

**Union of India and ors. Vs. State of Andhra Pradesh and anr.**

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**Court :** Andhra Pradesh

**Decided On :** Mar-18-1996

**Reported in :** 1996(2)ALT929; [1996]103STC34(AP)

**Judge :** P.S. Mishra, C.J. ;B. Subhashan Reddy and ;M.H.S. Ansari, JJ.

**Acts :** Andhra Pradesh General Sales Tax Act, 1957 - Sections 2; Andhra Pradesh General Sales Tax (Amendment) Act, 1985; [Customs Act, 1962](#); [Constitution of India](#) - Articles 131, 143, 194, 212, 226, 277, 285 and 289; Madhya Pradesh General Sales Tax Act; [Evidence Act, 1872](#) - Sections 155; [Code of Criminal Procedure \(CrPC\) , 1898](#) - Sections 288; Central Excises and Salt Act, 1944 - Sections 36; Government of India Act - Sections 154 and 155

**Appeal No. :** Writ Petition No. 17664 of 1989

**Appellant :** Union of India and ors.

**Respondent :** State of Andhra Pradesh and anr.

**Judgement :**

P.S. Mishra, C.J.

1. The Union of India along with Collector, Customs and Central Excise, Guntur and Additional Collector of Customs, New Customs House, Port Area, Visakhapatnam has moved this Court under article 226 of the [Constitution of India](#) for a declaration that section 2(e) of the A.P. General Sales Tax Act, as amended

by Act 18 of 1985, is ultra vires the [Constitution of India](#) as well as arbitrary and a consequential direction to refund to them Rs. 4,45,077.38 being the sales tax collected by the respondent - State of Andhra Pradesh. According to them, whenever there are violations of the provisions of the [Customs Act, 1962](#), goods involved are confiscated, they are put to sale and upon the sale of such goods the State Government has been imposing sales tax. They have been paying the tax until, however, they learnt that the Collectors of Customs of Bombay and Calcutta had filed writ petitions in their respective High Courts and the High Courts of Bombay and Calcutta had granted stay of collection of sales tax on the proceeds of sale of confiscated goods under the [Customs Act, 1962](#). Deciding, for the said reason, to move this Court in the petition they, i.e. the Union of India and others have averred that Collectors of Customs exercise statutory duties and functions of administering [Customs Act, 1962](#) which is enacted by the Union Legislature on the subject of customs duties and other ancillary subjects. The of 'customs duties' in enumerated under entry 83, List I of the Seventh Schedule to the [Constitution of India](#). While administering the said Act, petitioners, as enjoined by law, make disposal of confiscated contraband goods as well as unclaimed goods. In doing so, they discharge the sovereign function of the Union. They are not engaged in any business. The transaction of disposal of goods is involuntary and not voluntary sales in the course of business or otherwise. It is a process of recovering Government revenue. Thus, when engaged in the transaction of disposal of goods which are confiscated under the [Customs Act, 1962](#) or are otherwise with them, they are not 'dealer or dealers carrying on business' or 'a deemed dealer or dealers'.

2. Respondent's return, inter alia, states, however, that goods that are confiscated under the Customs Act are put in sale by auction and after mentioning about the definition of 'dealer' under section 2(1)(e) of the A.P. General Sales Tax Act, 1957 and mentioning about Explanation (iii) to the same, point out that the amendments carried out in the A.P. General Sales Tax Act are similar to one in section 2(b), Explanation (2) in the Central Sales Tax Act, 1956.

3. Learned Additional Solicitor-General has taken us through the various provisions in the A.P. General Sales Tax Act and particularly to the definition of

'business' in section 2(bbb), definition of 'dealer' in section 2(e), definition of 'goods' in section 2(h) and the definition of 'sale' in section 2(n) of the Act. He has contended that Explanation (iii) to the definition of 'dealer' in section 2(e) of the Act and Explanation (viii) to the definition of 'sale' in section 2(n) of the Act conflict with the definition of 'business' in section 2(bbb) of the Act and go beyond definition to create liability upon the Central Government or the State Government which, whether or not in the course of business buys, sells, supplies or distributes goods directly or otherwise for cash or for deferred payment or for commission, remuneration or other valuable consideration. Learned Additional Solicitor-General has placed reliance upon article 285 of the Constitution and contended that the property of the Union, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.

4. Learned Advocate-General has drawn our attention to article 131 of the [Constitution of India](#) and contended that Government of India cannot bring its dispute with the Government of the State to this Court Under article 226 of the [Constitution of India](#). The dispute between the Government of India and one or more States, between the Government of India and any State or States on one side and one or more States, on the other or between two or more States, in so far as the dispute involves any question whether of law or fact, on which the existence or extent of a legal right depends, can only be entertained by the Supreme Court of India to the exclusion of any other court. He (the learned Advocate-General) has contended that the State has not out-stepped its legislative limitations in extending the definition of a 'dealer' to transaction of sale goods by the Central Government or any other State Government whether or not in the course of business and accordingly extending the meaning of sale with all its grammatical variations and cognate expressions as transfer of the property in goods by one person to another in the course of trade or business by indentifying the Central Government and the State Governments as dealers transferring the property in goods whether or not in the course of business.

5. Parties would have spared the court of the exhaustive exercise of travelling through several provisions of the [Constitution of India](#), entering into the question whether the lis in the instant proceeding is in the teeth of article 285 of the

[Constitution of India](#) or not and whether article 131 of the [Constitution of India](#) is attracted and thus court's jurisdiction under article 226 of the [Constitution of India](#) is barred for the reason of the dispute being one between the Central Government and the State Government and thus falling under article 131 of the [Constitution of India](#) and the matter could have been settled in accordance with the direct authority of a two-member Bench decision of the Supreme Court in *Vrajlal Manilal & Co. v. State of Madhya Pradesh* : 1987(11)ECC253 in favour of the levy of tax and in favour of the vires of the Explanations to the definitions of 'dealer' and 'sale' in the M.P. General Sales Tax Act. Since, however, the courts do not follow a screw like application of law in all matters and prefer adjudication by taking a fair stock of the fact and the laws and proceed by a process of reasoning to the conclusions, we have been taken by the learned counsel for the parties through the pronouncements by some of the High Courts in the country as well as the pronouncements of the Supreme Court. We have good reasons to reject the objection as to the maintainability of the petition. Article 226 of the [Constitution of India](#) provides for the exercise of the constituent or sovereign power of issuing directions, orders or writs including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any other rights conferred by Part III of the Constitution and for any other purpose. This constitutional authority is created in the High Courts of the States of the country, 'notwithstanding anything in article 32' of the Constitution. Article 131 of the Constitution, however, excludes the jurisdiction of any other court and vests to the Supreme Court original jurisdiction in any dispute between the Government of India and one or more States or between the Government of India and any State or States on one side and one or more other States on the other or between two or more States, 'subject to the provisions' of the Constitution. Significant expressions or words as respects original jurisdiction of the Supreme Court are 'dispute..... involving any question whether of law or fact on which the existence or extent of a legal right depends' and 'subject to the provisions of the Constitution'. Unless it is shown that dispute involves any question whether of law or fact on which the existence or extent of a legal right of one of the disputants depends and the disputants are the Government of India and one or more States or Government of India and any State or States or two or more States, article 131 of the Constitution

is not attracted.

'Subject to' has received different meanings and there are occasions when courts have found this expression inter-changeable with the expression 'notwithstanding'. Black's Law Dictionary, sixth edition, has to say that 'subject to' means liable, subordinate, subservient, inferior, obedient to, governed or affected by, provided that, provided, answerable for. P. Ramanatha Aiyar in the Law Lexicon, reprint edition 1995, carries for 'subject to' the following : 'The effect of the words 'subject to' in a deed is to introduce condition or proviso. The use of the words 'subject to' in a transfer of property subject to an existing agreement was construed to mean subject not only to the disadvantages imposed by such agreement but also to the advantages given thereby'. The expression 'subject to the provisions of the Evidence Act' has been interpreted in a judgment of the Patna High Court in Bigna Kumar v. King-Emperor AIR 1926 Pat 440 almost 70 years ago as it was then found in section 288 of the Criminal Procedure Code, 1898. The contention before the court was that the evidence before the committing Magistrate was not admissible at the trial and reliance was placed upon the words 'subject to the provisions of the Indian [Evidence Act, 1872](#)' introduced into section 288 of the Code by the Amending Act of 1923. By the said Amending Act the evidence of a witness taken before a committing Magistrate was made evidence in the case if the witness was produced and examined at the trial for all purposes subject to the provisions of the Indian Evidence Act. The court commented as follows :

'..... These words have introduced a certain amount of ambiguity in the section. One cannot be certain as to what is exactly meant by these words. Under the provisions of the Indian Evidence Act the evidence of a witness examined before a committing Magistrate would not be admissible in evidence except under section 145 or under section 155 of the Evidence Act for the purposes of the witness being examined as to his previous statement and relevant matters in question or with the intention to contradict him with the statement made by him in previous depositions or generally in order to impeach the credibility of the witness; or under section 157 for the purpose of corroborating the testimony of the witness given at the trial. To my mind section 288 makes the previous evidence of a witness taken before a committing Magistrate, evidence admissible at the trial and the limitation imposed

to such admission by the introduction of the words 'subject to the provisions of the Indian Evidence Act' merely means, as laid down by this Court in *Emperor v. Jehal Teli* AIR 1925 Pat 51 that such evidence can be used at the trial for all purposes as long as the evidence is evidence within the meaning of the Evidence Act. In other words, that the deposition recorded by the committing Magistrate can be utilized at the trial if the matter contained therein is according to the rules of evidence laid down in the Evidence Act of evidential value. To limit the admissibility of such evidence at the trial only to cases where the evidence is admissible under the Evidence Act would be to frustrate the object in enacting section 288 of the Criminal Procedure Code. In my opinion the previous deposition of Tipru taken before the committing Magistrate was rightly admitted at the trial.'

6. Maxwell on the Interpretation of Statutes (Chapter 7, Twelfth Edition) says, 'A strong leaning exists against construing a statute so as to oust or restrict the jurisdiction of the superior courts. Although this feeling may owe its origin to the contests for jurisdiction between the various courts in former times, when the Judges' emoluments depended mainly upon fees, 'the well-known rule that a statute should not be construed as taking away the jurisdiction of the courts in the absence of clear and unambiguous language to that effect' now rests on a reluctance to disturb the established state of the law or to deny to the subject access to the seat of justice. 'The proper Tribunals for the termination of legal disputes in this country are the courts and they are the only Tribunals which, by training and experience, and assisted by properly qualified advocates, are fitted for the task.'. Maxwell has also pointed out, 'The fact that jurisdiction is conferred on one authority does not necessarily take away jurisdiction which another already possesses in the same matter.....'. In a reference under Article 143 of the [Constitution of India](#) : AIR 1965 SC745 the Supreme Court, while delivering its opinion on article 212 of the Constitution and privileges which are referable to article 194 of the Constitution stated as follows :

'Let us first take article 226. This article confers very wide powers on every High Court throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases any Government, within those territories directions, order or writs, including writs in the nature of habeas

corpus, mandamus, prohibition, quo warranto, certiorari, or any of them for the enforcement of any of the rights conferred by Part III and for any other purpose. It is hardly necessary to emphasise that the language used by article 226 in conferring power on the High Courts is very wide.....'

7. The Supreme Court has in the said judgment also said that the question of jurisdiction and the propriety or reasonableness of the exercise of jurisdiction are different and in the case of a superior court of record it is for the court to consider whether any matter falls within its jurisdiction or not. Unlike the court of limited jurisdiction the superior court is entitled to determine for itself questions about its own jurisdiction. The Supreme Court has quoted Halsbury's Laws of England (volume 9, page 349) :

'Prima facie, no matter is deemed to be beyond the jurisdiction of a superior court unless it is expressly shown to be so while nothing is within the jurisdiction of an inferior court unless it is expressly shown on the face of the precedents that the particular matter is within the cognizance of the particular court.'

8. In *South India Corporation (P.) Ltd. v. Secretary, Board of Revenue* : [1964]4SCR280 a five-Judge Bench of the Supreme Court has considered the expressions 'notwithstanding the repeal by this Constitution of the enactments referred to in article 395 but subject to the other provisions of this Constitution' in article 372(1) of the Constitution and stated as follows :

'.....The article would become ineffective and purposeless if it was held that pre-Constitution laws should be such as could be made by the appropriate authority under the Constitution. The Words 'subject to the other provisions of the Constitution' should, therefore, be given a reasonable interpretation, an interpretation which would carry out the intention of the makers of the Constitution and also which is in accord with the constitutional practice in such matters. The article posits the continuation of the pre-existing laws made by a competent authority notwithstanding the repeal of article 395; and the expression 'other' in the article can only apply to provisions other than those dealing with legislative competence. ....

But the real question is whether the said impugned law is inconsistent with the provisions of the Constitution other than those dealing with its legislative competency. The words 'subject to the other provisions of the Constitution' mean that if there is an irreconcilable conflict between the pre-existing law and a provision or provisions of the Constitution, the latter shall prevail to the extent of that inconsistency. An article of the Constitution by its express terms may come into conflict with a pre-Constitution law wholly or in part; the said article or articles may also, by necessary implication, come into direct conflict with the pre-existing law. I may also be that the combined operation of a series of articles may bring about a situation making the existence of the pre-existing law incongruous in that situation. Whatever it may be, the inconsistency must be spelled out from the other provisions of the Constitution and cannot be built up on the supposed political philosophy underlying the Constitution.....'

9. In this judgment the Supreme Court finally said :

'..... The expression 'subject to' conveys the idea of a provision yielding place to another provision or other provisions which it is made subject. Further article 278 opens out with a non obstante clause. The phrase 'notwithstanding anything in the Constitution' is equivalent to saying that in spite of the other articles of the Constitution, or that other articles shall not be an impediment to the operation of article 278. While article 372 is subject to article 278, article 278 operates in its own sphere in spite of article 372. The result is that article 278 overrides article 372; that is to say, notwithstanding the fact that a pre-Constitution taxation law continues in force under article 372, the Union and the State Governments can enter into an agreement in terms of article 278 in respect of Part B States depriving the State law of its efficacy. In one view article 277 excludes the operation of article 372, and in the other view, an agreement in terms of article 278 overrides article 372. In either view, the result is the same, namely, that at any rate during the period covered by the agreement the States ceased to have any power to impose the tax in respect of 'works contracts'.'

10. Whenever, however, the Constitution has intended to bar the jurisdiction of the courts it has employed positive expressions like 'exclude the jurisdiction of all

courts except the jurisdiction of the Supreme Court' under article 136 or in article 363(1) in which expression used is, 'notwithstanding anything in this Constitution but subject to the provisions of article 143 neither the Supreme Court nor any other court shall have jurisdiction in any dispute arising out of any provision of a treaty, agreement,.....'. 'Subject to article 143' in article 363(1) has saved the power of the President of India to consult the Supreme Court. 'Subject to' in article 131 thus can legitimately receive the meaning that the other courts' jurisdiction as in article 32 or in article 226 of the Constitution is not ousted. The expression 'subject to article 32' in article 226 obviously does not oust the jurisdiction of the Supreme Court. The expression 'subject to' in article 131 will yield thus to the power of the Supreme Court under article 32 of the Constitution or the power of the High Court under Article 226 of the Constitution. The view that we have taken has also the support of another five-Judge Bench decision of the Supreme Court in Mysore State Electricity Board v. Bangalore Woolen, Cotton and Silk Mills Ltd. : AIR 1963 SC1128 in which the expression 'subject to the provisions of this Act' has been given the meaning that if there are any provisions in the Act which operate in the matter, those provisions will prevail or at least will be available.

11. One other aspect, however, which one cannot miss is the meaning the words 'dispute between the Government of India and one or more States or between the Government of India and any State or States one side and one or more other States on the other or between two or more States' should receive. In a Constitution Bench decision in State of Bihar v. Union of India : [1970]2SCR522 the Supreme Court, dealt with a case of the plaintiff that due to the negligence or deliberate action of the servants of a Government of India undertaking there was a short delivery of iron and steel material ordered by the plaintiff, one of the undertakings of the State of Bihar, in connection with the construction work of the Gandak project. As the goods, in all cases, were booked by rail for despatch to the project site, defendants including the Union of India were sought to be made liable for short delivery. The Union of India, the owner of the Railway, was impleaded as the first defendant. The Supreme Court in the said judgment has pointed out as follows :

'.....It must be noted that the article confers jurisdiction on this Court to the exclusion of all other courts in any dispute between the parties mentioned therein. There is however an overriding provision that such jurisdiction is subject to the provisions of the Constitution and our attention was drawn to a few of these provisions where the disputes specified are to be adjudicated upon the entirely different manner. The most important feature of article 131 is that it makes no mention of any party other than the Government of India or any one or more of the States who can be arrayed as a disputant. The other distinguishing feature is that the court is not required to adjudicate upon the disputes in exactly the same way as ordinary courts of law are normally called upon to do for upholding the rights of the parties and enforcement of its orders and decisions. The words in the article 'if and in so far as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends' are words of limitation on the exercise of that jurisdiction. These words indicate that the disputes should be in respect of legal rights and not disputes of a political character. Moreover, this Court is only concerned to give its decision on questions of law or of fact on which the existence or extent of a legal right claimed depends. Once the court comes to its conclusion on the cases presented by any disputants and gives its adjudication on the facts or the points of law raised, the function of this Court under article 131 is over. Article 131 does not prescribe that a suit must be filed in the Supreme Court for the complete adjudication of the dispute envisaged therein or the passing of a decree capable of execution in the ordinary way as decrees of other courts are. It is open to an aggrieved party to present a petition to this Court containing a full statement of the relevant facts and praying for the declaration of its rights as against the other disputants. Once that is done, the function of this Court under article 131 is at end. The framers of the Constitution do not appear to have contemplated the contingency of a party to an adjudication by this Court under article 131 not complying with the declaration made. Our law is not without instances where a court may be called upon to make an adjudication of the rights of the parties to an agreement or an award simpliciter on the basis of such rights without passing a degree..... .....The express words of clauses (a), (b) and (c) exclude the idea of a private citizen, a firm or corporation figuring as disputant either alone or even along with a State or with the Government of India in the

category of a party to the dispute. There is no scope for suggesting that a private citizen, a firm or a corporation can be arrayed as a party by itself on one side and one or more States including the Government of India on the other. Nor is there anything in the article which suggests a claim being made by or preferred against a private party jointly or in the alternative with a State of Government of India. The framers of the Constitution appear not to have contemplated the case of a dispute in which a private citizen, a firm or corporation is in any way involved as a fit subject for adjudication by this Court under its exclusive original jurisdiction conferred by article 131.'

12. Tracing in the some detail the origin of the principle behind article 131 the Supreme Court has pointed out :

'Although article 131 does not define the scope of the disputes which this Court may be called upon to determine in the same way as section 204 of the Government of India Act, and we do not find it necessary to do so, this much is certain that the legal right which is the subject of dispute must arise in the context of the Constitution and the Federalism it sets up. However, there can be not doubt that so far as the parties to the dispute are concerned, the framers of the Constitution did intend that they could only be the constituent units of the Union of India and the Government of India itself arrayed on one side of the other either singly or jointly with another unit or the Government of India'.

13. The above view of the Constitution Bench of the Supreme Court that the dispute for the purposes of article 131 of the Constitution between or amongst the States and the Union has to be in their constitutional capacity is further elaborated and it has been clearly laid down by the Supreme Court that disputes between them in their contractual capacity, i.e. as a consignee of goods, in the capacity of a trader or employer in a factory or manufacturer of goods or holder of a permit to run a stage carriage are not covered by article 131 of the Constitution. In *Union of India v. State of Rajasthan* : [1985]1SCR700 this aspect of the law has been explained. After referring to the judgment of the Constitution Bench in *State of Bihar v. Union of India* : [1970]2SCR522 and other judgments of the Supreme Court including in *Union of India v. State of Mysore* : 1977(1)ELT26(SC) , *State of*

Rajasthan v. Union of India : [1978]1SCR1 and State of Karnataka v. Union of India : [1978]2SCR1 , in this case the court has pointed out as follows :

'On a careful consideration of the whole matter in the light of the decisions of this Court referred to above, we felt that article 131 of the Constitution is attracted only when a dispute arises between or amongst the States and the Union in the context of the constitutional relationship that exists between them and the powers, rights, duties, immunities, liabilities, disabilities, etc., flowing therefrom. Any dispute which may arise between a State in the capacity of an employer in a factory, a manufacturer of goods subject to excise duty, a holder of permit to run a stage carriage, a trader or businessman carrying on business not incidental to the ordinary functions of Government, a consumer of railway services, etc., like any other private party on the one hand and the Union of India on the other cannot be construed as a dispute arising between the State and the Union in discharge of their respective executive powers attracting article 131 of the Constitution. It could never have been the intention of the framers of the Constitution that any ordinary dispute of this nature would have to be decided exclusively by the Supreme Court. It is well to remember that the constitutional proposals of the Sapru Committee advocated the strengthening of the position of the Federal Court in India and widening its jurisdiction on the original side so that the Federal Court could act as an interpreter and guardian of the Constitution and as a Tribunal for the determination of the disputes between the constituent units of the Federation. The Joint Committee on Indian Constitutional Reforms was also of opinion that the object of conferring exclusive original jurisdiction of the Federal Court was that the dispute of the kind specified between the Federation and the Provinces as the constituent units of the Federation should not be left to be decided by courts of law of a particular unit but be adjudicated upon only by the highest Tribunal in the land which would be beyond the influence of any one constituent unit. The Special Committee consisting of Sriyuts S. Varadachariar, Alladi Krishnaswami Ayyar, B. L. Mitter, K. M. Munshi and B. N. Rau appointed by the Constituent Assembly to consider and report on the Constitution and powers of the Supreme Court suggested 'that the Supreme Court, like the Federal court under the 1935 Constitution, would be the best available forum for the adjudication of all disputes between the Union and a unit and between one unit and another and proposed

that the court should have a exclusive original jurisdiction in such disputes'. (Vide The Framing of India's Constitution - A Study by Shri B. Shiva Rao at page 483). Considered in the light of the foregoing the conclusion becomes inevitable that disputes of the nature involved in this case could not have been in the contemplation of the framers of the Constitution which they adopted article 131 of the Constitution.'

14. The law, in our opinion, thus, is no longer in doubt and if we can borrow the language from the judgment of the Supreme Court [Observations seems to be from State of Mysore v. Union of India AIR 1968 Mys. 237.] in Union of India v. State of Mysore : 1977(1)ELT26(SC) for the purposes of article 131, 'the dispute must directly arise between the State and the Central Government as the repository of the executive power of the Union. An indirect interest in the collection of the revenue in the form of excise duty if the excise duty demanded by the Central Excise is exigible, is far too slender a foundation for the postulate that in every controversy arising under the provisions of the Central Excise Act, the Central Government is necessarily a disputant. The acceptance of such interpretation would make the Central Government a party to every proceeding under the Central Excise Act in the role of a disputant, and, that consequence can scarcely fit into its constitution as a Tribunal under section 36 of the Act. (Section 36 of the Central Excises and Salt Act, 1944)', to illustrate the point that a claim of a duty or tax on the sale of property belonging to the Central Government or any State Government or any State Government will be too slender a foundation for the postulate that in such a controversy arising under the provisions of the A.P. General Sales Tax Act the dispute is one falling under article 131 of the Constitution. The requirement in article 131, we have already noticed, is that the dispute must involve a question whether of law or fact on which the existence or extent of a legal right depends. Legal rights of the Government of India in respect of the properties belonging to it are in no way affected by the imposition of the tax under the A.P. General Sales Tax Act. It is not a dispute arising between the Union of India and the State of Andhra Pradesh in the context of the constitutional relationship that exists between them and the powers, rights, duties, immunities, liabilities, disabilities, etc., flowing therefrom. It is pure and simple dispute in which the Government of India is being charged to a tax as a dealer in goods as defined

under the A.P. General Sales Tax Act and thus is sought to be taxed as a trader or businessman which is not incidental to the ordinary functions of the Government of India.

15. The claim of the State Government which is sought to be disputed by the Central Government is the levy of the sales tax based on the amendments by addition of an Explanation to the definition of 'dealer' or the definition of 'sale'. It is a dispute, in our opinion, clearly outside the scope of article 131 of the Constitution.

16. Learned Advocate-General has drawn our attention to a judgment of the Gujarat High Court in Babubhai Jashbhai Patel v. Union of India : AIR1983 Guj1 and a judgment of the Punjab and Haryana High Court in State of Punjab v. Union of India AIR 1971 P&H; 155 [FB]. Although five learned Judges of the Punjab and Haryana Court have adverted to this question and they appear generally to say as if demand of a tax can be a subject of dispute falling under article 131 of the Constitution, a careful reading of the judgment shows that on the facts of the case one could be inclined to take the view as the Punjab and Haryana High Court has taken but not in a sweeping manner. The Punjab and Haryana High Court dealt with an impost which was hit by article 270(1) of the Constitution, an item of legislation specifically excluded from the domain of the Union. The Gujarat High Court dealt with the provisions of the Oilfields (Regulation and Development) Act, 1948. The challenge the vires on the ground that the provisions in reality and in effect pertained to the acquisition of provincial property, viz., oilfield belonging to the Provinces was held to be one falling under article 131 of the Constitution. Gujarat judgment appears to go farther than the facts were intended to decide. We, however, are bound by the law laid down by the Supreme Court and in our own assumption, when a certain trading or business activity of the Government of India is sought to be brought under the levy of tax by the Government of the State, article 131 will not operate as a bar to the entertainability of the petition under article 226 of the Constitution at the instance of the Government of India.

17. Petitioner who has overcome the hurdle under article 131 of the Constitution has advanced the claim of immunity from the State taxes under article 285 of the Constitution. Article 285(1) read as follows :

'The property of the Union shall, save in so far as Parliament may by law otherwise provide, be exempt from all taxes imposed by a State or by any authority within a State.'

18. Learned counsel for the petitioner has urged that the expression 'property' in this article has been used in a perfectly general sense and would, therefore, include such activities of the Government of India which are relatable to property including the transfer of property by it. The exemption of property of the Union from State taxation as envisaged under article 285(1), for the Union, is extended to the property and income of a State under article 289(1) in these words :

'The property and income of a State shall exempt from Union taxation.'

19. Answering a reference under article 143 of the Constitution, the Supreme Court delivered its majority opinion in these words *In re Sea Customs Act (1878)*. Section 20(2) AIR 1963 SC 1760 :

'It is important to notice that while extending the exemption from Union taxation to a State it is not only the property but income of the State is also included in the exemption under article 289(1). Article 285 does not mention income. It mentions only property.'

20. The Supreme Court bestowed its attention to the words article 289 and also its complementary article 285 and adverted to the contention on behalf of the Union that when article 289 provides for exemption of the property and income of a State from Union taxation it only provides for exemption from such tax as may be levied directly on property and income and not from all Union taxes which may have some relation to the property or income of a State and that of the State that when article 289(1) provides for exemption of the property and income of a State from Union taxation it completely exempts the property and income of a State from all Union taxation of whatsoever nature it may be. The Supreme Court's opinion in

relevant parts reads as follows :

'Bearing the scheme of our Constitution in mind let us now turn to the words of article 289 and also its complementary article, namely, article 285. The contention on behalf of the Union is that when article 289 provides for exemption of the property and income of a State from Union taxation, it only provides for exemption from such tax as may be levied directly on property and income and not from all Union taxes, which may have some relation to the property or income of a State. On the other hand, the contention on behalf of the States is that when article 289(1) provides for exemption of the property and income of a State from Union taxation, it completely exempts the property and income of a State from all Union taxation of whatsoever nature it may be. So far as exemption of income is concerned, there is no serious dispute that the exemption there is with respect to taxes on income other than agricultural income (item 82, List I), for the simple reason that the only tax provided in List I with respect to income is in item 82 of List I. The dispute is mainly with respect to taxes on 'property'. Now this fact in our opinion has an important bearing on the nature of taxation of 'property' which is exempt under article 289(1). If the income of a State is exempt only from taxes on income, the juxtaposition of the words 'property' and 'income' in article 289(1) must lead to the inference that property is also exempt only from direct taxes on property. But it is said that there is no specific tax on property in List I and it is therefore contended on behalf of the States that when property of a State was exempted from Union taxation, the intention of Constitution makers must have been to exempt it from all such taxes which are in any way related to property. Therefore, it is urged that the exemption is not merely from taxes directly on property as such but from all taxes which impinge on property of a State even indirectly, like customs duties, or export duties or excise duties. It is true that List I contains no tax directly on property like List II, but it does not follow from that that the Union has no power to impose a tax directly on property under any circumstances. Article 246(4) gives power to Parliament to make laws with respect to any matter for any part of the territory of India, not included in a State notwithstanding that such matter is a matter enumerated in the State List. This means that so far as Union territories are concerned Parliament has power to legislate not only with respect to items in List I but also with respect to items in List

II. Therefore, so far as Union territories are concerned, Parliament has power to impose a tax directly on property as such. It cannot therefore be said that the exemption of States' property from Union taxation directly on property under article 289(1) would be meaningless as Parliament has no power to impose any tax directly on property. If a State has any property in any Union territory that property would be exempt from Union taxation on property under article 289(1). The argument therefore that article 289(1) cannot be confined to tax directly on property because there is no such tax provided in List I cannot be accepted.

(15) Now the words in article 289, confining ourselves to 'property', are that 'the property of a State shall be exempt from Union taxation'. It is remarkable that the word 'all' does not govern the words 'Union taxation' in article 289(1). It does not provide that the property of a State shall be exempt from all Union taxation. The question therefore is whether when article 289 provides for the exemption of State property from Union taxation, it only provides for exemption from that kind of Union taxation which is a tax directly on property. It is true that article 289(1) does not specifically say that the property of a State shall be exempt from Union taxation on property. It may however be properly inferred that that was the intention if one looks to the language of article 289(2). That clause mainly deals with income accruing or arising to a State from trade or business carried on by it. At the same time it provides that where the State is carrying on a trade or business nothing in clause (1) shall prevent the Union from imposing any tax to such extent as Parliament may by law provide in respect of any property used or occupied for the purposes of such trade or business, and the authority thus given to Parliament to tax property used or occupied in connection with trade or business can only refer to a tax directly on property as such, which is used or occupied for business, the tax being related to the use or occupation of the property. The meaning will be clearer if we look to article 285. Clause (1) of that article, provides that the property of the Union shall be exempt from all taxes imposed by a State or by any authority within a State. Prima facie, the use of the words 'all taxes' in clause (1) would suggest that the property of the Union would be exempt from all taxes of whatsoever nature, which a State can impose. But if one looks to clause (2) of article 285 the nature of taxes from which the property of the Union would be exempt is clearly indicated as a tax on property. Clause (2) provides that :

'nothing in clause (1) shall, until Parliament by law otherwise provides, prevent any authority within a State from levying any tax on any property of the Union to which such property was immediately before the commencement of this Constitution liable or treated as liable, so long as that tax continues to be levied in that State'.

It will in our opinion be permissible in view of clause (2) to read clause (1) of article 285 when it speaks of all taxes as relating to taxes of the nature of taxes directly on property. We have already pointed out, when dealing with the general considerations which should govern the interpretation of article 289(1) that the power of the Union would be crippled if article 289 is interpreted as exempting the property of a State from all Union taxes. We have also pointed out that even though the taxes may be collected and levied by the Union, there are provisions in Part XII for the assignment or distribution of many Union taxes to the States. There are also provisions for grants-in-aid by the Union from the Consolidated Fund of India to a State. In these circumstances it would in our opinion be in consonance with the scheme of the Constitution relating to taxation to read article 289(1) as laying down that the property and income of a State shall be exempt from Union taxation on property and income. There is in our opinion better warrant for reading these words 'on property and income' after the words 'Union taxation' in article 289(1) in view of the scheme of our Constitution relating to taxation and also the provisions of Part XII thereof than to read the word 'all' before the words 'Union taxation' in that clause. The effect of reading the word 'all' before the words 'Union taxation' would in our opinion be so serious and so crippling to the resources, which the Constitution intended the Union to have, as to make it impossible to give that intention to the words of clause (1) of article 289. On the other hand, the States would not be so seriously affected if we read the words 'on property and income' after the words 'Union taxation' in article 289(1), for unlike other Constitutions there is provision in Part XII of our Constitution for assignment or distribution of taxes levied and collected by the Union to the States and also for grants-in-aid from the Union to the States, so that the burden which may fall on the States by giving a restrictive meaning to the words used in clause (1) of article 289 would be alleviated to a large extent in view of the provisions in Part XII of the Constitution for assignment and distribution of taxes levied by the Union to the States and also for grants-in-aid from the Union to the States.

(16) Further it must not be forgotten that articles 285 and 289 are successors of sections 154 and 155 of the Government of India Act, though there are differences in detail between them, in particular clause (2) of article 285, which corresponds to the proviso to section 154 seems in our opinion to make it clear by the change in the language, that clause (1) of article 285 when it speaks of all taxes in referring to taxes on property of which clause (2) definitely permits continuance provided such property of the Union immediately before the commencement of the Constitution was liable or was treated as liable to such tax. As to article 289(1), a change has been made in the words, for section 155(1), which corresponded thereto, provided that the Government of a Province shall not be liable to Federal taxation in respect of lands or buildings. Article 289 on the other hand refers not only to lands and buildings but to all property of a State, whether movable or immovable and exempts it from Union taxation. Even so, we find no warrant for interpreting clause (1) of article 289(1) as if it exempts all property of a State from all Union taxation. We are therefore of opinion reading article 289(1) and its complementary article 285 together that the intention of the Constitution-makers was that article 285 would exempt all property of the Union from all taxes on property levied by a State or by any authority within the State while article 289(1) contemplates that all property of the States would be exempt from all taxes on property which may be leviable by the Union. Both the articles in our opinion are concerned with taxes directly either on income or on property and not with taxes which may indirectly effect income or property. The contention therefore on behalf of the Union that these two articles should be read in the restricted sense of exempting the property or income of a State in one case and the property of the Union in the other from taxes directly either on property or on income as the case may be, is correct.'

21. The relevant part of the opinion where a mention is made to article 285(1) and (2) along with article 289(1) thus is that the taxes referable to article 285 are all taxes directly on property. The above has been further elucidated in the majority judgment itself in these words :

'(25) This will show that the taxable event in the case of duties of excise is the manufacture of goods and the duty is not directly on the goods but on the

manufacture thereof. We may in this connection contrast sales tax which is also imposed with reference to good sold, where the taxable event is the act of sale. Therefore, though both excise duty and sales tax are levied with reference to goods, the two are very different imposts; in one case the imposition is on the act of manufacture or production while in the other it is on the act of sale. In neither case therefore can it be said that the excise duty or sales tax is a tax directly on the goods for in that event they will really become the same tax. It would thus appear that duties of excise partake of the nature of indirect taxes as known to standard works on economics and are to be distinguished from direct taxes like taxes on property and income.'

22. Learned counsel for the petitioner, however, has brought to our notice a judgment of the Supreme Court in the case of State of Punjab v. Union of India which has taken the view that the Union of India as the owner of the Northern Railway Departmental catering was the owner of the goods which were sold and sale of such goods was immune from taxation under the State law in view of the provisions of article 285(1) of the Constitution. The text of the Supreme Court's judgment on this question in full is as follows :

'..... There is no dispute that the Union of India is the owner of the Northern Railway Departmental Catering, Railway Station, Pathankot. The goods were purchased by the railways and were sold by the railways. The tax was imposed on the sale of goods. At the time of the sale, the goods belonged to the Railways. In view of the provisions of article 285(1) of the Constitution, such sales were immune from taxation under the State law. That was also the view of the High Court.....'

23. We have good reasons, however, to follow the majority view of the Supreme Court in the reference under article 143 in preference to the above, for, in case the latter judgment is also taken as the law laid down by the Supreme Court it is delivered by a Bench comprising of two learned Judges whereas the reference is answered by a Bench of nine learned Judges of the Supreme Court.

24. Learned counsel for the petitioner has made an attempt before us to argue that the opinion of the Supreme Court under article 143 is not the law declared by the

court for the purposes of article 141 thereof. We do not, however, detain ourselves to deal with this aspect more than reiterating what the Supreme Court has specifically said about its opinion under article 143 of the Constitution is that while it is open to the Supreme Court to re-examine the question already decided by it and to overrule if necessary, 'it would be strange that a decision given by this Court on a question of law in a dispute between two private parties should be binding on all courts in this country but the advisory opinion should bind no one at all even if as in the instant case it is given after issuing notice to all interested parties after hearing everyone concerned who desired to be heard and after a full consideration of the question raised in the reference'. Observations in *Ahmedabad St. Xaviers College Society v. State of Gujarat* : [1975]1SCR173 that even if the opinion given in the exercise of advisory jurisdiction may not be binding, it is entitled to great weight, have been specifically overruled in *Special Court Bill, 1978* reference : [1979]2SCR476 .

25. On the challenge to the explanations above quoted on grounds, inter alia, whatever, we have a direct judgment of the Supreme Court in *Vrajilal Manilal & Co. v. State of Madhya Pradesh* : 1987(11)ECC253 . The Supreme Court has dealt, in the said case, with similar definitions of 'dealer' and 'sale' as we have in the A.P. General Sales Tax Act and Explanations similarly worded for the imposition of the sales tax upon sale, supply or distribution on goods, directly or otherwise, for cash or for deferred payment, or for commission, remuneration or for other valuable consideration by the Central or a State Government or any of their departments or offices, whether or not in the course of business. The Supreme Court has stated as follows :

'The next contention was that neither the State Government nor any of its departments including the Forest Department or its offices was a dealer within the meaning of that term as defined in clause (d) of section 2 as none of them carried on the business of buying, selling, supplying or distributing goods and that Explanation II which was inserted in the said clause (d) did not have the effect of enlarging the concept of a dealer as defined in that clause. In support of this connection reliance was placed upon a decision of the Madhya Pradesh High Court in *Orient Paper Mills Ltd. v. State of Madhya Pradesh* [1971] 28 STC 532;

1971 Tax LR 1249 in which it was held that the State Government or the Forest Department could not, merely by selling the forest produce grown on their land, be regarded as carrying on any business of buying, selling, supplying or distributing goods and, therefore, in respect of mere sales of forest produce, neither the State Government nor the Forest Department was a dealer within the meaning of the definition of that term contained in clause (d) of section 2. As the Statement of Objects and Reasons to the Legislative Bill which, when enacted became the 1971 Act, expressly states it was in view of the judgments of the Madhya Pradesh High Court on various provisions of the M.P. Sales Tax Act whereby the State stood to lose a considerable amount of revenue by way of tax and penalty, that it was proposed to amend the M.P. Sales Tax Act suitably in the light of the said judgments in order to safeguard the revenue of the State and to validate the imposition of penalty and that amongst the amendments which were being made was that the definition of 'dealer' was proposed to be amended in the light of the judgment in the case of Orient Paper Mills Ltd. v. State of Madhya Pradesh [1971] 28 STC 532 (MP) so as 'to include the Central Government or a State Government selling goods not during the course of business'. In this context, it is pertinent to note that for a person to be a dealer within the meaning of clause (d), he must be one who carries on the business of buying, selling, supplying or distributing goods and the definition as originally enacted included within its scope the Central Government or a State Government or any of their departments which carried on such business. This definition was retrospectively amended by the 1971 Act, and the reference to the 'Central Government or a State Government or any of their departments' in sub-clause (i) of clause (d) was omitted from that sub-clause and Explanation II was added which expressly provided that 'the Central Government or a State Government or any of their departments or offices which, whether or not in the course of business, buy sell, supply or distribute goods, directly or otherwise, for cash..... or for other valuable consideration, shall be deemed to be a dealer for the purposes of this Act'. Merely because a particular provision in a statute is labelled as an explanation, it does not mean that it is inserted merely with a view to explain the meaning of words contained in the section of which it forms a part. The true scope and effect of an explanation can only be judged by its express language and not merely by the label given to it. The language of

explanation II shows that its purpose is to create a legal fiction, and that while under the main clause, for a person to be a dealer, he must carry on the business of buying, selling, supplying or distributing goods, even if the Central Government or a State Government or any of their departments or offices does not carry on such business, if it buys, sells, supplies or distributes goods, it is to be deemed to be a dealer for the purposes of the M.P. Sales Tax Act, that is, for the purposes of the levy and collection of tax under the M.P. Sales Tax Act. After the amendment of clause (d) by the 1971 Act, it is irrelevant for the purposes of the levy of tax under the M.P. Sales Tax Act whether the Central Government or a State Government or any of their departments or offices have bought or sold goods in the course of business. There is, therefore, no substance in the above contention and it must accordingly be rejected.'

26. The Supreme Court has in the said judgment upheld the constitutional validity of the Explanations which bring in the ambit of tax, transactions by the Central and State Governments whether in the course of the business or not, under article 14 as well as under articles 301 and 304 of the Constitution.

27. There could be interesting discussion, however, whether sale of seized goods by customs authorities is business or trade and whether for such sales it is a dealer liable to pay tax, has there been no statute clearly saying that in the case of the Central or the State Government the sale whether it is in the course of the business or not shall be a sale for the purposes of the Act and the Central or the State Government dealing in such goods whether directly or through any servant or agent shall be a dealer liable to pay the tax. It has, however, always been pointed out that it is not the character of the seller which is important to know whether he is a dealer or is dealing in goods in course of the business. It is his act in dealing in goods which is relevant and inferences are drawn from such dealings by him only and not by knowing who he is. We are, however, not required to proceed with this line of investigation of the matter as the law itself has taken all such transactions of sale by the Central or the State Governments within its ambit and the issues in this behalf are answered in full by the Supreme Court in *Vrajlal Manilal & Co. v. State of Madhya Pradesh* : 1987(11)ECC253 .

28. We find not merit in the writ petition. It is dismissed but without costs.

29. After the judgment is delivered, Sir P. Innayya Reddy, learned Standing Counsel for the Central Government, made an oral prayer for leave to appeal to the Supreme Court and for suspension of the above judgment. We do not find that the case involves a substantial question of law of general importance which needs to be decided by the Supreme Court. Hence, leave to appeal to the Supreme Court is rejected. The prayer for suspension of the above judgment is also rejected.

30. Writ petition dismissed.

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