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STATE OF TAMIL NADU, ETC.

v.

SITALAKSHMI MILLS, ETC.

December 21, 1973

[A. N. RAY, C. J., H. R. KHANNA, K. K. MATHEW, A. ALAGIRISWAMI,
B AND P. N. BHAGWATI, JJ.]

Central Sales Tax Act—S. 8(2)(b)—If violative of arts. 301, 302 *and* 303(1) *of the Constitution.*

Clause (b) of s. 8(2) of the Central Sales-tax Act, 1956 enacts that in the case of goods other than declared goods sold to persons other than registered dealers or government, sales-tax shall be calculated at the rate of 10 per cent or at the rate applicable to the sale or purchase of such goods inside the appro-
C priate State, whichever is higher. Art. 301 provides that, subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free. Article 302 provides that Parliament may, by law, impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest. Art. 303 (1) provides that notwithstanding anything in art. 302 neither Parliament nor the Legislature of a State shall have power to make any law giving or authorizing the giving of any preference to one State
D over another or making or authorizing the making of, any discrimination between one State and another by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule.

The respondents claimed (i) that they were not liable to be taxed at the higher rate prescribed in s. 8 (2)(b) of the Central Sales-tax Act, 1956 on the turnover of their sales in the course of interstate trade to government on the ground that s.8(2)(b) is violative of arts. 301 and 303(1) of the Constitution and, therefore void ; (ii) that there will be varying rates of tax on interstate sales in different States depending upon their rates of sales-tax for intra-state sales and
E that that will lead to the imposition of dissimilar tax on the sale of the same or similar commodities and so the section is violative of art. 303(1).

The High Court allowed the writ petitions.

Allowing the appeals to this Court by the State,

HELD : (1) (a) There is no reason to hold that s. 8(2)(b) is bad for the reason that it violates art. 301. If prevention of evasion of tax is a measure in the public interest there can be no doubt that Parliament is competent to make a provision for
F that purpose under art. 302 even if the provision would impose restrictions on the interstate trade or commerce. [7 A, D]

(b) It cannot be presumed that because the rate of tax was 10 per cent at the material time on this class of transactions or the rate fixed by the appropriate State in respect of intra-State sales, whichever is higher, the imposition of this rate was not in the public interest. [7 C]

Therefore, in any view of the matter, Parliament was competent to enact s. 8(2)(b) of the Act.

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(2) There is no merit in the contention that s.8(2)(b) of the Act offends the provisions of art. 303(1). In *N. K. Nataraja Mudaliar's* case the court held that the existence of different rates of tax on the sale of the same or similar commodity in different States by itself would not be discriminatory as the flow of trade does not necessarily depend upon the rates of sales-tax ; it depends upon a variety of factor such as the source of supply, place of consumption, existence of trade channels, the rate of freight, trade facilities, availability of efficient transport and other facilities for carrying on the trade. [7 F]

H *State of Madras* v. *N. K. Nataraja Mudaliar*, [1968] 3 S.C.R. 829 followed.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 2547-2549 of 1969.

From the judgment and order dated the 1st March 1968 of the Madras High Court at Madras in Writ Petition Nos. 84 and 2356 of 1967 and Tax No. 228 of 1964.

CIVIL APPEAL NOS. 105-106 OF 1970.

From the Judgment and Order, dated the 1st March, and 1st April 1968 of the Madras High Court in Writ Petition Nos. 983 and 687 of 1967.

S. V. Gupte and *A. V. Rangam*, for the appellants (in C.A. Nos. 2457-49/69 and 105 & 106/70)

B. Sen, S. D. Sharma and *S. P. Nayar*, for respondent No. 2 (in 2547/69 105 & 106/70) and respondent no. 3 (in 105/70).

C. B. Aggarwala and *Saroja Gopalakrishnan*, for respondent no. 1 (in 2547/69 & 105/70).

N. Natesan, V. Nataraj and *D. N. Gupta*, for respondent No. 1 (in 106/70).

O. P. Rana, for respondent no. 5 (in 105/70).

The Judgment of the Court was delivered by

MATHEW J.—Before the High Court of Madras, the respondents claimed that they were not liable to be taxed at the higher rate prescribed in s. 8(2) (b) of the Central Sales Tax Act, 1956 (hereinafter called the Act) on the turnover of their sales in the course of inter-State trade to government or unregistered dealers even though they had not obtained 'C' or 'D' forms, as the case may be, for the reason that s. 8(2)(b) is violative of articles 301 and 303(1) of the Constitution and was, therefore, bad. The High Court accepted the claims by a common judgment. These appeals are preferred against the judgment on the basis of certificates granted by the High Court and they raise the common question, namely, whether s.8(2)(b) of the Act is bad for the reason that the provisions thereof offend articles 301 and 303(1) of the Constitution.

In *Larsen and Toubro Ltd.* v. *Joint Commercial Tax Officer* (1), the High Court of Madras held that sub-sections (2), (2A) and (5) of s. 8 of the Act were bad for the reason that they violated the provisions of articles 301 and 303(1) of the Constitution This was on the basis that the different rates of tax and exemptions in the sales tax law of the various States placed an unequal burden on the sale of same or similar goods which impeded their free flow and movement in inter-State trade and commerce. In the appeal preferred from the decision, this Court set aside the decision of the High Court (see *State of Madras* v. *N. K. Nataraja Mudaliar* (2)). The question whether s.8 (2) (b) is violative of the provisions of article 301 or 303(1) was not specifically considered in either the majority judgment delivered by Shah, J. or in the concurring judgment of Bachawat, J. Hegde, J., however, made certain observations in his judgment that s. 8(2)(b) was enacted to check evasion of sales tax and the restriction imposed by it was in the public interest.

(1) 20 S.T.C. 150. (2) [1968] 3 S.C.R. 829.

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Sales tax has been one of the most important sources of revenue for the States. The framers of the Constitution realised that this power of taxation was being exercised by the States in a manner prejudicial to the free flow of trade and commerce throughout the country as each State, relying upon some ingredient of sale which had a territorial nexus, levied the tax which led to multiple taxation of inter-State sales. This multiple taxation increased the burden on the consuming public. The Constitution-makers, therefore, while retaining sales tax as a source of revenue for the States, imposed restrictions on the taxing power of the States. Article 286 of the Constitution was one of the articles enacted for that purpose. As framed, the article sought to put restraints upon the legislative power of the States ; but the language in which the article and particularly the Explanation was couched, instead of clarifying the intention of the Constituent Assembly, only darkened it. The scope of article 286 was considered by this Court in *The State of Bombay* v. *United Motors (India) Ltd.* (1) in an appeal to this Court in which the validity of the provisions of the Bombay Sales Tax Act, 1952, was challenged. The majority of the judges who heard the appeal held that article 286(1)(a) prohibited taxation of sales or purchases involving inter-State elements by all States except the State in which the goods were actually delivered for the purpose of consumption therein and that the effect of the Explanation thereto was to convert inter-State transactions into intra-State transactions and to remove them from the operation of clause 2. This interpretation of article 286 was not accepted by a larger Bench of this Court which heard and decided *The Bengal Immunity Company Limited* v. *The State of Bihar and Others*(2). That case held that the ban imposed by article 286 of the Constitution on the taxing powers of the States were independent and separate and each one of them had to be got over before a State legislature could impose tax on transactions of sale or purchase of goods. The case further held that the Explanation to article 286(1)(a) determined by the legal fiction created therein the *situs* of the sale in the case of transactions coming within that category and that once it is determined by the application of the Explanation that a transaction is outside the State, it followed that the State, with reference to which the transaction can thus be predicated to be outside it, can never tax the transaction. The Constitution was thereafter amended, Explanation 1 of article 286 was deleted and clauses (2) and (3) thereto were altered by the amendment. Simultaneously, item 92A was incorporated in List I of the Seventh Schedule authorising Parliament to legislate for levying tax on the sale or purchase of goods other than newspapers, where such sale or purchase took place in the course of inter-State trade or commerce and item 54 of List II was amended to exclude taxation of inter-State sales from the competence of the State legislatures. Article 269, clause 1(g) was also amended by clause 3 to that article and after the amendment it reads :

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> "Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce".

(1) [1953] S.C.R. 1069. (2) [1955] 2 S.C.R. 603.

The effect of these amendments made by the Constitution (Sixth Amendment) Act, 1956, was to invest the Parliament with exclusive authority to enact laws imposing tax on sale or purchase of goods where such sale or purchase takes place in the course of inter-State trade or commerce, and the tax collected by the States was to be assigned in the manner provided by clause (2) of article 269 to the States within which the tax was leviable.

In exercise of authority conferred upon the Parliament by article 286 and article 269, clause 3, Parliament enacted the Central Sales Tax Act (74 of 1956). By Chapter 3 of the Act, detailed provisions were made for imposing liability to pay tax on inter-State sales, for registration of dealers, fixing rates of tax and for levy and collection of tax and for imposing penalties for breach of the provisions of the Act relating to levy and collection of inter-State sales tax. By s. 5, every dealer was made liable to pay tax on all sales effected by him in the course of inter-State trade or commerce. The material part of s. 8 provides :

"8 (1) Every dealer, who in the course of inter-State trade or trade or commerce—

(a) sells to the Government any goods ; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3) ;

shall be liable to pay tax under this Act, which shall be three per cent of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1)—

(a) in the case of declared goods, shall be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State ; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

and for the purpose of making any such calculation any such dealer shall be deemed to be a dealer liable to pay tax under the sales tax law of the appropriate State, notwithstanding that he, in fact, may not be so liable under that law."

Thus, the transactions in goods which were made subject to tax in the course of inter-State trade or commerce fall into three broad classes : (1) transactions falling within s.8(1) *i.e.* all sales to Government and sales to a registered dealer other than the Government, of goods referred to in sub-section (3) of s. 8; (2) transactions falling within s. 8(2)(a) *i.e.* sales in respect of declared goods ; and (3) tran-

A sactions falling within s.8(2)(b) *i.e.* sales (not falling within (1)) in respect of goods other than declared goods. Sales of goods in category (1) were declared exigible to a tax of 3 per cent on the turnover. On sales of declared goods, tax was to be calculated at the rate applicable to the sale or purchase of such goods inside the appropriate State. On turnover of sale of goods not falling within categories (1) and (2), the rate was ten per cent or the rate applicable to the sale or purchase B of such goods inside the appropriate State, whichever was higher.

Article 301 provides :

> "Subject to the other provisions of this Part (Part XIII), trade, commerce and intercourse throughout the territory of India shall be free".

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The freedom of trade so declared is against the imposition of barriers or obstructions within the State as well as inter-State: all restrictions which directly and immediately affect the movement of trade are declared by article 301 to be ineffective. In other words, article 301 imposes a general limitation on all legislative power in order to secure that trade, commerce and intercourse in the territory D of India shall be free. That general limitation is relaxed in favour of Parliament by article 302 which provides:

> "Parliament may by law impose such restrictions on the freedom of trade, commerce or intercourse between one State and another or within any part of the territory of India as may be required in the public interest".

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In *Atiabari Tea Co. Ltd. v. The State of Assam and Others* (1) Gajendragadkar, J. speaking for himself Wanchoo and Das Gupta, JJ. observed:

> "....We think it would be reasonable and proper to hold F that restrictions, freedom from which is guaranteed by article 301, would be such restrictions as directly and immediately restrict or impede the free flow or movement of trade."

In *Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan and Others* (2), the Court practically agreed with the view of the majority in *Atiabari Tea Co. Ltd.'s* case but added a clarification that a G regulatory measure or a measure imposing a compensatory tax for the using of trading facilities would not come within the purview of restrictions contemplated by article 301. Normally, a tax on sale of goods does not directly interfere with the free flow or movement of trade. But a tax can be such that because of its rate or other features, it might operate to impede the free movement of goods. The majority judgment delivered by Shah, J. in *State of Madras* v. *N. K. Nataraja* H *Mudaliar* (supra) proceeds on the basis that tax under the Central Sales

(1) [1961] 1 S.C.R. 809. (2) [1963] Supp. 2 S.C.R. 435.

Tax Act is in its essence a tax which encumbers movement of trade and commerce, but the tax imposed in the case in question was saved by the other provisions of Part XIII. The Court then said that the exercise of the power to tax would normally be presumed to be in the public interest and as Parliament is competent under article 302 to impose restrictions on the freedom of trade, commerce, and intercourse between one State and another or within any part of the territory of India as may be required in the public interest, the tax was saved.

Bachawat, J. in his judgment in the case said that if a tax on intra-State sales does not offend article 301, logically, a tax on inter-State sales also cannot do so, that a tax does not operate directly or immediately on the free flow of trade or the free movement or transport of goods from one part of the country to the other, that the tax is on sale, and that the movement is incidental and a consequence of the sale. He observed further that even assuming that the Central Sales Tax is within the mischief of article 301, it is certainly a law made by Parliament in the public interest and is saved by article 302.

As already stated, s. 8(2) (b) deals with sale of goods other than declared goods and it is confined to inter-State sale of goods to persons other than registered dealers or governments. The rate of tax prescribed is ten per cent or the rate of tax imposed on sale or purchase of goods inside the appropriate State, whichever is higher. The report of the Taxation Inquiry Committee would indicate that the main reason for enacting the provision was to canalize inter-State trade through registered dealers, over whom the appropriate government has a great deal of control and thus to prevent evasion of tax:

> "Where transactions take place between registered dealers in one State and unregistered dealers or consumers in another, this low rate of levy will not be suitable, as it is likely to encourage avoidance of tax on more or less the same scale as the present provisions of article 286 have done. If this is to be prevented, it is necessary that transactions of this type should be taxable at the same rates which exporting States impose on similar transactions within their own territories. The unregistered dealers and consumers in the importing State will then find them-selves unable to secure any advantage over the consumers of locally purchased articles; nor of course will they, under this system, be able to escape the taxation altogether, as many of them do at present" (1).

In other words, it was to discourage inter-State sale to un-registered dealers that Parliament provided a high rate of tax, namely 10 percent. But even that might not serve the purpose if the rate applicable to intra-State of such goods was more than 10 percent. The rate of 10 percent would then be favourable and they would be at an advantage compared to local consumers. It is because of this that Parliament provided, as a matter of legislative policy that the rate of tax shall be 10 percent or the rate applicable to intra-State sales whichever is higher.

(1) see Report of the Taxation Enquiry Commission, 1953-54, Vol. 3, p. 57.

If prevention of evasion of tax is a measure in the public interest, there can be no doubt that Parliament is competent to make a provision for that purpose under article 302, even if the provision would impose restrictions on the inter-State trade or commerce.

But quite apart from this, the majority judgment in *State of Madras v. N. K. Nataraja Mudaliar* (supra) has categorically stated that "the exercise of the power to tax may, normally be presumed to be in the public interest". We do not think it necessary to go into the question whether it is open to the Court to conduct an enquiry whether the levy of a tax is the imposition of a restriction on the freedom of trade and commerce in the public interest. It cannot be presumed, because the rate of tax was 10 percent at the material time on this class of transaction or the rate fixed by the appropriate State in respect of intra-State sales, whichever was higher, the imposition of this rate was not in the public interest. Therefore, in any view of the matter. Parliament was competent to enact s. 8(2) (b) of the Act. In other words, even if it be assumed that the tax at the higher rate imposed under s.8(2) (b) places restrictions on the freedom of trade and commerce throughout the territory of India, as Parliament is competent to impose restrictions on that freedom in the public interest and as the imposition of a tax is normally to be presumed in the public interest, we see no reason to hold that s. 8(2) (b) is bad for the reason that it violates article 301.

As regards the contention that s.8(2) (b) is violative of article 303(1) in that there will be varying rates of tax on inter-State sales in different States depending upon their rates of sales tax for intra-State sales and that that will lead to the imposition of dissimilar tax on the sale of same or similar commodities, it is enough to state that this question has been considered by this Court in *State of Madras v. N. K. Nataraja Mudaliar* (supra) and the Court has rejected the contention. The Court said that the existence of different rates of tax on the sale of the same or similar commodity in different States by itself would not be discriminatory as the flow of trade does not necessarily depend upon the rates of sales tax; it depends, according to the Court, upon a variety of factors such as the source of supply, place of consumption, existence of trade channels, the rates of freight, trading facilities, availability of efficient transport and other facilities for carrying on the trade. The Court referred to the observations of Isaacs, J. in *King v. Barger* (1) and said :

> "....The Central Sales tax though levied for and collected in the name of the Central Government is a part of the sales-tax levy imposed for the benefit of the States. By leaving it to the States to levy sales-tax in respect of a commodity on intra-State transactions no discrimination is practised; and by authorising the State from which the movement of goods commences to levy on transactions of sale Central sales-tax, at rates prevailing in the State, subject to the limitation already set out, in our judgment, no discrimination can be deemed to be practised."

(1) (1908) 6 C. L. R. 41, at 108.

We think there is no merit in the contention that s.8(2) (b) of the Act offends the provision of article 303(1).

We, therefore, set aside the decision of the High Court and hold that s. 8(2) (b) does not offend articles 301 and 303 and is valid.

Civil Appeals No. 2547-2549 of 1969 are allowed with costs.

In Civil Appeals No. 105-106 of 1970, the respondents submitted that they have raised other contentions before the High Court and that those contentions were not considered by the High Court and will have now to be considered by it. We allow these appeals with costs and remit the cases to the High Court for consideration of the other questions raised.

One hearing fee.

P.B.R *Appeals allowed.*