

COMMISSIONER OF SALES-TAX, INDORE

v.

M/S. MOHD. HUSSAIN RAHIM BUX, MAIHAR

August 28, 1968

[J. C. SHAH, V. RAMASWAMI AND A. N. GROVER, JJ.]

Constitution of India, 1950, Art. 264 (before its amendment by the Constitution (Seventh) Amendment Act, 1956), providing that unless context otherwise required the word 'State' in Part XII would not include a Part C State—State in Art. 286 whether would include Part C State—Applicability of Art. 286 to Part C States.

The respondent firm resisted imposition of sales tax by the erstwhile State of Vindhya Pradesh for the assessment periods between April 1, 1950 and March 31, 1951, on the ground that the tax came under the prohibition contained in Art. 286 of the Constitution. The revenue authorities held that Art. 286 did not apply to Part C States because Art. 264 (as it was before its amendment in 1956) provided that unless the context otherwise required the word 'State' in Part XII would not include a Part C State, and therefore the restrictions in Art. 286 applied only to States other than Part C States. The Sales Tax Tribunal and the High Court held in favour of the assessee. The revenue appealed to this Court.

HELD : (i) There are several articles in Part XII which precede and follow Art. 286 about which it cannot be confidently said that the word State used in these Articles would not take in Part C States as well. Such Articles are 275, 276, 277, 280, 282, 287 and 291. Thus the meaning of the word 'State' in Art. 286 will have to be determined from the context. It will be quite legitimate to not only look at the context but also the purpose and object for which Art. 286 was enacted. [884 F-G]

(ii) The object of Art. 286 was to prevent impediment and discouragement to the free flow of trade within India regarded as one economic unit and to prevent commodities essential for the life of the community throughout India from being subjected to sales tax. The Constitution contemplated that Part C States could have their own legislatures. There was no ground whatsoever to differentiate Part C States from Part A and Part B States in the matter of restrictions put by Art. 286 on the legislative power of the State. In this view of the matter a requirement can certainly be spelt out from the context of Art. 286 that the word 'State' employed therein should include Part C States. [885 D-F]

Several anomalies would result if Part C States were held to be immune from the restrictions of Art. 286. There would be multiple taxation inasmuch as goods which under the Explanation to Art. 286 (as it was at the relevant time) were taxable in another State because they were delivered for consumption there would still be taxable in the Part C State. The Part C State unlike other States would be free to tax inter-State sales. The Constitution makers could never have countenanced a situation which would have brought in such discrimination between Part C States and other States. [885 F-886 B]

Delhi Laws Act Case, [1951] S.C.R. 747 and Bengal Immunity Co. Ltd. v. State of Bihar, [1955] 2 S.C.R. 603, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 628 and 629 of 1966.

- A Appeals by special leave from the judgments and orders dated July 30, 1964 of the Madhya Pradesh High Court in Misc. Civil Cases Nos. 71 of 1964 and 179 of 1963.

I. N. Shroff for the appellant (in both the appeals).

- B N. D. Karkhanis and A. G. Ratnaparkhi for the respondent (in both the appeals).

The Judgment of the Court was delivered by

- C Grover, J. The common question on which the disposal of these two appeals by special leave depends relates to the applicability of Art. 286 of the Constitution of India read with Art. 264 before the amendments made by the Constitution (VIIIth Amendment) Act, 1956 to the erstwhile State of Vindhya Pradesh during the relevant assessment period for the purpose of imposition of sales tax.

- D The respondent firm manufactures and deals in bidis having head office at Maihar which was a part of the erstwhile United States of Vindhya Pradesh. The Rajpramukh promulgated the Vindhya Pradesh Sales Tax Ordinance No. II of 1949 for the levy of a tax on sales of goods in Vindhya Pradesh. After Vindhya Pradesh had been included in the list of Part C States in the Schedule in the Constitution the aforesaid Ordinance was applied to the whole of Vindhya Pradesh with effect from April 1, 1950 by a notification No. 2 of March 28, 1950. The Parliament passed the Part C States (Laws) Act, 1950. Section 2 of that Act authorised the Central Government to extend any enactment to Part C States, which was in force in Part A States by a notification in the official gazette with power to repeal and amend any corresponding law. In exercise of that power, the Central Government by a notification dated December 29, 1950 extended to the State of Vindhya Pradesh the Central Provinces and Berar Sales Tax Act, 1947 as was in force in the old State of Madhya Pradesh subject to certain modifications. By that notification a new section was added to the C.P. & Berar Sales Tax Act, 1947. The newly added section 29 provided for the repeal and saving and the Vindhya Pradesh Sales Tax Ordinance No. II of 1949, was repealed. On March 20, 1951, the Central Government issued a notification in exercise of the powers conferred under sub-section (3) of s. 1 of the C.P. & Berar Sales Tax Act, 1947 as extended to the State of Vindhya Pradesh ordering that, from April 1, 1951, the extended Act would come into force in the State of Vindhya Pradesh. Thereafter the Parliament passed the Government of Part C States Act, 1951. In view of the decision of this Court in *Delhi Laws Act case*⁽¹⁾ the Part C States (Miscellaneous Law Repealing) Act, (Act LXVI of 1951) was enacted by Parliament on October 31, 1951. By s. 2 of that Act Laws declared in column 2 of its Schedule were

(1) [1951] S.C.R. 747.

repealed or deemed to have been repealed with effect from the dates specified in the corresponding entry in column 3 of that Schedule. In the Schedule the Vindhya Pradesh Sales Tax Ordinance II of 1949 was repealed from December 29, 1950. The Vindhya Pradesh Legislative Assembly also passed the Vindhya Pradesh Laws (Validating) Act, 1952 (Act VI of 1952). Section 2 of that Act provided that C.P. & Berar Sales Tax Act, 1947 would be deemed to be in force in Vindhya Pradesh from April 1, 1951. This entire history of legislation relating to the sales tax in the erstwhile State of Vindhya Pradesh has been given because the periods of assessments involved in both the appeals are from April 1, 1950 to June 30, 1950 and July 1, 1950 to December 31, 1950 and January 1, 1951 to March 31, 1951.

The relevant facts in C.A. 629/66 need only be stated. In respect of the period of assessment from April 1, 1950 to June 30, 1950 the respondent claimed that it was not liable to tax in respect of the sales of bidis of the value of Rs. 31,059/12 as the bidis sold were delivered outside the State of Vindhya Pradesh for consumption and that the transactions of the despatches of bidis of the value of Rs. 4,01,255/4 from its head office at Maihar to its branches in U.P. were not sale transactions but were merely transfer of goods from the head office to its branches and could not be assessed to sales tax in view of the provisions of Art. 286 of the Constitution. The Assistant Commissioner of Sales Tax of Rewa rejected the first claim of the assessee. It is unnecessary to give details of the decisions by the various departmental authorities, but the main controversy before them, as before the Sales Tax Tribunal which was the Board of Revenue, centred on the applicability of Art. 286 of the Constitution to the former State of Vindhya Pradesh. It was held by the Tribunal that Art. 286 was applicable. In the other appeal *i.e.* C.A. 628/66, also the same question arose. Certain questions of law were framed in both the cases and referred to the High Court by the tribunal. These questions need not be mentioned because in the present appeals it is common ground that the decision of the appeals would hinge on the point whether Art. 286 applied to Part C States. It may be mentioned that the High Court had agreed with the tribunal that the said Article was applicable. If that view is affirmed it is not disputed that both the appeals will have to be dismissed.

Article 264 of the Constitution, as it stood before its amendment by the Constitution (VIIth Amendment) Act 1956, which appeared in Part XII, Chapter 1 provided :

A "In this Part, unless the context otherwise requires :—

(a)

(b) 'State' does not include a State specified in Part C of the First Schedule;

(a)

B Art. 286(1) was in the following terms :

"(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place—

(a) outside the State; or

C (b) in the course of the import of the goods into, or export of the goods out of, the territory of India".

The short argument which was urged before the departmental authorities and the High Court and which has been now pressed before us by the learned counsel for the appellant is that owing to the express exclusion of Part C State from the definition of the word "State" in Art. 264 the provisions of Art. 286 could not possibly be applied as it places an inderdict on the making of a law by a State of the nature mentioned in the Article. It is submitted that although Art. 264 says "unless the context otherwise requires", but there is nothing in Art. 286 from which any such requirement can be spelt out which would attract the applicability of Art. 286.

It would be useful at this stage to first refer to Part VIII of the Constitution which deals with the States of Part C in the First Schedule. Article 239 provides "subject to the other provisions of this Part, a State specified in Part C of the First Schedule shall be administered by the President acting, to such extent as he thinks fit, through a Chief Commissioner or a Lieutenant Governor to be appointed by him or through the Government of a neighbouring State". Article 240 laid down that Parliament may by law create or continue for any State specified in Part C a body, whether nominated, elected or partly nominated and partly elected, to function as a legislature for the State; or a Council of Advisers or Ministers, or both with such constitution, powers and functions, as may be specified. The Parliament under the powers conferred by the Constitution enacted the Part C States Laws Act, 1950, giving power to the Central Government to extend any enactment in force in Part A to the States in Part C "with such restrictions and modifications as it thinks fit". The validity of the provisions of that Act came up before this Court in *Re. the Delhi Laws Act*⁽¹⁾. We need not, in this case,

(1) [1951] S.C.R. 747.

state the views which were expressed in that special reference. Parliament, however, after the opinions expressed by this Court passed the Government of Part C States Act, 1951 in exercise of its powers under Art. 240(1). By this Act Parliament made provision for the legislature, Council of Ministers or Advisers for Part C States. This Act also contained provisions relating to Consolidated Fund for a State which was included in Part C of the First Schedule.

Turning to Chapter XII of the Constitution before the amendment of 1956 it has already been noticed that Art. 264 which relates to interpretation with reference to the provisions contained in this Part provides that unless the context otherwise required State would not include a State specified in Part C of the First Schedule. In some of the Articles, however, in spite of the aforesaid definition of a State given in Art. 264 for the purposes of Part XII Part C States were expressly mentioned. For instance Art. 268 which relates to duties levied by the Union but collected and appropriated by the States provides *inter alia* that in case of any State specified in Part C of the First Schedule these duties shall be collected by the Government of India. Article 269 deals with duties and taxes of the nature mentioned therein which shall be levied and collected by the Government of India but shall be assigned to the States. Such duties and taxes could not form part of the Consolidated Fund of India except insofar as those proceeds represent proceeds attributable to States specified in Part C. Article 270 deals with taxes levied and collected by the Union and distributed between the Union and the States. The prescribed percentage of the aforesaid taxes shall not form part of the Consolidated Fund of India except in the case of proceeds attributable to States specified in Part C.

Now there are several other Articles in Part XII which precede and follow Art. 286 about which even the counsel for the appellant could not confidently say that the word "State" used in these Articles would not take in Part C States as well. Such Articles are 275, 276, 277, 280, 282, 287 and 291. Thus the meaning of the word "State" in Art. 286 will have to be ascertained from the context. It will be quite legitimate to not only look at the context but also the purpose and the object for which Art. 286 was enacted.

In the *Bengal Immunity Company Ltd. v. The State of Bihar & Ors.*⁽¹⁾ the entire background and the true reasons for the enactment of Article 286 have been discussed at pages 636 and 637. It has been observed that the imposition of multiple taxes on one and the same transaction of sale or purchase was certainly

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

- A calculated to hamper and discourage free flow of trade within India regarded as one economic unit. By Art. 286 the Constitution makers clamped on the legislative power several fetters. Broadly speaking, the fetters thus placed on the taxing power of the States are that no law of a State shall impose or authorise the imposition of a tax on the sale or purchase of goods where such
- B sale or purchase takes place, (a) outside the State or (b) in the course of import or export or (c) except insofar as Parliament otherwise provides, in the course of inter-State trade or commerce and lastly (d) that no law made by the legislature of a State imposing or authorising the imposition of a tax on the sale or purchase of any such goods as have been declared by Parliament by law to be essential for the life of the community shall have effect
- C unless it has been reserved for the consideration of the President and has received his assent.

- The High Court was fully justified in taking the view that if the framers of the Constitution thought it necessary to put restrictions on the legislative powers of the State for preventing impediment and discouragement to the free flow of trade within
- D India regarded as one economic unit and for preventing commodities essential for the life of the community throughout India from being subjected to sales tax then there could be no ground whatsoever to differentiate Part C States from Part A or Part B States in the matter of restrictions put by Art. 286 on the legislative power of the State. It must be remembered that it was
- E contemplated and provided by the Constitution that Part C States could have their own legislatures and even an Act was passed, as previously mentioned, in which detailed provisions were made regarding these matters, (The Government of Part C States Act, 1951). In this view of the matter a requirement can certainly be spelt out from the context of Art. 286 that the word
- F "State" employed therein should include Part C States. Several anomalies will result if it were to be held that Part C States were immune from the limitations and restrictions imposed by Art. 286. The Explanation to Art. 286(1) would become ineffective. For instance, under the Explanation the State in which the goods have actually been delivered as a direct result of sale or purchase for purposes of consumption in that State would be competent to
- G impose the sales tax. Now if the former State of Vindhya Pradesh could also collect sales tax on sales where the delivery was outside the State and was covered by the Explanation then there would be multiple taxation on one transaction, one by the State of Vindhya Pradesh and the other by the State in which the goods were delivered for consumption. Clause 2 of Art. 286 as it stood
- H at the material time before the Constitutional amendments made in 1956 provided that no law of a State shall impose or authorise the imposition of a tax on the sale or purchase of any goods where such sale or purchase took place in the course of inter-State

trade or commerce except insofar as Parliament by law otherwise provided. Now if Art. 286 was not applicable to Part C States then the sales or purchases taking place in the course of inter-State trade and commerce could have been taxed by the erstwhile State of Vindhya Pradesh. It is difficult to understand how the Constitution-makers could have ever countenanced such an anomalous situation which would have even brought in discrimination between Part C States and the other States. Whatever way the matter is looked at, it is difficult to escape from the conclusion that the context of Art. 286 required that the word "State" as used therein should include Part C States.

We would accordingly affirm the view of the High Court and dismiss these appeals with costs. There will be one hearing fee.

G.C.

Appeal dismissed.