
(2000) 09 MAD CK 0060

In the Madras High Court

Case No : Writ Petition No's. 19590 to 19593 and 19738 of 1999 and 291 of 2000

R. Vijayakumar

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-09-2000

Acts Referred:

Central Excises and Salt Act, 1944 — Section 3, 5A(1)
Constitution of India, 1950 — Article 14, 39, 43

Citation : (2001) 74 ECC 542 : (2000) 122 ELT 670

Hon'ble Judges : K. Govindarajan, J

Bench : Single Bench

Advocate : T. Mohan, for the Appellant; K. Kumar, Addl. SGSC, for the Respondent

Final Decision : Dismissed

Judgement

K. Govindarajan, J.—In all these writ petitions, the petitioners are seeking to issue a writ of declaration, declaring Sl. No. III(b)(ii) and the portion of the explanation "... in the preceding financial year" of Notification No. 41/99-Central Excise, dated 26-11-1999 issued by the 1st respondent as arbitrary, illegal and ultra vires Article 14 read with Article 39(c) of the Constitution of India.

2. The petitioners are running tea factories, and in view of the impugned portion in the Notification, the petitioners are liable to pay excise duty for the financial year 1999-2000. Though many grounds have been raised in support of the prayer the learned counsel appearing for the petitioners has focussed his arguments only with respect to the restriction for getting the benefit of duty exemption to the extent that such factories should have worked for at least six months during 1998-99. The learned counsel has submitted that such a restriction has no nexus to the object to be achieved, and it is arbitrary. According to the petitioners, a factory, even if it is closed during 1999-2000 will get exemption merely because they have been running the factory for six

months during 1998-99. But, on the other hand, a person who was able to run a factory for five months or so during the year 1998-99 and continuously running the factory for the subsequent year, cannot get the benefit of exemption under the impugned Notification. So, according to him, the said restriction cannot be said to encourage to the existing factories, and, if such concession is not given to the factories which are continuously running, they cannot compete with others and survive.

3. The learned Additional Central Government Standing Counsel has submitted that such restriction has been imposed only to encourage the old existing factories. According to him, if the factories had been closed during 1999-2000, there is no necessity to claim any benefit for that year. The intention of the respondents is only to encourage the factories and to make them to continue their production. The learned Addl. Central Government Standing Counsel relying on the counter has further submitted that the object is laudable and this court cannot interfere with the policy decisions of the 1st respondent-Government. With respect to the grant of exemption, according to the learned Standing Counsel, the claim for duty exemption is not a matter of right and only if the claimant satisfies the requirements strictly, that he is entitled for the same. Both the counsel have relied on a number of decisions in support of their submissions.

4. The challenge in these writ petitions is only with respect to the condition to get excise duty exemption, namely, the factory has been working for at least six months during 1998-99.

5. The above said clause has been contemplated under the impugned Notification issued exercising the powers conferred on the Central Government by Sub-section (1) of Section 5A of the Central Excise Act, 1944 for granting exemption with respect to the goods from the whole of the duty of excise leviable thereon u/s 3 of the Central Excise Act, 1944. Under the impugned Notification, with respect to levy of excise duty on Tea cleared by a bought leaf factory during the period on and from 10th December, 1999 to 31st March, 2000 has been exempted on the conditions specified therein. One of the conditions is, as stated above, that the factory should have worked for at least six months during 1998-99. With respect to the other conditions, there is no dispute in these writ petitions.

6. So, this Court has to consider whether such a condition is sustainable in law, on the basis of the submissions made by the learned Counsel appearing for the petitioners.

7. The learned counsel appearing for the petitioners has submitted that such a condition has no nexus to the object to be achieved. According to him the exemption is provided for only to encourage the industry, as also tea cultivation by small tea farmers. While doing so, the condition to run the factory for six months during the year 1998-99 has no nexus to the said object to be achieved by the Government. Merely because some factories were able to run for six

months during 1998-99, it cannot be said that they will also run continuously for the subsequent year. According to the learned counsel, though the petitioners were not able to run the factories for at least six months during the year 1998-99 they were able to run the same for some period during the year 1998-99 and so in view of the restriction, they are not in a position to claim duty exemption. It is his further submission that the Central Government have no valid reason to introduce such restriction and so it is unreasonable.

8. In the counter filed by the 2nd respondent, the reason for introducing additional requirement for the factory to be working during six months in 1998-99 has been set out in paragraph 4, which reads as follows :-

"It can be seen that the classification is rational and the exemption is granted setting out variable criteria for various categories within each class or category of manufacturers, there is no discrimination. The power to grant exemption to Tea factories belonging to cooperative societies in a more liberal fashion is discernible having a definite bearing to the Directive principles of state policy which enjoin under Article 43 that State shall endeavour to promote industries run on cooperative basis in rural areas. While favouring the cooperative societies for claiming exemption, the requirement is that tea shall not be purchased from any grower who has a holding exceeding 10 hectares under tea cultivation. The tea cleared by a bought leaf factory shall avail for exemption if it has been working for at least six months during 1998-99 but the restriction is compensated by the fact that not less than 2/3 of the green leaf used by the factory shall be purchased from growers having a holding not exceeding 10 hectares under tea cultivation. Unlike cooperative societies, it is possible for bought leaf factories to purchase the remaining 1 /3 of the green leaf from even large growers. The additional requirement for the tea factory to be working during six months in 1998-99 is not arbitrary but it is to secure such exemption only to factories which is engaged for a fairly long period as against factories to which tea manufacture is only a subsidiary activity. The object sought to be achieved is not only to promote the interest of small growers of tea but also to help tea factories not in the cooperative sectors which have been engaged for a long time with tea manufacturing as its principle activity. In the last few years, there has been a fall in Indian export of tea in the global markets and consequently, the supplies have been outstripping their demand and the consequent fall in prices. It is therefore, the endeavour of the state to help the factories who have been in the business of manufacturing tea by granting them the benefits of exemption."

From the abovesaid reasonings, it cannot be said that the introduction of additional requirement for getting excise duty exemption is without any basis, and it is on the basis of valid reasons. Further, the reasons set out in the counter, as stated above, cannot be said to be arbitrary.

9. The Constitution Bench of the Apex Court, in the decision in Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam, , while considering the scope of the powers of the State while reviewing tax, has held as follows :-

"In tax matters, the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. The Supreme Court of the United States of America has been practical and has permitted a very wide latitude in classification for taxation. Willis on "Constitutional Law" p. 587. This approach has been approved by this Court in the case of East India Tobacco Co. Vs. State of Andhra Pradesh, ."

10. While dealing with the Court's power to adjudicate the constitutionality of laws relating to economic activities, the Apex Court in the decision in R.K. Garg v. Union of India, AIR 1981 S.C. 2138, has held as follows :-

"7. Now while considering the constitutional validity of a statute said to be violative of Article 14, it is necessary to bear in mind certain well established principles which have been evolved by the courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is that there is always a presumption in favour of the constitutionality of a statute and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles. This rule is based on the assumption, judicially recognised and accepted, that the legislature understands and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and in discrimination are based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it the Court may take into consideration matters of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be conceived existing at the time of legislation.

8. Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion etc. It has been said by no less a person than Holmes, J., that the legislature should be allowed some play in the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is particularly true in case of legislation dealing with economic matters, where, having regard to the nature of the problems required to be dealt with greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in the field of economic regulation than in other areas where fundamental human rights are involved. Nowhere has this admonition been more felicitously expressed than in *Moray v. Dond*, (1957) 354 US 457 where Frankfurter, J. said in his inimitable style :

"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The Courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events self-limitation can be seen to be the path to judicial wisdom and

institutional prestige and stability."

The Court must always remember that legislation is directed to practical problems, that the economic mechanism is highly sensitive and complex, that many problems are singular and contingent, that laws are not abstract propositions and do not relate to abstract units and are not to be measured by abstract symmetry that exact wisdom and nice adaption of remedy are not always possible and that judgment is largely a prophecy based on meager and uninterpreted experience". Every legislation particularly in economic matters is essentially empiric and it is based on experimentation or what one may call trial and error method and therefore it cannot provide for all possible situations or anticipate all possible abuses. There may be cruities and inequities in complicated experimental economic legislation but on that account alone it cannot be struck down as invalid. The Courts cannot, as pointed out by the United States Supreme Court in *Secy, of Agriculture v. Central Roig. Refining Co.*, (1950) 94 L. ed. 381, be converted into tribunals for relief from such cruities and inequities. There may even be possibilities of abuse, but that too cannot of itself be a ground for invalidating the legislation, because it is not possible for any legislature to anticipate as if by some divine prescience, distortions and abuses of its legislation which may be made by those subject to its provisions and to provide against such distortions and abuses. Indeed, howsoever great may be the care bestowed on its framing, it is difficult to conceive of a legislation which is not capable of being abused by perverted human ingenuity. The Court must therefore adjudge the constitutionality of such legislation by the generality of its provisions and not by its cruities or inequities or by the possibilities of abuse of any of its provisions. If any cruities, inequities or possibilities of abuse come to light, the legislature can always step in and enact suitable amendatory legislation. That is the essence of pragmatic approach which must guide and inspire the legislature in dealing with complex economic issues."

In the above said decision, the Apex Court has held that the court cannot strike down the law as invalid merely on the basis that there are cruities and inequalities in implementing the said laws.

11. In yet another case in *Kerala Hotel and Restaurant Association v. State of Kerala* AIR 1990 S.C. 931, the Apex Court relying on the earlier decision in *ITO v. K.N. Takim Roy Rybani*, AIR 1976 SC 670, has held that "merely because tax falls more heavily on some in the same category, is not by itself a ground to render the law invalid. It is only when within the range of its selection, the law operates unequally and cannot be justified on the basis of a valid classificaton." The learned Judges have also held that "thus, it is clear that the test applicable for striking down a taxing provision on this ground is one of "palpable arbitrariness applied in the context of the felt needs of the times and societal exigencies informed by experience", and the courts should not interfere with the legislative wisdom of making the classification unless the classification is found to be invalid by this test."

12. While dealing with the protection under taxation, the Apex Court in the decision in *Spences Hotel Pvt. Ltd. and Another Vs. State of West Bengal and Others*, , the Apex Court has held as follows :-

"23. From the propositions of law enunciated in the above cases by this Court, it is well settled that a taxation will be struck down as violative of Article 14 if there is no reasonable basis behind the classification made by it, or if same class of property, similarly situated, is subjected to unequal taxation as was held in *S.K. Dutta, Income Tax Officer and Others Vs. Lawrence Singh Ingty.*, . If there is no reason for the classification then also the law will be struck down. However, as was held in *State of Rajasthan Vs. Mukanchand and Others*, , and *State of Andhra Pradesh and Another Vs. Nalla Raja Reddy and Others*, , if the taxation imposes a similar burden on everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground that the result of the taxation is to impose unequal burdens on different persons. It was held in *Steelworth Ltd. v. State of Assam*, 1962 Supp. 2 SCR 589 , that in law of taxation of income it is competent for the legislature to graduate the rate of tax according to the ability to pay. In *Ganga Sugar Corporation Ltd. and Others Vs. State of Uttar Pradesh and Others*, also it has been held that in the matter of taxation laws the court permits a greater latitude to the discretion of the legislature and in *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, , it has been held that in tax matters the State is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does so reasonably. In *The Twyford Tea Co. Ltd. and Another Vs. The State of Kerala and Another*, , it has been observed that when a statute divides the objects of tax into groups or categories, so long as there is equality and uniformity within each group, the tax cannot be attacked as violative of Article 14, although due to fortuitous circumstances or a particular situation some included within a group may get some advantage over others, provided of course they are not sought out for special treatment. It has repeatedly been held, for example, in *Khyerbari Tea Co. Ltd. and Another Vs. The State of Assam*, , *Gopal Narain Vs. State of Uttar Pradesh and Another*, and *Steelworth v. State of Assam* 1962 Supp. 2 SCR 589 and *V. Venugopala Ravi Varma Rajah Vs. Union of India and Another*, that as to what articles should be taxed is a question of policy and there cannot be any complaint merely because the legislature has decided to tax certain articles and not others. In *D.S. Nakara and Others Vs. Union of India (UOI)*, , Desai, J. even expressed that too microscopic a classification may also be violative of Article 14. It was reiterated in *Bank of Baroda Vs. Rednam Nagachaya Devi*, that the burden is always on the persons alleging the violation of Article 14 of the Constitution of India to raise specific pleas and grounds and to prove it."

13. While dealing with the jurisdiction to test the Government's policy, the Apex Court in the decision in *Subhash Photographics and Others Vs. Union of India (UOI) and Others*, has held as follows :-

"13. The Parliament has appointed two authorities i.e., Central Government and the Board to make rules/regulations to carry out the purposes of the Act generally. The character of Rules and that of the Regulations made under Sections 156 and 157 respectively is the same - both constitute delegated legislation. The Regulations are subject to an additional limitation viz., they should not be contrary to the Rules made u/s 156. The purpose of Sub-section (2) in both the sections is inter alia to allocate certain matters to each of them exclusively; subject to these Sub-sections, both the delegates can exercise the power vested in them for carrying out the purpose of the Act. No established legislative practice of any considerable duration has been brought to our notice to read any further limitation into the regulation-making power u/s 157, assuming that a legislative practice can be read as a limitation. We cannot, therefore, accept the contention that regulation-making power u/s 157 should be confined only to peripheral and/or procedural matters. It is not necessary for the purposes of this case to emphasize the need or the growing relevance of delegated legislation. Moreover, enactments like Customs Act and Customs Tariff Act are not merely taxing statutes but are also potent instruments in the hands of the Government for regulating the economy and the industrial development of the country. The "economic" ministries and the establishments allied to them keep a close watch on the economy, closely monitoring its behaviour. Power of taxation is one of the weapons in the Government's armoury to regulate the economy. A certain industry may require encouragement while another may not. Yet another sector may require to be controlled - nay, discouraged on some occasions. In an under-developed country like ours, the emphasis is bound to be more on capital goods "industry rather than on consumer goods" industry. The domestic industry has also to be protected and encouraged in certain situations. In 1986, the Government which expression in this discussion includes the Board - evidently thought that import of "industrial systems" meant for establishments designed to offer services of any description such as hotels, hospitals, photographic studios, photographic film processing laboratories, etc. needs no encouragement in the shape of concessional customs-tariff and they said so through the said Regulations, made in April, 1986. It is not for the Court to question the wisdom of the Government's - or for that matter, of Board's - Policy. Board is a part of the Government. It is in direct charge of the administration of the Act along with the Government. Probably, it is for this reason that the Parliament has, through Chapter Note (2), vested the power to define the expressions occurring in Chapter 98 in the Board. In this scheme of things, we cannot accept the argument of Shri Salve with respect to some kind of an inherent limitation upon the regulation-making power of the Board. We cannot say that the said power is confined only to, what the learned Counsel calls, peripheral and/or procedural matters."

14. From the above said decided cases, it is clear that to decide as to which type of industries need encouragement in the shape of exemption from levy of excise duty, it is not for the Court to decide and question the Government's policy,

catogorising the industry for granting such exemption.

15. As held by the Apex Court in Bank of Baroda Vs. Rednam Nagachaya Devi, , the burden is on the petitioners to establish that the classification or condition for granting exemption from levy of excise duty is arbitrary and without any basis.

16. The learned Counsel appearing for the petitioners has also relied on the decisions in Extrusion Processes Pvt. Ltd. and others Vs. Assistant Collector of Central Excise, Bombay and another, , Kasinka Trading and another, etc. etc. Vs. Union of India and another, , Union of India Vs. Paliwal Electricals (P) Ltd. and another, , Choksi Tube Company Ltd. Vs. Union of India (UOI) and Others, , Jain Exports Private Ltd. v. Union of India 1998 (98) E.L.T. 581 and in Union of India and Others Vs. Indian Charge Chrome and Another, , in support of his submission that any classification for grant of exemption, if it discriminates the same category, and arbitrary, the same cannot be sustained in law. He has also relied on the above said decisions to sustain his submission that if any condition to grant exemption is not having any nexus to the object to be achieved, the notification can be set aside. Since there cannot be any doubt about the said proposition of law, I am not dealing with the said decisions in detail.

17. In these writ petitions, it cannot be said that the Government have introduced the condition to claim duty exemption which is impugned, is not on the basis of valid reasonings as set out in the counter. Such reasonings cannot be said to be arbitrary because, the condition is only to help the industry which has been engaged for a long time with tea manufacturing as its principal object.

18. The submission of the learned Counsel appearing for the petitioners is that merely because a factory was running for six months during 1998-99, it cannot be said that they need not continue any such manufacturing thereafter but they are entitled for exemption, cannot be accepted. As the above said condition is only to claim exemption of duty exemption for the year 1999-2000, if a factory is not running during 1999-2000, there is no necessity to claim any exemption, since as they may not have any production.

19. As held by the Apex Court, it is for the Government to classify the category for the purpose of granting duty exemption, but it should be on acceptable principles. In these writ petitions, such classification has been made on valid reasons, and those reasons and classification cannot be held as arbitrary and so the petitioners can not sustain their grievance.

20. For the reasons stated above, I do not find any merits in these writ petitions. Accordingly, they are dismissed. No costs. Consequently, the connected W.M. Ps. are also dismissed.