

A SITA RAM BISHAMBHER DAYAL & ORS.

v.

STATE OF U.P. & ORS.

October 21, 1971

[K. S. HEGDE AND H. R. KHANNA, JJ.]

B *U.P. Sales Tax Act, 1948, s. 3D(1)—Its validity—Whether delegation of authority under the section excessive and bad in law—Is the section violative of Art. 14 of the Constitution.*

C The appellants are dealers in Rab. The State Government under s. 3D(1) of the U.P. Sales Tax Act, 1948, levied purchase tax in respect of their dealings in Rab. Section 3D(1) of the Act, *inter alia*, provides that for each assessment year, there shall be levied and paid a tax on the turnover of first purchases made by a dealer or through a dealer in respect of such goods, at such rates not exceeding 2 paise per rupee in the case of foodgrains and 5 paise in respect of other goods and in the explanation it is provided that "in the case of purchase made by a registered dealer through a licensed dealer, the registered dealer shall be the first purchaser and in every other case of fresh purchase, the dealer through whom the first purchase is made shall be deemed to be the first purchaser. The appellants challenged the vires of s. 3(d)(1) of the Act before the High Court but the High Court held against the appellants.

D In appeal this Court, it was contended by the appellants that in empowering the Government to levy tax on goods other than foodgrains at a rate not exceeding 5 paise in a rupee, the legislature had given an unduly wide power to the executive. Such a delegated power was, therefore, excessive and bad in law and secondly, s. 3D(1) infringed Art. 14 of the Constitution because it discriminated between registered dealers who purchased through licensed dealers and the registered dealers who purchased through other dealers.

E Dismissing the appeals,

F HELD : (i) The power to fix the rate of tax is a legislative power, but if the legislature lays down the legislative policy and provides the necessary guidelines that power can be delegated to the executive. Though a tax is levied primarily for the purpose of gathering revenue, in selecting the objects to be taxed and in determining the rate of tax, various social and economic factors are to be considered and since the legislatures have very little time to go into details, they have to delegate certain powers to the Executive. This Court has ruled that if a reasonable upper limit is prescribed, the legislature can always delegate the power of fixing the rate of purchase tax or sales tax. [143 E]

G *Devi Dass Gopal Krishnan v. State of Punjab*, 20 S.T.C. 430, followed.

In the present case, taking into consideration the legislative practice in this country and the rate of tax levied or leviable under the various sales tax laws in force in this country, it cannot be said that the power delegated to the executive is excessive and in the absence of any material, it cannot be said that the maximum rate fixed under s. 3D(1) is unreasonably high. [144 E-F]

H (ii) Section 3D is not violative of Art. 14 of the Constitution. In the present case, there is nothing wrong for the legislature to make a classification between licensed dealers and dealers who are not licensed. A licensed dealer has to maintain true and correct accounts and other particulars of

purchasers whereas dealers who are not registered are not required to maintain any accounts. Hence, if registered dealers are permitted to make purchases through dealers who are not licensed and those dealers are themselves not liable to be taxed, then opportunity for evasion of tax becomes larger. Under the circumstances, the classification is not unjustified. [145 G]

State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd., [1959] S.C.R. 379 and *Devi Deo Gopal Krishna v. State of Punjab*, 20 S.T.C. 430, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeals Nos. 362 and 1672 of 1969.

Appeals from the judgments and orders dated May 17, 1968 of the Allahabad High Court in Writ Petitions Nos. 310 and 627 of 1968.

J. P. Goyal and *Sobhag Mal Jain*, for the appellants (in both the appeals).

L. M. Singhvi and *O. P. Rana*, for the respondents (in both the appeals).

The Judgment of the Court was delivered by

Hegde, J. These are appeals by certificate. They raise a common question of law for decision. The only contention arising for decision in these appeals is as to the vires of s. 3-D(1) of the U.P. Sales Tax Act, 1948 (to be hereinafter referred to as the Act). The validity of that section has been assailed on two different grounds viz. (1) that the power delegated to the executive under s. 3-D(1) is excessive and as such bad in law and (2) Section 3-D infringes Art. 14 of the Constitution in as much as it discriminates between the registered dealers who purchase through the agency of licensed dealers and the registered dealers who purchase through other dealers.

The appellants are dealers in Rab. In respect of their dealings in Rab, they have been levied purchase tax as per the notification issued by the Government under s. 3(D)(1) of the Act. They are challenging the validity of the levy on the grounds mentioned above.

The High Court has repelled both the above contentions. The High Court has come to the conclusion that the power conferred on the State Government under s. 3-D is a valid power. It opined that the conferment of power on the executive to fix the rate of tax within the limits laid down in the section is not impermissible. Further it held that the section is not hit by Art. 14 of the Constitution.

A Before proceeding to consider the correctness of the contentions advanced on behalf of the appellant, it is necessary to read s. 3-D(1). It says: —

B “Except as provided in sub-section (2), there shall be levied and paid, for each assessment year or part thereof, a tax on the turnover, to be determined in such manner as may be prescribed, of first purchases made by a dealer or through a dealer, acting as a purchasing agent in respect of such goods or class of goods; and at such rates, not exceeding two paise per rupee in the case of foodgrains, including cereals and pulses, and five paise per rupee in the case of other goods and with effect from such date, as may, from time to time, be notified by the State Government in this behalf.

C *Explanation.*—In the case of a purchase made by a registered dealer through the agency of a licensed dealer, the registered dealer shall be deemed to be the first purchaser, and in every other case of a first purchase, made through the agency of a dealer, the dealer who is the agent shall be deemed to be the first purchaser.”

E It is true that the power to fix the rate of a tax is a legislative power but if the legislature lays down the legislative policy and provides the necessary guidelines, that power can be delegated to the executive. Though a tax is levied primarily for the purpose of gathering revenue, in selecting the objects to be taxed and in determining the rate of tax, various economic and social aspects, such as the availability of the goods, administrative convenience, the extent of evasion, the impact of tax levied on the various sections of the society etc. have to be considered. In a modern society taxation is an instrument of planning. It can be used to achieve the economic and social goals of the State. For that reason the power to tax must be a flexible power. It must be capable of being modulated to meet the exigencies of the situation. In a Cabinet form of Government, the executive is expected to reflect the views of the legislatures. In fact in most matters it gives the lead to the legislature. However, much one might deplore the “New Despotism” of the executive, the very complexity of the modern society and the demand it makes on its Government have set in motion forces which have made it absolutely necessary for the legislatures to entrust more and more powers to the executive. Text book doctrines evolved in the 19th Century have become out of date. Present position as regards delegation of legislative power may not be ideal, but in the absence of any better alternative, there is no escape from it. The legisla-

tures have neither the time, nor the required detailed information nor even the mobility to deal in detail with the innumerable problems arising time and again. In certain matters they can only lay down the policy and guidelines in as clear a manner as possible.

In *State of Madras v. Gannon Dunkerley & Co. (Madras) Ltd.*⁽¹⁾ this Court observed :

“Now, the authorities are clear that it is not unconstitutional for the legislature to leave it to the executive to determine details relating to the working of taxation laws, such as the selection of persons on whom the tax is to be levied, the rate at which it is to be charged in respect of different classes of goods and the like”.

It was not contended before us that the power delegated to the executive to select the goods on which the purchase tax is to be levied was an excessive delegation nor was it contended that the power granted to the executive to determine the rate of tax by itself amounts to an excessive delegation. All that was said was that in empowering the Government to levy tax on goods other than foodgrains at a rate not exceeding 5 paise in a rupee, the legislature parted with one of its essential legislative functions as the power given to the executive is an unduly wide one. We are unable to accede to this contention. Whether a power delegated by the legislature to the executive has exceeded the permissible limits in a given case depends on its facts and circumstances. That question does not admit of any general rule. It depends upon the nature of the power delegated and the purposes intended to be achieved. Taking into consideration the legislative practice in this country and the rate of tax levied or leviable under the various sales tax laws in force in this country, it cannot be said that the power delegated to the executive is excessive. In *Devi Dass Gopal Krishnan and ors. v. The State of Punjab and ors.*⁽²⁾ this Court ruled that it is open to the legislature to delegate the power of fixing the rate of purchase tax or sales tax if the legislature prescribes a reasonable upper limit.

We are unable to accept the contention of Mr. Goyal, learned Counsel for the appellant that the maximum rate fixed under s. 3-D is unreasonably high. At any rate there is no material before us on the basis of which, we can come to that conclusion.

This takes us to the contention that s. 3-D is *ultra vires* Art. 14 of the Constitution. The argument on this question proceeds thus : The explanation to s. 3-D provides that in the case of

(1) [1959] S.C.R. 379.

(2) 20 S.T.C. 430.

- A** purchase made by a registered dealer through the agency of a licensed dealer, the registered dealer would be deemed to be the first purchaser whereas in every other case of a first purchase made through the agency of a dealer, the dealer who is the agent would be deemed to be the first purchaser. This difference according to Mr. Goyal is discriminatory in character. He urged that
- B** there was no justification for making an agent liable to pay sales tax merely because he is an unlicensed agent. According to him there is no rational distinction between the purchases made through licensed dealers and those made through unlicensed dealers.
- C** The power to levy tax includes within itself the power to provide against evasion of tax. A licensed dealer has to function according to the conditions of his licence. He is bound to maintain true and correct accounts of his day to day transactions of sales and purchase of goods notified in sub-s. (1) of s. 3-D in an intelligible form and in such manner, if any, as may be prescribed and further he must furnish to the assessing authority the details
- D** of the aforesaid transactions together with the name and particulars of the purchaser and the number and date of the registration certificate filed by the purchaser under s. 8A and such other information regarding the transactions as may, subject to rule, if any, in this behalf be required.
- E** Hence whenever a purchase is made through a licensed agent, the authorities have the opportunity to know what purchases have been made and from whom those purchases were made but that would not be the case when purchases are made through dealers who are not licensed. They are not required by law to maintain any accounts or submit any returns. Hence if registered dealers
- F** are permitted to make purchases through dealers who are not licensed and those dealers themselves are not liable to be taxed then opportunity for evasion becomes larger. The rule of discrimination does not rule out classification. The power of classification under a fiscal law is larger than in the case of other laws. Hence there was nothing wrong in the legislature making a classification between licensed dealers and dealers who are not licensed.
- G** Even when a dealer who is not licensed is liable to pay purchase tax, the ultimate burden falls on his principal. For these reasons, we do not see any basis for the contention that s. 3-D is violative of Art. 14.

For the reasons mentioned above these appeals fail and they are dismissed with costs—one set.

H

S.N.

Appeals dismissed.