

Kasturi Lal Harlal vs State Of U.P. & Ors on 29 October, 1986

Equivalent citations: 1987 AIR 27, 1987 SCR (1) 86, AIR 1987 SUPREME COURT 27, 1987 TAX. L. R. 2065, 1986 STI 103, 1987 20 STL 10, 1987 ALL TAX J 252, 1987 SCC (TAX) 62, 1987 UPTC 135, 1987 (1) UJ (SC) 54, (1986) JT 749 (SC), 1986 (4) SCC 704, (1986) 1 SCJ 695, (1987) 64 STC 1, (1986) 4 SUPREME 138

Author: P.N. Bhagwati

Bench: P.N. Bhagwati, Misra Rangnath, V. Khalid, G.L. Oza, M.M. Dutt

PETITIONER:

KASTURI LAL HARLAL

Vs.

RESPONDENT:

STATE OF U.P. & ORS.

DATE OF JUDGMENT 29/10/1986

BENCH:

BHAGWATI, P.N. (CJ)

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BHAGWATI, P.N. (CJ)

MISRA RANGNATH

KHALID, V. (J)

OZA, G.L. (J)

DUTT, M.M. (J)

CITATION:

1987 AIR 27 1987 SCR (1) 86

1986 SCC (4) 704 JT 1986 749

1986 SCALE (2) 708

ACT:

U.P. Sales Tax Act, 1948: s.29-A--Provision for refund to buyers of amount realised as tax by a dealer--Whether constitutionally valid.

HEADNOTE:

Section 29-A of the U.P. Sales Tax Act, 1948 inserted by s. 17 of the U.P. Taxation Laws (Amendment) Act, 1969 provided for refund of the amount, realised by a dealer as tax on sale of goods and deposited under sub-s.(4) or sub-s.(5)

of s.8-A of the Act, to the person from whom such dealer had actually realised the same, and to no other

Coal became a taxable commodity under the U.P. Sales Tax Act for the first time on 1st October 1965. The appellants, who were registered as dealers in coal under the Act, on the assumption that sales tax was payable by them on sale of coal from and after 1st October 1965, corrected amounts by way of sales tax from the purchasers and submitted their returns for the assessment year 1965-66 after depositing a sum representing the amount of tax payable by them in accordance with their returns. The Sales Tax Officer, however, found that no sales tax was payable by the appellants on sale of coal under the Act. The appellants thereupon claimed refund of the amount deposited but the Sales Tax Officer rejected their claim under s.29-A of the Act.

A Writ Petition challenging the correctness of that order and the constitutional vires of s.29-A was rejected by the High Court.

Dismissing the appeal by certificate, the Court,

HELD: Section 29-A of the U.P. Sales Tax Act, 1948 introduced by s. 17 of the U.P. Taxation Laws (Amendment) Act, 1969 fails within the legislative competence of the State Legislature and is constitutionally valid. [90F, 89F]

Clause (3) of Art.246 of the Constitution read with Entry 54 in List H of the Seventh Schedule thereto empowers the State Legislature

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to make laws with respect to taxes on the sale or purchase of goods. An Entry in a Legislative List must be read in its widest amplitude and the legislature must be held to have power not only to legislate with respect to the subject matter of the entry but also to make ancillary or incidental provision in aid of the main topic of legislation- Taking over of sums collected by dealers from the public under guise of tax solely with a view to returning them to the buyers so deprived is necessarily incidental to tax on the sale and purchase of goods. The enactment of s.29-A can thus be said to be justified as exercise of an ancillary or incidental power of legislation under Entry 54. [89G, 90D, 89H]

R.S. Joshi v; A}it Mills, [1978] 1 SCR 338, followed.

Ashoka Marketing Ltd. v. State of Bihar & Anr., [1970] 3 SCR 455, dissented from.

R. Abdul Qader & Co. v. Sales Tax Officer, Hyderabad, [1964] 6 SCR 867, Orient Paper Mills Ltd., v. State of Orissa & Ors., [1962] 1 SCR 549 and State of Orissa v. Orissa Cement Ltd. & Ors., [1985] Suppl. SCC 608, referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 1862 (NT) of 1971.

From the Judgment & Order dated 13.7.1970 of the High Court of Allahabad at Lucknow Bench in Writ Petition No. 849/70.

Ms. Lira Goswami and D.N. Mishra for the Appellants. A.D. Singh, Mrs. Ashok K. Gupta, Raj Singh Rana, Mrs. S. Dikshit and B .P. Maheshwari for the Respondents. The Judgment of the Court was delivered by BHAGWATI, CJ. This appeal by certificate raises a short question as to the constitutional validity of section 29-A of the U.P. Sales Tax Act, 1948. This section, which was introduced in the U.P. Sales Tax Act, 1948 by section 17 of the U.P. Taxation Laws (Amendment) Act, 1969, has been held to be constitutionally valid by a Division Bench of the Allahabad High Court on 13th July 1970. The appellants question the correctness of this view taken by the High Court.

The appellants carry on business as dealers in coal and they are registered as such under the U.P. Sales Tax Act, 1948. Prior to 1st October 1965, there was no sales tax levied on sale of coal and for the first time on 1st October 1965, coal became a taxable commodity under the U.P. Sales Tax Act, 1948. The appellants, proceeding on the footing that sales tax was payable by them on sale of coal from and after 1st October 1965, collected amounts-by way of sales tax from the purchasers and submitted their returns for the assessment year 1965-66 after depositing a sum of Rs. 10,073.86 representing the amount of tax payable by them in accordance with their returns. It was, however, found as a result of the assessment order made by the Sales Tax Officer on 28th March 1970 that no sales tax was payable by the appellants on sales of coal under the U.P. Sales Tax Act, 1948. The appellants thereupon claimed refund of the sum of Rs. 10,073.86 but the Sales Tax Officer rejected the claim made by the appellants on the ground that by reason of section 29-A, no refund was claimable by the appellants and the only persons entitled to claim refund were those from whom the appellants had collected the tax. This order made by the Sales Tax Officer was challenged by the appellants by filing a writ petition in the High Court of Allahabad and the principal ground on which the correctness of this order was challenged was that section 29-A was ultra vires as being outside the legislative competence of the State Legislature. The High Court negatived this challenge and upheld the constitutional validity of section 29-A and on this view, sustained the order made by the Sales Tax Officer. The appellants thereupon preferred the present appeal after obtaining certificate of fitness from the High Court.

It is necessary at this stage to set out the relevant provisions of the U.P. Sales Tax Act, 1948 as they stood at the material time. Subsection (4) of section 8-A made the following provision:

"(4) Without prejudice to the provisions of clause (f) of section 14, the amount rea-

lised by any person as tax on sale of any goods, shall, notwithstanding anything contained in any other provision of this Act, be deposited by him in a Government treasury within such period as may be prescribed, if the amount so realised exceeds the amount payable as tax in respect of that sale or if no tax is payable in respect thereof."

Sub-section (5) was added in section 8-A by section 11 of the U.P. Taxation Laws (Amendment) Act, 1965 and it read as follows:

"(5) Where a dealer is found not liable to be assessed to tax by reason of his turnover being less than the amount specified in or under section 3, or sub-section (1) or (2) of section 18, but has realised any tax as such in respect of such turnover, he shall, not-

withstanding anything contained in this Act, be liable to pay the same to the State Government and shall deposit it into the treasury within 30 days of the date of the order by which he was found not so liable, unless it has already been so deposited."

Since, having regard to the judgment of this Court, in *R. Abdul Qader & Co. v. Sales Tax Officer, Hyderabad*, [1964] 6 SCR 867 it was doubtful whether sub-sections (4) and (5) of section 8-A, standing by themselves, would fail within the legislative competence of the State Legislature. Section 29-A was inserted in the U.P. Sales Tax Act, 1948 by section 17 of the Taxation Laws (Amendment) Act 1969:

Refund in Special Cases-- Notwithstanding anything contained in this Act or in any other law for the time being in force or in any judgment, decree or order of any court, where any amount is either deposited or paid by any dealer or other person under sub-section (4) or sub-section (5) of section 8 A, such amount or any part thereof shall on a claim being made in that behalf in such form and within such period as may be prescribed, be refunded to the person from whom such dealer or the person had actually realised such amount or part, and to no other person."

The question is whether this section, as it stood at the material time in the form in which it was introduced by section 17 of the U.P. Taxation Laws (Amendment) Act, 1969, was within the legislative competence of the State Legislature.

The only entry under which section 29-A was sought to be brought was Entry 54 in List II of the Seventh Schedule to the Constitution. Clause (3) of Article 246 read with this entry empowers the State Legislature to make laws with respect to taxes on the sale or purchase of goods. It is now well settled that an entry in a Legislative List must be read in its widest amplitude and the legislature must be held to have power not only to legislate with respect to the subject matter of the entry but also to make ancillary or incidental provision in aid of the main topic of legislation. Can section 29-A be justified as exercise of an ancillary or incidental power of legislation under Entry 54? Now, this question is no longer *res integra*. It stands concluded by the decision of this Court in *R.S. Joshi v. Ajit Mills*, [1978] 1 SCR 338. It is no doubt true that the decision of this Court in *Ashoka Marketing Ltd. v. State of Bihar & Anr.*, [1970] 3 SCR 455 does seem to indicate that a provision such as s. 29-A would not be justifiable as an exercise of incidental or ancillary power. There also, the impugned legislative provision, namely, section 20-A of the Bihar Sales Tax Act was very similar to section 29-A and this Court held that it fell outside the legislative competence of the State Legislature. The Court in *Ashoka Marketing Ltd.*'s case (*supra*) did not follow the decision in *Orient Paper Mills Ltd. v. State of Orissa & Ors.*, [1962] 1 SCR 549 where a similar provision was attacked on the same ground but the attack was

repelled by the Court. If the decision in Ashoka Marketing Ltd. 's case (supra) were to be regarded as good law, section 29-A would have to be struck down as being outside the legislative competence of the State Legislature. But this Court in R.S. Joshi's case (supra) clearly and categorically disapproved of the decision in Ashoka Marketing Company's case and reaffirmed the view taken in Orient Paper Mill's case (supra). The Court held that the taking over of sums collected by dealers from the public under guise of tax solely with a view to return them to the buyers so deprived is necessarily incidental to 'tax on the sale and purchase of goods'. Such a provision is manifestly a consumer protection measure since "while suits against dealers to recover paltry sums by a large number of customers would lead to endless and expensive litigation, a simpler process of returning those sums on application by the relevant purchasers would protect the common buyer while depriving the dealers of their unjust-gains." This Court in a subsequent decision in State of Orissa v. Orissa Cement Ltd. & Ors., [1985] Suppl. S.C.C. 608 also took the same view and pointed out that the decision in Ashoka Marketing Ltd. 's case (supra) was expressly dissented from by the decision in R.S. Joshi's case (supra). The decision in R.S. Joshi's case (supra) must, therefore, be regarded as laying-down the correct law on the subject and if that be so. it is obvious that section 29-A must be held to fall within the legislative competence of the State Legislature and its constitutional validity must be upheld.

The appeal must, therefore, be dismissed. but since it was filed at a time when the position in law was nebulous and had not been finally settled by the decision in R.S. Joshi's case (supra) we would direct that there shall be no order as to costs.

P.S.S.
dismissed.

Appeal