

(1969) 03 SC CK 0060

In the Supreme Court Of India

Case No : Civil Appeal Nos. 240 And 244-247 Of 1969

The State of Rajasthan and Another

APPELLANT

Vs

Ghasiram Mangilal etc.

RESPONDENT

Date of Decision : 19-03-1969

Acts Referred:

Rajasthan Sales Tax Act, 1954 — Section 4(2)

Citation : (1969) 2 SCC 710 : (1969) WLN 21

Hon'ble Judges : J. C. Shah, J;A. N. Grover, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

A.N. GROVER, J.-These appeals by special leave are from a judgment of the Rajasthan High Court holding that the assessment of sales tax on "Bardana" imported into the State in the hands of the first importer under a notification, dated August 11, 1959 issued in exercise of the power conferred by Section 4(2) of the Rajasthan Sales Tax Act, 1954, hereinafter called the "Act" was invalid and that the imposition of penalty in respect of Assessment Years 1963-64 and 1964-65 was also bad and illegal.

2. The respondent is a partnership firm carrying on the business of commission agent for the sale of gunny bags manufactured from jute. The following notification was issued by the Government under Section 4(2) of the Act on August 11, 1959:

"In exercise of the powers conferred by sub-section (2) of Section 4 of the Rajasthan Sales Tax Act, 1954 and in supersession of this department Notification F. 5(139) E & T/57, dated the 19th December, 1958, the State Government being of the opinion that it is expedient in the public interest to do so, hereby exempts from tax the sale of Bardana (old, new or being received as container) except on the first point at the hands of an importer in the series of sale in the State."

3. The respondent filed a petition under Article 226 of the Constitution in the High Court as the assessing authority had made an assessment in respect of the years 1963-64 and 1964-65 holding that the respondent was liable to pay tax on the sale of gunny bags imported by it from outside Rajasthan. In addition a penalty of Rs 25,000 had been imposed for the first year and Rs 17,000 for the second year for not filing the return in time. According to the respondent the levy of sales tax on imported "Bardana" contravened the provisions of Article 301 of the Constitution and suffered from the vice of discrimination. The High Court referred to the meaning of "bardana" which is a term of Hindi language as given in Nalanda Vishal Shabad Sagar - a Hindi dictionary - and held that this term did not mean only gunny bags made of jute but it also covered all kinds of containers. Although other types of "Bardana" were being manufactured. The position, therefore, was that while imported Bardana had been subjected to sales tax "on the first point at the hands of the importer" no such tax had been levied on the "Bardana" old or new, produced or manufactured in Rajasthan. For this reason Article 304(a) of the Constitution could be of no avail to the State and there was a clear contravention of Article 301. This is what the High Court finally said:

"After a careful examination of the law on the subject, we are firmly of the view that the levy of sales tax on the imported "Bardana" on the first point at the hands of an importer in Rajasthan in the present circumstances without levy of a similar tax on "Bardana" produced or manufactured in Rajasthan is unconstitutional and cannot be upheld. As a necessary corollary the assessment of tax on the imported gunny bags in the hands of assessee under the notification is invalid in law."

4. Before the High Court a prayer for refund was made of the amount of the sales tax which had been realised by the Government on the imported "Bardana". Although the High Court felt that the Government was bound to repay the amount which had been collected but it declined to grant any relief on the ground that nothing had been stated in the writ petition as to how much amount of tax had been paid by the respondent and when the same had been paid.

5. The principal contention that has been raised by the learned counsel for the State is that the notification had been validly promulgated in exercise of the power conferred under Section 4(2) of the Act. It exempted from tax the sale of "Bardana" which meant gunny bags made from jute and did not mean containers of all kinds made from wood or metal, etc. The exemption, however, contained an exception or a saving clause, namely, that it did not cover the levy of sales tax "on the first point at the hands of an importer in the series of sales in the State". It is submitted that the High Court was in error in holding (a) that "Bardana" meant all kinds of containers and was not confined merely to gunny bags and (b) that there was contravention of Article 301 of the Constitution and Article 304(a) could be of no assistance to the State.

6. Articles 301 and 304 of the Constitution may be noticed at this stage. Article

301 appears in the beginning of Part XIII which is headed as "trade, commerce and intercourse within the territory of India". According to this Article subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free. Article 304(a) lays down that notwithstanding anything in Article 301 or Article 303 (with which we are not concerned) the Legislature of a State may by law 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 as not to discriminate between goods so imported and goods so manufactured or produced. The construction or interpretation which has been commended by the learned counsel for the State of Article 304(a) is that the State has been empowered to impose tax on goods imported from other States or from the Union Territories where goods of the same nature are not being manufactured in the State and if they are being manufactured then the tax has to be levied in such a way that there should be no discrimination between the goods so imported and the goods which are manufactured or produced in the State. It is pointed out that in the present case gunny bags made of jute are imported from outside Rajasthan and admittedly they are not being manufactured in the State. The tax can, therefore, be levied as no question of discrimination can arise. On the other hand, learned counsel for the respondent has called attention to a decision of this Court in *Kalyani Stores v. State of Orissa*¹ in which the facts are some-what apposite. There an excise duty had been imposed on "foreign liquor" imported into the State. In the majority judgment this is what was observed at p. 872:

"Exercise of power under Article 304(a) can only be effective if the tax or duty is imposed on goods imported from other States and the tax or duty imposed on similar goods manufactured or produced in that State are such that there is no discrimination against imported goods. As no foreign liquor is produced or manufactured in the State of Orissa the power to legislate given by Article 304 is not available and the restriction which is declared on the freedom of trade, commerce or intercourse by Article 301 of the Constitution remains unfettered."

7. In our opinion it is altogether unnecessary to go into the question of the applicability of Articles 301 and 304(a) because the decision of the High Court on the question of discrimination is apparently correct. The meaning of "Bardana" as given in the Hindi dictionary is as follows:

8. According to this meaning the word "Bardana" does not mean gunny bags alone but it can also mean boxes, wooden packing, etc. in which merchandise has been packed for the purpose of despatch (from one station to another). It has not been suggested that the other kind of Bardana, namely, boxes, wooden packing material etc. are not being produced or manufactured in the State of Rajasthan. Thus an element of discrimination has been introduced in the exception to the exemption granted by virtue of the notification in the matter of Bardana inasmuch as "Bardana" of the type of gunny bags would be subjected to tax whereas the other kinds of "Bardana" in the shape of gunny bags and other

types of Bardana would not be so subjected. No reasonable basis has been suggested for making a separate classification of "Bardana". The learned Judge of the High Court who are likely to be familiar and fully conversant with Hindi which is the official language in the State of Rajasthan had no doubt that the word "Bardana" could not be confined to gunny bags and must be regarded as including other containers of the nature mentioned. This is particularly so because in the notification the word "container" is used.

9. On this view the exception to the exemption in the notification which is clearly severable has been and can be rightly struck down as unconstitutional on the ground of discrimination. It has been pointed out on behalf of the respondent that the amount of tax was duly determined (vide the assessment orders copies of which have been shown) and refund should have been ordered as the amounts of tax had been paid for the assessment years in question. It will be for the High Court to hear both sides on this matter and make appropriate directions for refund of such amounts as have been shown to have been paid by the respondent on accounts of tax on "Bardana" for the two assessment years.

10. The appeals, however, fail and are dismissed with costs. One hearing fee.