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WESTON ELECTRONIKS & ANR.

v.

STATE OF GUJARAT & ANR.

APRIL 29, 1988

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[R.S. PATHAK, C.J. AND RANGANATH MISRA, J.]

C

Gujarat Sales Tax Act, 1969—S. 49(2)—Read with Arts. 301, 303(1) and 304(a)—Imposition of tax must not be such as to discriminate between goods imported from other States and similar goods manufactured within the State—Discrimination cannot be supported by reference to Art. 39(b) and (c)—The proper course to be followed by the Court while striking down such discriminatory measures to give effect to the statutory intention.

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By availing of its powers under sub-s. (2) of s. 49 of the Gujarat Sales Tax Act, 1969 to exempt, in the public interest, any specified class of sales from payment of the whole or any part of the tax payable under the Act, the Government of Gujarat issued two notifications prescribing a lower rate of tax for goods manufactured within the State as compared to similar goods imported from outside the State. The petitioners, who are manufacturing electronic goods, including television sets etc., in factories located outside the State, challenged the validity of these notifications as violative of Art. 301 of the Constitution. The State Government contended that the rate of tax was reduced in order to provide as incentive for encouraging local manufacturing units and sought to draw support for its action from clauses (b) and (c) of Art. 39.

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Allowing the Petition and quashing the notifications aforesaid,

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HELD: Art. 301 declares that subject to the provisions of Part-XIII, trade, commerce and intercourse throughout the territory of India shall be free. Clause (1) of Art. 303 prohibits the legislature of a State from making any law giving, or authorising the giving of, any preference to one State or another, or making, or authorising the making of, any discrimination between one State and another. The terms of the prohibition are subject to Art. 304. Clause (a) of Art. 304 provides that the legislature of a State may, by law, impose on goods imported from other States any tax to which similar goods manufactured or produced in that State are subject so, however, as not to discriminate between goods so imported and goods so manufactured or produced. It is apparent that while a State Legislature may enact a law

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imposing a tax on goods imported from other States, as is levied on similar goods manufactured in that State, the imposition must not be such as to discriminate between goods so imported and goods so manufactured. We do not think any support can be derived from the two clauses of Art. 39 to justify the reduction in the rate of tax in the case of goods manufactured locally. Clause (a) of Art. 304 is clear in meaning. An exception to the mandate declared in Art. 301 and the prohibition contained in cl. (1) of Art. 303 can be sustained on the basis of cl. (a) of Art. 304 only if the conditions contained in the latter provision are satisfied. [770H; 771A-B, 772F-G]

Firm A.T.B. Mehtab Majid & Co. v. State of Madras & Anr., [1963] Suppl. 2 S.C.R. 435; *Atiabari Tea Co. Ltd. v. The State of Assam and Ors.*, [1961] 1 S.C.R. 809; *The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan & Ors.*, [1963] 1 S.C.R. 491 and *H. Anraj etc. v. Government of Tamil Nadu etc.*, [1986] 1 S.C.C. 414, relied on.

(ii) The next question is whether, for the purpose of ensuring the same rate of tax between the petitioners and the local manufacturers, the levy of the higher rate of tax suffered by the petitioners should be quashed and they be held entitled to the levy of the lower rate applied to the local manufacturers, or, should the higher rate imposed on the petitioners be maintained and the notifications imposing the lower rate on local manufacturers be quashed. The grievance of the petitioners has arisen only because the local manufacturers have been favoured by a lower rate of tax. The rate levied on the petitioners is the rate prescribed under s. 7 of the Act. That is the rate applied generally. It represents the normal standard of levy. The lower rate applied to local manufacturers has been applied by invoking sub-s. (2) of s. 49 of the Act. It represents a departure from, or exception to, the general norm. In cases such as this, the Court should, when granting relief, choose the alternative which would give effect to the statutory intention. And, therefore, in this case what is called for is the quashing of the impugned notifications reserving a lower rate of tax for local manufacturers. [772H; 773A-E]

CIVIL ORIGINAL JURISDICTION: Writ Petition No. 1032 of 1986.

(Under Article 32 of the Constitution of India).

Soli J. Sorabjee, Ms. S. Ralhan, S.C. Dhande and Ms. Rekha Pandey for the petitioners.

A V.S. Desai, A.S. Bhasme and Khanwilkar for the respondents.

The Judgment of the Court was delivered by

PATHAK, C.J. The petitioners manufacture electronic goods, including television sets, television cameras and television monitors.
B The factories are located at Delhi, and the goods are sold through sales organisations spread all over India, including the State of Gujarat.

C Section 7 of the Gujarat Sales Tax, Act, 1969 provides for the levy of sales tax on the turnover of sales of goods specified in Part A Sch. II appended to the Act. Entry 80A(a) of Part A of Sch. II specifies the rate of tax applicable to the turnover of television sets. The rate was 15% originally upto 1981, the Entry applied to all television sets, whether manufactured and sold within the State of Gujarat or imported from outside the State. No distinction was made between the goods on the basis of the place of manufacture.

D Sub-s. (2) of s. 49 of the Act empowers the State Government to exempt, in the public interest, any specified class of sales from payment of the whole or any part of the tax payable under the Act. In 1981, while the rate for electronic goods entering the State for sale therein was maintained at 15%, the rate in respect of locally manufactured goods was reduced to 6% by Notification No. (GHN-51) GST 1081 (S. 49)(109) TH issued under sub-s. (2) of s. 49 of the Act. The Notification introduced a new entry in the Schedule dealing specifically with electronic goods manufactured in the State of Gujarat. Thereafter in 1986 the rate of sales tax in respect of television sets imported from outside the State was reduced from 15% to 10% and for goods manufactured within the State of sales tax was reduced to 1% by Notification No. (GHN 22) GST 1086/(S. 49)(173)-TH dated 29 March, 1986. The petitioner contends that by lowering the rate of tax in respect of goods manufactured within the State, the State Government has created an invidious discrimination which is adversely affecting the free flow of inter-state Trade and commerce, resulting in a contravention of Article 301 of the Constitution. It is pointed out that a purchaser buying a television set manufactured within the State of Gujarat pays about Rs.250 to 300 less for a black and white model and Rs.750 to Rs.1,000 for a colour model. It is said that the sales of electronic goods manufactured by the petitioner have been prejudicially affected within the State of Gujarat.

H Art. 301 of the Constitution declares that subject to the provi-

sions of Part XIII "trade, commerce and intercourse throughout the territory of India shall be free". Clause (1) of Art. 303 prohibits "the legislature of a State from making any law giving, or authorising the giving of, any preference to one State or another, or making, or authorising 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 terms of the prohibition are subject to Art. 304, which provides: "Notwithstanding anything in Art. 301 or Art. 303, Legislature of a State may by law:

- (a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
- (b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purpose of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President."

It is apparent that while a State Legislature may enact a law imposing a tax on goods imported from other States as is levied on similar goods manufactured in that State the imposition must not be such as to discriminate between goods so imported and goods so manufactured. In the *Firm A.T.B. Mehtab Majid & Co. v. State of Madras & Anr.*, [1963] Suppl. 2 S.C.R. 435 this Court was called upon to consider the validity of Rule 16 of the Madras General Sales Tax Rules under which tanned hides and skin imported from outside the State of Madras were subject to a higher rate of tax than the tax imposed on hides and skins tanned and sold within the State. Referring to its earlier decisions in *Atiabari Tea Co. Ltd. v. The State of Assam and Ors.*, [1961] 1 S.C.R. 809 and *The Automobile Transport (Rajasthan) Ltd. v. The State of Rajasthan & Ors.*, [1963] 1 S.C.R. 491 where the scope and significance of Art. 301 were explained, it proceeded to observe:

"It is therefore now well settled that taxing laws can be restrictions on trade, commerce and intercourse, if they hamper the flow of trade and if they are not what can be termed to be compensatory taxes or regulatory measures.

- A Sales tax, of the kind under consideration here, cannot be said to be a measure regulating any trade or a compensatory tax levied for the use of trading facilities. Sales tax, which has the effect of discriminating between goods of one State and goods of another, may affect the free flow of trade and it will then offend against Art. 301 and will be valid only if it comes within the terms of Art. 304(a).
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- C Art. 304(a) enables the Legislature of a State to make laws affecting trade, commerce and intercourse. It enables the imposition of taxes on goods from other States if similar goods in the State are subjected to similar taxes, so as not to discriminate between the goods manufactured or produced in that State and the goods which are imported from other States. This means that if the effect of the sales-tax on tanned hides or skins imported from outside is that the latter becomes subject to a higher tax by the application of the proviso to sub-rule of r. 16 of the Rules, then the tax is discriminatory and unconstitutional and must be struck down."
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- E So also in *H. Anraj v. Government of Tamil Nadu and Dipak Dhar & Ors. v. State of West Bengal & Anr.*, [1986] 1 S.C.R. 414 this Court struck down the levy of tax imposed by the State of Tamil Nadu on lottery tickets issued by other States and sold within the State of Tamil Nadu while exempting from such levy lottery tickets issued by the Government of Tamil Nadu.

- F In answer to the writ petition, the respondents point out that the rate of tax was reduced in the case of goods manufactured locally in order to provide an incentive for encouraging local manufacturing units. Reference is made to cl.(b) and (c) of Art. 39 of the Constitution. We do not think that any support can be derived from the two clauses of Art. 39. Cl. (a) of Art. 304 is clear in meaning. An exception to the mandate declared in Art. 301 and the prohibition contained in Cl. (1) of Art. 303 can be sustained on the basis of cl. (a) of Art. 304 only if the conditions contained in the latter provision are satisfied.
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In the result, the discrimination effected by applying different rates of tax between goods imported into the State of Gujarat and goods manufactured within that State must be struck down.

- H The next question is whether, for the purpose of ensuring the

same rate of tax between the petitioners and the local manufacturers, the levy of the higher rate of tax suffered by the petitioners should be quashed and they be held entitled to the levy of the lower rate applied to the local manufacturers or should the higher rate imposed on the petitioners be maintained and the notifications imposing the lower rate on local manufacturers be quashed. A perusal of the record shows that the grievance of the petitioners has arisen only because the local manufacturers have been favoured by a lower rate of tax. So long as the higher rate of tax imposed on the petitioners was also suffered by the local manufacturers, no complaint was voiced by the petitioners. It is the levy of the lower rate on local manufacturers that constitutes the substance of the grievance. That is borne out by the terms of the relief specifically claimed by the petitioners, that the notifications specifying a lower rate for local manufacturers should be quashed. Moreover, the rate levied on the petitioners is the rate prescribed under s. 7 of the Act. That is the rate applied generally. It represents the normal standard of levy. The lower rate applied to local manufacturers has been applied by invoking sub-s. (2) of s. 49 of the Act. It represents a departure from, or exception to, the general norm. In cases such as this, the Court should, when granting relief, choose the alternative which would give effect to the statutory intention. And, therefore, in this case what is called for is the quashing of the impugned notifications reserving a lower rate of tax for local manufacturers.

Accordingly, the writ petition is allowed and the Notifications No. (GHN-51) GST 1081 (S. 49)(109) TH dated 23 July, 1981 and No. (GHN-22) GST 1086/(S.49)(173) TH dated 29 March, 1986 prescribing a lower rate of tax for local manufacturers in respect of television sets and other electronic goods are quashed. The petitioners are entitled to their costs.

H.L.C.

Petition allowed.