

State and anr. Vs. Beejal

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Court : Rajasthan

Decided On : Mar-22-1954

Reported in : AIR1954Raj283

Judge : Wanchoo, C.J.

Acts : [Constitution of India](#) - Article 265; Marwar Customs Act, 1949 - Sections 35; Rajasthan (Regulation of Customs Duties) Ordinance, 1949 - Sections 3

Appeal No. : Second Appeal No. 96 of 1952

Appellant : State and anr.

Respondent : Beejal

Advocate for Def. : Hukamchand, Adv.

Advocate for Pet/Ap. : L.N. Chhangani, Govt. Adv.

Disposition : Appeal dismissed

Judgement :

Wanchoo, C.J.

1. This is a second appeal by the State against the judgment and decree of the District Judge, Pali, by which that Court reversed the decree of the Civil Judge, Pali, and decreed the suit brought by Beejal, plaintiff-respondent, against the

defendant-appellant.

2. The case put forward in the plaint by Beejal was that he entered the boundary of the former State of Marwar in August, 1950, from the former State of Sirohi along with certain sheep, goats, lambs and camels in order to go to Ajmer. When he reached Pali, he was stopped from proceeding further unless he paid two taxes known as Kharota lag and Charnot duty. He was compelled to pay Rs. 764/- as Kharota lag and Rs. 833/- as Charnot duty. He, therefore, filed this suit for recovery of the sum of Rs. 1597/-.

His case was that these taxes were realized from him without any authority of law, and against the provisions of the Rajasthan (Regulation of Customs Duties) Ordinance (No. 16) of 1949 (hereinafter called the Rajasthan Ordinance), Reliance was also placed on Article 15 and 19 of the Constitution in order to challenge the validity of these two taxes.

3. The suit was resisted by the defendant State. The case of the defendant was that the applicant had brought the goats and sheep etc. from Kutch and passed through Sirohi and then entered Pali district. Consequently, the two taxes were realized from him, and that this realization was in accordance with law. Other points were also raised, but the parties joined issues on two questions of law only on which two issues were framed by the trial Court. These issues were:

'(1) Whether Kharota Lag had been realized from the plaintiff according to law?

(2) Whether Charnot duty was realized from the plaintiff according to law?

4. The trial Court came to the conclusion on both these issues against the plaintiff, and dismissed the suit. There was an appeal to the District Judge of Pali, which was allowed, and the suit was decreed, that Court holding that the two taxes were realized without the authority of law or against the provisions of the law. Hence this second appeal.

5. The same two issues arise before me. I shall first take the issue relating to Kharota Lag. The realization in this case took place in August, 1950, when the Constitution had come into force. Under Article 265 thereof, no tax can be levied

or collected except by authority of law. It is obvious that the authority of law envisaged in Article 265 is authority of statute law, and only such taxes can be realized as are authorised by such law. In this connection I may refer to -- 'P. J. Joseph v. Assist. Excise Commissioner, Ernakulam', AIR 1953 Trav-C 146 (A), with which I respectfully agree.

It is admitted on behalf of the State that there is no law either of the State of Rajasthan or of the former State of Marwar authorising the levy and collection of Kharota Lag. This tax seems to be some kind of customary tax which was being realized in Marwar without any statutory provision. Reliance is placed on a circular of 17-9-1943, by the Commissioner, Land Revenue of the former State of Marwar, as to how Kharota Lag should be levied and what should be done for avoiding hardships. This circular cannot take the place of law.

Further, the circular itself shows that Kharota Lag was already leviable before this circular which only explains certain procedural matters relating to its realization. This circular, therefore, cannot be treated as the authority of law which is required by Article 265 for the levy of a tax. Reliance is also placed on an order of the Revenue Minister of the former State of Marwar, which was passed in January, 1944, on an appeal by certain persons of Kutch.

Their appeal was dismissed, and it was said that the order of the Commissioner, Land Revenue, levying Kharota Lag on sheep staying at a place for more than 24 hours was correct. This order in appeal also cannot amount to authority of law for it dealt with only a particular case, and the Revenue Minister refused to interfere with the collection made by the Commissioner. Lastly, reliance is also placed on the order of the 'Ijlas Khas' where some kind of an appeal was taken from the order of the Revenue Minister, dated 10-1-1944.

The appellants were informed that His Highness saw no reason to interfere with the order already passed by the Revenue Minister, and that the appeal was being rejected. Here again, this is no authority of law for realization of Kharota Lag as the order of His Highness also deals with one particular case. There is thus no authority of law whatsoever either of the former State of Marwar or of the State of Rajasthan, and Kharota Lag therefore being an unauthorised levy cannot be

realized.

6. Then I turn to the levy of Charnot duty. Section 35 of the Marwar Customs Act (No. 22) of 1949 (hereinafter called the Marwar Act) provides as follows:

'A charnot duty at the rate of two annas per animal shall be levied on all animals passing, through Marwar in transit. The duty shall be levied at the time of issue of the transit pass.'

The contention on behalf of the State is that Charnot duty has been realized under this provision of the law, and the realization cannot, therefore, be challenged as illegal. The plaintiff, however, relies on Section 3 of the Rajasthan Ordinance. That section reads as follows:

'With effect from such date as may be notified, by the Government in the Rajasthan Gazette, no duties of Customs shall be levied and collected in respect of any goods transported within Rajasthan, notwithstanding anything to the contrary in any law, or rule, instrument or usage/having the force of law, in any part of Rajasthan; and any such law, rule, instrument or usage shall be deemed to be repealed to that extent:

Provided that the Government may, by notification in the Rajasthan Gazette--

(a) impose a duty of customs on the transport of goods from or to any part of Rajasthan to or from such other part thereof, at such rate or rates and with effect from such date as may be specified in the notification, or

(b) direct that, in respect of the transport of goods of such description and from or to such part of Rajasthan as may be specified in the notification, a sum of money equal to the amount of the duty leviable on the export of such goods shall be deposited with the appropriate Customs Officer of the place from where the goods are intended to be transported.'

It is not the case of the State that Section 3 has not come into force because no notification as envisaged by the opening words of that section has been issued. Further it is no one's case that the Government of Rajasthan has issued any

notification under either of the provisos to Section 3. What has, therefore, to be seen is whether Section 3 in effect repealed Section 35 of the Marwar Act, or, in any case, whether the Charnot duty could be charged from those who brought sheep and goats etc from the Sirohi district of Rajasthan into the Pali district of Rajasthan.

It may be mentioned that the Marwar Act came into force in February, 1949, when the former Marwar State was in existence. Section 35 of the Act therefore was obviously meant to levy a duty on animals entering into Marwar from another State, and passing through Marwar in transit. It seems to me that in the changed circumstances, after the coming into existence of the State of Rajasthan, Section 35 of the Marwar Act must be deemed to have been repealed by Section 3 of the Rajasthan Ordinance so far as transport from one district in Rajasthan to another district was concerned.

The Section definitely provides that no duties of customs shall be levied and collected in respect of any goods transported within Rajasthan, and any former law etc. which levied such duty was deemed to be repealed. Charnot duty is customs duty under the Marwar Act.

At the time when the Marwar Act was passed, it would rightly be customs duty because it was to be imposed on animals coming into the former State of Marwar from other States. But after the formation of the present State of Rajasthan, if animals are brought, say from Churu district to Nagaur (which are contiguous districts), it can hardly be said that Charnot duty under Section 35 would be leviable, as Section 3 of the Rajasthan Ordinance clearly forbids levy and collection of such duties on the transport of goods within Rajasthan.

Section 3 thus forbids levy of any customs duty prescribed by the laws of the former States which have merged into Rajasthan, if the goods are passing from one former State to another former State provided both are now parts of the State of Rajasthan. I do not express any opinion as to the applicability of Section 35 where the animals are brought direct from another State into that part of Rajasthan which was formerly in the State of Marwar.

7. No evidence was led by either party in this suit, and the facts have, therefore, to be taken from the admitted case of the parties. The case of the plaintiff was that he had brought these animals from Sirohi district of Rajasthan into the Pali district of Rajasthan. He did not say from where he had come into Sirohi district, though it may be mentioned that he gave his residence as district Anjar which is certainly not in Rajasthan, and is said to be in Kutch or Saurashtra. The case of the defendant State was that the plaintiff came from Kutch into Sirohi district and from Sirohi into Pali district.

Now no law has been pointed out which entitled the State to charge Charnot duty when the animals entered Sirohi. Thereafter, the animals moved from Sirohi district into Pali district. The question is whether it was open to the State to charge Charnot duty under Section 35 of the Marwar Act in the face of Section 3 of the Rajasthan Ordinance. It is obvious that in view of Section 3 no duty can be charged if goods or animals are brought from the Sirohi district into Pali district, even though formerly these districts were part of two different States, and customs duties used to be charged when goods or animals passed from one State into another.

In the present case, the animals were brought from Sirohi district into Pali district, and it is because of that that Charnot duty is being charged under Section 35. It seems to me that it is immaterial from where the animals came into Sirohi. Once they are in Sirohi, they can come into Pali district and it is not open to the State to charge Charnot duty under Section 35 of the Mar-war Act in view of Section 3 of the Rajasthan Ordinance.

It would be making traffic between Sirohi district and Pali district almost impossible, if every time a person crosses over from Sirohi district into Pali district with animals, he has to establish from where he had brought the animals before he could escape Charnot duty. It may be added that there is nothing on the record to show that the plaintiff accepts that he brought the animals from Kutch into Sirohi.

But assuming that it is so, that would not, in my opinion, make any difference. Once the animals have crossed into Sirohi or some district of Rajasthan the further crossing from such district into Pali district, or another district, which was part of

the former Marwar State, cannot be subject to any customs duty, be it Charnot under Section 35 of the Marwar Act, or under any other law of the former States, in view of Section 3 of the Rajasthan Ordinance.

8. I am, therefore, of opinion that the levy of Charnot duty also was illegal in view of Section 3 of the Rajasthan Ordinance, and the suit has been rightly decreed.

9. I hereby dismiss this second appeal with costs to the respondent throughout.

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