

(1990) 02 AP CK 0018

In the Andhra Pradesh High Court

Case No : Writ Petition No's. 15357, 15358, 15362, 15366, 15472, 15532, 16165 and 17012 of 1988 and 12391 and 12514 of 1989

Prabhudayal Ramanand

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 02-02-1990

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 5, 5A, 5C, 5E, 6
Central Sales Tax Act, 1956 — Section 14, 8

Citation : (1990) 77 STC 122

Hon'ble Judges : Upendralal Waghray, J; B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : K. Pratap Reddy, for the Appellant; Government Pleader for Commercial Taxes, for the Respondent

Judgement

Upendralal Waghray, J.—This batch of writ petitions is filed by several roller flour mills in the State seeking declaration that the collection of sales tax on sale or purchase of wheat or its products like maida, atta, ravva is unconstitutional and illegal.

2. It is not disputed that a number of roller flour mills which convert wheat into its various products like ravva and maida are located in our State and also this State has a large number of bakeries manufacturing biscuits, bread, etc., which use wheat products as raw material. It is asserted that the number of bakeries in this State is the highest in our country. Our State does not produce wheat in significant quantities and, therefore, it has to be brought from outside the State for the roller flour mills. Wheat is one of the declared goods u/s 14 of the Central Sales Tax Act and, therefore, the maximum rate at which a State can levy sales tax on its sale is four per cent. Till about 1987, wheat, which is an essential commodity was being distributed and sold to roller flour mills through the Food Corporation of India throughout the country at fixed rates because of orders under the Essential Commodities Act. However, from the middle of 1987, the Government of India discontinued the policy of distribution of wheat by Food

Corporation of India to the roller flour mills at fixed rates and introduced a system of sale by tenders by the Food Corporation of India. At the same time, the roller flour mills were given freedom to purchase wheat from the open market anywhere in the country. Thus, the raw material needed by the roller flour mills has to be procured, either in the open market or by submitting tenders offering appropriate rates to the Food Corporation of India. This introduced an element of play of market forces on the price of this raw material of the petitioners. According to the petitioners, because of the high rate of sales tax under the Andhra Pradesh General Sales Tax Act, 1987, on wheat and its products in comparison with the other States the bakeries in our State are finding it cheaper to buy the wheat products from the roller flour mills outside the State.

3. In short, the case of the petitioners is that the levy of sales tax in the manner and at the rates by the State, is in violation of article 301 of the Constitution of India and shall be declared to be illegal. This is disputed by the respondent-State.

4. Part XIII of the Constitution of India bears the heading - Trade, commerce and intercourse within the territory of India - and consists of articles 301 to 307. Article 301 reads as follows :

"301. Subject to the other provisions of this part, trade, commerce and intercourse throughout the territory of India shall be free."

5. Articles 302 and 303 deals with certain powers conferred on Parliament with which we are not concerned. Article 304 is in the nature of an exception to articles 301 and 303 and confers a restricted power on the State Legislature with which we are not concerned in this case.

6. The Andhra Pradesh General Sales Tax Act, 1957 (Act No. 6 of 1957) (hereinafter called "the Act") provides for the levy of sales tax by the State. In accordance with section 5 read with section 6 and the Third Schedule, item 16, wheat is taxable at the first sale in the State at four per cent till it was reduced to one per cent with effect from 15th February, 1989, by G.O. Ms. No. 130, Revenue, dated 14th February, 1989. Again in accordance with section 5 read with the First Schedule, item 60 provides for levy of sales tax on maida, etc. The entries read as follows :

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Description of goods	Point of levy	Rate of tax	(1) (2) (3) (4)		
-----				60.	(a) Maida, atta and At the point 2 paise in ravva not covered of first sale the rupee by item (b) below in the State (b) Maida, atta and do. 1 paise in the ravva obtained from rupee wheat that has met tax under this Act (c) Wheat bran do. 1 paise in the rupee."

Further, section 5-A provides for the levy of additional tax and reads as follows :

"5-A. Levy of additional tax on turnover. - Every dealer who is liable to pay tax

under sections 5, 5-C, 5-E, 6, 6-A and 6-C shall, in addition to the tax payable under those sections pay for each year a tax on his turnover liable to tax at the rate of -

(a) one half paise on every rupee where the total turnover for the year is three lakh rupees or more but less than fifty lakh rupees;

(b) one paise on every rupee where the total turnover for the year is fifty lakh rupees or more but less than one crore rupees; and

(c) one and half paise on every rupee where the total turnover for the year is one crore rupees or more :

Provided that in respect of declared goods the total rate of tax together with the rate of additional tax specified in this section shall not exceed four per cent."

7. It is stated that the annual sale turnover of many petitioners is over one crore and of some over fifty lakhs.

8. Section 6-B provides for levy of surcharge on sales tax and reads as follows :

"6-B. Levy of surcharge on sales tax. - (1) Every dealer, who is liable to pay tax under this Act on the sale or purchase of goods, shall pay a surcharge on such tax at the rate of ten per cent of such tax :

Provided that if, in respect of declared goods, the tax u/s 6 and the surcharge under this section, payable by such dealer, exceeds four per cent of the sale or purchase price thereof the rate of surcharge in respect of such goods shall be reduced to such an extent that the tax and the surcharge together shall not exceed four per cent of the sale or purchase price of such goods.

(2) The provisions of this Act shall apply in relation to the surcharge payable under sub-section (1) as they apply in relation to the tax payable under this Act.

Explanation : For the purpose of this section the term "tax under this Act" shall include additional tax, concessional tax and other tax payable u/s 6 or section 6-A."

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9. As noticed earlier, wheat which is an essential commodity is one of the declared goods u/s 14 of the Central Sales Tax Act. Various other States in the country have imposed sales tax on wheat and wheat products by their respective Sales Tax Acts. As it is one of the declared goods the maximum rate of sales tax on wheat will be four per cent. There are differences in the structure of levy of tax and the applicable rate on wheat and wheat products among the various States. Some States have granted exemption from the liability of tax on these goods.

10. One other aspect to be kept in view is that, after the present litigation has commenced by filing these writ petitions, some important statutory changes

have been made by the State, which have an effect on the sales tax liability on wheat and wheat products : (a) By the Andhra Pradesh General Sales Tax (Third Amendment) Act, 1988 (Act No. 29 of 1988) which came into force from 13th September, 1988, section 5-A has been amended increasing the levy of additional tax on turnover. The present amended provision has been extracted earlier. (b) By G.O. Ms. No. 130, Revenue, dated 14th February, 1989 the Government have amended the rate of sales tax on wheat, that is, item 16 in the Third Schedule, and also the rate of sales tax on wheat products, that is, item 60 of the First Schedule, with effect from 15th February, 1989. The amended provisions have been extracted earlier. The effect of these is that there has been a reduction of sales tax on wheat and its products. Also there has been an increase on the additional tax on turnover of all goods as indicated above. The effective rate of sales tax on maida or ravva which are the main products of the petitioners used in the bakeries will be 2 per cent in case where wheat has not suffered State sales tax; and 1 per cent where wheat has suffered sales tax. The tax on wheat itself is 1 per cent. The surcharge u/s 6-B and additional turnover tax u/s 5-A is applicable to all goods. The surcharge is 10 per cent of the sales tax and the additional turnover tax is 1.5 paise per rupee where the turnover is over 1 crore and 1 paise per rupee where turnover is between fifty lakhs and one crore. Further, while calculating the levy of tax on wheat products, a set-off is given for any tax paid on wheat which is evident from item 60 of the First Schedule.

11. After some hearing the matter was adjourned to enable the parties to inform the court about the rates of sales tax in other States. From the material given by them (which it is stated may not be up to date) the following facts emerge :

Sl.	State	Rate of tax on wheat	Rate of tax on wheat products	Remarks
1.	Karnataka	2 per cent	3 per cent	Set-off is (vide item 9, (vide item 138, available where Schedule IV) Schedule II) the products are extracted from tax suffered wheat.
2.	Tamil Nadu	1 per cent	2 per cent	However, it (vide item 1, (vide item 75, appears, by a Schedule II) Schedule I) notification wheat is exempt from levy of tax.
3.	Maharashtra			Exemption is granted to wheat and wheat products from levy of State sales tax, though under the Act a rate of tax is prescribed.

12. In respect of some other States like Orissa, Madhya Pradesh and Uttar Pradesh, the tax levied both on wheat and wheat products is more than in our State. It can, therefore, be seen that except in the case of Maharashtra State, where an exemption is given, the sales tax on wheat and wheat products in our State is not higher than in other States. There is no material about surcharge and additional turnover tax in other States and any way these are applicable to all goods.

13. The question, therefore, is whether the present levy of sales tax by the State

Legislature is violative of article 301 of the Constitution of India ?

14. According to the petitioners, this levy is unconstitutional and illegal. The counsel for the petitioners has relied upon a decision of the Supreme Court reported in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , particularly paragraphs 18 and 34, and contended that the levy violates the mandate of the Constitution of India under article 301, as it affects free-flow of trade and commerce. He has also relied upon the decisions of the Supreme Court reported in *Weston Electronics v. State of Gujarat* [1988] 70 STC 52; AIR 1988 SC 2038, *West Bengal Hosiery Association and Others Vs. State of Bihar and Another*, and *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, , in support of his contention.

15. The learned Government Pleader for Commercial Taxes has, however, contended that, after February, 1989, the rate of sales tax on wheat or wheat products in our State cannot be said to be higher than the rate in the neighboring States and only because of exemption granted by the Maharashtra State Government there is no liability to sales tax in that State. He also contended that there is no question of any violation of article 14 or 19(1)(g) or article 301 of the Constitution of India in this case. He referred to the decision reported in *State of Madras Vs. N.K. Nataraja Mudaliar*, , where an attack to the validity of certain provisions of the Central Sales Tax Act on the ground of its being violative of articles 301, 302 and 303 was repelled.

16. Part XIII of the Constitution of India is framed to ensure freedom of trade and commerce throughout the country and article 301 puts a fetter on the various legislatures to make any law which will prevent such a free-flow of trade and commerce. This restriction on legislative power is subject to the various conditions mentioned in articles 302 to 304 with which we are not concerned in this case.

17. The Supreme Court in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , has held that, even the legislation regarding taxation is subject to the provisions of Part XIII of the Constitution of India. In that case, the question was, whether the levy of tax by the State of Assam on certain goods carried by road or inland water ways in the State violated article 301. The legislation was made by the Assam Legislature under entry 56 of List II with a view to increase the income of the State, as tea and jute were its main products were moved out of the State by road and river and a very small proportion of this was sold or consumed in the State. The court, by majority, held that the said tax on movement of goods by road and river violated freedom of trade and commerce as contemplated by article 301, and pointed out in paragraphs 54 and 64, that as the requirements of article 304(b) have not been fulfilled, it could not be held to be valid. Paragraphs 52 to 55 of the said judgment indicate that the court had confined the consideration to the particular legislation which levied tax on movement of goods. The question whether and to what all to what all other type of taxation laws the restriction will apply, was left open.

18. In the three decisions of the Supreme Court reported in 1988, viz., *Weston Electronics v. State of Gujarat* [1988] 70 STC 52; AIR 1988 SC 2038 *West Bengal Hosiery Association and Others Vs. State of Bihar and Another*, and *Indian Cement Ltd. v. State of Andhra Pradesh* [1988] 69 STC 567, referred to by the counsel for the petitioners, the attack was on the validity of the provisions of Sales Tax Act on the ground of violation of article 301. In *Western Electronics*" case [1988] 70 STC 52 (SC); AIR 1988 SC 2038, the imposition of sales tax at different rates on goods manufactured outside the State and those locally manufactured was held to be violate of article 301. In *West Bengal Hosiery Association and Others Vs. State of Bihar and Another*, , the levy of sales tax on goods manufactured outside the State and sold in the State while granting exemption to the goods manufactured and sold in the State was held to be violate of article 301. In *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, , a more favorable treatment for cement produced within the State than the cement manufactured outside the State for levy of sales tax was also held to violative of article 301. It is, therefore, clear than even sales tax laws if by their operation are shown to violate article 301 will be illegal, unless the other conditions under articles 302 to 304 are satisfied. It is to be noticed that the grievance was against the action of some State.

19. In the decision of the Supreme Court reported in *State of Madras v. Nataraja Mudaliar* [1968] 22 STC 376; AIR 1969 SC 147, relied upon by the Government Pleader the attack was to section 8 of the Central Sales Tax Act on the ground of violation of article 301. The Supreme Court in the concluding portion of paragraph 9 (at page 386 of STC) of that judgment observed as follows :

"..... It must, therefore, be regarded as settled law that a tax may in certain cases directly and immediately restrict or hamper the flow of trade, but every imposition of tax does not do so."

20. It also noticed that the Parliament could impose certain restrictions under article 302 in regard to the provisions of that article and article 303. The validity of the provisions was upheld. It is useful to extract what Hegde, J., said in his concurring judgment in paragraph 42 (at page 399 of STC) :

"If we bear in mind the fact that sales tax on inter-State sales is levied for the benefit of the States and the further fact that each one of the State Governments in its own interest is bound to create the best possible condition for the growth of industry and commerce in that State, it is reasonable that they will not be blind to economic forces. All that one has to guard against is to see that they do not, by having resource to their taxation power, obstruct the flow of trade into their States. In the normal course they will be interested in seeing that goods produced in their States are sold outside. Reasonably sufficient safe-guards against the free-flow of trade into a state have been provided by the provisions of the Act, firstly, by providing for the levy of sales tax in the State in which the goods are produced, and, secondly, by placing various restrictions on the power of the states in fixing the rates."

21. Now, coming to the facts here, it is not a case of levy of tax at different rates creating discrimination in favour of the local manufacturers as in the three cases of the Supreme Court reported in 1988. It is not shown how a slight difference in rate of sales tax in different States will amount to violation of article 301 by itself. For establishing a violation of article 301 several complex factors including questions of fact, pattern of trading, etc., are necessary. It is for this reason that article 307 enables Parliament appoint an authority for the purposes of articles 301 and 304. Any authority established under article 307 will be in a better position to decide such complaints. However, in this case, the grievance of the petitioners is, apparently, against a handicap suffered by them due to the exemption on wheat products granted by the Maharashtra State. This may affect their competitiveness, but the question is whether this violates article 301 ? By the constitutional scheme, each State is to have its own sales tax laws, which, inherently implies a difference in structure and rate of taxation in the various States. The mere difference in rate of tax in different States without anything more to indicate hindrance to freedom of trade cannot make the sales tax law violative of article 301. The *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, , dealt with a tax on movement of goods and not with sales tax. A lower sales tax in the other State would, prima facie, increase inter-State flow of trade and it would be expected as *Bachawat, J.*, observed that the States themselves will take corrective action. In this case, from February, 1989, any grievance of the petitioners has been set right. The provisions regarding surcharge and additional turnover tax, that is, sections 5-A and 6-B cannot, per se, be said to violate of article 301. The figures of rate of tax on wheat and wheat products given above also negate the contention of the petitioners that there is any violation of article 301.

22. As a result, the writ petitions are dismissed. No orders as to costs. Government Pleader's fee Rs. 250 in each.

23. An oral application for grant of leave to appeal to the supreme Court under article 132 of the constitution of India is made by the learned counsel for the petitioners. We do not consider that this is an appropriate case involving any substantial question of law as to the interpretation of the constitution. Therefore, the oral application is dismissed.

24. Writ petitions dismissed.