

EPARI CHINNA KRISHNA MOORTHY, PROPRIETOR,
EPARI CHINNA MOORTHY AND SONS,
BERHAMPUR, ORISSA

1964
March 12

v.

STATE OF ORISSA

(With Connected Petition)

[P. B. GAJENDRAGADKAR, C. J., K. N. WANCHOO, J. C. SHAH,
N. RAJAGOPALA AYYANGAR AND S. M. SIKRI, JJ.]

Fundamental Rights—Notification by Government exempting certain articles from sales tax—Petitioner claiming exemption under the notification—Validation Act coming into force—Retrospective operation—Validity—Enactment, if unconstitutional—Orissa Sales Tax Act, 1947, (14 of 1947), s. 6—Sales Tax Validation Act, 1961 (7 of 1961) s. 2—Constitution of India, Arts. 14, 19(1)(g).

The petitioner, a merchant, carrying on business in “bullion and specie” and gold and silver ornaments was a registered ‘dealer’ under the Orissa Sales Tax Act, 1947. The Government purporting to exercise its authority under s. 6 of the said Act issued a notification on July 1, 1949 exempting certain articles from the operation of the charging section of that Act. Under the notification gold ornaments were ordered to be exempted from sales tax when the manufacturer selling them charges separately for the value of gold and the cost of manufacture. The petitioner filed his returns before the Sales-tax Officer and claimed exemption of sales-tax under the said notification. Up to June 1952, the claim for exemption was upheld. Subsequently, however, these assessments were reopened under s. 12(7) of the Act and it was claimed that the deductions made on certain sale transactions of gold ornaments were not justified and the petitioner had escaped assessment. The petitioner pleaded that he was entitled to exemption, because he belonged to the class of manufacturers to which the notification referred. The Sales-tax Officer disallowed the petitioner’s contention. The petitioner then challenged the said decision by preferring appeals, but the said appeals were also dismissed.

Pending these appeals, similar assessments made in respect of other dealers including the petitioner were challenged by writ petitions before the High Court. The High Court upheld the petitioner’s case and issued writs directing the Sales-tax Officer to allow the petitioners’ claim for exemption. After this judgement was pronounced, the impugned Act was passed by the legislature on August 1, 1961 and was published on September 18, 1961, containing one operative provision in s. 2. It provided that notwithstanding anything contained in any judgement, decree or order of any court, the word ‘manufacturer’ occurring against item 33 in the schedule to the notification of the Government dated July 28, 1947 as amended by another notification of the 1st July, 1949 shall mean and shall always be deemed to have meant a person who by his own labour works up materials into suitable forms and a person who owns or runs a manufactory for the purpose of business with respect to the articles manufactured therein. The validity of this section was challenged in the present writ petition.

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It was urged (i) that since the exemption was granted by the State Government by virtue of the powers conferred on it by s. 6, it was not open to the legislature to take away that exemption retrospectively; (ii) that the provision in s. 2 of the impugned Act was discriminatory and as such contravened the equality before the law guaranteed by Art. 14 and (iii) that the retrospective operation of the impugned section should be struck down as unconstitutional, because it imposes an unreasonable restriction on the petitioner's fundamental right under Art. 19(1)(g).

Held: (i) What the legislature had purported to do by s. 2 of the impugned Act, was to make the intention of the notification clear. And, if the State Government was given the power either to grant or withdraw the exemption, that could not possibly affect the legislature's competence to make any provision in that behalf either prospectively or retrospectively.

(ii) The notification as interpreted by s. 2 of the impugned Act benefits the artisans who produce ornaments themselves and who run manufactories. That is why the main object of granting exemption can be said to be achieved by holding that 'manufacturer' means either a manufacturer properly so called or one who engages artisans to manufacture gold ornaments. In the present case the petitioners were not directly concerned with the production of ornaments, and admittedly, they did not produce the said ornaments themselves. Therefore, the persons who get the benefit of the exemption notification as a result of the provisions of s. 2 of the impugned Act cannot be said to belong to the same class as that of the petitioners. The two categories are distinct and there is no sameness or similarity between them, and if that is so, the main argument on the basis of Art. 14 does not subsist.

(ii) It would be difficult to accept the argument that because the retrospective operation may operate harshly in some cases, therefore, the legislation itself is invalid. In the circumstances of the present case it would not be possible to hold that by making the provision of s. 2 of the impugned Act retrospective the legislature has imposed a restriction on the petitioner's fundamental rights under Art. 19(1)(g) which is not reasonable and is not in the interest of the general public.

ORIGINAL JURISDICTION: Writ Petition Nos. 125--135, and 233 of 1963.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

A. V. Vishwanatha Sastri, T. A. Ramachandran, B. Parthasarathy, O. C. Mathur, J. B. Dadachanji and Ravinder Narain, for the petitioner (in W. P. Nos. 125--135/1963).

H. N. Sanyal, Solicitor-General, N. S. Bindra and R. N. Sachthey, for the respondents (in W. P. Nos. 125--135/63).

O. C. Mathur, J. B. Dadachanji and Ravinder Narain, for the petitioner (in W. P. No. 233/1963).

R. N. Sachthey, for the respondents (in W.P. No. 233/63).

March 12, 1964. The Judgment of the Court was delivered by—

GAJENDRAGADKAR, C. J.—This group of 12 writ petitions raises a common question about the validity of the Orissa Sales Tax Validation Act, 1961 (Act No. 7 of 1961) (hereinafter referred to as the Act). The facts on which the petitioners rely are similar, and so, we shall mention the facts in the first group consisting of writ petitions Nos. 125—135 of 1963. The petitioner in this group is Shri Epari Chinna Krishna Moorthy, Proprietor, Epari Chinna Krishna Moorthy & Sons, Berhampur, Orissa. He is a merchant who carries on business in “bullion and specie” and gold and silver ornaments at Berhampur and as such merchant, he has been registered as ‘dealer’ under the Orissa Sales Tax Act, 1947 (Act No. 14 of 1947). After the said Act came into force, the Government of Orissa purporting to exercise its authority under s. 6 of the said Sales Tax Act issued a notification exempting certain articles from the operation of the charging section of that Act. Under this notification, gold ornaments were ordered to be exempted from sales-tax ‘when the manufacturer selling them charges separately for the value of gold and the cost of manufacture.’ This notification was issued on July 1, 1949. During the course of his business, the petitioner manufactures gold ornaments by supplying the gold to the artisans and getting ornaments prepared by them under his supervision and when the ornaments are so prepared, he sells them in his shop and has been showing the value of gold and the cost of manufacture separately. That is why the petitioner alleges that he is entitled to claim the benefit of the exemption notification.

Consistently with this plea, the petitioner filed his returns before the Sales-tax Officer at Berhampur and had been claiming exemption of Sales-tax on the sales as being entitled to exemption under the said notification. Upto June, 1952, the claim for exemption made by him was upheld and the amount represented by sales of the said gold ornaments was deducted from the taxable turnover shown by the petitioner in his returns. Subsequently, however, these assessments were re-opened under s. 12(7) of the Act and it was claimed that the deductions made on certain sales transactions of gold ornaments were not justified and to that extent, the petitioner had escaped assessment. The petitioner resisted this attempt to re-open the assessment and he pleaded that he was entitled to claim exemption under the notification, because he belonged to the class of manufacturers to which the notification referred.

The Sales-tax Officer, however, disallowed the petitioner’s contention and proceeded to levy tax on the sales transactions in question. The petitioner then challenged the said

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decision by preferring appeals, but the said appeals were also dismissed. While the appeals were pending similar assessments made in respect of other dealers including the petitioner were challenged by them by writ petitions before the High Court of Orissa. (Nos. 151, 161, 162, 204—209 and 110 of 1957 respectively).

The Division Bench of the Orissa High Court which heard the writ petitions upheld the petitioner's case and issued appropriate writs directing the Sales-tax Officer to allow the petitioner's claim for exemption under the notification in question. The main controversy before the High Court was about the precise denotation of the word 'manufacturer' used in the notification. The High Court held that the expression 'manufacturer' meant the first owner of the finished products for whom it was made either by his paid employee or even by independent artisans on receipt of raw materials and labour charges from him. According to this view, the petitioners before the High Court were found to be manufacturers and as such entitled to claim exemption in respect of sale of gold ornaments made by them. This judgement was pronounced on March 13, 1959. Against this judgement the State of Orissa has filed appeals to this Court and they are numbered as Civil Appeals Nos. 92 to 94 of 1963. These appeals are till pending disposal.

After the Orissa High Court pronounced its judgement in the writ petitions to which reference has been made, the impugned Act was passed by the Orissa Legislature on August 1, 1961. This Act received the assent of the Governor on September 10, 1961, and was published on September 18, 1961. It contains one operative provision in s. 2. Section 2 provides that notwithstanding anything contained in any judgment, decree or order of any court, the word 'manufacturer' occurring against item 33 in the schedule to the notification of the Government of Orissa dated July 28, 1947 as amended by another notification of the 1st July, 1949 shall mean and shall always be deemed to have meant a person who by his own labour works up materials into suitable forms and a person who owns or runs a manufactory for the purpose of business with respect to the articles manufactured therein. It is the validity of this section which is challenged before us by the petitioners in the present writ petitions.

It is clear that the object of s. 2 of the impugned Act is to make it clear that the legislature's intention was not, as the High Court had held, to include within the notification all persons who are first owners of the finished product of gold. Section 2 shows that the legislative intention was to give benefit of the said exemption only to persons who themselves work and produce gold ornaments or who run or own a manufactory for the purpose of business with respect to the articles

manufactured therein. In other words, the intention of the Government in issuing the notification was not to give the benefit of the exemption to traders or shop-keepers who were no more than commission agents and who did not personally work for making gold ornaments or who did not own a manufactory employing artisans for that purpose. If this section is valid, it is common ground that the petitioners are not entitled to claim the exemption. On the other hand, if this section is invalid, the petitioners would be the first owners of gold ornaments and may be entitled to claim exemption.

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The first argument which has been urged before us by Mr. Sastri is that since the exemption was granted by the State Government by virtue of the powers conferred on it by s. 6, it was not open to the legislature to take away that exemption retrospectively. Section 4 of the parent Sales-tax Act is the charging section and s. 6 is the section which confers on the State Government power to issue a notification exempting from the tax the sale of any goods or class of goods and likewise withdraw any such exemption subject to such conditions and exceptions as it may deem fit. The argument is, the power to grant exemption having been conferred on the State Government, it was validly exercised by the State Government and though the legislature may withdraw such exemption, it cannot do so retrospectively. It is obvious that if the State Government which is the delegate of the legislature can withdraw the exemption granted by it, the legislature cannot be denied such right. But it is urged that once exemption was validly granted, the legislature cannot withdraw it retrospectively, because that would be invalidating the notification itself. We are not impressed by this argument. What the legislature has purported to do by s. 2 of the impugned Act is to make the intention of the notification clear. Section 2 in substance declares that the intention of the delegate in issuing the notification granting exemption was to confine the benefit of the said exemption only to persons who, actually produce gold ornaments or employ artisans for that purpose. We do not see how any question of legislative incompetence can come in the present discussion. And, if the State Government was given the power either to grant or withdraw the exemption that cannot possibly affect the legislature's competency to make any provision in that behalf either prospectively or retrospectively. Therefore, there is no substance in the argument that the retrospective operation of s. 2 of the impugned Act is invalid.

Then Mr. Sastri contends that this provision is discriminatory and as such, contravenes the equality before the law guaranteed by Art. 14. This argument is also misconceived. It is not seriously disputed that the petitioners belong to the

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class of traders or shopkeepers who are like commission agents. They give gold to the artisans, paying the artisans their labour charges and when the ornaments are thus produced, they charge commission before they are sold to the customers. In such a case, it is not easy to understand how this class of traders can be said belong to same class of persons who produce gold ornaments themselves or run manufactories where artisans are engaged for producing them. The counter-affidavit filed on behalf of the respondent-State has also averred that the petitioners sometimes sell goods manufactured by firms outside the State of Orissa and in no case had they manufactured ornaments themselves. Whether the gold which they give to the artisans is their own or is supplied to them by customers is not a matter of any significance, because what is important in this connection is that they are not directly concerned with the production of ornaments, and admittedly, they do not produce the said ornaments themselves. Therefore, the persons who get the benefit of the exemption notification as a result of the provisions of s. 2 of the impugned Act cannot be said to belong to the same class as that of the petitioners, and if that is so, the main argument on the basis of Art. 14 does not subsist.

Besides, one of the objects of the impugned Act appears to be to make it clear that the legislature intends to benefit the gold-smiths who actually make gold ornaments and that object can be carried out only if exemption is granted to persons who keep in their continuous employment artisans who produce gold ornaments. If a person produces gold ornaments himself and if a person employs artisans to produce gold ornaments for him, they fall within the protection of the exemption. In the case of the petitioners, however, they do not keep any artisans in their continuous employment, and so, if the legislature thought it was not necessary to give them the benefit of the exemption, it cannot be said that the classification made by the legislature has no rational connection with the object intended to be achieved by it. This argument assumes that the petitioners belong to the same class as the persons to whom the benefit of the exemption is available. But as we have already stated, these two categories are distinct and there is no sameness or similarity between them.

It was also suggested by Mr. Sastri that the result of the impugned provision is to deny the benefit of the exemption to the poorer classes of persons who are engaged in the business of manufacturing gold ornaments, and in that connection, he has commented on the fact that the notification gives the benefit of the exemption to persons who run manufactories but it denies that benefit to persons who carry on the work of producing gold ornaments on a smaller scale, and

so, are unable to run a manufactory. This argument is fallacious. The notification as interpreted by s. 2 of the impugned Act benefits the artisans who produce ornaments themselves and that obviously covers a very large section of independent artisans engaged in the trade. The notification also benefits persons who run manufactories and that ensures the continuous employment of artisans. That is why it seems to us that the main object of granting exemption can be said to be achieved by holding that 'manufacturer' means either a manufacturer properly so called or one who engages artisans to manufacture gold ornaments.

Mr. Sastri also argued that the retrospective operation of the impugned section should be struck down as unconstitutional, because it imposes an unreasonable restriction on the petitioners' fundamental right under Art. 19(1)(g). It is true that in considering the question as to whether legislative power to pass an Act retrospectively has been reasonably exercised or not, it is relevant to enquire how the retrospective operation operates. But it would be difficult to accept the argument that because the retrospective operation may operate harshly in some cases, therefore, the legislation itself is invalid. Besides, in the present case, the retrospective operation does not spread over a very long period either. Incidentally, it is not clear from the record that the petitioners did not recover sales tax from their customers when they sold the gold ornaments to them. The counter-affidavit filed by the respondent-State alleges that even where sales-tax has not been charged separately, the price charged included sales-tax because it was the usual practice of every registered dealer doing similar business to collect sales-tax either by showing it as such separately and thereby claiming deduction of the sales-tax from the gross turnover to arrive at the taxable turnover shown separately or by including it in the price and thereby collecting it as a part of the price charged. In any event, we do not think that in the circumstances of this case it would be possible to hold that by making the provision of s. 2 of the impugned Act retrospective the legislature has imposed a restriction on the petitioners' fundamental right under Art. 19(1)(g) which is not reasonable and is not in the interest of the general public.

The result is, the petitions fail and are dismissed with costs. One set of hearing fees.

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Petitions dismissed.