

A LOHARA STEEL INDUSTRIES LTD. AND ANOTHER ETC.
v.
THE STATE OF ANDHRA PRADESH AND ANOTHER

DECEMBER 20, 1996

B [A.M. AHMADI, C.J. AND SUJATA V. MANOHAR, J.]

C *Constitution of India, 1950 : Article 304 (a)—Imposition of tax on goods—Notification—Goods imported from other state not subject to same tax as similar goods manufactured in the State—Whether violative being discriminatory—Held, yes—However, only that portion of notification which discriminates against goods manufactured outside the State is struck down—Doctrine of severability.*

D Appellant No. 1, a registered dealer in iron and steel under the Andhra Pradesh General Sales Tax Act, 1957, purchased iron and steel scrap and ingots in the state of Andhra Pradesh, and sent them to its re-rolling mill in the State of Karnataka. There they were re-rolled into rounds and flats and the re-rolled products were brought back to Andhra Pradesh to be sold there.

E The iron and steel scrap and ingots purchased by the appellants are subject to tax in the State of Andhra Pradesh under an exemption notification, the re-rolled finished products of steel sold in Andhra Pradesh were made exempt from tax provided tax had already been levied on the sale or purchase of any of the materials specified in Item 2 of Schedule III to the said Act which included the raw-material purchased by the assessee. By F G.O. MS No. 1373 of 28.8.1981 the original exemption notification G.O. MS. No. 88 was amended. By the amendment the words denying the exemption to goods manufactured outside the State were expressly and specifically added. The result was that exemption under original exemption notification became available only to those re-rolled finished products of G steel re-rollers which were situated in the State of Andhra Pradesh. Since the appellant mills were situated outside Andhra Pradesh the re-rolled products of the appellants became ineligible for this exemption which was made available to local products. Thereafter, another notification bearing H G.O. MS. No. 498, dated 20.3.1984 was issued which proceeded on the same basis. The appellants have challenged these notifications as being violative

of Article 304(a) of the Constitution of India.

In appeal to this Court, the appellants contended that there is a clear discrimination in the levy of tax between the goods which have been manufactured in the State and goods which have been manufactured outside the State. It was further contended by appellants that the exemption notification must be read as a whole and if the exemption notification is found to be violative of Article 304 (a) the entire exemption notification will have to be struck down and not just a portion of it which is discriminatory.

Allowing the appeals, this Court

HELD : 1.1. Article 304 of the Constitution enables the legislature to impose tax on goods manufactured within the State as also goods imported from other States into the State. But in doing so the State cannot discriminate between goods so imported and goods manufactured or produced locally. [902-F]

1.2. In the present case the appellants have purchased the raw material in the State of Andhra Pradesh and tax has been paid under the Andhra Pradesh General Sales Tax Act on this raw material. There is no reason why the finished products from the re-rolled mills which are sold in Andhra Pradesh should be subjected to discrimination on the ground that these products have been manufactured outside the State and not inside the State. There is a clear violation of Article 304 (a) in the present case. [903-E]

A.T.B. Mehtab Majid and Co. v. State of Madras and Anr., [1963] Supp. 2 SCR 435 and *Andhra Steel Corporation v. Commissioner of Commercial Taxes in Karnataka*, [1990] Supp. SCC 617, relied on.

State of Madras v. N.K. Nataraja Mudaliar, [1968] 3 SCR 829 and *Rattanlal and Co. and Anr. v. The Assessing Authority and Anr.*, [1969] 2 SCR 544, cited.

2. In the present case the exemption notification as it originally stood, exempted all re-rolled finished products sold in the State of Andhra Pradesh from tax, provided tax had been paid in the State of Andhra Pradesh on the raw material. This exemption is still available to re-rolled products which are manufactured within the State. No exception can be

- A** taken to this part of the notification. Only the portion of exemption notification which discriminates against goods manufactured outside the State violates the provisions of Article 304 (a). In fact the words denying this to goods manufactured outside the State were expressly and specifically added to the original exemption notification by the amending G.O.MS. No. 1373 of 28.8.1981. It is this amendment alone which is clearly severable, that offends Article 304 (a). It can, therefore, be struck down. The subsequent notification of 20.3.1984 proceeds on the same basis. There is no need, therefore, to strike down the entire tax exemption which is granted to all re-rolled steel products sold in the State of Andhra Pradesh and manufactured out of tax paid raw material purchased in the State of Andhra Pradesh. The discriminatory provision is clearly severable and can be struck down. [904-B-E]

State of Bombay and Anr. v. The United Motors (India) Ltd. and Ors., [1953] SCR 1069, relied on.

- D** CIVIL APPELLATE JURISDICTION : Civil Appeal No. 827 of 1992 Etc.

From the Judgment and Order dated 27.11.90 of the Andhra Pradesh High Court in W.P. No. 8584 of 1985.

- E** V.K. Mohta and A.S. Bhasme for the Appellants.

K. Ramkumar for the Respondents.

The Judgment of the Court was delivered by

- F** MRS. SUJATA V. MANOHAR, J. Leave granted in S.L.P. (C) No. 14547 of 1992.

- G** Appellant No. 1 is a registered dealer under the Andhra Pradesh General Sales Tax Act, 1957. The appellant is a dealer in iron and steel. It purchases iron and steel scrap and ingots in the State of Andhra Pradesh. Iron and steel scrap and ingots are sent by the first appellant to the its re-rolling mill which is situated in the State of Karnataka. The raw material is re-rolled into rounds and flats in the re-rolling mills of the appellant. The re-rolled products are brought back to Andhra Pradesh and are sold
- H** in Andhra Pradesh.

The iron and steel scrap and ingots which are purchased by the appellants are subject to tax in the State of Andhra Pradesh under the Andhra Pradesh General Sales Tax Act, 1957. Under an exemption notification issued under the Andhra Pradesh General Sales Tax Act, 1957 bearing G.O.Ms. No. 88 Revenue, dated 28.1.1977 which came into effect from 1st of April, 1976 re-rolled finished products of steel sold in Andhra Pradesh were made exempt from tax payable under the Andhra Pradesh General Sales Tax Act provided tax had already been levied under the said Act on the sale or purchase of any of the materials specified in Item 2 of Schedule III to the said Act which included the raw material purchased by the assessee. The relevant text of the exemption notification as amended by G.O.Ms. No. 2458 Revenue, dated 3.6.1980 and in force retrospectively from 1st of April, 1976 is as follows :-

"In exercise of the powers conferred by sub-section (1) of 9 of A.P.G.S.T. Act, 1957 (Act VI of 1957) the Governor of Andhra Pradesh hereby makes an exemption with effect from 1st of April, 1976, the re-rolled finished products of steel re-rollers from the tax payable under the said Act, subject to the condition that the tax has been levied under the said Act on the sale or purchase of any of the material specified in Item 2 of Schedule III to the said Act."

By G.O.Ms. No. 1373 Revenue, dated 28.8.1981 the above G.O.Ms. No. 88 was amended. By the amendment, after the words 're-rolled finished products of the steel re-rollers' the following words were added to G.O.Ms. No. 88:-

"Situated within the Andhra Pradesh State".

The result was that exemption under G.O.Ms. No. 88 became available only to those re-rolled finished products of steel re-rollers which were situated in the State of Andhra Pradesh. Since the appellants' re-roller mills were situated outside Andhra Pradesh the re-rolled products of the appellants became ineligible for this exemption which was made available to local products.

The amended G.O.Ms. No. 88 was cancelled with effect from 4.2.1982. Thereafter, another notification bearing G.O.Ms. No. 498 Revenue, dated 20.3.1984 has been issued under which once again exemp-

A tion from tax leviable under Section 6 of the Andhra Pradesh General Sales
 Tax Act, 1957, on ingots or billets or re-rolled finished products manufac-
 tured from iron and steel scrap on which tax has been paid under the said
 Act is granted only to those re-rolled finished products which are manufac-
 tured from steel plants-cum-re-rollers situated within the State of Andhra
 B Pradesh and sold inside the State. The appellants have challenged both
 these notification as being violative of Article 304 (a) of the Constitution
 of India.

The appellants contend that in the impugned notifications there is a
 clear discrimination between the goods which have been manufactured in
 C the State and goods which have been manufactured outside the State in
 levying tax under the Andhra Pradesh General Sales Tax Act of 1957.
 Article 304 of the Constitution is as follows :-

"304. *Restrictions on trade, commerce and intercourse among States-*
 Notwithstanding anything in Article 301 or Article 303, the Legis-
 D lature of a State may by law-

(a) 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 dis-
 E criminate between goods so imported and goods so manufactured
 or produced; and

(b)

Article 304 thus enables the Legislature of a State to impose tax on
 F goods manufactured within the State as also goods imported from other
 States into the State. But in doing so the State cannot discriminate between
 goods so imported and goods manufactured or produced locally. This
 Article came up for consideration before this Court in the case of *Firm*
A.T.B. Mehtab Majid and Co. v. State of Madras and Anr., [1963] Supp. 2
 G SCR 435. The Court said that sales tax which has the effect of discriminat-
 ing between goods of one State and goods of another, may affect the free
 flow of trade and it will then offend against Article 301 and will be valid
 only if it comes within the terms of Article 304 (a). In the above case by
 virtue of Rule 16 which had been framed under the Madras General Sales
 Tax (Turnover and assessment) Rules 1939, tanned hides and skins im-
 H ported from outside the State and sold within the State were subject to a

higher rate of tax than hides or skins tanned and sold within the State. This Court upheld the contention of the appellant that such an imposition would violate Article 304(a) of the Constitution and would be bad in law.

This decision has been re-affirmed by this Court in the case of *Andhra Steel Corporation v. Commissioner of Commercial Taxes in Kamataka*, [1990] Supp. SCC 617. In this case the appellant who was a registered dealer under the Karnataka Sales Tax Act purchased iron scrap from dealers inside the and outside the State of Karnataka for the purpose of manufacturing iron ingots, steel rounds and tor-steel. These manufactured goods were sold mostly within the State. A provision in Section 5(4) of the Karnataka Sales Tax Act which granted exemption to sales of finished goods manufactured out of locally purchased raw material while denying it to the sale of finished goods manufactured out of imported raw material was held to be unconstitutional and contrary to Article 304(a) of the Constitution. This Court distinguished the decisions in *State of Madras v. N.K. Nataraja Mudaliar*, ([1968] 3 SCR 829 and *Rattan Lal & Co. and Anr. v. The Assessing Authority and Anr.*, [1969] 2 SCR 544 and re-affirmed its decision in *A.T.B. Mehtab's case* (supra).

In the present case the appellants have purchased the raw material in the State of Andhra Pradesh and tax has been paid under the Andhra Pradesh General Sales Tax on this raw material. We do not see any reason why the finished products from the re-rolled mills which are sold in Andhra Pradesh should be subjected to discrimination on the ground that these products have been manufactured outside the State and not inside the State. There is clear violation of Article 304(a) in the present case.

It was, however, contended before us by the department that the exemption notification must be read as a whole and, therefore, if we find the exemption notification to be violative of Article 304(a) the entire exemption notification will have to be struck down and not just a portion of it which is discriminatory as contended by the appellants. This question in relation to a taxing statute has been considered by this Court as far back as in 1953 in the case of *The State of Bombay and Anr. v. The United Motors (India) Ltd. and Ors.* [1953] SCR 1069 at 1097. If the taxing statute imposes tax on subjects which are divisible in their nature and if the covered subjects which are exempted by the Constitution are wrongly taxed, the

- A entire taxing statute need not be declared as ultra vires because it is feasible to separate taxes levied on authorised subjects from those levied on exempt subjects and to exclude the latter in the assessment to tax. In such cases this Court has said the statute itself should be allowed to stand. The taxing authority can be prevented by injunction from imposing the tax on subjects exempted by the Constitution. In the present case the exemption notification as it originally stood exempted all re-rolled finished products sold in the State of Andhra Pradesh from tax provided tax had been paid in the State of Andhra Pradesh on the raw material. This exemption is still available to re-rolled products which are manufactured within the State. No exception can be taken to this part of the notification.
- B Only the portion of exemption notification which discriminates against goods manufactured outside the State violates the provisions of Articles 304(a). In fact the words denying this exemption to goods manufactured outside the State were expressly and specifically added to the original exemption notification by the amending G.O.Ms. No. 1373 of 28.3.1981. It is this amendment alone, which is clearly severable, that offends Article 304(a). It can, therefore, be struck down. The subsequent notification of 20.3.1984 proceeds on the same basis. There is no need, therefore, to strike down the entire tax exemption which is granted to all re-rolled steel products sold in the State of Andhra Pradesh and manufactured out of tax paid raw material purchased in the State of Andhra Pradesh. The discriminatory provision is clearly severable and can be struck down.
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The appeals are, therefore, allowed and the judgments and orders of the High Court and of the Sales Tax Appellate Tribunal in Civil Appeal No. 16901 of 1996 arising out of S.L.P. (C) No. 14547 of 1992 are set aside. The respondents shall pay to the appellants costs of the appeals.

S.S.

Appeals allowed.