(1990) 10 KAR CK 0010

In the Karnataka High Court

Case No : Writ Petition No. 11986 of 1989

Solidaire India Ltd.	APPELLANT
Vs	
State of Karnataka and another	RESPONDENT

Date of Decision : 08-10-1990

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 5, 8 A

Citation : (1994) 92 STC 278

Hon'ble Judges : S.R. Rajasekhara Murthy, J

Bench : Single Bench

Advocate : K.P. Kumar, for the Appellant; H.L. Dattu, HCGP, for the Respondent

Judgement

S.R. Rajasekhara Murthy, J.—The petitioner is a manufacturer of television sets, components, parts and accessories thereof having its factory at Madras. The television sets are sold under the brand-name "Solidaire". The petitioner is a dealer registered in the State of Karnataka under the Karnataka Sales Tax Act, 1957 ("the Act").

2. The notification dated June 20, 1986, issued by the Government in exercise of the powers conferred u/s 8-A of the Act (annexure B) is challenged in this writ petition. The said notification reads thus :

"In exercise of the powers conferred by section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) the Government of Karnataka hereby reduces with immediate effect, the rate of tax payable by a dealer u/s 5 of the Act, on television sets and components manufactured in Karnataka to two per cent."

3. The manufacturers of television sets outside the State had to pay tax under entry 53-A of the Second Schedule at 10 per cent up to March 31, 1986, which was enhanced to 13 per cent from April 1, 1986.

4. By notification dated March 26, 1986, the tax on all television sets was

reduced from 13 per cent to 4 per cent.

5. By notification dated June 20, 1986 the tax payable by the dealer u/s 5 of the Act on television sets, and components manufactured in Karnataka was reduced to 2 per cent. The 4 per cent tax payable by all dealers reduced under notification dated March 26, 1986, was enhanced to 6 per cent by notification dated March 28, 1987 (annexure C). By another notification issued on the same day the tax payable by a dealer on television sets manufactured in the State of Karnataka was enhanced from two per cent to three per cent.

6. The discrimination brought about by the notifications issued by the Government of Karnataka levying higher rate of tax on television sets manufactured outside the State of Karnataka is challenged by the petitioner as violative of articles 301, 303(1) and 304(4) of the Constitution. The object of introducing of these articles in the Constitution is to preserve free-flow of inter-State trade and commerce as contained in article 301. article 303(1)imposes restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. Article 304 imposes restrictions on the Legislature of a State not to discriminate between goods imported and goods manufactured or produced within the State while imposing tax under entry 54 of List II of the Seventh Schedule. The provisions inserted in these articles read together seek to prevent discrimination by applying different rates of tax between goods imported into the State and goods manufactured within the State.

7. In a similar writ petition filed before the Supreme Court in Weston Electroniks and Anr Vs. State of Gujarat and Ors, the Supreme Court had occasion to deal with a similar notification issued by the State of Gujarat. By notification issued on March 29, 1986, a new entry in the Schedule, specifically to deal with electronic goods manufactured in the State of Gujarat, was introduced. By the said notification the rate of sales tax in respect of television sets imported from outside the State was reduced from 15 per cent to 10 per cent and for goods manufactured within the State, the sales tax was reduced to 1 per cent. The petitioner contended before the Supreme Court that by prescribing a lower rate of tax in respect of goods manufactured within the State, the State Government had created invidious discrimination which adversely affected the free-flow of inter-State trade and commerce resulting in contravention of article 301 of the Constitution.

8. The Supreme Court held that while a State Legislature may enact a law imposing a tax on goods imported from other States as is levied on similar goods manufactured in that State, the imposition must not be such as to discriminate between goods so imported and goods so manufactured.

9. The Supreme Court referred to its decision in Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, in which the validity of rule 16 of the Madras General Sales Tax Rules was held violative of article 301 of the Constitution of India. It would be useful to reproduce the excerpt from the said

judgment which was relied upon by the Supreme Court in Weston Electroniks and Anr Vs. State of Gujarat and Ors,

"It is therefore now well-settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulatory measures. 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. 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).

Article 304(a) enables the Legislature of a State to make laws affecting trade, commerce and intercourse. It enables the imposition of taxes on goods from other States if similar goods in the State are subjected to similar taxes, so as not to discriminate between the goods manufactured or produced in that State and the goods which are imported from other States. This means that if the effect of the sales tax on tanned hides or skins imported from outside is that the latter becomes subject to a higher tax by the application of the proviso to sub-rule (2) of rule 16 of the Rules, then the tax is discriminatory and unconstitutional and must be struck down."

10. The notifications challenged in this writ petition also bring about discrimination in the matter of levy of sales tax on television sets imported into the State and those manufactured within the State.

11. Following the ratio of the decision of the Supreme Court, the notification dated June 20, 1986 (annexure B) and the notification dated March 28, 1987 (annexure D) impugned in this writ petition are quashed.

12. Writ petition allowed.

