
(1972) 12 RAJ CK 0020

In the Rajasthan High Court

Case No : Civil Miscellaneous Writ Petition No. 523 of 1966

Jaipur Bottling Co.

APPELLANT

Vs

State of Rajasthan and Another

RESPONDENT

Date of Decision : 07-12-1972

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1973) RLW 112 : (1972) WLN 964

Hon'ble Judges : M.L. Joshi, J;B.P. Beri, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

B.P. Beri, J.—This is a petition under Article 226 of the Constitution of India challenging the taxability of certain items and the vires of Section 7(2A) of the Rajasthan Sales Tax Act, 1954 (hereinafter called "the Act").

2. The petitioner is a partnership firm registered under the Indian Partnership Act and carries on the business of manufacturing and selling of areated water, ice box openers and straws. It is registered with the Commercial Taxes Officer, Jaipur City "B" Circle. The petitioner commenced its business from the 1st of November, 1964 It was assessed for the accounting year 19(54-65. that is from 1-11-1964 to 31-3-1965. It challenges the provisions of the Act and the notifications issued thereunder dated 2-3-1963 and 2-11-1965 and the provisions of Section 7(2A) of the Act on various grounds and has prayed that by means of an appropriate writ, order or direction Section 5 of the Act of 1954 as amended by Act 13 of 1964 and the notification dated 2-11-1965 made thereunder be held to be illegal, void and unconstitutional; that the notification dated 2-11-1965 be declared had being not in conformity with the amended Section 5 of the Act and Section 7(2A) be declared beyond the legislative power of the Rajasthan State Legislature being violative of the provisions of the Constitution of India.

3. The State by its reply has contested the contentions raised by the petitioner.

4. Mr. C.B. Agarwal, learned Counsel for the petitioner, has firstly, contended that the notification of the 2nd November, 1965 is not authorised by the amended Section 5 of the Act because the amended Section 5 of the Act does not authorise different rates and secondly, the amendment of Section 5 by Act 13 of 1964 which came into effect on 4-5-1964 the previous notification of 2-3-1963 authorising different rates of sales tax, which is Annexure III in the petition, did not remain in force. His third submission is that Sub-section (2A) of Section 7 is ultra vires of the powers of the State Legislature because such advance tax is not authorised by entry 54 of List II of the 7th Schedule of the Constitution of India. He has cited certain authorities in support of his contentions which we shall notice at appropriate places.

5. Mr. Raj Narain Munshi, learned Additional Advocate General. urged that the amended Section 5 does authorise the State Government to fix separate rates for different goods subject to a maximum of 10 percent. The amendment to Section 5 does not alter the provisions in such a manner as to make the notification dated 2-3-63 (Annexure III) ineffective and it has full force and validity in view of the provisions of Section 27 of the Rajasthan General Clauses Act, 1955 and lastly, he urged that the entry 54 of the State List of the 7th Schedule includes ancillary power for imposing the tax u/s 7(2A) of the Act. He has also relied on certain authorities which will be noticed at appropriate places.

6. For an appreciation of the contentions raised under pointed by the learned Counsel for the petitioner it will be necessary to notice certain provisions of the Act. u/s 2(c) of the Act "assessment year" has been defined as under:

(c) "assessment year" means the year commencing on the first day of April;

"Taxable turnover" and "turnover" have been defined in clauses (s) and (t) of Section 2 of the Act respectively as under:

(s) "taxable turnover" means that part of turnover which remains after deducting therefrom the aggregate amount of the proceeds of sale of goods-

(i) on which no tax is leviable under this Act,

(ii) which have already been subjected to tax under this Act,

(iii) which have been sold to persons outside the State for consumption outside the State, and

(iv) which are taxable at a point of sale within the State subsequent to the sale by the dealer and such sale is covered by a declaration as may be required under any provision of this Act or the rules made thereunder;

Provided that where a dealer in goods which are exempted from tax unconditionally, sells any bardana, container or any other picking material received alongwith such goods at the time of purchase thereof by him, the

taxable turnover in respect of such sales shall, at the option of such dealer to be exercised in the prescribed manner, be one percent of the aggregate amount of the sale prices received or receivable by him in respect of the sale or supply of such goods and of such bardana, container or material;

Provided further that when any dealer has purchased any goods without paying any tax on the strength of any declaration furnished by him and the said goods are used by him for any purpose other than the one mentioned in declaration, the purchase price of such goods shall be included in his taxable turnover;

(t) "turnover" means the aggregate of the amount of sale prices received or receivable by a dealer in respect of the sale or supply of goods or in respect of the sale or supply of goods in the carrying out of any contract:

Provided that the proceeds of the sale by a person of agricultural or horticultural produce, grown by himself or grown on any land in which he has an interest whether as owner, usufructuary mortgagee, tenant or otherwise, or poultry ordinary products from fowls or animals kept by him shall be excluded from his turnover:

Provided further that in the case of a prescribed class of dealers, other than a manufacturer, producer, processor or a dealer engaged in the execution of a contract, and at the option to be exercised by a dealer of such prescribed class, in such manner and subject to such terms and conditions, as may be prescribed, turnover shall mean the aggregate of the amount of purchase price paid or payable by him in respect of the goods purchased by him for sale plus an amount equal to 10% of such purchase price.

Explanation.- Subject to such conditions and restrictions, if any, as may be prescribed in this behalf:

(i) the amount for which goods are sold or supplied shall, in relation to a contract, be deemed to be the amount payable to the dealer for carrying out such contract less the cost of labour;

(ii) the amount for which goods are sold or supplied shall include any sum charged for anything done by the dealer in respect of the goods sold at the time of or before the delivery thereof;

(iii) any cash or other discount on the price allowed in respect of any sale and any amount refunded in respect of articles returned by customers shall not be included;

(iv) where for accommodating a particular customer of a purchaser, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer or purchaser, the sale in respect of such goods shall be included in the turnover of the latter dealer alone.

Section 3 of the Act provides the incidence of taxation laying down that subject to the provisions of the Act, every dealer whose turnover in the previous year in

respect of sales or supplies of goods exceeds particular amount he shall be liable to pay tax under this Act on his taxable turnover. Section 4 excludes from taxability exempted goods and Section 5 has been noticed before amendment and after amendment:

Section 5 before the amendment in Section 5 after amendment by Act 1964: 13 of 1964 which came into effect from 4-5-1964: 5. Rate of tax. - The tax payable by a dealer under this Act shall be at such single point in the series of sales by successive dealers as may be prescribed and shall be levied at such rate of 6% on the taxable turnover, as may be notified by the State Government in the Official Gazette: Provided that the tax in respect of the sale of any goods, which are not included in the Schedule: (i) shall not be leviable: (a) if such sale takes place in the course of inter-State trade or commerce within the meaning of Section 3 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), or (b) if such sale takes place outside the State within the meaning of Sub-section (1) of Section 4 of the said Central Tax, or (c) if such sale takes place in the course of import or export within the meaning of Section 5 of the said Central Act. (ii) in the case of such goods being those declared by Section 14 of the said Act to be of special importance in inter-State trade or commerce, (a) shall not exceed two per cent of the sale price thereof, (b) shall not be payable if the sale takes place outside the State within the meaning of Section 4 of that Act, and (c) shall not be leviable in the State at more than one stage; Provided also that where the State Government is of the opinion that it is necessary or expedient goods or by such class of dealers in the public interest so to do, it may, by notification in the Official Gazette, provide that the tax payable by a dealer levy tax in a lump sum on a part in respect of any goods to be specified or the whole of their turnover, on such conditions as may be specified in the notification. the taxable turnover as may be specified in

the said notification.

7. Annexure III which is dated 2nd March, 1963, was issued by the Government of Rajasthan in exercise of its power conferred by Section 5 of the Act. To it is appended a list containing 65 items which have been described in column 2 thereof and the rate of tax has been described in column 3 therein. The material entry is 64 which reads as follows:

64. All kinds of eatables and non-alcoholic potable liquids, such as biscuits, syrups, distilled juices (ark), jams (Chatni, Murabbas), fruit juices, essences, gulkand. etc. packed in tins or bottles or plastic containers or sealed packings of any kind.

8. The argument of the learned Counsel for the petitioner is that the amended Section 5 and its second proviso provided different rates of taxes for different classes of goods and this power is inferable by the expression "or class of goods to be specified in the notification shall be such not exceeding 10%" as mentioned in the proviso. But after Section 5 was amended neither the section itself nor the second proviso substituted therein conferred any authority on the State Government to levy tax on turnover by imposing tax at different rates on different classes of goods. The notification of 2-3-1963 (Annexure III) thus could not be deemed to have been made under the amended provisions and the notification of Nov. 5, 1965 (Annexure I) was clearly unauthorised because under the amended Section 5 tax at different rates could not be issued. His further submission was that the proviso of the unamended Act could be read as a substantive provision as permitted by a decision of the Supreme Court in *The Commissioner of Commercial Taxes and Others etc. Vs. R.S. Jhaver and Others etc.*, and if we were to read the proviso of the amended Act also in the same spirit it will be clear that under the amended Act the expression "class of goods" is missing. Even if we were to treat that the second proviso to Section 5 of the unamended provisions was transplanted as Section 5 itself then too the taxing power by classifying goods was wanting. He urged that no equitable considerations arise in interpreting taxing statutes and its deficiencies could not be supplied. He relied on *Commissioner of Sales Tax, Uttar Pradesh Vs. The Modi Sugar Mills Ltd.*, He also relied on *Commissioner of Income Tax, Andhra Pradesh v. M/s Motors and General Stores (P) Ltd.* AIR 1968 SC 200, wherein the principle enunciated in the *Bank of Chettinad v. C.I.T.*, Madras AIR 1940 PC 183 has been noticed. "If a person sought to be taxed comes within the letter of the law he must, be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the crown seeking to recover the tax cannot bring the subject within the letter of the law, the subject is free; however, apparently within the spirit of the law the case might otherwise appear to be."

9. The rule that taxing Acts are to be construed with strictness is based on the principle that "inasmuch as there was not any a priori" liability in the subject to pay any particular tax nor any antecedent relationship between the tax payer and the taxing authority no reasoning founded upon any supposed relationship of

the tax-payer and the taxing authority could be brought to bear upon the construction of the Act". (Pyrce v. Manmouthshire Canal and Railway Co. (1879)4 A.C. 197

The rule, while valuable as caution cannot be taken as varying the ordinary rules for construing all statutes including taxing Acts In Attorney-General v. Carlton Bank (1899) 2 Q.B. 158 (164) Lord Russell said:

I see no reason why any special canons of construction should be applied to any Act of Parliament, and I know of no authority for saying that a taxing Act is to be construed differently from any other Act, The duty of the Court is, in my opinion, in all cases the same whether the Act relates to taxation or to any other subject, namely to give effect to intention of the Legislature, as that intention is to be gathered from the language employed." (see Craise on Statutes (1963 Edition) page 115).

10. Another principle of construction which is equally well settled is one of harmonious construction of a statute. Gajendragadkar J. (as he then was) has observed in Madanlal Fakirchand Dudhediya Vs. Shree Changdeo Sugar Mills Ltd.,

The two sub-sections must be read as parts of an integral whole and as being inter-dependent an attempt should be made in construing them to reconcile them if it is reasonably possible to do so, and to avoid repugnancy.

11. In the light of the principles enunciated above let us examine the true interpretation of Section 5 of the amended Act. A close examination of Section 5 of the amended Act shows that the tax payable by a dealer will be such as may be prescribed by the State Government by notification in the official Gazette. It shall be levied at such rate not exceeding 10 per cent on the taxable turnover. The crux of the argument is that the statute uses the word "rate" only and there is no power to classify goods and impose tax at varying rates. The learned Additional Advocate General urged that the singular includes the plural as provided in Section 14(2) of the Rajasthan General Clauses Act which lays down that "words in the singular shall include the plural and vice versa" Apart from this which we agree if we apply the doctrine of harmonious construction to, Section 5 itself would show that the Legislature did envisage different rate of tax for different commodities. Sub-clause (2) to the first proviso provides that in the case of such goods as are declared by Section 14 of the said Act to be of special importance in inter-State trade or commerce, the tax shall not exceed two per cent or the sale price thereof. It clearly authorises the levy of tax at a rate different from the rest in regard to certain commodities The second proviso to Section 5 also envisages such class of goods or such class of dealers for the levy of tax in lump sum. If the submission of the learned Counsel for the petitioner was accepted then the classification envisaged by the second proviso and Clause 2(a) of the first proviso would be irreconcilable with the first paragraph of Section 5 and would be destructive of the harmony. Further, the power conferred by the second proviso to choose sales of such class of goods postulates the

intention of the Legislature to classify goods. If classification of goods is permissible then the rates to be levied by way of tax is equally permissible subject to the maximum of 10 per cent as ordained in Section 5 itself. We also agree with the contention of the Additional Advocate General that the singular word "rate" includes its plural word "rates" and the minute we accept this, variation in rates is clearly inferable and authorised.

12. A close reading of the definitions of "turnover" and "taxable turnover" reveals that the transactions relating to certain classes of commodities are to be treated differently from others. If the goods sold or supplied have to be treated separately for the purposes of reaching the turnover there is no reason to hold that they cannot be taxed at different rates subject to the maximum laid down by Section 5.

13. It has to be borne in mind that if liberal interpretation of words of a statute gives rise to ambiguity and words are sufficiently flexible so as to admit of alternative constructions, a statute should be so construed as to give effect to its object or policy. The Courts will be slow to adopt such a construction which "may lead to large scale evasion of the Act resulting its object being defeated" See *Shanti Prasad Jain Vs. The Director of Enforcement*, . Maxwell in his "Interpretation of Statutes" page 29 (Edition 1953) has stated that the fiscal Acts "are not to be so construed as to furnish a chance of escape and a means of evasion." It will thus appear that Section 5 has to be interpreted in such manner as will effectuate the object of the Legislature and to avoid the large scale escaping from tax liability. Section 3 is the charging section and is the part of the statute which determines what persons in respect of what turnovers are liable. Liability ex hypothesi of the assessee has already been fixed u/s 3. If we were to accept the argument of Mr. Agarwal, that will militate against the intention of the Legislature which declared the liability by the charging section and will lead to a complete evasion of tax liability under the Act which could not have been the intention of the Legislature. In this view of the matter also we are of the opinion that the interpretation which we have put on Section 5 is in keeping with the well established principles of Statutes. Impugned Notifications are, therefore, covered by the provisions of Section 5 and do not suffer from any repugnancy as contended by the learned Counsel for the assessee.

14. The second contention of the learned Counsel for the petitioner is that Section 5 as amended is inconsistent with the provisions of repealed Section 5 and, therefore, the notification dated 2nd March, 1963 (Annexure III) does not survive. He placed reliance on *Harish Chandra v. The State of Madhya Pradesh* AIR 1995 SC 932 and *Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another*, . Section 27 of the Rajasthan General Clauses Act, 1955 reads as follows:

27 Continuation of orders etc. Issued under enactments repealed and re-enacted-Where any enactment is repealed and re-enacted with or without modifications then, unless it is otherwise expressly provided, any appointment, notification,

order, scheme, rule, regulation, form or bye-law made or issued and anything duly done or action taken under the repealed enactment shall, so far as it is not inconsistent with the provisions so re-enacted, continue in force, and be deemed to have been made or issued and done or taken under the provisions so re-enacted, unless and until it is superseded by any appointment, notification, order, scheme, regulation, form or bye-law made or issued or anything done or action taken under the provisions so re-enacted.

The important words are that where any enactment is re-enacted with or without modification then unless it is otherwise expressly provided any notification made under the repealed enactment shall so far as it is inconsistent with the provisions so re-enacted shall continue in force and shall be deemed to have been made or issued under the provisions so re-enacted. The short question is whether the repealed provisions of Section 5 are inconsistent with the re-enacted provisions of Section 5? Our answer to this question is in a plain negative. Barring the ceiling and the placement of provisions in substance there is no inconsistency between the repealed and re-enacted provisions of Section 5 and the notification (Annexure III) dated March 2, 1963, therefore, shall be in force by virtue of Section 27 of the Rajasthan General Clauses Act. The cases cited by the learned Counsel for the petitioner are distinguishable,

15. In *Harish Chandra's case* AIR 1995 SC 932 the question was whether the Madhya Bharat Notification dated 26-8-1949 issued under Madhya Bharat Iron Steel and Scrap (Production Procurement and Distribution) Control Order 1949 survived notwithstanding the repeal of the Madhya Bharat Essential Supplies (Temporary Powers) Act under which the Control Order and the consequent notifications were issued? It was held that with the extension of the Essential Supplies (Temporary Powers) Act, 1946, to Madhya Bharat and also of the Indian Iron and Steel (Scrap Control) Order they effectively replaced the Madhya Bharat Act; Control Order and the Notification. The reason given was that repealing Act had no saving clause authorising the survival of the notifications issued under the repealed provisions. Our case is distinguishable because the situation is different.

16. The case of *Bhawani Cotton Mills Ltd. Vs. State of Punjab and Another*, is also distinguishable because there the conflict was between the Punjab General Sales Tax Act with the Central Sales Tax Act.

17. The last point urged is that Section 7(2A) requires any dealer or class of dealers specified in any notification made by the Government to pay tax at intervals shorter than those prescribed under Sub-section (1). In such cases the proportionate tax on the basis of last return shall be deposited at the interval specified in the said notification in advance of the return. The grievance of the petitioner is that the basis of the last return is erroneous because the tax is leviable on turnover on the actual sales as envisaged by entry 54 of the Seventh Schedule of List II of the Constitution. The challenge is to the Legislative power of the State to levy tax on anticipated sale. Entry 54 of the Seventh Schedule of the List II to the Constitution reads as follows:

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I.

The words of this entry designate the centre and not the circumference of the power, in the language of their Lordships of the Madras High Court in *Ram Raj Tobacco Trading Co. v. Asstt. Commercial Tax Officer, Attur and Ors.* (8). The learned Judges have observed. "'Again every legislative power carries with it authority to legislate in relation to acts, matters and things the control of which is found necessary to effectuate its main purpose and thus carries with it power to make laws governing or affecting many matters that are incidental or ancillary to the subject-matter. If a tax liability is certain to arise a provision designed to ensure that this shall not be evaded is clearly within the power to enact a law with respect to taxes on the sale or goods.'" In this case also advance tax was assailed but the attack was rejected. It is easy to see that the provisions of Section 7(2A) are designed to minimise evasion, to eliminate accumulation of taxes and to regulate a continuous flow in the coffer. These are incidental powers and we do not find any force in the contention of the petitioner that Section 7(2A) is ultra vires of the Constitution. And more so because every deposit of tax made under Sub-section (2) shall be deemed to be provisional subject to necessary adjustments in pursuance of the final adjustment of the tax under the Act,

18. No other point was pressed before us. The result is that this petition fails and is dismissed with costs.