Firm A.T.B. Mehtab Majid and Co. v. State of Madras*. The Court said that sales tax which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will offend against Article 301 and will be valid only if it comes within the terms of Article 304(a). In the above case by virtue of Rule 16 which had been framed under the Madras General Sales Tax (Turnover and Assessment) Rules, 1938, tanned , hides and skins imported from outside the State and sold within the State were subject to a higher rate of tax than hides or skins tanned and sold within the State. This Court upheld the contention of the appellant that such an imposition would violate Article 304(a) of the Constitution and would be bad in law.

8. This decision has been reaffirmed by this Court in the case of *Andhra Steel Corporation v. Commissioner of Commercial Tax*. In this case the appellant who was a registered dealer under the Karnataka Sales Tax Act, 1957 (25 of 1957) purchased iron scrap from dealers inside and outside the State of Karnataka for the purpose steel rounds and tor-steel. These manufactured goods were sold mostly within the State. A provision in Section 5 (4) of the Karnataka Sales Tax Act which granted exemption to sale of finished goods manufactured out of

locally purchased raw material while denying it to the sale of finished goods manufactured out of imported raw material was held to be unconstitutional and contrary to Article 304(a) of the Constitution. This Court distinguished the decisions in *State of Madras v. N.K. Nataraja Mudaliar* and *Rattan Lal & Co. v. Assessing Authority* and reaffirmed its decision in *A.T.B. Mehtab* case.

9. In the case of *Video Electronics Private Limited*, inter alia, the Supreme Court was concerned with the provision of exemption on sales tax on the goods manufactured in the State to boost up or help economic growth and the development and thereby giving preferential treatment to the goods manufactured or produced in the State. While dealing with that issue, the Supreme Court considered plethora of its decisions namely *Kathi Raning Rawat Vs. The State of Saurashtra*, *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, *Kailash Nath and Another Vs. State of U.P. and Others*, *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, *The State of Uttar Pradesh and Others Vs. Babu Ram Upadhyaya*, *Smt. Ujjam Bai v. State of U.P.* AIR 1962 SC 1621 *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, *A Hajee Abdul Shakoor & Co. v. State of Madras* AIR 1964 SC C 1729, *State of Madhya Pradesh Vs. Bhailal Bhai and Others*, *Kalyani Stores Vs. The State of Orissa and Others*, *State of Mysore Vs. H. Sanjeeviah*, *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, *State of Madras v. N.K. Nataraja Mudaliar* AIR 1969 SC 147, *Rattan Lal and Co. and Another Vs. The Assessing Authority and Another*, *Narinder Chand Hem Raj and Others Vs. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and Others*, *Coffee Board, Bangalore Vs. Joint Commercial Tax Officer, Madras and Another*, *V. Guruviah Naidu and Sons and Others Vs. State of Tamil Nadu and Others*, *State of Tamil Nadu Vs. Hind Stone and Others*, *H. Anraj Vs. Government of Tamil Nadu*, *Associated Tanners, Vizianagaram, Andhra Pradesh Vs. Commercial Tax Officer, Vizianagaram, Andhra Pradesh and Others*, *Weston Electronics v. State of Gujarat* AIR 1988 SC 2038, *M.K. Salpekar Vs. Sunil Kumar Shamsunder Chaudhari and Others*, *State of U.P. and Others Vs. Renusagar Power Co. and Others*, *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, and *Bharat General & Textiles Industries Ltd. v. State of Maharashtra* (1989) 72 STC 354).

10. The Supreme Court then held in *M/s. Video Electronics Private Limited* that in the matters relating to list II of the 7th Schedule the states have been conferred plenary powers to raise the revenue for its purposes and it does not require that every legislation of the State must obtain the assent of the President. In paragraphs 20 and 21 of the report the Supreme Court observed thus:

20. The question as we see is, how to harmonise the construction of the several provisions of the Constitution. It is true that if a particular provision being taxing provision or otherwise impedes directly or immediately the free flow of trade within the Union of India then it will be violative of Article 301 of the

Constitution. It has further to be borne in mind that Article 301 enjoins that trade, commerce and intercourse throughout the territory of India shall be free. The first question, therefore, which one has to examine in this case is, whether the sales tax provisions (exemption etc.) in these cases directly and immediately restrict the free flow of trade and commerce within the meaning of Article 301 of the Constitution. We have examined the scheme of Article 301 of the Constitution read with Article 304 and the observations of this Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, as also the observations made by this Court in *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, In our opinion, Part XIII of the Constitution cannot be read in isolation. It is part and parcel of a single constitutional instrument envisaging a federal scheme and containing general scheme conferring legislative powers in respect of the matters relating to list II of the 7th Schedule on the States. It also confers plenary powers on States to raise revenue for its purposes and does not require that every legislation of the State must obtain assent of the President. Constitution of India is an organic document. It must be so constructed that it lives and adapts itself to the exigencies of the situation, in a growing and evolving society, economically, politically and socially. The meaning of the expressions used there must, therefore, be so interpreted that it attempts to solve the present problem of distribution of power and rights of the different State in the Union of India, and anticipate the future contingencies that might arise in a developing organism. Constitution must be able to comprehend the present at the relevant time and anticipate the future which is natural and necessary corollary for a growing and living organism. That must be part of the constitutional adjudication. Hence, the economic development of States to bring these into equality with all other States and thereby develop the economic unity of India is one of the major commitments or goals of the constitutional aspirations of this land. For working of an orderly society economic equality of all the State is as much vital as economic unity.

21. The taxes which do not directly or immediately restrict or interfere with trade, commerce and intercourse throughout the territory of India, would therefore be excluded from the ambit of Article 301 of the Constitution. It has to be borne in mind that sales tax has only an indirect effect on trade and commerce. Reference may be made to the Constitution bench judgment of this Court in *Andhra Sugars Ltd. and Another etc. Vs. State of Andhra Pradesh and Others*, where this Court observed that normally a tax on sale of goods does not directly impede the free movement of transport. See also the observations in *State of Madras Vs. N.K. Nataraja Mudaliar*, it was observed that a tax on sale would not normally offend Article 301. That article made no distinction between movement from one part of State to another part of the same State and movement from one State to another. In this connection, reference may also be made. to the observations in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, . Both the preceding cases clearly establish that if a taxing provision in respect of intra-State sale does not offend Article 301,

logically it would not affect the freedom of trade in respect of free flow and movement of goods from one part of the country to the other under Article 301 as well.

11. Then, Supreme Court examined whether difference in rates per se discriminate so as to come within Article 301 and 304(a) of the Constitution. It was observed that free flow of trade between the two states does not necessarily or generally depend upon the rate of tax alone and many factors including the cost of the goods play an important role in the movement of the goods from one State to another. The following observations were made by the Supreme Court in paragraphs 22 and 25 of the report:

22. It has to be examined whether difference in rates per se discriminates so as to come within Articles 301 and 304(a) of the Constitution. It is manifest that free flow of trade between two State does not necessarily or generally depend upon the rate of tax alone. Many factors including the cost of goods play an important role in the movement of goods from one State to another. Hence the mere fact that there is a difference in the rate of tax on goods locally manufactured and those imported would not amount to hampering of trade between the two States within the meaning of Article 301 of the Constitution. As it manifest, Article 304 is an exception to Article 301 of the Constitution. The need of taking resort to exception will arise only if the tax impugned is hit by Articles 301 and 303 of the Constitution. If it is not then Article 304 of the Constitution will not come into picture at all. See the observations in *State of Madras Vs. N.K. Nataraja Mudaliar*, of the report. It has to be borne in mind that there may be differentiations based on consideration of natural or business factors which are more or less in force in different localities. A State might be allowed to impose a higher rate of tax on a commodity either when it is not consumed at all within the State or if it is felt that the burden falling on consumers within the State, will be more than that and large benefit is derived by the revenue. The imposition of a rates of sales tax is influenced by various political, economic and social factors. Prevalence of differential rate 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. Under the Constitution originally framed revenue from sales tax was reserved for the States.

25. Where the general rate applicable to the goods locally made and on those imported from other States is the same nothing more normally and generally is to be shown by the State to dispel the argument of discrimination under Article 304(a), even though the resultant tax amount on imported goods may be different. Here, reference may be made to *Ratan Lal's case* AIR 1970 SC 1742 (supra). In the instant writ petition, in the State of U.P. those producers or manufactures who do not come within the ambit of notifications, have to pay tax on their goods at the general rate described and there is no differentiation or discrimination qua the imported goods. The question naturally arises whether the power to grant exemption to specified class of manufacturers for a limited period

on certain conditions as provided by Section 4A of the U.P. Sales Tax Act is violative of Article 304(a). It was contended by the petitioners that Part XIII of the Constitution was envisaged for preserving the unity of India as an economic unit and, hence, it guarantees free flow of trade and commerce throughout India including between State and State and as such Article 304(a), even though an exception to Article 301, yet applies where an exemption is granted by one State to a special class of manufacturers for a limited period on certain conditions. It was so submitted that either a State should grant exemption to all goods irrespective of the fact that the goods are locally manufactured or imported from other States, else it would be violative of Article 304 and 304(a).

12. The Supreme Court in *M/s. Video Electronics Private Limited* in paragraph 28 of the report further held that it was always open to the States to realise tax and thereafter remit the same or pay back to the local manufacturers in the shape of subsidy and that would neither discriminate nor be hit by Article 304(a) of the Constitution. The pertinent observations made by the Supreme Court in paragraph 28 of the report read thus:

Concept of economic barrier must be adopted in a dynamic sense with changing conditions. What constitutes an economic barrier at one point of time often cease to be so at another point of time. It will be wrong to denude the people of the State of the right to grant exemptions which flow from the plenary powers of legislative heads in list II of the 7th Schedule of the Constitution. In a federal polity, all the States having powers to grant exemption to specified class for limited period, such granting of exemption cannot be held to be contrary to the concept of economic unity. The contents of economic unity by the people of India would necessarily include the power to grant exemption or to reduce the rate of tax in special cases for achieving the industrial development or to provide tax incentives to attain economic equality in growth and development. When all the States have such provisions to exempt or reduce rates the question of economic war between the States inter se or economic disintegration of the country as such does not arise. It is not open to any party to say that this should be done and this should not be done by either one way or the other. It cannot be disputed that it is open to the States to realise tax and thereafter remit the same or pay back to the local manufacturers in the shape of subsidies and that would neither discriminate nor be hit by Article 304(a) of the Constitution. In this case and as in all constitutional adjudications the substance of the matter has to be looked into to find out whether there is any discrimination in violation of the constitutional mandate.

13. The Constitution bench of the Supreme Court in the case of *Shree Digvijay Cement Company Limited and Ors. v. State of Rajasthan and Ors.* was concerned with the Notification dated March 12, 1997 issued by the State of Rajasthan u/s 8(5) of the Central Sales Tax Act whereby it reduced the rate of sales tax on inter-State sale of cement by any dealer from that State to 4% in lieu of the requirement of furnishing of declaration in form C or certificate in form D

contemplated by Section 8(4) of the Act. In that case the petitioners were manufacturers of cement having their units in the State of Gujarat. The cement manufactured by them was consumed in Gujarat and other States. The State of Rajasthan had issued Notifications dated January 8, 1990 and June 27, 1990 which had the effect of reducing tax on inter State sale effected by the dealers from Rajasthan to 7% even though in respect of local sales the tax was 16%. In the writ petition Filed before the Rajasthan High Court, it was contended that as a consequence of such reduction of sales tax, cement from Rajasthan became much cheaper in the neighbouring States like Gujarat and that adversely affected the local sale of cement manufactured by the petitioners in Gujarat by reason of higher rate of sale tax on the local sales within that State. Such reduction of the rate of tax, the petitioners contended, was contrary to free flow of trade and business provided in Part XIII of the Constitution of India. The Rajasthan High Court dismissed the writ petition, Thereupon a SLP was Tiled in the Supreme Court. Leave was granted and the civil appeal was heard and the judgment was reserved on March 5, 1997. On March 21, 1997, the appeal filed by the manufacturers was allowed and the Notifications dated January 8, 1990, June 27, 1990 and March 7, 1994 were quashed. In the meanwhile on March 12, 1997, the government of Rajasthan issued the notification. It was then that the writ petition was, filed directly before the Supreme Court challenging the Notification dated March 12, 1997. The matter was referred to the larger bench as it was found that earlier the bench of three judges had struck down the similar Notifications being violative of Articles 301 and 303 of the Constitution. The constitution bench then considered the matter and after considering its previous decisions inter alia *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, , *State of Madras v. N.K. Nataraja Mudaliar* 1968) 22 STC 376 and *Video Electronics Private Limited* held thus:

We are unable to agree with the contention of the learned Counsel for the petitioners that the impugned notification had the effect of preventing or hindering the free movement of goods from one State to another. As far as the State of Rajasthan is concerned, it had the opposite effect. Merely because local rate of tax in the State of Gujarat on the sale of cement was higher than the inter-State sales tax on the cement sold from Rajasthan cannot lead to the conclusion that the impugned notification prevented or hindered the free movement of goods from one State to another. In fact the impugned notification had the opposite effect, namely, it increased the movement of cement from Rajasthan to other States. It is not as if the impugned notification created a barrier which may have had the effect of hindering free movement of goods but on the other hand, the sales tax barrier was lowered resulting in increased volume of inter- State trade.

14. The decision on the question whether there has been discrimination between the imported and the local goods depends on diverse factors including and the item of goods. Inter-alia, the legal position that emerges from the authorities considered above is that where there is no intentional discrimination but the

concession from sales tax is given in respect of goods manufactured in a particular State which is not so developed in furtherance of economic development and where such concession is granted to new industries for a specified time which came into existence within a specific period, such concession or exemption may not offend part XIII of the Constitution.

15. In the case in hand, there is no challenge to the constitutional validity of Section 8 of the Rajasthan VAT Act. It is not in dispute that the State Government earlier in January 24, 2000 in exercise of the powers conferred by Section 15 of the Rajasthan Sales Tax Act, 1994 and the subsequent Notification dated 16th March, 2005 on identical terms exempted from tax the sale of asbestos cement sheets and bricks manufactured in the State by an industrial unit having fly ash as its main raw material constituting 25% or more in the contents by weight of such asbestos cement sheets and bricks. The validity of the said Notifications have not been put in issue by the petitioner or any other person or any dealer or manufacturer at any point of time. There also appears to be no dispute that the fly ash coming out of thermal power plants is abundantly available in the State of Rajasthan. It is not unreasonable to presume, particularly, for want of any challenge, that to promote the use of fly ash as raw material for the production of asbestos cement sheets and bricks, the State Government decided to give incentive for asbestos manufacturing plants within the State of Rajasthan and it was for this reason that way back on 24th January, 2000 in exercise of the powers conferred by Section 15 of the Rajasthan Sales Tax Act, 1994 exemption from sales tax was granted for production of asbestos cement sheets and bricks in the State provided the fly ash constituted 25% or more in the contents by weight of such asbestos cement sheets and bricks and provided further that the industrial unit commenced commercial production by 31.12.2001.

16. The date of commencement of production provided in the Notification dated 24th January, 2000 was extended from time to time, last of such being by the Notification issued on 16th March, 2005. What has been done by the Notification dated 9th March, 2007, as a matter of fact is that the exemption that was given to industrial units by Notification dated 20th January, 2000 and the Notification dated 16th March, 2005 has been sought to be continued upto the year 2010 on the repeal of Rajasthan Sales Tax Act and coming into force of Rajasthan VAT Act (effective from 1.4.2006). It cannot be said that the stand of State Government that it was bound even otherwise by the principle of promissory estoppel to continue with the exemption which was granted to the industrial units covered by the Notifications dated 24th January, 2000 and 13th May, 2005 is wholly without any merit.

17. The stand of the State Government, in our considered view, gets support from the decision in the case of Video Electronics Private Limited.

18. It is true that in the case of Shree Mahaveer Oil Mills (supra), the Supreme Court explained and distinguished Video Electronics Private Limited. However,

perusal of paragraph 23 of the report in the case of Mahaveer Oil Mills would show that the observations made in Video Electronics Private Limited were held to be justified where the exemption was granted to new industries for a specified time and for a short period. The Notification dated 9th March, 2007 under consideration by us in the backdrop of the two earlier Notifications issued on 24th January, 2000 and 16th May, 2005 falls in exceptional category covered by the case of Video Electronics as the exemption has been granted to asbestos sheets and bricks manufactured by the industry in the State of Rajasthan, commercial production of which started by 31.12.2006. The exemption is only upto 23.1.2010 and only if the contents of it have fly ash twenty five percent or more by weight. The exemption is not an exemption to all industries irrespective of their date of establishment.

19. Sub-clauses (ii) and (iii) of the Notification dated March 9, 2007, thus, cannot be held to be offending Article 304(a) of the Constitution of India.

The writ petition is dismissed.