

(1986) 07 KAR CK 0016

In the Karnataka High Court

Case No : Writ Petition No's. 5506 to 5508 of 1986

Mangalore Metal House

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 25-07-1986

Acts Referred:

Constitution of India, 1950 — Article 301, 303, 304 (a)
Karnataka Sales Tax Act, 1957 — Section 5 (4)

Citation : (1986) 63 STC 482

Hon'ble Judges : M. Ramakrishna, J;M. Rama Jois, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; S.R. Babu, Government Advocate, for the Respondent

Judgement

M. Rama Jois, J.—In these writ petitions presented by Mangalore Metal House, Mangalore. the following question of law arises for consideration :

"Whether section 5(4) read with item 2 of the IV Schedule read with explanation-II thereto of the Karnataka Sales Tax Act ("the Act" for short) is violative of article 304(a) of the Constitution of India ?"

2. The question is raised on the basis of the following facts and circumstances. The petitioner is a registered dealer under the Act. He is dealer various items of iron and steel. In particular he is a dealer in M.S. rounds. The petitioner purchases M.S. rounds locally as well as in the course of inter-State trade and commerce. In respect of sale turnover of M.S. rounds, the provision, levying tax applicable, in view of explanation incorporated at the Fourth Schedule, is to the following effect :

(i) For the period from 1st October, 1957, to 31st March, 1978, though the tax on the first sale turnover of M.S. rounds is four per cent., if such M.S. rounds had been manufactured out of the scrap iron, on the sale or purchase of which tax had been paid to this State, no tax is payable.

(ii) For the period on and after 1st April, 1978, in respect of M.S. rounds manufactured within the State, though the rate of tax is 4 per cent., a deduction to the extent of the amount of tax paid on the turnover of scrap iron, out of which M.S. rounds were manufactured, is allowed.

(iii) In respect of M.S. rounds manufactured outside the State and brought for sale within the State, the levy is 4 per cent., both prior to 1st April, 1978, and after 1st April, 1978.

3. On the basis of the above facts and circumstances, the plea raised by the petitioner is that there is discrimination in the rate of tax on sales of M.S. rounds manufactured within the State and M.S. rounds manufactured outside the State and brought within the State and sold, and therefore the provision is violative of article 304(a) of the Constitution. The stand of the State is that the same rate of 4 per cent. at single point is levied on locally manufactured as well as imported items of iron and steel and there was no violation of article 304(a) of the Constitution.

4. Before proceeding to consider the rival contentions of the petitioner and the State, it is necessary to refer in brief to the relevant provisions of the Constitution and of the Central Sales Tax Act, 1956, ("the Central Act" for short).

Article 304(a) of the Constitution, on the basis of which the validity of the provision in the Act is challenged, reads :

"304. Restrictions on trade, commerce and intercourse among States. - Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law -

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so however, as not discriminate between goods so imported and goods so manufactured or produced;"

Article 302 of the Constitution empowers the Parliament to make laws imposing restrictions on the freedom of trade, commerce and intercourse between one State and another as may be required in public interest. The Central Act has been enacted by the Parliament in exercise of its power under article 302 of the Constitution. Section 14 of the Central Act declares certain goods as of special importance in inter-State trade or commerce. These goods are defined as "declared goods" u/s 2(c) of the Central Act. Various items of iron and steel are specified vide item (iv) in that section. Section 15 of the Central Act imposes restrictions on the power of the State regarding levy of sales tax on declared goods. The relevant portion of the said section reads :

"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. - Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of declared goods be subject to the following restrictions and conditions, namely : -

(a) the tax payable under that law in respect of any sale or purchase of such goods inside the State shall not exceed four per cent. of the sale or purchase price thereof and such tax shall not be levied at more than one stage."

In view of the above restriction imposed by the Central Act, section 5(4) is incorporated in the State Act. The relevant portion of section 5(4) of the State Act reads :

"5. Levy of tax on sale or purchase of goods. -

* * *

(4) Notwithstanding anything contained in sub-section (1), a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchases in each year relating to such goods."

The relevant part of the IV Schedule referred to in section 5(4) of the State Act reads :

SI	Description of the goods	Point of levy	Period for Rate	No. which of tax applicable	1	2	3	4	5
2.	Iron and steel, that is to say, - (i) Pig iron and cast iron including Sale by the 15-7-75 4% ingot moulds, bottom plates, iron first or to scrap, cast iron scrap, runner scrap earliest of 31-10-82 & iron skull scrap successive dealers in the State liable to tax under this Act Ordinance 6 of 82. (a)(i) Pig iron and cast iron including Sale by the From 4% ingot moulds, bottom plates; first or 1-11-82 of successive dealers in the State liable to tax under this Act. (ii) Steel semis (ingots, slabs, blooms do. From and billets of all qualities, 15-7-75 do. shapes and sizes); (iii) Skelp bars, tin bars, sheet bars, do. do. do. hoe-bars and sleeper bars; (iv) Steel bars (rounds, rods, do. do. do. squares, flats, octagons and hexagons plain and ribbed or twisted, in coil form as well as straight lengths); (v) Steel structurals (angles, joists, do. do. do. channels, tees, sheet piling sections, Z sections or any other rolled sections); (vi) Sheets, hoops, strips and skelp, both do. do. do. black and galvanised hot and cold rolled, plain and corrugated, in all qualities, in straight lengths and in coil form, as rolled and in riveted condition; (vii) Plates both plain and chequered in do. do. do. all qualities; (viii) discs, rings, forgings and steel do. do. do. castings; (ix) tool, alloy and special steels do. do. do. of any of the above categories From 15-7-75 to 31-10-82. (x) Steel melting scrap in all do. 15-7-75 do. forms including steel skull to turnings and borings; 31-10-82 (xi) steel tubes, both welded and do. From do. seamless, of all diameters 15-7-75 and lengths including tube fittings; (xii) tin-plates, both hot dipped and do. do. do. electrolytic and tin free plates; (xiii) fish plates, bars, bearing plate Sale by the From 4% bars, crossing sleeper bars, first or 15-7-75 fish plates, bearing plates, earliest crossing								

sleepers and pressed of successive steel sleepers, rails heavy and dealers in the light crane rails; State liable to tax under this Act. (xiv) wheels, tyres, axles and wheel sets; do. do. do. (xv) wire rods and wires - rolled, drawn, galvanised aluminised, tinned or coated such as be copper; do. do. do. (xvi) defectives, rejects, cuttings or end pieces of any of the above categories; do. do. do.

----- Act 13 of 82
(1-10-57 to 31-3-78)

Explanation II. - Where tax has been paid in respect of the sale or purchase of -

(i) iron scrap, cast iron scrap, runner scrap and iron skull scrap referred to in entry (i) of serial number 2 or in respect of steel melting scrap in all forms including steel skull turnings and borings referred to in entry (x) of serial number 2 and out of the said scrap, steel semis (ingots slabs, blooms and billets of all qualities, shapes and sizes) referred to in entry (ii) of serial number 2 are manufactured and sold; or

(ii) steel semis (ingots, slabs, blooms and billets of all qualities, shapes and sizes) referred to in entry (ii) of serial number 2 and out of the said steel semis any re-rolled products of iron and steel referred to in any one or more of the entries at (iii), (iv), (v), (vi), (vii) and (xv) of serial No. 2 are manufactured and sold, no tax shall be leviable on the sale of the said steel semis or the re-rolled products as the case may be :

Provided that the dealer claiming exemption of tax under this explanation furnishes before the assessing authority concerned proof of levy and payment of tax by the previous or earliest of successive dealers on the said scrap or steel semis used in the manufacture of the steel semis re-rolled products, as the case may be :

Provided further that in respect of the said steel semis or the said re-rolled products of iron and steel, no amount was collected by the dealer from his customers by way of tax or purporting to be by way of tax.

Act 13 of 82 (1-4-78)

Explanation II. - Where tax has been levied in respect of any item of goods of iron and steel referred to in entries (i) to (xvi) of serial number 2 and out of the said goods any other item of goods of iron and steel referred to under the said serial number is manufactured in Karnataka and sold, the tax on the sale of such manufactured goods shall be reduced by the amount of tax already paid under this Act on the relative items of goods of iron and steel used in its manufacture :

Provided that the burden of proving that the tax under this Act has already been paid and of establishing the exact quantum of tax so paid on such items of goods of iron and steel shall be on the dealer claiming the reduction."

5. It is common ground that in view of the decision of the Supreme Court in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, all the above

items of iron and steel mentioned in item 2 of the IV Schedule, are separate. The "iron and steel" is the genera and each of the 16 items mentioned therein are its species. Therefore, each of the species, though manufactured out of another, is a new commercial commodity. Further that each of the items is a declared goods is also not in dispute.

6. The provision of section 5(4) of the State Act, extracted above, is challenged by the petitioner on the ground that it is violative of article 304(a) of the Constitution on the ground that it discriminates in respect of items of iron and steel manufactured outside the State and brought into the State, in that, in respect of such items the levy is 4 per cent. on the first or earliest sale turnover in the State throughout whereas in respect of similar goods manufactured within the State for the period prior to 1st April, 1978, no tax is levied if tax had been paid on an item of iron and steel out of which the concerned items were manufactured and in respect of the period after 1st April, 1978, though the rate of tax was 4 per cent. on the sale turnover of the concerned items, deduction is required to be given to the extent of the amount of tax paid on items of iron and steel out of which the concerned item of iron and steel in respect of which tax is being levied was manufactured.

7. The petitioner has produced three assessment order for the period commencing from 1st September, 1978, to 30th August, 1979 (annexure-A), from 1st September, 1981, to 31st August, 1982 (annexure-B), and from 1st September, 1982, to 31st August, 1983 (annexure-C). Thus, the grievance of the petitioner relates to the period subsequent to 1st April, 1978. Therefore, we shall proceed to consider as to whether the impugned provision in so far it prescribes the rate of tax on items of iron and steel after 1st April, 1978, is violative of article 304(a) of the Constitution.

8. As pointed out earlier, the restriction imposed u/s 15 of the Central Act is that, in respect of declared goods there can only be a single point levy by the State concerned and such levy cannot exceed 4 per cent. of the turnover. The relevant part of the IV Schedule, extracted earlier, levies tax only at single point, namely, sale by the first or earliest of successive dealers in the State and that the rate of tax fixed is 4 per cent. No discrimination is made in the rate of tax in respect of iron and steel manufactured within the State or outside the State. The levy is uniformly 4 per cent. But the contention of the petitioner is that explanation II in so far it relates to the period after 1st April, 1978, is discriminatory because the tax burden is less on items of iron and steel manufactured within the State. In our view the said submission is based on an erroneous interpretation of the provision. All that the explanation provides is that though the rate of tax on a particular item of iron and steel on its first sale after manufacture in the State should be computed at 4 per cent., if it is established that such item was manufactured from another item of iron and steel in respect of which same 4 per cent. of tax had already been paid, the amount of tax so paid shall be deducted in the sale turnover of the latest manufactured items. In other words, the

explanation is intended to ensure that there shall not be repetitive tax at 4 per cent. when every item of iron and steel is converted into another item and to see that only 4 per cent. tax is paid finally. Therefore, the contention of the petitioner that there is difference in the rate of tax on the same item of iron and steel manufactured within the State and outside the State is fallacious. It is quite natural that the sale turnover of an item of iron and steel would be higher compared to the sale turnover of another item of iron and steel out of which the former is manufactured. For instance, the turnover of the sale of iron angles, rods and sheets made out of scrap iron would be certainly lesser than the sale turnover of windows and doors manufactured out of angles, rods and sheets. The clear effect of the explanation is that if the sale of iron angles, rods and sheets have already been subject to 4 per cent. tax and out of such tax suffered items, windows or doors, as the case may be, are manufactured, while the levy on sale turnover of windows or doors would be 4 per cent., the amount of tax paid on the sale turnover of iron angles, rods and sheets should be deducted. The resultant position is that in respect of the latest manufactured goods of iron and steel, the levy is 4 per cent. on its sale turnover and nothing short. The fact that deduction is given in respect of tax already paid on item of iron and steel, out of which the latter goods were manufactured, is no basis to hold that the rate of tax on the latter goods is less than 4 per cent. Therefore, the very basis on which the contention is advanced by the petitioner is untenable. In fact, as stated earlier, the provision is intended to avoid repetitive tax at 4 per cent. when every item of iron and steel is converted into another item and therefore obviously intended to give full effect to the object and purpose with which the restriction is imposed on the power of the State to levy tax on the sales of declared goods.

9. Learned counsel for the petitioner, however, strenuously contended that the challenge to the constitutionality of the impugned provision has to be upheld in view of the ratio of the decisions of the Supreme Court in the following cases :

(i) Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, In the said case, the validity of rule 16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, was challenged on the ground that in view of the exemption granted under the proviso to rule 16(2), tanned hides and skins manufactured out of raw hides and skins purchased within the State were exempted from tax, if tax had been paid on raw hides and skins, whereas the tanned hides and skins manufactured outside the State and brought within the State for sale were subjected to tax and hence the provision was violative of article 304(a) of the Constitution, which prohibited discrimination. The plea of the petitioner therein was that though the rate of tax on untanned hides and skins and tanned hides and skins, both of which were declared goods, were one and the same, there was discrimination as in respect of hides and skins tanned within the State the tax liability was on the sale turnover of raw hides and skins which was much lower than the sale turnover of tanned hides and skins and therefore incidence of tax was more on tanned hides and skins brought from outside the State. The Supreme Court upheld the contention and held that rule

16(2) of the Madras General Sales Tax (Turnover and Assessment) Rules was violative of article 304(a) of the Constitution.

(ii) A. A. Hajee Abdul Shakoor and Company Vs. State of Madras, In the said case the validity of section 2(1) of the Madras General Sales Tax (Special Provisions) Act, enacted to overcome the effect of the judgment of the Supreme Court in the case of Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, was challenged on the ground that it was violative of article 14 of the Constitution. The petitioners therein contended that the effect of section 2(1) of the Madras General Sales Tax (Special Provisions) Act, was that while persons who purchased the raw hides and skins within the State paid tax of 3 pies (old) per rupee which worked out to 19/16th per cent. upto 1st April, 1957, whereas those who purchased raw hides and skins from outside the State during the same period were liable to pay tax at the rate of 2 per cent. The challenge was upheld and the provision was held to be discriminatory against imported hides and skins upto 1st August, 1957, and therefore violative of article 14 of the Constitution.

10. Sri Rajendra Babu, learned counsel for the State, submitted that the ratio in the aforesaid decisions was not apposite to the facts of this case. He submitted that on and after 1st April, 1978, there had been no difference in the rate of tax and the provision for giving deduction to the extent of amount of tax paid on items of iron and steel out of which some other item, the sale turnover of which constituted the subject-matter of levy in a given case, was manufactured, could not be regarded as discriminatory. He relied on the following decisions :

(i) V. Guruviah Naidu and Sons and Others Vs. State of Tamil Nadu and Others, This was a case in which the rate of tax on dressed hides and skins manufactured outside the State and brought within the State of Madras for sale, was questioned. The contention raised in the said case was similar to the one raised in this case. The relevant provisions of the Madras General Sales Tax Act provided for deducting the tax paid on the raw hides and skins out of the total amount of tax payable on the sale turnover of dressed hides and skins. The appellant in the said case placed reliance on the decisions in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, and A. Hajee Abdul Shakoor and Company Vs. State of Madras, . The Supreme Court upheld the validity of the provision. The relevant portion of the judgment is at page 571. It reads :

"Apart from that it seems to us that even though dressed hides and skins have been treated as separate commodity, there is a clear nexus between hides and skins in raw form and those in dressed form. So far as the Central Act is concerned, both the raw as well as the dressed hides and skins are specified together in clause (iii) of section 14. It has to be borne in mind that it is raw hides and skins which after being subjected to processing or tanning take the shape of dressed hides and skins. Dressed hides and skins cannot, therefore, be considered in isolation and we find no infirmity in a legislative provision which while levying tax on the sale of dressed hides and skins takes into account the

levy of tax in respect of the purchase of raw hides and skins. Looked at in this light there appears to be no warrant for the proposition that preferential treatment has been shown to dressed hides and skins prepared from locally purchased raw hides and skins compared to the treatment accorded to imported hides and skins."

(ii) Abdul Samad Saheb & Co. v. Commercial Tax Officer, Visakhapatnam [1976] 38 STC 571 (AP). In the said case, the validity of entry 9(a) and (b) of the Third Schedule of the Andhra Pradesh General Sales Tax Act, was challenged on the ground that it was violative of article 304(a) of the Constitution on the grounds similar to the one raised in this petition. In the said case, Chinnappa Reddy, J., (as he then was) concluded the judgment thus :

"In Associated Tanners v. Commercial Tax Officer [1974] 33 STC 588, Gopal Rao Ekbote, C.J., and Chennakesav Reddy, J., while observing that the case appeared to be covered by the decision of the Supreme Court in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, , held that the Supreme Court appeared to have struck a new note in the cases of State of Madras Vs. N.K. Nataraja Mudaliar, and Rattan Lal and Co. and Another Vs. The Assessing Authority and Another, , and that they were bound to follow the later judgments of the Supreme Court. We also feel the same way. Entry 9(b) appears to us to offend article 304(a) of the Constitution in the light of what was said by the Supreme Court in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, But in the light of the principles laid down in the two later cases by which also we are bound, we have to uphold the validity of entry 9(b)."

It may be seen from the above decision that the court expressed the view that though the argument received support from the earlier judgment of the Supreme Court in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, the subsequent decisions of the Supreme Court in State of Madras Vs. N.K. Nataraja Mudaliar, and Rattan Lal and Co. and Another Vs. The Assessing Authority and Another, , struck a different note and the view taken in those decisions must prevail. In these two decisions the Supreme Court held that in order that the levy is violative of article 304(a) of the Constitution, there must be difference in the rate of tax as between goods manufactured within the State and those manufactured outside the State.

11. As pointed out by us earlier, there is no difference in the rate of tax at all in so far it relates to the period on and after 1st April, 1978. The rate is 4 per cent. whether the particular item of iron and steel is manufactured within the State or brought from outside the State. The fact that deduction is given in respect of tax already paid on the sale turnover of a particular item of iron and steel which is one of the declared goods. while collecting the tax on the sale turnover of the items manufactured out of an item of iron and steel which had suffered tax within the State, which is also one of the declared goods, is no basis to say that there is discrimination in the rate of tax against such items of iron and steel brought from outside the State. Further, though as held by the Supreme Court in

State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, , every item or iron and steel mentioned at entry 2 of Fourth Schedule constituted different taxable goods, there is a clear nexus between each of the items out of which the other item is manufactured and both are declared goods and therefore a provision providing for deduction of the amount of tax paid on the turnover of one item of declared goods when it is converted into another item of declared goods, is no ground to say that the rate of tax on the latter item is less. The ratio of the judgment of the Supreme Court in V. Guruviah Naidu and Sons and Others Vs. State of Tamil Nadu and Others, , is a complete answer to the contention raised by the petitioners.

12. The Supreme Court in a recent decision in Associated Tanners, Vizianagaram, Andhra Pradesh Vs. Commercial Tax Officer, Vizianagaram, Andhra Pradesh and Others, , has held that so long as the rate of tax on declared goods manufactured within a State, whether by purchase of raw material from outside the State or within the State is the same, there was no violation of article 304(a) of the Constitution and that the fact that its effect works differently on dealers who buy raw material from outside the State and those who buy raw material within the State, was no basis to say that the provision is violative of article 304(a) of the Constitution. In view of this decision whether the provision in respect of the period earlier to 1st April, 1978, is violative of article 304(a) of the Constitution itself is doubtful. However, we consider it unnecessary to examine and pronounce upon it as the assessment orders (annexures A, B and C) which constituted the basis for the petitioner to challenge the validity of the provision are all subsequent to 1st April, 1978.

13. For the foregoing reasons, we answer the question set out first as follows :

"Section 5(4) read with items 2 of the Fourth Schedule read with explanation II thereto of the Karnataka Sales Tax Act is not violative of article 304(a) of the Constitution of India."

14. In the result, we make the following order :

(i) Rule discharged.

(ii) The writ petitions are dismissed with costs. Advocate's fee Rs. 1,000.

15. Writ petitions dismissed.