

(1990) 06 KAR CK 0006

In the Karnataka High Court

Case No : Writ Petition No's. 9532 and 9533 of 1986

N.G. Purushottam

APPELLANT

Vs

Government of Karnataka and another

RESPONDENT

Date of Decision : 15-06-1990

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 14, 286, 304 (a)

Citation : (1990) 79 STC 227

Hon'ble Judges : S. Rajendra Babu, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; M.R. Achar, Government Advocate, for the Respondent

Judgement

1. The petitioner seeks a declaration that entry 5(e)(ii) of the Fourth Schedule to the Karnataka Sales Tax Act, 1957 ("the KST Act", for short) as amended by Karnataka Act of 23 of 1983 as unconstitutional, as offending articles 14, 286 and 304(a) of the Constitution of India; consequently, the levy of tax under entry 5(e)(ii) of the said Fourth Schedule, on coconuts is sought to be quashed.

2. The petitioner is a wholesale dealer in coconut. Coconut is a "declared goods", declared to be of special importance in inter-State trade or commerce, u/s 14 of the Central Sales Tax Act, 1956 ("the CST Act", for short). Section 15 of the CST Act imposes certain restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. By Karnataka Act 23 of 1983, tax is levied on sale, as well as purchase of coconuts in the State of Karnataka, which according to the petitioner is constitutionally impermissible. It is asserted that, under the KST Act, tax was leviable on the fresh purchase in the State. In respect of coconuts purchased locally within the State, tax was being levied at the earliest point of purchase; now after the amendment, in respect of purchases made by inter-State sales, tax is not levied, but tax is levied at the point of first sale; this levy, is not only discriminatory, but also offends article 304(a) of the

Constitution.

3. Entry 5(e) brought out by the impugned amendment made to the Fourth Schedule, reads :

"5(e) Coconuts (i.e., copra excluding tender coconuts) - (i) Purchased within State by the first or earliest of three dealers in the State per cent liable to tax under this Act. (ii) Obtained from sale by the first or earliest of three dealers outside the State per cent liable to tax under this Act. cent."

From the language of entry 5(e)(ii) the petitioner contends the levy thereunder as a levy on the goods purchased or brought into the State, in the course of inter-State or commerce. As local sales of such goods are not burdened with such a purchase tax under entry 5(e)(i), the levy only on the coconuts obtained from outside the State, offends article 304(a) of the Constitution.

4. Mr. Gandhi contended that under entry 54, List II of the Constitution, tax can be levied either on the sale or on the purchase, of any particular goods, but not on both sale and purchase; in the instant case, the State Legislature has selected on both points of sale and purchase of the levy, which is not permissible. The legislature should have confined the levy, either to the levy stated in entry 5(e) (i) or to entry 5(e)(ii), but levy on both aspects of a transaction is not contemplated by the legislative entry. In respect of coconuts brought into the State of Karnataka by inter-State trade, tax is already levied u/s 15 of the CST Act; such coconuts already bear the tax burden; imposition of one more tax again, while these coconuts are sold in the State, at the first point of sale, enhances the burden on the goods; this primarily attracts the bar imposed by article 304(a).

5. It is not possible for us to accept the arguments of the learned counsel. Under entry 54, List II of the Constitution, sales tax may be levied on any aspect of the sale transaction. There is no bar against choosing either points of the transaction of sale for the levy; whether, the levy is at the point of sale or at the point of purchase, the levy is on the transaction of sale; concept of "sale" necessarily includes the concept of purchase. Depending upon the circumstances, a particular category of goods may have to bear the burden of sales tax either at the point of sale, or at the point of purchase.

6. Coconuts sold locally attract the sales tax at the point of first purchase, as is clear from entry 5(e)(i). Same coconuts are not again or earlier taxed at the sale point. In other words, the local seller of coconuts do not bear the sales tax in Karnataka when the transaction of sale results in purchase by another in Karnataka. However, by virtue of sub-item (ii) of entry 5(e), these coconuts, which are brought into Karnataka, are to bear the tax burden, when they are sold for the first time in Karnataka, because, the anterior sale point did not attract the levy of tax under the Act. The fact that coconuts which are brought into the State have already been taxed in another State is irrelevant for the

purpose of levy of tax in the State of Karnataka. By the time those coconuts arrive in Karnataka, the tax elements would have merged into their costs or value. Cost of production, cost of transportation, costs by way of anterior tax burdens, traders' profits, are all components of the value of such goods in the State of Karnataka. Mr. Gandhi contends that the cost of coconuts brought into Karnataka from outside Karnataka will get further augmented by the levy of tax in Karnataka at the point of sale while similar cost components do not burden the local coconuts. The simple answer is to note that this is inevitable in any kind of inter-State transaction. The State of Karnataka cannot examine the higher cost of production and other components which go into the cost of goods brought into Karnataka; the Constitution, nowhere, contemplates such a restriction on the State's power to levy sales tax. Article 304(a) of the Constitution prohibits imposition of a tax on goods imported from other States, if "similar" tax is not imposed on goods manufactured or produced in the State. Sales tax is levied on sale transactions of coconuts in the State of Karnataka. If so, sales tax can be levied on sale transactions of coconuts which are brought into Karnataka. The point of levy is irrelevant so long as the rate of tax is the same. It is quite clear that levy either at the sale point or purchase point is a levy of sales tax, when the taxable event is the sale transaction. Therefore, what is levied by virtue of sub-item (ii) of entry 5(e) is a tax similar to the one levied under sub-item (i) thereof.

7. The only restriction, in the matter of levy of sales tax, in respect of declared goods, is found in section 15 of the CST Act. As per clause (a) of section 15 of the Act the maximum rate of taxation is prescribed. As per clause (b), certain benefit of reimbursement is given, in case, the transaction of sale of the goods has already attracted tax in a particular State and, thereafter, the said goods are sold in the course of inter-State trade or commerce, from that State. The instant case is of a different nature. The levy under the State sales tax law is not anterior to the inter-State sale and, therefore, clause (b) of section 15 is not attracted. The levy under the KST Act is after the coconuts are brought into Karnataka. The rate of tax levied under the KST Act is within the limitation imposed as to the rate by clause (a) of section 15. In these circumstances, the levy under entry 5(e)(ii) of the Fourth Schedule to the KST Act, cannot be held as going beyond the restrictions imposed by section 15 of the CST Act.

8. Power of taxation vested in the State is liberally construed. The restrictions against the power ought to be clear and specific. The constitutional bar against a levy has to be clearly brought out and established. The discriminatory treatment has to be a real discrimination. State of Karnataka here, has not levied anything on coconuts brought into Karnataka, which, coconuts produced in this State need not suffer. A single point of levy regarding the sale transaction is envisaged by the impugned entry 5(e), either at the point of purchase or at the point of sale.

9. The ratio of the decision of the Supreme Court is *Sri Doki China Guruvulu Son and Co. and Another Vs. Government of Andhra Pradesh and Another*, is equally

applicable to the instant case. Relevant facts are neatly summarised in the head note to the report at page 235, which reads :

"Tamarind was originally liable to sales tax in the State of Andhra Pradesh under item No. 14 of the Second Schedule to the Andhra Pradesh General Sales Tax Act, 1957, at the point of first purchase in the State irrespective of whether it was produced within the State or obtained from outside the State. By an amendment tamarind purchased within the State was retained in item No. 14 of the Second Schedule while tamarind purchased from outside the State was taken to the First Schedule, and under item No. 170 was made taxable at the point of first sale in the State. The rate of tax in both cases was the same, viz., 4 paise in the rupee. The appellants, dealers in tamarind in a border district in Andhra Pradesh, who had purchased tamarind from the State of Orissa paying tax there and incurring expenditure in bringing the goods to Andhra Pradesh for sale, filed a writ petition in the High Court challenging the validity of the amendment on the ground that it brought about discrimination between tamarind purchased within the State i.e., produced within the State and tamarind purchased outside the State, i.e., produced outside the State; and that the incidence of tax was more on tamarind purchased outside the State and, therefore, the amendment violated clause (a) of article 304 of the Constitution of India as also article 14."

The Supreme Court held at page 39 :

"In the instant case the tamarind purchased within the State and outside the State, are taxed at the same rate. But the point of taxability has necessarily to be different in both the cases. In the case of tamarind purchased within the State, i.e., produced within the State, the tax is levied at the point of first purchase, and in the case of imported tamarind, i.e., purchased outside the State, the tax is levied at the point of first sale in the State."

Thereafter, the contention of the petitioner therein, that the cost of tamarind imported into the State being more (in view of freight charges, etc.) it should not be taxed again in the State, was rejected :

"Tamarind will be imported only when it can be sold in the market here at the same price as the tamarind produced within the State. Only when after bearing the other State tax and freight charges, if it is able to compete with the locally produced tamarind, it will normally be imported from outside the State. If there is any difference in prices because of market conditions and other factors, that cannot be said to be due to discrimination prohibited by clause (a) of article 304 of the Constitution. In order to ensure this, it would be necessary that imported goods must always be taxed at a lower rate than the corresponding goods within the State because of freight and other charges. That cannot be so."

The Supreme Court further pointed out that so long as the rate of tax on imported goods is not higher than the rate of tax on local goods, article 304 has no application :

"When the rate is applied the resulting tax may be somewhat higher but that does not contravene the equality contemplated by article 304 of the Constitution."

10. The learned counsel for the petitioner pointed out that tamarind is not a "declared goods" u/s 14 of the CST Act and, therefore, the aforesaid decision is distinguishable. But it is not explained as to how in the matter of legal principle it is distinguishable. The special treatment given to a "declared goods" is found only u/s 15 of the CST Act; if the restrictions imposed by the said section 15 is satisfied, no further benefit need be extended to the sale or purchase of "declared goods".

11. Consequently, we find no merit in these writ petitions and, accordingly, they are dismissed. Rule is discharged. No order as to costs. The petitioner is given time till the end of November, 1990, to pay the tax assessed under the impugned orders.

12. Petition dismissed.