

(1968) 12 MAD CK 0031

In the Madras High Court

Case No : Writ Petition No's. 220, 291, 369, 401, 402, 403, 425 to 428, 439, 462 to 465, 476, 510 to 515, 533, 566 to 572, 573 to 577, 595 to 604, 625, 635 to 637, 638, 639, 687, 688, 698 to 702, 725, 749, 750, 770 to 789, 792, 826 to 829, 817 to 854, 861, 877 to

K. Subramania Pillai and Others

APPELLANT

Vs

State of Madras

RESPONDENT

Date of Decision : 06-12-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 8

Constitution of India, 1950 — Article 14, 226, 246, 301, 304

Citation : (1970) ILR (Mad) 471 : (1969) 23 STC 359

Hon'ble Judges : Veeraswami, J; Ramaprasada Rao, J

Bench : Division Bench

Advocate : S. Mohan Kumaramangalam, for R. Shanmugham, K.M. Natarajan, V.K. Thiruvengkatachari, for T.S. Viswanatha Rao, M.K. Nambiar, for M.S. Sethu, K.V. Sankaran, for R. Nadanasabapathy, S. Venkatraj, N. Venkatarama Iyer, E. Padmanabhan and D. Srinivasan and D. Subramaniam, for the Appellant; S. Mohan, the Assistant Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

Ramaprasada Rao, J.—In this batch of writ petitions the main question canvassed is whether the exigence of sales tax on sales of cane

jaggery in contradistinction to the exemption from tax granted to the sales of palm jaggery within the State of Madras is violative of Article 14 of

the Constitution of India and whether the legislative or executive machineries adopted by the State in imposing the levy and granting the exemption

is legal. The petitioners are dealers in cane jaggery. As the affidavits in support of the issue of the process under Article 226 of the Constitution are

many and varied in this batch, it was agreed that the facts in W.P. No. 369 of

1968 may be noticed and be taken as the pattern for adjudgment of the merits and the legal problems arising thereunder.

2. The petitioner, a registered dealer who is dealing in cane jaggery,, complains of hostile discrimination by reason of the notification of the

Government in G.O. 2261 dated 30th December, 1967, whereby the tax payable on all sales of palm jaggery was executively exempted. Tracing

the history of the law regarding the imposition of sales tax on jaggery, it is stated that under the Madras General Sales Tax Act, 1959, under item 5

of the Third Schedule to that Act, jaggery and gur were exempt from taxation. This exemption was in force from April, 1959, till December, 1967.

On 1st January, 1968, the Government of Madras, in exercise of their powers u/s 59(1) of the Act, amended the Third Schedule, and in particular,

the above entry thereto by withdrawing both jaggery and gur from the exemption which the commodities were enjoying. This became law as Act 2

of 1968 when the Legislature approved the notification initially issued by the Government. On the same day, but in exercise of their powers u/s

17(1) of the Act, the State of Madras passed the impugned G.O. referred to above granting exemption in respect of the tax payable on all sales of

palm jaggery. Such an executive exemption granted by the respondent in exercise of their powers under the Act is the subject-matter of the

complaint and attack. According to the petitioner, the imposition and the adoption of the incidence of tax and the consequential tax liability in the

case of sales of cane jaggery in juxtaposition to the withdrawal of such incidence and tax on sales of palm jaggery is discriminatory in scope and

therefore offends Article 14. The case is that consequent upon the general benefit by reason of the legislative exemption enjoyed by both cane

jaggery and palm jaggery prior to 1968, the tax payable on inter-State sales of both the commodities, namely, cane jaggery and palm jaggery, was

also exempt by virtue of Section 8(3-A) of the Central Sales Tax Act, 1956. But as a result of the invidious distinction which has resulted from the

legislative imposition and executive exemption referred to above, the petitioner's case is that the impugned G.O. operates as a restriction on the

freedom of trade guaranteed by Part XIII of the Constitution of India, and in particular inter-State trade in so far as cane jaggery is concerned. The

petitioner would also say that the withdrawal of the exemption on cane jaggery

which is the ultimate impact of the impugned G.O. and Act 2 of 1968 without the prior assent of the President of India is violative of Article 304(b) of the Constitution. One other limb of the contention of the petitioner is that the power conferred on the State by Section 59 of the Act to amend the Schedules without proper guidance is arbitrary and illegal. Even so, the delegation to the executive in this behalf is also impugned. At the instance of this Court and as no particulars were provided by the petitioner to substantiate his case of discrimination, a supplemental affidavit was filed furnishing such details. The particulars furnished by the petitioner, in the main, show that the price level of cane jaggery and palm jaggery is the same and therefore the resultant addition of sales tax to cane jaggery alone is ex facie obnoxious and by itself is suggestive of hostile discrimination. In other respects the particulars furnished disclose that there has been a fall in the trade ever since the imposition of sales tax on cane jaggery and the petitioner has also expressed his difficulty in adopting the statutory process in inter-State trade while effecting sales of cane jaggery for that purpose.

3. The Government while supporting their action maintain that what was done either u/s 59 of the Act or u/s 17 thereto is well within their powers and also maintain that the impugned notification is quite legal, valid and well within their jurisdiction. They would state that in accordance with the exigencies of the policy of the Government and regard being had to the resources of the State, certain goods are brought within the net of taxation and certain other commodities are relieved from such incidence and its burden. Such matters are purely within the field of administration and certainly within the competent ambit of both the Madras Legislature and the State Executive and no question therefore of any excessive delegation of powers u/s 59 of the Act would even arise. Further, the notification having become law with effect from 1st January, 1968, with the passing of Act 2 of 1968, it is quite out of place to consider whether the delegation to the executive is excessive or not, excepting it be for academic purposes. Alternatively, it is contended that the exercise of the powers conferred on the Government u/s 59 of the Act, particularly in the instant cases, is a matter within their discretion, competence and depending upon the contingencies prevalent during the particular period and as such the

power has been validly and reasonably exercised. It is also said that the withdrawal of exemption with reference to cane jaggery is a matter which is once again a subject which could be competently disposed of by the State Government having regard to the surrounding circumstances, economic policies and such others, and the contention of the petitioner to the contrary is unsustainable. The respondent denies that cane jaggery has been discriminated against and says that the executive exemption granted to the sales of palm jaggery in exercise of their powers u/s 17 of the Act is yet again valid and sustainable. Regarding the objection that Act 2 of 1968, as also the executive exemption granted u/s 17 of the Act, suffers from the infirmity of the absence of sanction by the President of India under Article 304(b), the respondent's case is that a non-discriminatory tax on the sale of goods of the nature in question does not directly or indirectly impede inter-State movement or transport of goods and does not therefore affect the freedom guaranteed under Article 301 of the Constitution of India. It is also contended that no sanction of the President of India is necessary for the enactment of the sales tax law, as it relates to non-discriminatory and regulatory taxes and as the power of the State Legislature to levy such taxes under the provisions of the Constitution is now derived from Article 246(3) read with item No. 54 of List II in the Seventh Schedule to the Constitution of India.

4. Touching upon the policy of the Government and the broad base on which both the executive exemption and the legislative impositions were thought of and ultimately effectuated, the respondent states that manufacture of palm jaggery which is a class by itself and totally different from cane jaggery, and which is marketed through co-operative societies, is essentially a cottage industry which does not stand any comparison with the manufacture and production of cane jaggery. The palm gur industry comes within the purview of the Khadi and Village Board and is a source of employment of ex-toddy-tappers who are poor. It is said that the ex-toddy-tappers are employed not for collecting toddy from the palmyrah trees, but for collecting neera or pardeneer and such juice collected by them in the traditional manner is converted into jaggery in their own dwelling places which mostly consist of huts. Palmyrah jaggery or palm jaggery being a seasonal product these toddy-tappers who are essentially the

persons who are engaged in this trade are having such seasonal employment only. Such being the nature of the palm gur industry, the respondent, in order to safeguard the interests of the poor toddy-tappers and to encourage this cottage industry, has taken out of the pale of taxation the sales of palm jaggery. This is by virtue of the policy of the Government and particularly to safeguard the interests of a class of the community who were thrown out of employment years ago due to the introduction of prohibition. The respondent has furnished statistics to show the reasons which prompted the Government to grant exemption in favour of palm jaggery. It is stated but not refuted, that the utilization of palm jaggery as an edible product by indigenous manufacture is still in its embryonic stage and the trade in the product is lagging far behind that of cane jaggery trade. As a fillip to the development of palm gur industry, it is stated that the Government has exempted a premier company in the State which is purchasing palmyrah jaggery and converting it into sugar in its factories, from payment of any excise duty. The respondent's case therefore is that as levy of an additional burden by way of sales tax over the sales of such an indigenous product manufactured in an old and traditional style would not only affect the industry but also those who are engaged in its production, the levy of sales tax on such a product was deliberately avoided and the executive exemption granted u/s 17 of the Act. Commenting on the particulars furnished by the writ petitioner, the respondent would state that the fall in the market or trade cannot be attributed to the grant of the exemption from sales tax to palm jaggery. Whatever may be the reason for the fall in his business, it cannot be said that it is due to the impugned G.O. According to the respondent, the demand for cane jaggery has fallen due to various other reasons including its quality and the fall in the purchasing capacity of such gur by other States like Rajasthan, Uttar Pradesh and Orissa. It is suggested that cane jaggery is always cheaper in comparison to palm jaggery and the question of preference of palm jaggery would not therefore arise even after the exemption of sales tax on sales of cane jaggery. By way of illustration the respondent urges that the total production of palm gur in the entire State itself is only Rs. 4 crores whereas the turnover of one of the petitioners in the group is about Rs. 70 lakhs and there are about 200 petitioners in this batch and this by itself is prominently indicative of the fact that the palm gur industry deserves all encouragement

including the exemption from sales tax.

5. After tracing the manner, method and mode in which both cane jaggery and palm jaggery were being dealt with by the Madras General Sales

Tax Act, 1959, Mr. V. K. Thiruvengkatachari referred to the exemptions from tax granted to cane jaggery and palm jaggery from time to time and

in varied proportions. His attack, however, is that such power though available, remains in the statute without any guide lines to the executive, such

that there is ample scope for such a power being exercised arbitrarily and nakedly. The impugned notification effectively curbs the trade of the

petitioners. He referred to Dr. Lokanathan's Report in support of his argument that there should be no discrimination between the two

commodities. His case is that Section 59 as long as it is unguided, any notification thereunder issued is ineffective in the eye of law and even so any

legislation passed subsequent to and pursuant to the same. Particularly he would say that when the two commodities were enjoying the privilege

and benefit of exemption for a considerable length of time, it is bad enough to withdraw the exemption without any justifiable reason to disturb the

earlier pattern of taxation and it is indeed worse if one amongst the two of such commodities is granted an exemption by an executive fiat. He

referred to *The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others*, , *Freightlines etc., Ltd. v. State of N.S.W.* [1967]

2 All E.R. 433 , *Westminster Bank, Ltd. v. Beverley B.C.* [1968] 2 All E.R. 104 and *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and*

Others, . The corner-stone of his argument is that the impact of Act 2 of 1968 read with the impugned G.O. resulted in discriminating cane jaggery

from palm jaggery which are similar in many respects and such a discrimination violates Article 14 of the Constitution of India. Besides, the

procedure adopted by the State has made inroads into the cane jaggery trade resulting in the imposition of unreasonable restrictions.

6. According to Mr. M. K. Nambiar appearing for some of the petitioners, jaggery in all forms was treated alike and at all material times exempt

from sales tax and there is no conceivable reason why in 1968, there should be any departure from the established practice. When the Legislature

accepted Dr. Lokanathan's Report in 1959, it virtually conceded the existence of discrimination as between the products and excluded jaggery

from taxation. The circumstances which existed in 1959 do exist even today and no nexus has been established between the amendment made or the executive exemption granted through the impugned G.O. and the objects of the Act. The substance and effect of the notification initially issued u/s 59 of the Act followed up by Act 2 of 1968 and the executive exemption granted to palm jaggery u/s 17 of the Act, tantamount to removal of the legislative exemption originally enjoyed by the two commodities in the arena of executive exemption and later confirm the exemption to one only of the two commodities, resulting in hostile discrimination. He also relied upon the circumstance that the imposition of sales tax on cane jaggery is an additional burden imposed without authority. For several years both were exempt and treated alike. But by Act 2 of 1968 read with the impugned G O. there is an open differential treatment, which is not permitted. Besides he urged that inter-State trade and commerce in relation to cane jaggery is affected and the imposition being unreasonable, the law as well as the G.O. should fail since it offends Articles 301 and 304 of the Constitution of India. The attempt of the Government to justify their stand by improving the material in the counter-affidavit at different points of time is very much commented upon. He proceeds to say that sales tax being not regulatory or compensatory in scope should accord to the usual norms attendant upon it. What was originally a legislative exemption was taken away by executive action u/s 59(1) of the Act. This is followed up by the further fiat of the executive u/s 17 whereby one product alone has been picked and chosen to have the benefit of exemption. All this having been done in the teeth of proviso to Article 304(b), the imposition of tax on sale of cane jaggery as well as the exemption granted to sales of palm jaggery-are acts of the respondent which cannot stand scrutiny.

7. The learned Assistant Government Pleader, in reply, maintains that the products in question though classified as products of village industries, are totally different in composition and as they are commercially and popularly understood. The sucrose content in cane jaggery is reported to be 69.43 per cent, whereas such content in palm jaggery is 76.86 per cent. The total output during 1966-67 of cane jaggery appears to be 3,42,260 metric tons as against 39,455 metric tons of palm jaggery. The price per quintal of cane jaggery varied from Rs. 140 to Rs. 160 and that of palm

jaggery was Rs. 180 per quintal. Both the products are neither popularly, scientifically or commercially understood as "sugar". He relied on East

India Tobacco Company v. State of Andhra Pradesh [1962] 13 S.T.C. 529 where Virginia tobacco was held to be different from nattu tobacco.

The ratio in Liberty Oil Company v. London National Bank 67 Lawyers' Edition 237 and Tungabhadra Industries Ltd. v. State of Andhra

Pradesh [1966] 17 S.T.C. 366 were pressed into service. He urged that sales tax being non-discriminator} in character, no question of

discrimination arises. Mere fortuitous circumstances which enabled the two articles to be free from tax for some years, by itself cannot interdict or

fetter the power available to the named authorities under the Act, to bring them into the net of taxation if the policy, economy and public interest

needed a change. He would characterise the argument that because tax is imposed on cane jaggery only by Act 2 of 1968 read with the impugned

G.O., it cannot be said that an unreasonable restriction has been imposed. He referred to Andhra Sugars Ltd. v. State of Andhra Pradesh [1968]

21 S.T.C. 212 and State of Madras v. Nataraja Mudaliar [1968] 22 S.T.C. 376 and urged that the Government when they issued the initial

notification u/s 59(1) and when the Legislature adopted it as law u/s 59 and also when the executive exempted palm jaggery from the incidence of

taxation u/s 17 of the Act, they acted well within their jurisdiction and powers and no discrimination has resulted therefrom. As regards the

contention that prior sanction of the President of India under the proviso to Article 304(b) has not been obtained in relation to matters under

scrutiny, the learned Government Pleader contends that no such sanction is necessary at all.

8. The background or the history of the legislative practice prevalent in the State prior to the issuance of the initial notification u/s 59 of the Act, and

the impugned G.O. may be usefully considered in order to note the stages at which both cane jaggery and palm jaggery were subject or exempt

from taxation. It is common ground, at any rate at the time of the hearing of these petitions, that the two commodities are different and distinct.

When Madras Act 9 of 1939 (Madras General Sales Tax Act, 1939) was in force, cane jaggery and palm jaggery were subject to tax at 3 pies

per rupee multi-point u/s 3(1) thereto.

9. This continued till 1955 when all sales of palm jaggery effected through co-operative societies and the Palm Gur Federation were exempt by G.O. 651 dated 28th February, 1955, and G.O. 2780 dated 7th September, 1955, respectively. By a subsequent G.O., G.O. 1605 dated 19th April, 1956, palm gur was completely exempt from taxation with effect from 1st April, 1956. Cane jaggery, however, during the above period when palm jaggery enjoyed the benefit of exemption from sales tax, continued to be liable for such tax till 1957. Dr. P.S. Lokanathan who was invited to make recommendations regarding the simplification and improvement of sales tax system in Madras, recommended the withdrawal of the exemption granted to palm jaggery amongst other products of palm gur industry and opined that such exemption introduces discrimination in general trade. In point of time it happens the Madras Government by G.O. 1457, Revenue, dated 15th April, 1958, exempted all sales of cane jaggery from tax with effect from 1st April, 1958. This exemption brought the two articles, cane jaggery and palm jaggery, on a par and accordingly when Madras Act 1 of 1959 (Madras General Sales Tax Act, 1959) was enacted, the exemption continued and was noted in item 5 of the Third Schedule to the Act. It is not however known whether the exemption so granted was on the basis of Dr. Lokanathan's report or otherwise. Even before us no material was placed to persuade us to conclude that the exemption afforded to cane jaggery from 1st April, 1958, was to avoid discrimination. The result of this analysis is palm jaggery was practically and for all purposes exempt from sales tax even under the earlier enactment and the same continued after the passing of Madras Act 1 of 1959. Even so, when the impugned G.O. Ms. 2261 dated 30th December, 1967, was issued, the State Government maintained their earlier policy and reiterated the exemption to sales of palm jaggery. On the other hand, cane jaggery was subject to sales tax at different rates in different times till 1st April, 1958, and it secured an exemption only on the eve of the passing of the present Madras Act I of 1959. Apparently doubts were entertained by the Government on the passing of the Additional Duties of Excise (Levy and Distribution) Bill, 1957, whether cane jaggery was sugar at all and on a clarification issued by the Government of India in their letter dated 10th September, 1965, the Madras State was instructed that cane jaggery including gur and nattu sakkarai do not fall within the

scope and content of the definition of "sugar" and therefore the State was free to tax cane jaggery amongst other products. Proposals to tax cane jaggery was therefore considered by the State and, in fact, the learned Government Pleader contends that G. O. 2287 dated 5th July, 1966, proposing to include cane jaggery in the net of taxation was considered, but for some reason deferred. Thereafter the subject was once over taken up for reconsideration. As a result of such deliberations, the State Government issued a notification u/s 59(1) of the 1959 Act, hereinafter referred to as the Act, to alter the Third Schedule thereto by making certain modifications to item 5 therein. Item 5 of the Third Schedule to the Act read as sugar...including jaggery and gur." This exemption was no doubt in force from 1st April, 1959, till 31st December, 1967. By the above notification dated 1st January, 1968, item 5 in the Third Schedule was amended so as to exclude jaggery and gur from, the said item. The result of it was the exemption granted from tax liability in respect of sales of jaggery and gur was withdrawn. This notification was followed up by the prescribed procedure u/s 59(2) of the Act and the same has become law under the Madras Act 2 of 1968. When the amendment was so initiated by a notification and ultimately merged in an Act of the State Legislature, in order to maintain the legislative practice which was prevalent and in order to continue the erstwhile privilege enjoyed by the palm jaggery industry throughout the State, the Government exempted the said commodity from payment of sales tax in exercise of their powers u/s 17 of the Act by passing the impugned G.O. With the above background the contentions of counsel have to be considered.

10. Is the imposition of sales tax on cane jaggery and contemporaneous exemption granted to palm jaggery an unreasonable restriction on the freedom of trade. The yard-stick to measure the reasonableness or otherwise of an Act of the Legislature or the delegated authority ultimately depends on the verdict of a judicial and well-instructed mind before whom the subject comes up for review. As pointed out by the Supreme Court in Mohd. Hanif Quareshi and Others Vs. The State of Bihar, : Though the Court starts with the assumption that the Legislature is. the best judge of what is good for the community, by whose suffrage it comes into existence, the ultimate responsibility for determining the reasonableness of

the restriction, from the point of view of the interests of the general public rests with the Court and the Court cannot shirk this solemn duty cast on it by the Constitution.

11. Objectively viewing the provisions attacked in these petitions, it cannot be said that the Legislature or the executive arbitrarily acted to the

prejudice of the traders in cane jaggery. In fact, palm jaggery was enjoying the benefit of exemption ever since 1955, whereas cane jaggery was

subject to tax till 1958. Even then it would seem that cane jaggery was exempted because of the lurking suspicion that it is sugar as is popularly

understood. As soon as the suspicion was removed by the clarification made by the Government of India in 1965, steps were taken to withdraw

the exemption which ultimately fruited only in 1967. During all these times palm jaggery was exempt. The object of sales tax law is intimately

connected with several social and economic problems. One such is the feasibility of levying such a tax on a product of indigenous manufacture by

ex-toddy-tappers, who to a certain extent live on it and by such trade and above all who deserve encouragement in the hands of the State

Government. It was this that necessitated the exemption from sales tax over all transactions in palm jaggery. Whatever may be the wisdom or

necessity behind the exemption granted to palm jaggery, it cannot be said that the resultant withdrawal of the exemption enjoyed by cane jaggery,

the trade in which is obviously more prosperous, is an arbitrary or an excessive exercise of the power admittedly available with the Legislature.

Further, the notification u/s 59(1) of the Act, having become law u/s 59(2) of the Act, it is not open to the petitioners to say that the law is

unreasonable because both cane jaggery and palm jaggery are brought into the fold of taxation by the said Act. Indirectly, however, the process

adopted by the State Government, is sought to- be attacked on the ground of unreasonableness because the executive exemption u/s 17 of the Act

brings out, according to the petitioners, such an arbitrariness in the law or notification adopted and enacted. This is far-fetched. "The

reasonableness of a restriction has to be determined in an objective manner and from the standpoint of the interests of the general public and not

from the point of view of the persons upon whom the restrictions are imposed or upon abstract considerations"-see Mohd. Hanif Quareshi and

Others Vs. The State of Bihar, . At any rate having regard to the facts already set out in detail and the peculiar circumstances of these petitions, the

means selected for safeguarding the interests of the toddy-tappers in general and the lingering village industry consisting of the manufacture of palm

jaggery in particular, the purposes underlying the grant of the exemption to palm jaggery in the prevailing conditions of its trade, have a rational and

substantial nexus to the object which the State Government wished to achieve, namely, encouraging the palm jaggery industry and reiterate the long

legislative practice of according exemption from tax on sales of palm jaggery. This might have resulted in the continuance of the levy of sales tax on

cane jaggery. But it is certainly irrational to hold that it has resulted in an unreasonable restriction on cane jaggery trade. That way every tax would

become unreasonable. We are not persuaded to agree with this extreme contention.

12. According to the petitioners, the imposition of sales tax not only affects intra-State sales in cane jaggery, but impedes inter-State trade. This

argument also has to be repelled. We are unable to appreciate how the law of the State imposing tax on a commodity would be unconstitutional on

the ground of an unreasonable restriction on trade. Normally a tax on sale of goods does not directly impede the free movement or transport of

goods. The argument that "C Forms should be secured and other burdens undertaken under the provisions of the Central Sales Tax Act, 1956, by

reason of the impost, cannot be the guide light to test the reasonableness of the due process of law. ""Exercise of the power to tax may normally be

presumed to be in the public interest. 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""-see State of Madras v. Nataraja Mudaliar [1968] 22 S.T.C. 376. We are unable to see how

the principle in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, is applicable to the instant case. The facts here,

unlike in the case noticed by the Supreme Court, are that there is no prohibition in trade, commerce or intercourse ; trade in cane jaggery is not

allowed only on the fulfilment of an unreasonable restriction and no discriminatory tax is levied. It is inconceivable as to how in the fasciculus of

events already narrated it could be said that the freedom of trade in cane jaggery is affected. As a matter of fact, the details furnished by the petitioners do not reflect on this problem either. Fall in trade may be due to diverse and varied reasons. As rightly contended by the respondent, it may be due to fall in quality, purchase-power of out-of-State dealers, seasonal lapses and other causes. It is pure speculation on the part of the petitioners to project a case of affectation in their trade based only and purely on an alleged fall in their turnover. Such a fall and imbalance in trade is seen even in the earlier years. Viewed from any perspective, the imposition of tax on both the commodities under Act 2 of 1968 and the subsequent grant of exemption from such tax to palm jaggery alone u/s 17 of the Act do not cumulatively or otherwise impose any unreasonable restriction on the trade under consideration. The question to be posed has been rightly formulated as under: ""Does the statute arbitrarily and without genuine reason impose a burden upon one group of taxpayers from which it exempts another group, both of them occupying substantially the same relation towards the subject-matter of the legislation ?"" If the answer to the poser is in the negative, as it ought to be in the instant case under review, then no question of an unreasonable restriction arises. The policy of taxation is flexible and a provision empowering the executive to exempt particular goods from a duty is valid-see *Orient Weaving Mills (P) Ltd. Vs. The Union of India (UOI)*, , *Ram Bux v. State of Rajasthan* AIR 1963 S.C. 351. *Gopal Narain Vs. State of Uttar Pradesh and Another*, and *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, . As has been succinctly put by the Supreme Court in *Ameerunnissa Begum and Others Vs. Mahboob Begum and Others*, , the Legislature has to deal with diverse problems arising out of an infinite variety of human relations. Therefore it. has the power to make special laws to attain particular objects and for that purpose it must have powers of selection or classification of persons and things upon which such laws are to operate. We are therefore not satisfied that by reason of the exemption there has resulted in the imposition of any unreasonable restriction as complained by the petitioners.

13. The contention of the petitioners vaguely referred to in the affidavit but not seriously pressed before us about the fallibility of the impugned

order as offending Articles 301 and 304 of the Constitution of India may be noticed and dealt with. Whilst Article 301 envisages that trade, commerce and intercourse throughout the territory of India shall be free. Article 304 enables the Legislature of a State, notwithstanding Article 301, to make a law imposing reasonable restrictions on such freedom as may be required in the public interest, subject to the prior sanction of the President. While so legislating a taxing law, the State may fetter inter-State trade or commerce; but it would stand muster provided the tax imposed under the tax law is on all goods of the same kind. Even so, while such a law exempts goods of a certain description and category by an executive fiat issued under lawful authority, it is infallible and will not fail by reason of Article 301. Neither Act 2 of 1968 nor the impugned G.O. can ever be said to offend Article 301 or 304.

14. In the circumstances of this case and in the setting of time, the State Government thought that it was in the public interest that poor toddy-tappers, who were deprived of their living due to the introduction of prohibition, be encouraged economically and socially to manufacture and sell palm jaggery free from the clutches of taxation on such sales effected by them. With this object, the impugned G.O. was introduced in the normal exercise of their delegated legislative authority. We have already made it clear that the exemption granted to sales of palm jaggery is competent and even if it were to be viewed as restrictive of trade in relation to cane jaggery, such a restriction is reasonable, rational and necessary in the public interest. To quote the words of Patanjali Sastri, C. J., in *The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others*, in our Constitution the principle of freedom of inter-State trade and commerce is made to give way before the State-power of imposing non-discriminatory taxes.

15. Another ground of attack suggested in pleadings but not argued against the impugned G.O. is that it is in the nature of an amendment to the existing law under Article 304(b) and has to, therefore, fail because of non-compliance with the proviso to Article 304(b). We have already expressed that in the instant case, neither Article 301 nor 304 is violated. The proviso to Article 304(b) necessarily has to be brushed aside for consideration. In so far as the sales tax law is concerned the State has the

exclusive right to legislate provided it does not impinge Article 301 or 304 of the Constitution. Under the proviso to Article 304(b) no amendment to an existing law shall be introduced without the previous sanction of the President. This is on the supposition that the main Act requires such a sanction. It is not so in the instant case. Even otherwise this argument overlooks the fact that the executive exemption granted by the respondent u/s 17 of the Act is not in the nature of an amendment to an existing law.

A clear-cut legislative policy is created by the Act and various mandates directed against the State Government are provided thereunder. Sections 59 and 17 are illustrative of such a designed policy and mandate. To contend that every amendment of the Schedule to the Act, to effectuate which a defined procedure is set, and every executive exemption granted by the Government under their delegated power to notify exemptions, should not be introduced or made without the previous sanction of the President of India, is without any basis whatsoever and indeed would be to read something into the article which it does not enfold. It is not necessary to pursue this aspect any more as we are clearly of the view that the impugned G.O. does not hamper free trade or commerce or impose any restriction therein.

16. The attack on the impugned G.O. on the ground of discrimination may now be considered. The principles governing discrimination are now well-settled. Generally speaking, equal protection of law is positive in scope and content envisaging equal protection to all persons and things similarly situate and placed. That does not however mean that no classification as between persons or property can at all be made. But whether it be in the field of taxation or in other spheres of legislation, a wide and an inflexible power is available to the Legislature to classify. Such classification however is intended to promote public welfare, to implement any beneficial economic policy undertaken by the State and to counteract various administrative problems confronting it. This naturally would result in such a classification being not of "universal application".

Provided however the classification and the resulting laws therefrom do forge a rational nexus between the differentia created and the object of the particular piece of legislation, then it is valid. In creating a class for conferring a bounty or to impose a burden, it is impossible to achieve scientific

perfection and logical completeness. As indeed every choosing or picking of a class is bound to produce inequality ex facie, that by itself is not

sufficient. The differentia should actually and palpably be unreasonable. In the words of Fazl Ali, J., in *Chiranjit Lal Chowdhuri Vs. The Union of*

India (UOI) and Others, , ""the Court should not adopt a doctrinaire approach which might choke all beneficial legislation."" Discrimination to be

hostile should be invidious in its content and application. More especially in taxing laws, the local needs and a variety of situations provoke the

Legislature and sometimes the executive acting under its delegated powers to fix its tax formula and programme.

17. In the subject under consideration the complaint is more on indirect discrimination. It is not open to the petitioners to canvass the propriety or

legality of Madras Act 2 of 1968. We have rendered our reasons earlier. How discrimination is sought to be made out is that the impugned G.O.,

by granting an executive exemption to palm jaggery, left cane jaggery alone to be dealt with under Madras Act 2 of 1968. As a result of this, cane

jaggery is in the teeth of taxation while palm jaggery is free. It should be remembered that both are different commodities. A classification which is

plausible has been made by the Legislature in its wisdom and to achieve its beneficial object of avoiding unnecessary burden over an indigenous

industry whose annual turnover is about 10 per cent, of the turnover of the trade in cane jaggery in the State and incidentally also to protect the ex-

toddy-tappers as a part of the community who are still in a developing stage. If thus the Government have chosen to exempt palm jaggery from tax,

it is for the petitioners to prove by facts and figures that they, as traders in cane jaggery, have been spotted out for hostile discrimination. No such

acceptable material has been placed before us and the onus heavily cast on the petitioners to establish such discrimination has not been discharged.

The slogan of fall in cane jaggery trade is but reflective of the mind of a competitor in trade, besides being self-serving. We are not prepared, on a

close scrutiny of such details furnished, to hold that the impugned G.O. has such an impact on cane jaggery which has resulted in hostile

discrimination. As the Supreme Court said in *Kunnathat Thathunni Moopil Nair Vs. The State of Kerala and Another*, :

If the Legislature has classified persons or properties in different categories which are subjected to different rates of taxation with reference to

income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Article 14 will not be in the way of such classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property.

18. To the same effect is the observation of the Supreme Court in *Jagannath and Others Vs. Union of India (UOI)*, . If therefore there are two different commodities then the Legislature has the right to fix the incidence and rate of tax differently for the commodities and no question of discrimination arises. The following statement of the law in *Willis* on "Constitutional Law" correctly reflects the position vis-a-vis the taxing statutes under our Constitution:

A State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably.... The Supreme Court has been practical and has permitted a very wide latitude in classification for taxation.

19. *Venkatarama Aiyar, J.*, speaking for the Bench in *East India Tobacco Company v. State of Andhra Pradesh* [1962] 13 S.T.C. 529 said at page 530 :

The differences which exist between Virginia tobacco and country tobacco are materials on which the State could treat Virginia tobacco as forming a class by itself for purposes of taxation. Therefore Andhra Act XIV of 1955 which taxed sales of Virginia tobacco but exempted sales of country tobacco could not be said to be discriminatory and was not obnoxious to Article 14 of the Constitution.

20. In the instant case it is not in dispute that cane jaggery and palm jaggery are different commodities and we have already dealt with their composition. Such a proved distinction has prompted the State Government to logically and legally differentiate the products for tax purposes.

There is nothing unjustified about it and no discrimination therefore arises. We

shall conclude by quoting the observations of the Full Bench of the

Andhra Pradesh High Court in *Tungabhadra Industries Ltd. v. State of Andhra Pradesh* which reads at page 367 :

Article 14 ensures equality amongst equals. It is designed to protect all persons placed in similar circumstances against legislative discrimination, but

if the Legislature takes care to reasonably classify persons for legislative purposes and if it deals equally with all persons belonging to a well-defined

class, such action is not open to the charge of denial of equal protection on the ground that the law does not apply to all persons.

21. It is therefore abundantly clear that no question of discrimination direct or indirect can arise in the case under consideration. In exercise of their

right to pick and choose and having regard to the fact that palm jaggery trade required encouragement and special treatment, executive exemption

was granted by the State Government u/s 17 of the Act. The impugned G.O. is reflective of such a purpose. The contention of the petitioners that

they have been discriminated against is without any basis whatsoever.

22. The impugned G.O. therefore does not suffer from the imposition of any unreasonable restriction. It is not fallible because the President has not

approved of such an interdiction and above all there is no resultant discrimination in the treatment of the two trades in question by reason of the

Government Order. All the contentions of the petitioners fail and the writ petitions are therefore dismissed with costs, one set. Advocate's fee Rs.

250 in W.P. No. 369 of 1968.