**(1959) 11 MP CK 0007**

**In the Madhya Pradesh High Court**

**Case No :** M.P. No. 122 of 1958

Umraolal Subalal APPELLANT

Vs

State RESPONDENT

**Date of Decision :** 27-11-1959

**Acts Referred:**

Constitution of India, 1950 — Article 226, 304(a)

**Citation :** (1961) JLJ 1240

**Hon'ble Judges :** T.P. Naik, J;K.L. Pandey, J

**Bench :** Division Bench

**Advocate :** R.S. Dabir, for the Appellant; S.B. Sen Addl. Govt. Advocate, for the Respondent

**Final Decision :** Allowed

# Judgement

T.P. Naik J.

1. This is a petition under Article 226 of the Constitution of India for a writ or direction to the respondents not to charge sales tax on ''bura sugar'' imported by it into Madhya Bharat, on the ground that the law imposing such a tax is discriminatory, illegal and ultra vires the Constitution.

2. The petitioner is a partnership firm carrying on business of sugar, bura and other goods, in Bhind, which was formerly in Madhya Bharat. It was also a licensee under the Madhya Bharat Sales Tax Act, 1950 (No. 30 of 1950). For its business of selling ''bura sugar'', it imported ''bura sugar'' from places outside Madhya Bharat into Bhind and sold it to various consumers in Bhind The Sales Tax Authorities, Madhy Bharat, are claiming sales tax on the sales of imported ''bura sugar'' made by it in Bhind during the period 1955-57 under the Madhya Bharat Sales Tax Act (No. of 1950).

3. The relevant entry under which the sales tax is being charged is contained in item of Sch. III of the Act. That item reads as follows: -

(sic) It would thus be seen that under the Act, imported ''bura sugar'' would be liable to sales tax, but the ''bura sugar'' made from sugar imported or manufactured in Madhya Bharat would be exempted from the tax.

4. This law was clearly discriminatory. Under Article 304 (a) of the Constitution:-

"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, however, as not to discriminate between goods so imported and goods so manufactured or produced.''''

The State could thus tax imported goods provided that it also taxed other goods of a like nature and did not discriminate against the imported goods.

5. In the words of the Supreme Court in the The State of Bombay and Another Vs. The United Motors (India) Ltd. and Others,

"It will be seen that the principle of freedom of inter-State trade and commerce declared in Article 301 is expressly subordinated to the State Power of taxing goods imported from sister States, provided only no discrimination is made in favour of similar goods of local origin. Thus the States in India have full power of imposing, what in American State legislation is called the use tax, gross receipts tax, etc not to speak of the familiar property tax, subject only to the condition that such tax is imposed on all goods of the same kind produced or manufactured in the taxing State, although such taxation is undoubtedly calculated to fetter inter-state trade and commerce. In other words, the commercial unity of India is made to give way befors the State-power of imposing ''any'' non-discriminatory tax on goods imported from sister States."

6. By levying sales tax on imported ''bura sugar'' and not levying it on ''bura sugar'' manufactured locally, the imported ''bura sugar'' was discriminated against, and it would be in a very much less advantageous position as an article of commerce in the local market of the State.

7. Section 92 of the Constitution of Australia provided that:-

"On the imposition of uniform duties of customs, trade, commerce, and intercourse among the States, whether by means of internal carriage or ocean navigation, shall be absolutely free."

8. Commenting on the provisions of a State legislation of Western Australia which authorised the issue of several different licences for the sale of liquor for which different fees were required to be paid, Griffith C J. in Fox vs. Robbins 8 CLR 115 at pp. 119 and 120, said:-

"This provision (S. 92) would be quite illusory if a State could impose disabilities upon the sale of the products of other States which are not imposed upon the sale of home products."

* * *

"Act of Western Australia now in question, in so far as it makes a discrimination against wine the product of fruit grown in other State of the Commonwealth in favour of wine the product of fruit grown in Western Australia, is contrary to the Constitution, which is the paramount law of the Commonwealth. The consequence is that no greater burden or restriction can now be laid upon the sale of other Australian wines in Western Australia than that land upon the sale of Western Australian wine."

In the same case, Barton J. said (pp. 123 & 124):-

"To impose one charge on the sale of the wines of other States, while allowing the sale of Western Australian wines at another and a lower fee, is discrimination of a kind which if lawful in this case is lawful in a thousand others-for this is a question of power. By burdens of this kind and that, whether under the name of licence fees or under any other name, the operation of interstate free trade could be so hampered and restricted as to reduce the Constitution in that regard to mere futility."

* * *

"I must not for a moment be taken to cast any doubt on the capacity of a State to tax. together with its own products, goods produced in other States, when brought into it for sale or consumption. When the interstate transit is over and they have become part of the mass of property within the State, any goods may be taxed, no matter whence they have come. But they must be taxed alike with all other such goods in the State. The tax must be general, and laid equally on all goods of the kind to be taxed, whether their State of origin be the taxing State or another. And what I say of taxes applies to other imports and burdens."

The Supreme Court of America has laid down a similar rule under the American Constitution under its commerce clause: (see Welton vs. State of Missouri 91 VS 275 23 L. Ed. 347).

9. We are, therefore, of opinion that the provision in the Madhya Bharat Sales Tax Act (No. 30 of 1950) permitting the imposition of sales tax on sales of imported ''bura sugar'' in Madhya Bharat is discriminatory and unconstitutional and cannot be enforced against the petitioner. A writ shall accordingly issue prohibiting the respondents from levying or recovering any sales tax on the sale of ''bura sugar'' by the petitioner.

10. The petition is allowed with costs. Counsel''s fee 100.

 