(1994) 08 RAJ CK 0015

In the Rajasthan High Court

Case No : Civil Writ Petition No. 833 of 1988

Paras Mal APPELLANT

Vs

State of Rajasthan RESPONDENT

Date of Decision : 11-08-1994

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 301, 303, 304

Citation : (1994) 2 RLW 439 : (1995) 1 WLC 216 : (1994) 2 WLN 494

Hon'ble Judges : Gokal Chand Mital, C.J;N.K. Jain, J

Bench : Division Bench

Final Decision : Allowed

Judgement

N.K. Jain, J.—This writ petition has been filed by Paras Mal, Principal Secretary M/s. Barmer Marudhar Vikas Samiti, Barmer Under Article 226 of the Constitution of India to declare the words "In the State" in Clause 5 of Notification Ex.3 dated 16.8.83 as unconstitutional. The petitioners also seeks to quash the respective assessment orders (Ex. 13 to 15) and demand notices (Ex. 16 to 18) dated 7.3.88.

2. The Barmer Marudhar Vikas Samiti is a registered Society and it is also registered as a dealer Under the Rajasthan Sales Tax Act (hereinafter referred to as the ''Act'') importing match boxes manufactured by the cottage match industries outside the State of Rajasthan. The sale of purchase of such match boxes along with other products of the village industries were exempted by the State Government vide Notification dated 6.3.78 (Ex.1). The petitioner''s Society was also exempted from payment of tax. This notification was superseded by another Notification Ex. 3 dated 16.8.83 wherein exemption was granted to the products processed and manufactured by the village industries in the State of Rajasthan. The petitioner has challenged the validity of the Notification Ex.3 so also the assessment orders and demand notices issued in pursuance thereof.

3. Mr.Purohit, learned Counsel for the petitioner has contended that the

impugned notification Ex.3 dated 16.8.83 is unconstitutional since it levies sales tax on the products of the village industries situated outside Rajasthan and imported to Rajasthan, which can only be levied If a similar tax is imposed on the products of the similar industries in Rajasthan. According to him the imposition of the tax in this manner offends Article 304(a) and also hit by Article 14 of the Constitution of India being discriminatory. He has relied on State of Madhya Pradesh Vs. Bhailal Bhai and Others, M.K. Salpekar Vs. Sunil Kumar Shamsunder Chaudhari and Others, , Weston Electronics V. State of Gujarat (AIR 1988 SC 2038) and the Indian Cement and Others Vs. State of Andhra Pradesh and Others,

4. Mr. Rajvanshy has opposed the submissions of Mr. Purohit stating that the state of Rajasthan for unliftment of its people working in village cottage industiy can levy sales tax on the products of village industries situated outside Rajasthan as grant of exemption from payment of sales tax is prerogative of State Government and no one has a right to claim exemption from payment of tax. He has contended that the words inserted vide Ex.3 are not void and discriminatory. He has placed reliance on State of Madhya Pradesh Vs. Abdeali,

5. We have heard learned Counsel for the parties and perused the case law as well as the relevant provisions of law.

6. For just decision of the controversy raised in this petition it would be proper to read Articles 301 and 304 of the Constitution of India. They urn as Under: 301. Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free.

304. 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 to discriminate between goods so imported and goods so manufactured or produced; and

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest;

Provided that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the pervious sanction of the President.

7. A careful reading of these articles shows that it is not open to any State to levy any tax on goods imported from other States or Union territories so as to discriminate between goods so imported and goods manufactured and produced in that state subject to the llnitations contained in clause (b) of Article 304.

8. Relevant part of the notification Ex.1 dated 6.3.1978 read as under:

(v) No. F.5 137) FDCT/66-2, dated 31.12.1966(S.No. 115) and hereby exempts from tax the sale or purchase of the undermentioned goods on the condition that the said goods are recorded in the registration certificate of the dealer claiming exemption as being so exempted on the recommendation of the Khadi and Village Industries Commission constituted Under the Khadi and Village Industries Commission Act of 1956 (Central Act 61 of 1956) or the Rajasthan Khadi and Village Industries Board constituted Under the Rajasthan Khadi and village Industries Act, 1955 (Rajasthan Act 5 of 1955):

(1) Cotton Punies, sliver, raw and processed wool, knitting wool and lefa

(2) All carding, spinning, weaving, warping, sliver making and hoisery making apparatus and applicances relating to the production of Khadi or hoiserey goods and spare parts of such apparatus and applicances, including saranjam, amber charkha and spare parts thereof;

(3) Hand-spun and hand-woven Khadi and yarns rade of cotton, wool, silk or any other natural fibres of animal hair or of mixture of any two or all of them;

(4) Ready-made garments and other articles made of Khadi including razia, gaddas, pillows and handbags and jerseys, sweaters, socks and hand-gloves made of handspun and hand-woven yarn;

(5) The products of the village industries as defined in the Khadi and village Industries commission Act, 1956 (Central Act of 1956) listed in the Schedule appended thereto:

Schedule 1. Beekeeping; 2. Cottage Match Industry; 9. Relevant part of the notification Ex.3 dated 16.8.83 reads as Under:

S. O. 74-In exercise of the powers conferred by Sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 (Rajasthan Act 29 of 1954) and in supersession of this Department Notification No.F.4 (21) FD. Gr. IV/78-2, dated 6.3.1978 (S. No. 380) the State Government being of the opinion that it is expedient in the public interest to do so, it hereby exempts with immediate effect from tax the sale or purchase of the goods as mentioned in the Schedule below on the following conditions:

1. That the said goods are recorded in the registration certificate or the dealer claiming exemption.

2. That the recommendations of the Khadi and Village Industries Commission constituted Under the Khadi and Village Industries Commission Act of 1956 (Central Act 61 of 1956) or Rajasthan Khadi and Village Industries Board constituted Under the Rajasthan Khadi and Village industries Board Act, 1955 (Rajasthan Act 5 of 1955) and produced before the concerning assessing authority.

SCHEDULE 1..... 2..... 3..... 4..... 5. The products processed or manufactured in the State of the following village Industries as defined in the Khadi and Village Industries Commission Act, 1956 (Central Act 61 of 1956): 1..... 2. Cottage

Match Industry;

10. Earlier vide Notification Ex.1 exemption was granted from payment of sales tax but for grant of this exemption two conditions precedent were there to the effect that (a) the goods are recorded in the registration certificate of the dealer claiming exemption and (b) the recommendation of the Khadi and village Industries Board were, to be produced before the concerned assessing authority, then and then only the exemption could have been allowed by the assessing authority from payment of tax. By the subsequent notification dated 16.8.93 issued in supersession of notification dated 6th March, 1978 the exemption was granted to the products of the village industries was withdrawn and instead of it the products processed or manufactured in the State i.e. with the State of Rajasthan were granted exemption from payment of sales tax.

11. It is no doubt true that Article 304(a) enables the legislature of a State to make laws imposing taxes on goods imported from other states and impose reasonable restriction on the freedom of trade, commerce or intercourse but such imposition can be made if similar goods in the state are also subjected to similar tax, so that there may not be any discrimination between the goods manufactured or produced in that State and the goods which are imported from other States, otherwise it may offend Article 301. Undoubtedly as per Sub-section (2) of Section 4 of the Act the State Government has vested right and power to grant or not to grant exemptions for payment of tax.

12. In the instant case, the petitioner''s Society was importing match boxes form the cottage village industry outside the State and was fulfilling required conditions and levy of sales tax on such import was earlier exempted vide Ex.1 dated 6.3.78. By virtue of Ex.3 the products processed or manufactured in the village industries of the State of Rajasthan have been exempted from the sales tax due to which import of such match boxes has been subject to sales tax inspite of the fact that petitioner''s Society fulfills the two other conditions specified in Ex.3. In our view imposition of sales tax of the kind Under consideration here, cannot be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities rather it hampers free flow of trade. Since by the said conditions match boxes though made in the village cottage industry outside the state fulfilling the other conditions specified in the Notification Ex.3 have been taxed whereas similar match boxes made by the village cottage industry in the State of Rajasthan fulfilling same conditions have been exempted from imposition of tax which is discriminatory. It is now well settled by their lordships of the Supreme Court in numerous decisions that sales tax which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Article 301 and will be valid only if it comes within the terms of Article 304(a). The respondents have not been able to show that the words introduced in Clause 5 "in the State" comes within reasonable restrictions,except that it is provided for upliftment of village industry of Rajasthan which is no explanation in the eye of

law.

13. So far as the decision cited at Bar by the counsel for the non-petitioner rendered in State of Madhya Pradesh V. Abadeal (supra) is concerned, the same is not applicable to the facts of present case as in that case there was no discrimination between the footwear manufactured or produced in the State of Madhya Pradesh and footwear imported from outside. In that case a company carrying on business of importing and selling different types of footwear in the State of Madhya Pradesh was assessed to sales tax in accordance with Item 32 of Schedule III, which was challenged contending that it was not liable to pay any sales tax on the sale of hand-made shoes, chappals and other types of footwear whose sale price did not exceed Rs. 12-8-0 per pair. The High Court accepted the contention holding that the exemption applies to hand-made shoes, Chappals etc., whether made within or outside the State if the other conditions mentioned in the notification are satisfied. Their lordships of the Supreme Court while setting aside the judgment of the High Court observed as Under:

The notification lays down three conditions for the grant of exemption; one of the conditions is that the sate must be of such shoes, chappals, country shoes and footwear as are hand-made and not manufactured on power machine; the second condition is that the sale price must not exceed Rs. 12.8.0.; and the third condition is that the sale must be by the manufacturer or any member of his family. The notification when it uses the expression "in case of sale" must refer to the sale which is being exempted from tax in the State; in other words it has reference to the taxable event in the State as per Sch.3. That notification makes it clear that the tax is a single point tax, and the taxable event is the sale by the importer or manufacturer in the State. Therefore, the expression "in case of sale" in the exemption notification can have no reference to a sale outside the State. The High Court was in error when it said that it made no difference whether the sale was by the manufacturer within the State directly to the purchaser or whether the sale was by the manufacturer within the State dirctly to he purchaser or whether the sale was by the manufacturer outside the State to the importer who then sold the shoes to the purchaser in the State. When a manufacturer sells shoes outside the State to an importer and the importer again sells shoes in the State, there are really two sales, one outside the State and one inside it. The sales outside the State are not taxable Under the Act and the notification of January 28, 1956 has no reference to such sales. When the notification uses the expression "in case of sale by the manufacturer or a member of his family", it has reference to such sales as would come but for the exemption within item 32 of Sch.3. All the three conditions laid down in the notification must be fulfilled before the exemption referred to therein can be claimed.

14. Their lordships further observed that the notification dated January 28, 1956 does not make any discrimination between footwear manufactured or produced in the State of Madhya Pradesh and foot-wear imported from other States as is

prohibited by Article 304(a) of the Constitution. The exemption granted by the notification depends on the fulfillment of three conditions and all the three conditions are equally applicable to foot-wear manufactured or produced in the State and foot-wear imported from other States. It is obvious that the exemption is for the protection and benefit who make hand-made shoes of small value and who may be unable to compete with large-scale manufacturers and footwear made on machines.

15. As stated above, the aforesaid decision has no bearing on the controversy involved in this petition since in the aforesaid case there was no discrimination and the order of the High Court was set aside as it was putting a wrong interpretation.

16. For the reasons set out above, we are of the opinion that the words appearing in Clause 5 "in the State" are hit by Article 301 of the Constitution of India and we declare that part of the notification Ex.3 unconstitutional. In view of this the respective assessment orders (Ex.13 to 15) and demand notices issued by the non-petitioners Ex.16 to 18 are quashed and the matter is remanded back to the assessing authority to decide it afresh and give effect to the order of this Court granting exemption if the petitioner fulfills the other conditions specified in Ex.3.

17. Accordingly, the writ petition is allowed with the above observations. No costs