Bhagatram Rajiv Kumar vs Commissioner Of Sales Tax Madhya ... on 25 November, 1994

Equivalent citations: AIRONLINE 1994 SC 131, (1994) 7 JT 573 (SC), (1995) 28 STA 291, (1995) 59 ECR 18, (1995) 96 STC 654, 1995 SCC (SUPP) 1 673

Bench: Kuldip Singh, R.M. Sahai, B.L. Hansaria

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           CASE NO.:
Appeal (civil)  2336 of 1994

PETITIONER:
BHAGATRAM RAJIV KUMAR

RESPONDENT:
COMMISSIONER OF SALES TAX MADHYA PRADESH AND ORS.

DATE OF JUDGMENT: 25/11/1994

BENCH:
KULDIP SINGH & R.M. SAHAI & B.L. HANSARIA

JUDGMENT:
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JUDGMENT 1994 SUPPL. (6) SCR 91 The Judgment of the Court was delivered by R.M. SAHA1, J. The question that arises for consideration in these appeals, directed against the judgment and order of the Madhya Pradesh High Court, is whether entry tax on goods such as sugar on which no sales tax is leviable, could be subjected to levy under Section 3(I)(a) of the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyaro, 1976 (hereinafter referred to as 'Entry Tax Act').

Even though legislative competence of the State Legislature was the principal attack on the validity of the levy in the High Court but the main thrust of challenge in this Court has been on the nature of levy, its ambit and whether it impedes free flow of trade and commerce in violation of Article 301 of the Constitution of India. Since there is no dispute on facts and the appellants who are dealers registered under the Sales Tax Act of the State have brought goods such as sugar which are specified in Schedule II of the Act from outside the State for consumption, use or sale inside the State, it is appropriate to extract Section 3 of the Entry Tax Act to appreciate the rival submissions :

> "3. Incidence of taxation.- (I) There shall be levied an entry tax-
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> (a) on the entry in the course of business of a dealer of goods specified in Schedule II, into each local area for consumption, use or sale therein; and
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> (b) on the entry in the course of business of a dealer of goods specified in Schedule III, into each local are a for consumption or use of such goods as raw material or

incidental goods or as packing material or in the execution of works contracts but not for sate therein;

and such tax shall be paid by every dealer liable to tax under the Sales Tax Act who has effected entry of such goods:

Provided....."

The levy was described in substance to be purchase tax leviable under the Sales Tax Act. But it appears to have been prompted by the latter part of the Section which identifies the person who shall be responsible for paying the tax. The Section is in two parts - one, levying the tax and other fixing the person from whom it shall be realised.. The latter is more a part of machinery provision. It cannot control the main or the substantive part of the Section. The taxable event is the entry of goods in a local area of the State by a dealer in course of business and not its purchase. To characterise it as purchase tax is ignoring the nature of levy.

Nor there is any merit in the submission that the language of the Section is vague and discriminatory and it would result in excluding those dealers who were not registered under the Sales Tax Act. Registration under the Sales Tax Act is provided for every dealer whose turnover is Rs. 1,000 per year. Therefore, no dealer except of course hypothetically can be excluded from operation of the Section. The apprehension that it may exclude some dealer is not well founded. Even assuming for a moment it to be so it does not render.the levy bad. If the legislature advertently or inadvertently omits to levy tax on any class of persons that by itself cannot result in invalidating the levy unless it is found to be discriminatory. Dealers with turnover of Rs. 1,000 per annum can be considered to be class of small dealers. Excluding such class of dealers is neither arbitrary nor discriminatory.

Reliance was placed on the expression 'liable to tax' used in the Section and it was urged that the liability being co-related with entry of goods the only reasonable construction of the Section was to restrict the levy on those goods on which the dealer was liable to pay tax under the Sales Tax Act. The submission was elaborated by relying on provisions of (The) Additional Duties of Excise Act, 1957 and it was urged that sugar was one of the goods on which additional excise duty is leviable. Therefore, no sales tax can be levied on it. Consequently, the dealer being not liable to pay tax on such goods no entry tax could be levied on it. A bare reading of the Section indicates that the tax is attracted under this Section if the following conditions are satisfied:

(a) Entry of goods specified in Schedule II.

(b) The goods are brought in course of business by a dealer.

(c) The goods have been purchased outside the State but they have been brought inside the State in a local area.

(d) For consumption, use or sale.

Liability to pay sales tax on the goods specified in Schedule II is thus not an essential ingredient of levy. The expression 'liable to tax' has been used to identify the person who shall pay the entry tax. To put it conversely if any goods mentioned in Schedule II are brought from outside the State by a person who is not liable to tax under the Sales Tax Act then entry tax shall not be realised from such person. The intention is to levy tax only when the goods are brought inside the State by a dealer carrying on business whose turnover is not less than Rs. 1,000 annually and not by any other person. In other words, the tax is leviable on all goods specified in Schedule II brought for consumption, use or sale; but it shall be realised only from those persons who are dealers registered under the Sales Tax Act and are liable to pay tax. The expression 'liability to tax' is determinative of the person from whom the tax shall be realised and not of the goods which could be subjected to levy. The construction suggested by the learned counsel for the appellant militates against the clear language of the Section as the levy being on goods specified in Schedule II if the submission is accepted then it would result in non-levy on those items on which additional excise duty is leviable.

The goods were brought by the appellants who are dealers in course of business for consumption, use or sale therein, was not disputed. Nor it is disputed that they are liable to pay tax under the Sales Tax Act. If that be so, then there appears no escape from the conclusion that they are liable to pay entry tax under this Section. The appellants claim to be dealers of sugar which is specified in Schedule II. The tax being on entry of goods the taxing event was complete once sugar was brought into the local are by a dealer in course of business for consumption, use or sale therein. This could not be diluted or negatived by subjecting it to another condition that such goods should have been liable to tax under the Sales Tax Act. That would be misreading of Section 3. The charge or incidence of tax is different from realisation of it. A levy may be valid and good and yet it may remain ineffective if there is no machinery provision. But the provision for realisation of tax from the dealer who effects the entry of goods does not make it a condition for the levy of tax. Tax under Section 3 is on bringing of goods inside the local area by a dealer for consumption, use or sale therein irrespective of whether sales tax is payable on it or not. Therefore, sugar on which no sales tax is leviable because additional excise duty is payable would not be beyond the taxing net.

Even the submission on Article 301 of the Constitution is not well-founded. The Article came up for interpretation by this Court in Atiabari Tea Co. Ltd. v. The State of Assam and Ors., [1961] 1 SCR 809 and The Automobile Transport (Rajasthan) Ltd .v. The Stale of Rajasthan and Ors., [1963] I SCR

491. A combined reading of the two decisions indicate that so long as a tax is regulatory and compensatory it is not within the mischief of Article

301. In the counter affidavit filed on behalf of the State which was not disputed the nature of levy has been demonstrated to be compensatory. The appellants did not dispute the figure furnished by the State. It is settled by now that if the tax is compensatory then it is immune from challenge under Article 301 (See Khyerbair Tea Co. Ltd. and Anr. v. The State of Assam, [1964] 5 SCR 975 and State of Karnataka and Anr. v. M/s Hansa Corporation, [1981] 1 SCR 823. The submission of Shri Ashok Sen, learned senior counsel that compensation is that which facilitates the trade only does not appear to be sound. The concept of compensatory nature of tax has been widened and if there is substantial or even some link between the tax and the facilities extended to such dealers directly or indirectly the levy cannot be impugned as invalid. The stand of the State that the revenue earned is being made over to the local bodies to compensate them for the loss caused, makes the impost compensatory in nature, as augmentation of their finance would enable them to provide municipal services more efficiently, which would help or ease free flow of trade and commerce, because of which the impost has to be regarded as compensatory in nature, in view of what has been stated in the aforesaid decisions, more particularly in Hansa Corporation's case (supra).

In the result, these appeals fail and are dismissed. But there shall be no order as to costs.