[2015] 4 S.C.R. 497

VIKRAM CEMENT & ANR. A

v.

STATE OF MADHYA PRADESH & ORS.

(Civil Appeal No.8192 of 2003) B

MARCH 17, 2015

[A.K. SIKRI AND R. F. NARIMAN, JJ.]

Madhya Pradesh Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 – Entry tax – Rate of – Reduced by Notification dated 4.5.1999 for a limited period i.e. from 1.5.1997 to 30.9.1997 – However, Explanation to the Notification stating that if the tax was already paid at higher rate for that period, would not be refunded to the assessee – Held: The Explanation to the Notification is discriminatory as it carves out two categories of tax payers i.e. one who have already paid the tax and the other who paid the tax after the Notification was issued – There is no basis for or rationale behind creating the two classes which would have any causal connection with the objective sought to be achieved – The Explanation is also violative of Art. 265 of the Constitution – Therefore, the Explanation to the Notification is unconstitutional – Notification No.A-3-80-98-ST-V (49) dated 4.5.1999 – Explanation to the Notification – Notification dated 5.7.1999 – Constitution of India, 1950 – Arts.14 and 265. C D E F G

Allowing the appeal, the Court

HELD: 1. The Explanation attached to Notification

A dated 4.5.1999, or for that matter the Notification dated 5.7.1999, which states that the amount shall not be refunded in any case on the basis that dealer had filed the tax at a higher rate, results in invidious discrimination towards those who have paid the tax B at a higher rate, like the appellants, when compared with that category of the persons who were defaulters and have now been allowed to pay the tax at the rate of 1% for the relevant period. The consequence is that it carves out two categories of tax payers who C are made to pay the tax at different rates, even though they are identically situated. There is no basis for creating these two classes and there is no rationale behind it, which would have any causal connection with the objective sought to be achieved. The D Explanation is highly discriminatory in nature. [Paras 7 and 10] [503-F-H; 504-A-C; 508-D]

D.S. Nakara & Ors. v. Union of India 1983 (2) SCR 165: (1983) 1 SCC 305; *Re.: Special Courts Bill, 1978* E 1979 (2) SCR 476: (1979) 1 SCC 380; *EP. Royappa v. State of Tamil Nadu* (1974) 2 SCR 348 – relied on.

2. The effect of the Notification dated 4.5.1999 would be that any person bringing raw materials, viz. F coal, gypsum and bauxite, within the State of Madhya Pradesh was liable to pay the entry tax only at the rate of 1%. Once this aspect is kept in mind, the legal effect thereof has to be that all the persons including the appellants, who had already paid the tax, were G supposed to pay the tax at the rate of 1% only. Therefore, if they had paid the tax at a higher rate, they were entitled to the refund of excess amount of tax paid. Thus, as the entry tax payable was at the rate of 1% only, asking any person to pay at a higher H

rate would be clearly violative of Article 265 of the Constitution. Article 265 of the Constitution has to be read along with Article 14 in the given context. [Paras 12, 13] [508-E-G; 509-A-C]

Kunnathat Thathunni Moopil Nair v. State of Kerala & Anr. (1961) 3 SCR 77; *Corporation Bank v. Saraswati Abharansala & Anr.* 2008 (16) SCR 340: (2009) 1 SCC 540 – relied on.

3. On a presumption that while adding this Explanation to the Notification, the Government had kept in mind the principle of unjust enrichment, there cannot be any justification for adding the Explanation. In order to determine as to whether a particular dealer is in fact entitled to refund or not, the Government can go into the issue of unjust enrichment while considering his application for refund. That would depend on the facts of each case. It cannot be presumed that the burden was positively passed on to the buyers by these dealers and, therefore, they are not entitled to refund. Therefore, the impugned Explanations in the Notifications dated 4.5.1999 and 5.7.1999 are unconstitutional. [Paras 15 and 16] [513-D-H; 514-A]

Case Law Reference

1983 (2) SCR 165	Relied on	Para 8
1979 (2) SCR 476	Relied on	Para 9
(1974) 2 SCR 348	Relied on	Para 10
(1961) 3 SCR 77	Relied on	Para 13
2008 (16) SCR 340	Relied on	Para 14

A CIVIL APPELLATE JURISDICTION: Civil Appeal No. 8192 of 2003.

From the Judgment and Order dated 11.09.2002 of the High Court of Madhya Pradesh at Jabalpur in Writ Petition
B No. 6459 of 2000.

Niraj Sharma for the Appellant.

Arvind Verma, C. D. Singh for the Respondents.

C The Judgment of the Court was delivered by

A.K. SIKRI, J. 1. The bare minimum facts which are required to be mentioned to decide this appeal are recapitulated, in brief, hereinbelow:

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2. The appellant Nos. 1 and 2 are the units of Grasim Industries Limited, which carries on manufacture and sale of cement. It requires raw material in the form of coal, gypsum and bauxite. On the aforesaid raw materials, the appellants
E had been paying entry tax for entry of these goods in the territory of the State of Madhya Pradesh under M.P. Sthaniya Kshetra Me Mal Ke Pravesh Par Kar Adhiniyam, 1976 (hereinafter called the 'Entry Tax Act'). In the year
F 1997, the entry tax on the aforesaid items of raw materials payable under the Act was at the following rates:

COAL - 2.5%
GYPSUM - 2%
G BAUXITE - 10%

In the year 1999, respondent No.1 - State issued Notification No. A-3-80-98-ST-V (49) dated 4.5.1999. By this Notification it reduced the rate of entry tax, namely,
H coal, gypsum and bauxite by making the entry tax payable

at the rate of 1% only. This Notification remained in force for a limited period, that is from 1.5.1997 to 30.09.1997. The rate of entry tax prior to 1.5.1997 and after 30.09.1997 remained the same, namely, 2.5%, 2% and 10% for coal, gypsum and bauxite respectively.

3. We are concerned here with the aforesaid period when entry tax payable was @ 1% only. However, while reducing the entry tax to 1%, in the same very Notification an Explanation was also appended stating that the amount which is already paid by the dealer at the higher rate shall not be refunded. This Explanation is worded in the following terms:

> "Explanation - The amount shall not be refunded in any case on the basis that the dealer had paid the tax at a higher rate."

As the Notification was issued only in May 1999 and it realted to the past period, i.e. 1.5.1997 to 30.09.1997 and the entry tax is payable at the point of entry of the goods into the State, as and when the appellants were bringing the aforesaid raw material into the State of Madhya Pradesh, they had been paying the entry tax. During the period 1.5.1997 to 30.09.1997, they had paid the entry tax at the rate which was prevalent at that time, though reduced to 1% vide the Notification dated 4.5.1999. In this manner, according to the appellants, though they had paid the entry tax at the higher rate, which was now reduced to 1% vide the aforesaid Notification, they became entitled to get the refund of the excess amount paid, but were still deprived of that refund because of the aforesaid Explanation.

A 4. Naturally, being aggrieved by the said Explanation, the appellants challenged the validity of the Explanation by filing writ petiion in the High Court of Madhya Pradesh. The challenge was led primarily on two counts: (i) in the first B instance, it was pleaded that this Explanation was arbitrary and discriminatory being violative of Article 14 of the Constitution inasmuch as the classification which has carved out because of the said explanation had the effect of treating the appellants and others who had paid tax at a C higher rate, differently from those who had not paid the tax at all and were defaulted. It was argued that such a classification was not based on any intelligible differentia and had no nexus with any objective sought to be achieved. D A number of judgments in support of this contention were cited in the High Court. (ii) The second argument raised was that it amounted to exaction of tax at a higher rate, namely, at the rate of 2.5%, 2% and 10% for coal, gypsum and bauxite respectively, though the rate fixed ultimately for E the period in question by the Notification dated 4.5.1999 was 1%. Therefore, such an 'Explanation' in the Notification was in the teeth of Article 265 of the Constitution and per se illegal.

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5. The High Court, though took note of the aforesaid arguments, did not deal with these arguments in the manner in which these submissions were made and dismissed the writ petition vide impugned judgment dated 11.9.2002 only G on the ground that identical issue had been considered by its own Division Bench earlier in the case of **Century Textiles and Industries Ltd. v. State of Madhya Pradesh & Ors.**[1] To be fair to the High Court, we would

H 1 Writ Petition No. 2917 of 2000

also mention that the High Court has referred to another judgment of this Court in **Indian Oil Corporation v. Municipal Corporation, Jullundhar**[2] and having relied upon the observations in the said case to the effect that where the octroi duty had already been collected, there was no question of any equity in favour of the Indian Oil Corporation to claim the refund thereof.

6. Learned counsel appearing for the appellants has placed before us the same arguments which were advanced before the High Court with the plea that the High Court did not even consider those arguments appropriately. He submitted that it was a clear case of discrimination qua the appellants who had faithfully paid the tax and, therefore, the provisions of Article 14 of the Constitution will squarely attract in the facts of the present case. The learned counsel for the State, on the other hand, referred to the reasoning given by the High Court in the impugned judgment in support of his submissions while countering the arguments by the learned counsel for the appellants.

7. After giving our thoughful consideration to the issue involved, we are of the view that there is force in the submission of the learned counsel for the appellants. The Explanation attached to Notification dated 4.5.1999, or for that mater the Notification dated 5.7.1999, which states that the amount shall not be refunded in any case on the basis that dealer had filed the tax at a higher rate, results in invidious discrimination towards those who have paid the tax at a higher rate, like the appellants, when compared

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2 (1993) 1 SCC 333

A with that category of the persons who were defaulters and have now been allowed to pay the tax at the rate of 1% for the relevant period. The consequence is that it carves out two categories of tax payers who are made to pay the tax
B at different rates, even though they are identically situated. There is no basis for creating these two classes and there is no rationale behind it which would have any causal connection with the objective sought to be achieved. It would be pertinent to mention that on repeated query made
C by this Court to the learned counsel for the respondents, he could not explain or show from any material on record as to what led the authorities to provide such an Explanation. Therefore, it becomes apparent that there is
D no objective behind such an Explanation appended to the Notification dated 4.5.1999 which is sought to be achieved, except that the Government, after collecting the tax from those who had paid at a higher rate, did not intend to
E refund the same. This can hardly be countenanced, more so when it results in discrimination between the two groups, though identically situated.

8. The law on the scope and meaning of Article 14 of
F the Constitution has now been well articulated. We may gainfully refer to the case of **D.S. Nakara & Ors**. v. **Union of India**[3], wherein this Court observed as under: "10. The scope, content and meaning of Article 14 of the Constitution has been the subject-matter of intensive examination by this
G Court in a catena of decisions. It would, therefore, be merely adding to the length of this judgment to recapitulate all those decisions and it is better to avoid that exercise

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H 3 (1993) 1 SCC 305

save and except referring to the latest decision on the subject in **Maneka Gandhi v. Union of India**[4], from which the following observation may be extracted:

> "...what is the content and reach of the great equalising principle enunciated in this Article? There can be no doubt that it is a founding faith of the Constitution. It is indeed the pillar on which rests securely the foundation of our democratic republic. And, therefore, it must not be subjected to a narrow, pedantic or lexicographic approach. No attempt should be made to truncate its all embracing scope and meaning for, to do so would be to violate its activist magnitude. Equality is a dynamic concept with many aspects and dimensions and it cannot be imprisoned within traditional and doctrinaire limits....Article 14 strikes at arbitrariness in State action and ensure fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically, is an essential element of equality or non-arbitrariness pervades Article 14 like a brooding omnipresence."

> 11. The decisions clearly lay down that though Article 14 forbids class legislation, it does not forbid reasonable classification for the purpose of legislation. In order, however, to pass the test of permissible classification, two conditions must be fulfilled, viz. (i) that the classification must be founded on an intelligible differentia which distinguishes persons or

4 (1978) 1 SCC 248

A things that are grouped together from those that are left out of the group; and (ii) that that differentia must have a rational relation to the objects sought to be achieved by the statute in question **[See Shri Ram**
B **Krishna Dalmia** v. **Shri Justice S.R. Tendolkar & Ors.**[5]]. The classification may be founded on differential basis according to objects sought to be achieved but what is implicit in it is that there ought to be a nexus, i.e. casual connection between the basis
C of classification and object of the statute under consideration. It is equally well settled by the decisions of this Court that Article 14 condemns discrimination not only by a substantive law but also by
D a law of procedure.

(emphasis supplied)"

9. In **Re.: Special Courts Bill, 1978**[6], this Court undertook a survey of plethora of decisions touching upon
E the 'Equality' doctrine enshrined in Article 14 of the Constitution and culled out certain principles. In principle No.3, the Court highlighted that though classification was permissible and it was not for the Courts to insist on
F delusive exactness or apply doctrinaire tests for determining the validity of classification in any given case, but, at the same time, classification would be treated as justified only if it is not palpably arbitrary. It was also emphasized that
G the underlined purpose in Article 14 of the Constitution was to treat all persons similarly circumstanced alike, both in

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5 1959 SCR 279, 296

H 6 (1979) 1 SCC 380

privileges conferred and liabilities imposed. Following was the emphatic message given by the Court:

> "(4)...It only means that all persons similarly circumstanced shall be treated alike both in privileges conferred and liabilities imposed. Equal laws would have to be applied to all in the same situation, and there should be no discrimination between one person and another if as regards the subject matter of the legislation their position is substantially the same.
>
> (emphasis supplied)"

Another principle which was restated was that the classification must not be arbitrary but must be rational, that is to say, it must not only be based on some qualities or characteristics which are to be found in all persons grouped together and not in others who are left out, but those qualities and characteristics must have reasonable relation to the object of the legislation.

10. Article 14 eschews arbitrariness in any form. This principle was eloquently explained in **EP. Royappa v. State of Tamil Nadu**[7] holding that the basic principle which informs both Articles 14 and 15 is equality and inhibition against discrimination. We would like to quote the following passage from that judgment as well, which is as under:

> "From a positivistic point of view, equality is antithetic to arbitrariness. In fact, equality and

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7 (1974) 2 SCR 348

A arbitrariness are sworn enemies; one belongs to the rule of law in a republic while the other, to the whim and caprice of an absolute monarch. Where an act is arbitrary it is implicit in it that it is unequal both
B according to political logic and constitutional law and is, therefore, violative of Article 14, and if it affects any matter relating to public employment, it is also violative of Article 14. Article 14 and 16 strike at arbitrariness in State action and ensure fairness and
C equality of treatment."

On the application of the aforesaid principles to the facts of the present case, the irresistible conclusion is
D that the Explanation is highly discriminatory in nature.

11. The matter can be looked into from another angle as well, which will yield the same results.

12. We have to keep in mind that vide Notification
E dated 4.5.1999, it is the rate of entry tax on the aforesaid raw materials which is reduced to 1%. The effect of that would be that any person bringing raw materials, viz. coal, gypsum and bauxite, within the State of Madhya Pradesh
F was liable to pay the entry tax only at the rate of 1%. Once this aspect is kept in mind, the legal effect thereof has to be that all the persons including the appellants, who had already paid the tax, were supposed to pay the tax at the
G rate of 1% only. Therefore, if they had paid the tax at a higher rate, they were entitled to the refund of excess amount of tax paid. No reasons are coming forth in the counter affidavit filed by the State either in the High Court or in this Court or in any other form as to why there was a
H necessity of adding such an Explanation for not refunding

the excess amount paid by the dealer in excess of 1% which was the entry tax legally payable for this period. Once we consider the matter from this angle, it also becomes clear that as the entry tax payable was at the rate of 1% only, asking any person to pay at a higher rate would be clearly violative of Article 265 of the Constitution.

13. Article 265 of the Constitution has to be read along with Article 14 in the given context. This co-relation between the two provisions is beautifully brought out in **Kunnathat Thathunni Moopil Nair** v. **State of Kerala & Anr.**[8] as under:

> "10. The most important question that rarises for consideration in these cases, in view of the stand taken by the State of Kerala, is whether Art. 265 of the Constitution is a complete answer to the atack against the constitutionality of the Act. It is, therefore, necessary to consider the scope and effect of that Article. Article 265 imposes a limitation on the taxing power of the State in so far as it provides that the State shall not levy or collect a tax, except by authority of law, that is to say, a tax cannot be levied or collected by a mere executive fiat. It has to be done by authority of law, which must mean valid law. In order that the law may be valid, the tax proposed to be levied must be within the legislative competence of the Legislature imposing a tax and authorising the collection thereof and, secondly, the tax must be subject to the conditions laid sown in Art. 13 of the Constitution. One of such conditions envisaged by Art.

8 (1961) 3 SCR 77

A 13(2) is that the Legislature shall not make any law which takes away or abridges the equality clause in Art.14, which enjoins the State not to deny to any person equality before the law or the equal protection of the laws of the country. It cannot be disputed that if the Act infringes the provisions of Art.14 of the Constitution, it must be struck down as unconstitutional. For the purpose of these cases, we shall assume that the State Legislature had the necessary competence to enact the law, though the petitioners have seriously challenged such a competence. The guarantee of equal protection of the laws must extend even to taxing statutes. It has not been contended otherwise. It does not mean that every person should be taxed equally. But it does not mean that if property of the same character has to be taxed, the taxation must be by the same standard, so that the burden of taxation, may fall equally on all persons holding that kind and extent of property. If the taxation, generally speaking, imposes a similar burden on everyone with reference to that particular kind and extent of property, on the same basis of taxation, the law shall not be open to attack on the ground of inequality, even though the result of the taxation may be that the total burden on different persons may be unequal. Hence, if the Legislature has classified persons or properties into different categories, which are subjected to different rates of taxation with reference to income or property, such a classification would not be open to the attack of inequality on the ground that the total burden resulting

from such a classification is unequal. Similarly, different kinds of property may be subjected to different rates of taxation, but so long as there is a rational basis for the classification, Art. 14 will not be in the way of such a classification resulting in unequal burdens on different classes of properties. But if the same class of property similarly situated is subjected to an incidence of taxation, which results in inequality, the law may be struck down as creating an inequality amongst holders of the same kind of property. It must, therefore, be held that a taxing statute is not wholly immune from attack on the ground that it infringes the equality clause in Art. 14, though the Courts are not concerned with the policy underlying a taxing statute or whether a particular tax could not have been imposed in a different way or in way that the Court might think more just and equitable. The Act has, therefore, to be examined with reference to the attack based on Art. 14 of the Constitution."

14. At this stage, we would like to refer to another judgment of this Court which is quite proximate to the situation at hand, namely, **Corporation Bank** v. **Saraswati Abharansala & Anr.**[9] That was case where rate of Sales Tax was reduced from 1% to 0.5% vide SRO No. 1075/99 dated 27.12.1999, which was given retrospective effect from 1.4.1999. The respondent in that case, who had paid the sales tax @ 1% for the period 6.4.1999 to 10.12.1999, claimed refund of the excess tax paid, i.e. over and above 0.5%. This request was rejected by the Assistant

9 (2009) 1 SCC 540

A Commissioner, Sales Tax. The assessee filed the writ petition challenging the order of the Assistant Commissioner, which was dismissed by the Single Judge of the High Court. However, the assessee's intra-court B appeal was allowed by the Division Bench directing the authorities to refund the excess amount collected. The said decision of the Division Bench was upheld by this Court in the aforesaid judgment holding that non-refund would not only offend equality clause contained in Article 14 of the C Constitution, it would also be in the teeth of Article 265 of the Constitution which mandates that no tax shall be levied or collected, except by authority of law. Following passages from the said judgment are worth a quote:

D "20. Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by authority of law.

E 21. In terms of the said provision, therefore, all acts relating to the imposition of tax providing, inter alia, for the point at which the tax is to be collected, the rate of tax as also its recovery must be carried out strictly in accordance with law.

F 22. If the substantive provision of a statute provides for refund, the State ordinarily by a subordinate legislation could not have laid down that the tax paid even by mistake would not be refunded. If a tax has G been paid in excess of the tax specified, save and except the cases involving the principle of 'unjust enrichment', excess tax realized must be refunded. The State, furthermore, is bound to act reasonably H having regard to the equality clause contained in

Article 14 of the Constitution of India.

23. It is not even a case where the doctrine of unjust enrichment has any application as it is not the case of the respondent/Setate that the buyer has passed on the excess amount of tax collected by it to the purchasers.

24. In view of the admitted fact that tax had been collected and paid for the period 6th April, 1999 and 10th December, 1999 @ 1% of the price which having been reduced from 1st April, 1999 to 0.5%, the State, in our opinion, is bound to refund the excess amount deposited with it."

15. It is possible, as was sought to be argued by the learned counsel for the State, that while adding this Explanation the Government had kept in mind the principle of unjust enrichment. Presumably because of this reason, the High Court also referred to the judgment in the case of Indian Oil Corporation (supra). However, on such a presumption alone, there cannot be any justification for adding the Explanation of the nature mentioned above. In order to determine as to whether a particular dealer is in fact entitled to refund or not, the Government can go into the issue of unjust enrichment while considering his application for refund. That would depend on the facts of each case. It cannot be presumed that the burden was positively passed on to the buyers by these dealers and, therefore, they are not entitled to refund.

16. For all the aforesaid reasons, we are of the opinion that the impugned Explanations in the Notifications dated

A 4.5.1999 and 5.7.1999 are unconstitutional. We, accordingly, allow the appeal and quash the said Explanations.

No costs.

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Kalpana K. Tripathy Appeal allowed.