

CASE NO.:
Appeal (civil) 6223-24 of 1997

PETITIONER:
M/s Geo Miller & Co. Pvt. Ltd. & Ors.

RESPONDENT:
State of M.P. & Ors.

DATE OF JUDGMENT: 05/05/2004

BENCH:
CJI & G.P. MATHUR.

JUDGMENT:
J U D G M E N T

RAJENDRA BABU, CJI. :

The appellants are dealers registered under the M.P. General Sales Tax Act, 1958 and were also assessed to the Entry Tax during the period from 1.1. 1986 to 11.12.1986 under the Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter referred to as the 'M.P. Entry Tax Act'). The appellants are carrying on the business of execution of works contract. Before the authorities below, it was the appellants' contention that since the goods were brought for purpose of works contract and they have been subjected to sales tax under the Sales Tax Act, the appellants were not liable to pay the entry tax on goods. The appellants had unsuccessfully challenged the assessment of tax before the Appellate Deputy Commissioner of Sales Tax and the Board of Revenue and thereupon appellants preferred Misc. Petition No. 3960 of 1991 before the High Court of Madhya Pradesh.

The appellants contended that by virtue of the definition of sale as defined under Article 366 (29-A) of the Constitution, the activity involved was a transfer of goods in works contract, it amounted to a 'sale' and as such the goods are not exigible to the entry tax. The High Court vide judgment dated 18/09/1996, did not accept this contention and dismissed their prayer. Hence these appeals by Special Leave. In view of the High Court's judgment the Madhya Pradesh Builders Association has also joined the present petitions for special leave to appeal as the judgment affects the entire community of contractors.

The questions that arise for consideration herein are:

- i) Whether the M.P. Entry Tax Act, 1976, is unconstitutional as it is hit by Article 301 of the Constitution for not satisfying the conditions laid down in Article 304 (b)?
- ii) Whether in any event the goods used by the appellants are subject to Entry Tax by virtue of Section 3 of the M.P. Entry Tax Act, 1976?

It is the submission of the appellants that the M.P. Entry Tax Act, 1976 is unconstitutional as it offends Article 301 owing to non-compliance of the conditions laid down in Article 304 (b).

The appellants relied on the cases of Atiabari Tea Co. Ltd. Vs. The State of Assam & Ors., (1961) 1 SCR 809 and Automobile Transport (Rajasthan) Ltd. vs.

The State of Rajasthan & Ors. (1963) 1 SCR 491, to state that taxation may impede the movement of goods from one barrier to the other and would accordingly bring Article 301 into play. They then contend that the conditions of Article 304 (b) have not been complied thereby rendering the M.P. Entry Tax Act, 1976 unconstitutional.

This argument of the appellants does not seem to be correct. It is well settled by the decision in *Atiabari Tea Co.* [supra] at p.860, that only such restrictions or impediments which directly or immediately impede the free flow of trade, commerce and intercourse fall within the prohibition imposed by Article 301. This Court did not accept the argument that all taxes whether or not their impact on trade is immediate or mediate, direct or remote should be governed by Article 301. This view was further upheld in the *Automobile Transport Case* and in *State of Kerala vs. A.B. Abdul Kadir & Ors.*, 1969 (2) SCC 363. Hence, the mere fact that a tax is imposed does not automatically bring Article 301 into play.

In fact the concept of "compensatory taxes" was propounded in the *Automobile Transport Case*. By virtue of this, taxes, which would otherwise interfere with the unfettered freedoms under Article 301, will be protected from becoming unconstitutional if they are compensatory.

Thus, the reliance placed by the appellants on the observations made in the *Atiabari Case* and the *Rajasthan Automobile Case* that taxation may impede the movement of goods from one barrier to the other and accordingly submitting that the M.P. Entry Tax Act, 1976 is hit by Article 301 is not properly founded.

In fact, Section 3 of the said Act was under challenge in the case of *M/s Bhagatram Rajeevkumar vs. Commissioner of Sales Tax, M.P. & Ors.*, 1995 Supp. (1) SCC 673. A three Judge Bench of this Court, found that the levy of tax under the M.P. Entry Tax Act, 1976 was constitutional, since the nature of revenue earned was compensatory, as it was handed over to the local bodies to compensate them for the loss caused.

In the present case too, the respondents have reiterated that the tax being imposed is compensatory in nature as the revenue earned therefrom passes over to the local bodies to compensate them for the loss incurred due to abolition of octroi.

Augmentation of their finance would enable them to promote Municipal Services more efficiently helping in the free flow of trade and commerce.

The Act being compensatory in nature it is not open to challenge under Article 301 and there is no need to venture into the argument based on Article 304 (b). Accordingly, the constitutionality of the Act is upheld.

In the case of *Jindal Stripe Ltd. v. State of Haryana*, (2003) 8 SCC 60, a division bench of this court, raised doubts over the legal proposition laid down in the aforementioned *Bhagatram case* (which upheld the validity of the M.P. Entry Tax Act, 1976) and refers the matter to a Constitution Bench over the interpretation of Article 301 vis-à-vis compensatory tax. In *Bhagatram's*

Case, although it was demonstrated by the appellant State and not disputed by the respondents that the levy was compensatory, the Court goes on to make an observation that compensation need not be that which facilitates the trade only. It observes that "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 dealer directly or indirectly the levy cannot be impugned as invalid". In the Jindal Stripe Case, the division bench noted that the above observation would mean that "an indirect or incidental benefit to traders by reason of stepping up the developmental activities in various local areas of the State can be legitimately brought within the concept of compensatory tax". Accordingly it refers the matter to a Constitution Bench to decide what exactly would fall under the ambit of "compensatory tax", and thereby fall outside the purview of Article 301. Inasmuch as the Act in question has been upheld on the basis that it had been demonstrated by the State and not disputed by the dealers that the levy was compensatory it may not be necessary for us to dilate on this aspect any further.

It is the contention of the appellants that Sec. 3(1) (b) of the M.P. Entry Tax Act, 1976 does not permit levy of any entry tax on the entry in the course of a business of a dealer of goods specified in Schedule III into a local area for consumption or use of such goods in the execution of works contracts, as these amount to 'sale'. They contend that owing to the 46th Amendment transfer of property in goods involved in the execution of a works contract amounts to 'sale'.

The relevant part of Section 3 of the M.P. Entry Tax Act is reproduced herein;

"Section 3: Incidence of Taxation ;-(1) There shall be levied an entry tax

(a) \005\005..

(b) on the entry in the course of business of a dealer of goods specified in Schedule III, into each local area for consumption or use of such goods (raw material or incidental goods) or as packing material or in the execution of works contracts but not for sale therein\005\005\005."

(Emphasis supplied)

The relevant portion of Article 366 of the Constitution is as follows;

"Article 366: In this Constitution, unless the context otherwise requires, the following expressions have the meaning hereby respectively assigned to them, that is to say \026 \005\005\005..

(29-A) "tax on the sale or purchase of goods" includes \026

(b) a tax on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.."

Accordingly, the appellant contends that Section 3(1) (b) of the M.P. Entry Tax Act, 1976, no longer permits levy of entry tax on goods consumed or used in works contract

as these amount to 'sale' by virtue of Article 366(29-A).

The question that arises for consideration is whether the definition of "tax on the sale or purchase of goods" as provided by the 46th amendment through Article 366 (29-A) applies to the M.P. Entry Tax Act.

It is evident from the section 3(1) (b) of the M.P. Entry Tax Act, 1976, that if a dealer effects the entry of goods specified in Schedule III into any local area and those goods are meant for

- a) consumption or
 - b) to be used as
 - i) raw materials or
 - ii) incidental goods or
 - iii) as packing material or
 - iv) in the execution of works contract,
- such dealer would come within the ambit of the charging section and hence, liable to pay tax on the entry of those goods.

The section goes on to make it clear that goods specified in Schedule III if they are imported for the purpose of sale then they are not subject to tax.

Admittedly, the appellants, a dealer, has effected entry of goods specified in Schedule III in the local area for use in execution of works contract, and is hence liable to tax as per Section 3(1)(b) of the Act.

It is hence evident that the M.P. Entry Tax Act, 1976 makes a clear distinction between 'sale' and 'execution of works contracts' and specifically excludes the latter from the purview of the former. The appellants contention that the definition of 'sale' under Article 366 (29-A) of the Constitution which includes transfer of goods in execution of works contract, should be adopted into the M.P. Entry Tax Act, 1976 is not well founded.

The M.P. Entry Tax Act has been enacted by the Legislature by virtue of Entry 52 of List II of the VIIth Schedule. It reads as under:

"Entry 52: Taxes on entry of goods into a local area for consumption, use or sale therein."

Article 366(29-A) on the other hand seeks to define 'tax on the sale or purchase of goods'. This phrase is used in Schedule VII, List I, Entries 92 and 92-A and Schedule VII, List II Entry 54. Hence, it can be seen that the said meaning cannot be imported for the purposes of Entry 52 of List II.

On the other hand, it is evident that the M.P. General Sales Tax Act, 1958 has been enacted in relation to Entry 54 of List II, and it indeed includes transfer of goods in the execution of works contract within the definition of 'sale' as required by Article 366(29-A). However the M.P. Entry Tax Act has specifically excluded the definition of 'goods' and 'sale' which is utilised in the M.P. Sales Tax Act. Section 2(2) of the M.P. Entry Tax Act, 1976 reads as under:-

"Section 2(2): All those expressions, other than

expression 'goods' and 'sale' which are used but are not defined in this Act and are defined in the Sales Tax Act shall have the meanings as assigned to them in that Act."
(Emphasis supplied)

The exclusion is justifiable considering the fact that the M.P. Entry Tax Act, 1976 has been enacted by virtue of Entry 52 of List II of Schedule VII. It need not be circumscribed by the definition provided in Article 366 (29-A).

Article 366(29-A) does not define the term 'sale', but enlarges its scope by including transfer of goods in the execution of works contract within this definition of sale. Therefore, 'sale' as it appears in Article 366(29-A) is with reference to the Sales Tax Act. The M.P. Sales Tax Act indeed adopts the same. However Section 2(2) of the M.P. Entry Tax Act has expressly not imported the definition of 'sale' from the Sales Tax Act. Therefore, the intention of the legislature in excluding 'execution of works contract' from the definition of 'sale' is manifest and this reflects clearly in the letter of the law.

Further, the contention that the term 'sale' utilised in Entry 52 of List II and Entry 54 of List II are the same concept deriving from the expression 'tax on the sale or purchase of goods' as defined in Article 366(29-A) seems to be incorrect. The High Court has observed rightly that the M.P. Sales Tax Act, 1958 is covered by Entry 54 whereas the M.P. Entry Tax Act, 1976 is covered by Entry 52. Therefore, both these Acts are covered by different entries in the Constitution and hence, the incidence of taxation in both cases is different. Under the Sales Tax Act enacted by virtue of Entry 54 the incidence of taxation is on the sale and purchase of goods whereas in the case of the Entry Tax Act, the incidence of taxation is on the entry of the goods specified in the Entry Tax Act.

Accordingly, the M.P. Entry Tax Act does not adopt the expression of "goods" and 'sale' under the M.P. Sales Tax Act.

It is a well-settled position of law that in interpreting taxing statutes, one must have regard to the strict letter of the law. If the person/entity sought to be taxed comes within the letter of the law he must be taxed.

In the instant case, the letter of the law, i.e. Section 3 (1) (b) of the M.P. Entry Tax Act, 1976, leaves out "execution of works contracts" from the definition of "sale". By expressly not adhering to the definition of 'sale' in the M.P. Sales Tax Act [which includes, transfer of property in goods involved in the execution of works contract within the definition of 'sale' as required by Article 366(29A)(b)] their can be no doubt that the section clearly requires the appellants to pay the entry tax. Accordingly the appellants are liable to pay entry tax under the M.P. Entry Tax Act, 1976.

It is true that the M.P. Entry Tax Act, 1976 does not provide a definition of 'sale'. The appellants contend that in the absence of such definition the Constitutional definition as provided in Article 366(29-A) must be imported.

However, even though the Act does not define 'sale' it does provide a negative definition by clearly leaving out 'execution of works contract' from the definition of 'sale'. Thus, there is no ambiguity at least with regard to 'execution of works contract'. It cannot be said to be a 'sale' for the purposes of the M.P. Entry Tax Act, 1976.

The appellants further contend that under Section 3 (1) (b) of the Entry Tax Act, 1976, the goods specified in Schedule III if are imported from outside the State for consumption are completely exempted by virtue of exception (vi) to proviso attached to Section 3(1)(b). The relevant proviso is extracted herein:

"(vi) in respect of goods specified in Schedule III imported from outside the State for consumption or use as [raw materials or incidental goods] or as packing materials or in the execution of works contract but which have been disposed of in any manner." (Emphasis supplied)

The appellants submit that a plain reading of Section 3 would indicate that all those goods falling in Schedule III which are imported from outside the State for consumption are not subject to entry tax. This submission is incorrect. There is no ambiguity in the proviso which clearly states that tax shall not be levied only on those goods which have been imported from outside and are meant for use or consumption as raw materials, incidental goods as packing material or in the execution of works contract, but only if after being brought in for such purpose are disposed of in some other manner. The interpretation of the appellants fails to consider the final part of the proviso, which has been emphasised in the reproduction of the same above.

Hence it can be seen that the Entry Tax imposed by the respondents is justifiable.

These appeals are accordingly dismissed.