

PETITIONER:
SRI DOKI CHINA GURUVULU SON & CO. AND ANR.

Vs.

RESPONDENT:
GOVT. OF ANDHRA PRADESH AND ANR.

DATE OF JUDGMENT 07/12/1989

BENCH:
MUKHARJI, SABYASACHI (J)
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MUKHARJI, SABYASACHI (J)
RAY, B.C. (J)

CITATION:
1989 SCR Supl. (2) 422 1990 SCC (1) 221
JT 1989 Supl. 373 1989 SCALE (2) 1249

ACT:

Andhra Pradesh Sales Tax Act, 1957 (As amended by Act 19 of 1986): First Schedule Item 170/Second Schedule Item 14--Tamarind obtained from outside the State--Taxation of--At a stage different from tamarind produced in the State--Whether results in double taxation--Whether discriminatory and violative of Articles 304(a) and 14 of the Constitution.

Constitution of India, 1950: Articles 14 and 304: State sales tax law---Taxing commodity obtained from outside the State at a stage different from commodity produced in the State--Whether discriminatory and unconstitutional.

HEADNOTE:

Under item 14 of Second Schedule to the Andhra Pradesh General Sales Tax Act, 1957 tamarind was subjected to sales tax at the point of first purchase in the State irrespective of whether it was purchased within the State or outside the State. However, by virtue of an amendment to the Act by Act 19 of 1986 tamarind which is purchased within the State was retained in Second Schedule, while tamarind purchased outside the State was transferred to First Schedule as item 170, making it taxable at the same rate at the point of first sale in the State.

The appellants had purchased tamarind from the State of Orissa paying tax there and incurred expenditure in bringing it to Andhra Pradesh for sale. They challenged the said amendment modifying the point of taxability as discriminatory between tamarind produced and purchased within the State and the tamarind produced and purchased outside the State and as such, violative of Articles 304(a) and 14 of the Constitution. The submission was that imported tamarind which had suffered tax at the first sale point will again be taxed at the purchase point when purchased within the State, which would amount to double taxation, and that tax in case of imported tamarind would be more because its price will include freight charges and other State taxes.

The High Court found that there was no discrimination.

Dismissing the appeal by special leave, the Court,

423

HELD: When a taxing State is not imposing rates of tax on imported goods different from rates of tax on goods

manufactured or produced, Article 304 of the Constitution has no application. In the instant case, both tamarind purchased within, and outside, the State was taxed uniformly. There was, therefore, no infraction of clause (a) of Article 304 of the Constitution. [429D-E; 426A; 425G-H]

Rattan Lal & Co. & Anr. v. The Assessing Authority & Anr., [1969] 2 SCR 544, applied.

Firm A.T.B. Mehtao Majid & Co. v. The State of Madras, 14 STC 355 and Indian Cement Ltd. & Ors. v. State of Andhra Pradesh & Ors., 69 STC 305, distinguished.

It may be that when the rate is applied the resulting tax in respect of imported tamarind may be somewhat higher because its price will include freight charges and other State taxes. But that cannot be said to be the effect of what law has amended. Tamarind will be imported only when it can be sold in the market at the same price as the tamarind produced within the State. Only when after bearing the other State taxes and freight charges, if it is able to compete with the locally produced tamarind it will normally be imported from outside the State. If there is any difference in prices because of market conditions and other factors, that cannot be said to be due to discrimination prohibited by clause (a) of Article 304. [429E; 427D-E]

M/s Associated Tanners, Vizianagaram, A.P. v. C.T.O., Vizianagaram, A.P. & Ors., [1986] 2 SCC 479, referred to.

Weston Electronics & Anr. v. State of Gujarat & Ant., [1988] 3 SCR 768, distinguished.

Once the imported tamarind is taxed at the first sale point under the First Schedule there is no occasion for taxing it over again at the sale point under the Second Schedule. The idea of both the Schedules is to tax only at one point, though the point of taxability is different in both the cases. In case of tamarind purchased within the State, i.e., produced within the State, the tax is levied at the point of first purchase under the Second Schedule, and in case of imported tamarind i.e., purchased outside the State, the tax is levied at the point of first sale in the State under the First Schedule. It could not therefore, be said that taxing the imported tamarind at the point of first sale in the State would amount to double taxation. [427H; 428A; 427B-C; 427G]

424

In the facts and circumstances of the case, there was, therefore, no ground to complain about the breach of Article 14 of the Constitution [429E-F]

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 4879 of 1989.

From the Judgment and Order dated 12.11.1986 of the Andhra Pradesh High Court in W.P. No. 16535 of 1986 P. Rama Reddy and A.V.V. Nair for the Appellants.

C. Sitaramaiah, Jagan Rao, D.R.K. Reddy and T.V.S.N. Chari for the Respondents.

The Judgment of the Court was delivered by SBYASACHI MUKHARJI, J. Leave granted.

This is an appeal from the judgment and order of the High Court of Andhra Pradesh dated 12th November, 1986. The appellants challenged the validity of an amendment to the Schedule to the Andhra Pradesh General Sales Tax Act, 1957 (hereinafter called 'the Act'). The appellants are dealers in tamarind in Parvathipuram in Srikakulam district, a border district in Andhra Pradesh. They had purchased tama-

rind from the State of Orissa paying tax there and incurring expenditure in bringing the said goods to Andhra Pradesh for the purpose of sale. Under the Act, tamarind was item 14 of Second Schedule and was subjected to sales tax at the point of first purchase in the State irrespective of whether it was purchased within the State or outside the State. The subject-matter of challenge in this application under Art. 226 of the Constitution before the Andhra Pradesh High Court, was the validity of an amendment to the Schedule to the Act modifying the point of taxability of tamarind in question. Prior to the amendment tamarind was taxable as mentioned hereinbefore at the first purchase point, being item No. 14 in Schedule II to the Act. The entry therein read as follows:

Description of the goods	Point of levy	Rate of tax
14. Tamarind (2014)	At the point of first purchase in the State."	4 paise in the rupee.

425

By virtue of the amendment, the said entry was amended. Tamarind which is purchased within the State, was retained in IIInd Schedule while tamarind purchased outside the State was transferred to 1st Schedule. After the amendment, item No. 14 in Schedule II and item 170 in Schedule I stood as follows:

"SECOND SCHEDULE

S. No.	Description of goods	Point of levy	Rate of tax
14.	Tamarind when purchased within the State.	At the point of first purchase in the State.	4 paise in the rupee.

FIRST SCHEDULE

S. No.	Description of Goods	Point of levy	Rate of tax
170	Tamarind when obtained from outside the State.	At the point of first sale in the State."	4 paise in the rupee.

It appears that the result of the said amendment was that tamarind purchased outside the State, was taxable at the point of first sale in the State. It was contended before the High Court that the said amendment brought about a discrimination between tamarind purchased within the State i.e. one produced within the State, and the tamarind purchased outside the State i.e. produced in other States; and that the incidence of tax was more on the tamarind purchased outside the State. It was contended that it violated clause (a) of Art. 304 as also Art. 14 of the Constitution.

Clause (a) of Art. 304 states that notwithstanding anything contained in Art. 301 or Art. 303, the legislature of State may by law impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in the State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced. The question is whether as a result of the said amendment, there has been any infraction of clause (a) of Art. 304 of the Constitution. We are unable to

426

accept the contention that there was any such discrimination. The High Court in the judgment under appeal has so held. We are of the opinion that the High Court was right. Both the tamarind purchased within, and outside, the State is taxed uniformly.

On behalf of the appellants, reliance was placed on Firm A.T.B. Mehtao Majid and Co. v. The State of Madras, 14 STC 355, wherein on an analysis of the relevant provisions it

was held that the provisions of rule 16(2) of the Madras General Sales Tax [Turnover and Assessment] Rules, 1939 (substituted in the place of the old rule w.e.f. 1st April, 1955) discriminate between hides and skins imported from outside the State and those manufactured or produced inside the State and as such contravened the provisions of Art. 304(a) of the Constitution, and therefore were invalid. It was reiterated by this Court that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if these are not compensatory taxes or regulatory measures. It was further held that sales tax on hides and skins imposed under the Madras General Sales Tax Act, 1939 and the rules framed thereunder could not be said to be a measure regulating any trade or compensatory tax levied for the use of trading facilities. The similarity contemplated by Art. 304(a) is in the nature of the quality and kind of the goods and not with respect to whether they were already the subject of tax or not. There this Court was dealing with rule 16 of the relevant Madras rules. Sub-rule (a) of rule 16 provides that in case of untanned (raw) hides and/or skins, the tax u/s 3(1) of the Act was to be levied from the dealer who is the last purchaser in the State. Sub-rule (2) which was in two parts, dealt with tanned hides and skins. Clause (i) of sub-rule (2) provided that in case of hides and skins tanned outside the State, tax shall be levied upon the dealer who in the State is the first dealer. Clause (ii) provided that in case of tanned hides and skins which have been tanned within the State, the tax u/s 3(1) shall be levied upon a person who is the first dealer in such hides or skins. The proviso, however, declared that if the dealer proved that he had already been taxed under sub-rule (1) on the untanned hides and skins, he shall not be subjected to tax under sub-rule (2). It was held by this Court that this rule inevitably brought about a discrimination in the quantum of tax because while the tanned hides and skins which were imported from outside the State and were sold within the State, were taxed at a higher rate, the hides and skins tanned within the State and sold within the State, are taxed at a lower rate by virtue of the proviso. It was, indeed, found that there was a substantial variation between the prices of tanned and untanned goods. This Court pointed out that by virtue of the proviso, the tax on

427

the latter category was, in fact, on the purchase price of the untanned hides and skins--though ostensibly the rate of tax under sub-rule (2) was the same. Hence, the mischief of discrimination was brought about by the proviso which said that if hides and skins are taxed within the State at raw (untanned) stage, they shall not be taxed again at the tanned stage. But in view of the facts involved in the instant case, we are unable to accept that the principles of the said decision have any scope of application to the facts of instant case. In the instant case the tamarind purchased within the State and outside the State, are taxed at the same rate. But the point of taxability has necessarily to be different in both the cases. In case of tamarind purchased within the State i.e. produced within the State, the tax is levied at the point of first purchase, and in case of imported tamarind i.e. purchased outside the State, the tax is levied at the point of first sale in the State.

It was contended by Mr. P. Rama Reddy, learned advocate for the appellants, that tax in case of imported tamarind would be more because its price will include freight charge and other State taxes. Hence, it was submitted that the

sales tax will also be more. That may be so but it cannot be said to be the effect of what law has amended. Tamarind will be imported only when it can be sold in the market here at the same price as the tamarind produced within the State. Only when after bearing the other' State tax and freight charges, if it is able to compete with the locally produced tamarind, it will normally be imported from outside the State. If there is any difference in prices because of market conditions and other factors, that cannot be said to be due to discrimination prohibited by clause (a) of Art. 304 of the Constitution. In order to ensure this, it would be necessary that imported goods must always be taxed at a lower rate than the corresponding goods within the State because of freight and other charges. That cannot be so. The High Court observed that tamarind is an agricultural produce and that is why it was put in Second Schedule i.e. to say, purchase point, but where it was imported and sold within the State, there was no reason to tax it at the sale point. We are of the opinion that the High Court was 'right.

It was contended on behalf of the appellants before the High Court that imported tamarind which had suffered tax at the first sale point, will again be taxed at the purchase point when purchased within the State, which would amount to double taxation. Once the imported tamarind is taxed at the first sale point under the First Schedule, there is no occasion for taxing it over again at the sale point under the Second Schedule. The idea of both the Schedules is to tax only at one point

428

though the point of taxability may be different under different Schedules.

Our attention was drawn on behalf of the appellants to a decision of this Court in *Indian Cement Ltd. & Ors. v. State of Andhra Pradesh & Ors.*, 69 STC 305. There this Court was concerned with Andhra Pradesh General Sales Tax Act. It appears that in exercise of its powers u/s 9(1) of the Act, the State Government had passed a notification on January 27, 1987 reducing the rate of sales tax on sale of cement from 13.75% to 4% in respect of cement manufactured by cement factories situated in the State and sold to manufacturing units situated within the State for the purpose of manufacture of cement products such as cement sheets, asbestos sheets, cement flooring stones, cement concrete pipes, cement water and sanitary fittings, concrete poles etc. On the same day the State Govt. had passed another notification u/s 8(5) of the Central Sales Tax Act, 1956 reducing the rate of tax on inter-State sale of cement to 2% with or without Form C. On February 28, 1987 the State of Karnataka passed a similar notification reducing the rate of tax on inter-State sale of cement from 15% to 2%. The petitioners, of whom some were manufacturers of cement having their manufacturing units in Tamil Nadu and others, were stockists having places of business in the States of Karnataka, Kerala and Tamil Nadu, filed writ petitions before this Court challenging the validity of these notifications on the ground that these created trade barriers and directly impinged upon the freedom of trade, commerce and intercourse provided for in Art. 301 of the Constitution of India. It was held that the variations in the rates of local and inter-State sales tax affected free trade and commerce and created a local preference, which was contrary to the scheme of Part XIII of the Constitution of India; and as such the notification were bad.

This decision was rendered in the peculiar facts of that case. While the principle enunciated by the Court in the

said decision there can be no dispute that taxation was a deterrent in some cases, against free flow of trade, and as a result of favourable or unfavourable treatment by way of taxation, the course of flow of trade gets regulated either adversely or favourably, and that if the scheme of Part XIII guarantees has to be preserved in the national interest, it is imperative that the provisions of Art. 301 must be strictly complied with, we are of the opinion that the ratio of the said decision in the facts and circumstances of this case would not be relevant. In our opinion, the provisions of the Constitution should be strictly complied with not only with the letter but also with their spirit. Part XIII of the Constitution has to

429

be dealt with the other provisions of the Constitution. Our attention was drawn to the observations of this Court in M/s Associated Tanners, Vizianagaram, A.P. v. C.T.O., Vizianagaram. A.P. & Ors., [1986] 2 SCC 479. It was reiterated there that the effect of an imposition of tax may work differently upon different dealers, namely, those who import goods and those who purchase the goods locally. That effect cannot be said to arise directly or as an immediate effect of the imposition of tax. It cannot be said that there was any violation of clause (a) of Art. 304 of the Constitution.

We are of the opinion that in the instant case the difference, in rates, if any, between the imported tamarind and locally produced tamarind is not as an immediate or direct result of the imposition of tax. The decision of this Court in Weston Electronics & Anr. v. State of Gujarat & Anr., [1988] 3 SCR 768 dealt, in our opinion, with an entirely different situation and for the purpose of the instant controversy, cannot be of any assistance.

Mr. C. Sitaramiah, appearing for the respondents, drew our attention to Rattan Lal & Co. & Anr. v. The Assessing Authority & Anr., [1969] 2 SCR 544 wherein this Court had reiterated that when a taxing State is not imposing rates of tax on imported goods different from rates of tax on goods manufactured or produced, Art. 304 has no application. So long as the rate is the same Art. 304 is satisfied. In the instant case the tax is at the same rate and, hence, tax cannot be said to be higher in the case of imported goods. When the rate is applied the resulting tax may be somewhat higher but that does not contravene the equality contemplated by Art. 304 of the Constitution. In the facts and the circumstances of the case, there is no ground to complain about the breach of Art. 14 of the Constitution.

In the aforesaid view of the matter, we are of the opinion that the High Court was right in the view it took and this appeal must fail. The appeal is accordingly dismissed. In the facts and the circumstances of the case, however, we make no order as to costs.

P.S.S.
dismissed.

Appeal

430