Sreenivas and Co. Vs. the Deputy Commercial Tax Officer, Moore Market Division

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Court : Chennai

Decided On : Oct-16-1959

Reported in : [1960]11STC68(Mad)

Judge : Rajagopalan and ;Ramachandra Iyer, JJ.

Appeal No. : Writ Appeal Nos. 15, 16 and 18 of 1958

Appellant : Sreenivas and Co.

Respondent : The Deputy Commercial Tax Officer, Moore Market Division

Advocate for Def. : The Adv.-General and ;The Additional Government Pleader

Advocate for Pet/Ap. : M.K. Nambiyar, Adv. for ;Soundrarajan and ;Sivaswami, Advs.

Disposition : Appeal dismissed

Judgement :

Ramachandra Iyer, J.

1. These appeals, which are filed under Clause 15 of the Letters Patent against the Judgment of Rajagopala Ayyangar, J., in W.P. Nos. 1287, 1288 and 1469 of

1956, raise a common question relating to the constitutional validity of the revised rules 15 ard 16 of the Turnover and Assessment Rules made by the Government of Madras under Sections 3, 5 and 19 of the Madras General Sales Tax Act, 1939 and published in the Fort St. George Gazette on 7th September, 1955- The appellants in the various appeals are tanners and dealers in hides and skins, tanned and untanned. The respondent in the respective appeals issued notices to them, calling upon them to submit returns and pay tax in advance in accordance with Rule 5 of the Madras General Sales Tax Rules and the revised rules 15 and 16 of the Turnover and Assessment Rules. The appellants, therefore, moved this court by means of the petitions aforesaid for the issue of a writ under Article 226 of the Constitution to direct the respondent to forbear from enforcing the rules, after declaring them illegal. The case for the appellants is that rules 15 and 16 of the Turnover and Assessment Rules, which were published on 7th September, 1955, were invalid, as being contrary to the provisions of Article 286(3) of the Constitution before the amendment.

2. The Madras General Sales Tax Act, 1939, authorises the State to impose a tax on the sale of goods. Under Section 3 of the Act, the tax is levied on an annual turnover of a dealer, which comprises the sale or in certain cases the purchase price of the goods. The tax being leviable on the occasion of a sale of a particular article, there could, on the terms of that provision, be as many levies as there were sales of that commodity within the State of Madras, resulting in multi-point levy on the same article. The Act provided exemptions and reductions in certain cases. Dealers, having an annual turnover of less than Rs. 10,000 were exempted. Certain goods, for example, hand-woven clothes were totally exempted. In regard to certain others, the multi-point levy was avoided by a scheme of a single point levy, that is, the sales tax being levied only on one occasion of the series of sales that may take place within the State with regard to that commodity. Section 5 provided for the cases where exemptions were granted and where the levy was confined to a single point. Hides and skins got the benefit of a single point levy. Section 3(4) states that, for the purposes of the Act, the turnover, on which tax on sale of goods had to be ascertained, was to be in accordance with such rules as might be prescribed. Section 5(vi) says that the sale of hides and skins, whether tanned or untanned, shall be liable to tax under Section 3, Sub-section (1), only at

such single point in the series of sales by successive dealers, as may be prescribed. Thus, rules have to be framed for determing the turnover and, in the case of hides and skins, prescribing the single point in the series of sales at which the tax could be levied. Rules 15 and 16 provided for the levy of tax on hides and skins. The original rules under the Act came into force on 1st October, 1939. Various defects were noticed in the rules and anomalies came to light in their actual application; evasion was found possi ble. The learned Judge has, in his Judgment, set out in detail the relevant provision of the statute and the rules and difficulties that were found in its application., The rules had to be recast and the Government did so. In the place of the old rules 15 and 16, they made the impugned rules. The new rules came into force on 7th September,1955,

3. The case for the appellants was that the rules which had the effect of imposing a tax had not, before their promulgation, been reserved for the consideration of the President under Article 286(3), of the Constitution and as such would be invalid.

4. At the time when the rules were framed, Article 286(3): of the Constitution declared :

No law made after* the commencement of this Act by the Legislature of a State imposing, or authorising the imposition of, a tax; on the sale or purchase of any goods declared by this Act to be essential for the life of the community shall have effect, unless it has been reserved for the consideration of the President and has received his assent.

5. The Article prescribed that commodities declared by an Act of Parliament as essential for the life of the community throughout India should not be subject to sales tax without the approval of the President. But, before its provisions could be made applicable, the Parliament should have declared, by law, the concerned commodity as essential for the life of the community. In such a case, no State could legislate so as to impose a sales tax on such commodity, unless the bill was reserved for consideration of the President and received his assent. There was such a legislation by the Parliament. The Essential Goods (Declaration and Regulation of Tax on Sale or Purchase) Act, LII of 1952, was enacted and came into force on 8th August, 1952. In the schedule to the enactment, which specified

the goods which were declared essential for the life of the community, item 10 related to hides and skins. Section 3 of Act LII of 1952 provided that no law of a State, which imposed or authorised the imposition of a sales tax on goods declared as essential goods under that enactment, would be valid, unless it had,been reserved for consideration by the President and received his assent.

6. On the dates when the impugned rules were made and notified, Act LII of 1952 was in force, though later it was repealed. That latter circumstance, however, is of no moment to this case, as the rules, if held to be contrary to the then existing provisions of the Constitution and the Act, would be invalid. According to the appellants rules 15 and 16 of the Turnover and Assessment Rules would be a law imposing, or authorising the imposition of, a tax on the sale or purchase of goods, namely, hides and skins, which had been declared by Parliament to be essential to the life of the community and that as no assent of the President was obtained previous to the promulgation of the rules under Article 286(3) of the Constitution, they should be held to be invalid.

7. Rajagopala Ayyangar, J., who disposed of the writ petitions, (the Judgment is reported in Palaniappa v. Deputy Commercial Tax Officer (1959) 10 S.T.C. 171 held that Article 286(3) of the Constitution imposed fetters only on post-Constitution laws, that it could not operate on the Madras General Sales Tax Act, which was enacted long anterior to the Constitution, that the provisions contained in Section 3(1) and (2), as modified by Section 5 of that Act, would constitute the law imposing tax, that the rest of the Act, namely, the rules made by virtue of Section 19, contained only machinery provisions for the assessment and collection of the taxes and that, although those could be properly termed as laws dealing with sales tax, they would not be laws imposing taxes and as such, would not come under the ban contained in Article 286(3).

8. The question whether rules 15 and 16 of the Turnover and Assessment Rules could be held to come within the term 'imposing a tax' of Article 286(3) was considered by the learned Judge in the light of certain decisions of the Australian High Court which held that Assessment Acts passed by the legislatures of that country, notwithstanding that they contained provisions which brought within the

charge persons or transactions, could not be held to be Acts 'imposing a tax'. In that view, the rules forming the machinery to make the sales tax exigible were held not to come within the ban of Article 286(3), as they would not be law imposing a tax strictly so called and consequently such rules not being 'law imposing a tax' though they came into operation at the time when the Central Act LII of 1952 was in force, would not be invalid by reason of the omission to reserve them for the consideration of and assent by the President.

9. Mr. M. K. Nambiyar, the learned counsel for the appellants, contended that the Turnover and Assessment Rules relating to the tax on hides and skins were really taxing provisions and not mere machinery ones. He further contended that the interpretation of the words 'a law imposing tax', adopted in the decisions of the Australian Courts, was the result of a political practice adopted in that country and could not properly guide the interpretation of Article 286(3) of the Constitution and that further the rules, having been made a part of the Act by Section 19 thereof, should be deemed to be a law imposing a sales tax by the State Legislature.

10. The precise nature of the old Rule 16 was considered in several decisions of this Court. Those considerations would also apply to the new rules. In Syed Mohamed and Co. v. State of Madras (1952) 3 S.T.C. 367, it was held that Sections 5 and 6 did not, by themselves, impose a tax on the purchaser in the case of the sale of hides and skins but left it to the rule-making authority to determine at which point, in the series of sales by successive dealers, tax should be levied. In Hajee Abdul Shukoor and Co. v. State of Madras (1955) 6 S.T.C. 352, dealing with the same matter, it was observed that no turnover would be liable to be taxed until the single point in the series of sales was fixed by the rules, that the charging provision in Section 3 would be subject, in the case of transactions in hides and skins, to the terms of Section 5(vi) under which the single point of taxation in the series of sales had to be fixed by the rules and that single point should be deemed to be fixed and the liability to tax would arise only under Rule 16. The decision in Noor Mohammad v. State of Madras (1956) 7 S.T.C. 752 is to the similar effect. In Munuswami Mudaliar and Co. v. State of Madras (1956) 7 S.T.C. 1, the learned Judges held that the essence of a single point taxation consisted in the fixation of a single point, either by the Act itself, or

under the rule-making power, if the Act so prescribed and that, as the Act by Section 5(vi) directed the rules to prescribe the single point for taxation, no tax liability could accrue out of a sale of hides and skins, whether tanned or untanned, unless the rules had prescribed such a single point. It was further observed that in the case of commodities like hides and skins, in respect of which a tax could be levied only at a single point to be fixed by the rules, there could be no tax liability accruing, until and unless the rules prescribed a single point for taxation. These cases would appear to support the contention of the learned advocate for the appellants that Rule 16 was a taxing and not a mere machinery provision with respect to the sale of hides and skins. But Rajagopala Ayyangar, J., was of opinion that these cases were concerned with the problems of quite different nature from those involved in the present case and would not apply when the question had to be considered with reference to Article 286(3).

11. A taxing enactment generally contains provisions regarding the levy, assessment and recovery. In the provisions of an enactment relating to the levy of a sales tax, there are three constituent elements : (1) enumeration or selection of the goods, that is, the provision which determines the goods upon which tax is leviable, (2) specification of the rate of duty and (3) specification of the transaction or transactions which attract tax liability, e.g., whether it is single point or multi-point. The first two are provided for by Sections 3 and 5 (vi) of the Act, in so far as the tax relates to the sale of hides and skins. The last is provided for by Rule 16 of the Turnover and Assessment Rules. The rule determines in respect of which and by whom is the fixed point tax to be paid. Liability would, therefore, accrue only if the point has been fixed. As in a sales tax the occasion or event is an important constituent element to attract tax liability, the specification of the point should be construed as part of the charging provision and not a mere machinery one. But for that specification, there would be no liability at all of the dealer to pay the tax. Rule 16 should, therefore, be considered, as the old Rule 16 was considered an integral part of the charging provisions. It would, therefore, be part of the law imposing a tax.

12. On the question as to the precise meaning to be attributed to the words 'law imposing taxation' in the Constitution, the learned Judge referred to three

decisions of the Australian Courts : Osborne v. Commonwealth 12 C.L.R. 321, Federal Commissioner of Taxation v. Munro 38 C.L.R. 153 and Cadbury Fry Fascall Proprietary Ltd. v. The Federal Commissioner of Taxation 70 C.L.R. 362. Those cases make a distinction between a law imposing a tax and mere Assessment Acts. The latter class, though it imposed a liability on certain persons, was held not to be one imposing a tax. To appreciate the decisions of the Australian Courts, it is necessary to ascertain the legislative powers and practice in that country. Section 53 of the Australian Constitution Act provides that proposed laws, appropriating revenue or moneys or imposing taxation, shall not originate in the Senate; that body had no power even to amend such laws, but could only suggest amendment. Section 55 provides :

Laws imposing taxation shall deal only with the imposition of taxation and any provision therein dealing with any other matter shall be of no effect.

13. Referring to Section 55, Mr. Anstey Wynes, in 'Legislative, Executive and Judicial Powers in Australia', 2nd Edition, states at page 246 :

This section, being in the middle of a group of sections relating to the powers of the respective Houses and Parliamentary procedure, is directed to preserving the privileges of the House of Representatives with respect to finance and providing against their abuse.

14. The learned author states further at page 247 :

A law imposing taxation is one which in itself and by itself imposes a tax; it does not necessarily comprehend every law which deals with taxation. Nor need a law be complete as to rate or subject-matter or person to be taxed in order to come within the category; for example, a statute which merely prescribes that there shall be a land tax leaving the rates and conditions to,be prescribed later, would be a ' law imposing taxation'. A further distinction is to be noted between a law imposing taxation and a law which is interpretative, declaratory or procedural. The usual procedure adopted by the Commonwealth is to impose a tax by one Act and assess it in another; the Assessment Act is not then a 'law imposing taxation '. This practice has been upheld by the High Court in several cases.

15. We have referred to Section 53 of the Australian Constitution under which proposed laws, appropriating revenue or money, or imposing taxation, should not originate in the Senate. The Senate has no power either to amend proposed laws imposing taxation so as to increase the burden or charge on the people. In order, therefore, to demarcate the powers of the House of Representatives and the Senate in that country, it was necessary to define within narrow limits the laws imposing taxation in respect of which alone the latter body would have controvert legislative powers. That was achieved by restricting the laws imposing a tax to the barest limits and dealing with other matters relating to taxation by a separate enactment, so that the Senate would have full legislative powers over them. They were called Assessment Acts, while the former was called the Taxing Act. Thus, a constitutional practice grew in that country for separating Taxation Acts from Assessment Acts. In Cadbury Fry Fascall Proprietary Ltd. v. Federal Commissioner of Taxation 70 C.L.R. 362, Latham, C.J., observed at page 373:

Parliamentary practice has given effect to these provisions by distinguishing between Tax Assessment Acts and Tax Acts in the manner stated. Acts of the former type provide means for assessing and collecting tax-they give authority to officers to assess and collect the tax and they impose duties upon persons to make returns in order to make such assessment and collection possible. The Tax Acts contain the grant of money-they impose the burden upon the people. It is the latter Acts and not the former which have been regarded as imposing taxation and therefore as not capable of originating in the Senate or of being amended by the Senate.

This practice has been recognised by this Court as carrying out the constitutional provisions upon a correct basis. It has been held on several occasions that various Assessment Acts do not impose taxation and it has been so held though such Acts contain provisions that a person should be liable to pay tax or be chargeable with tax.

In Moore v. The Commonwealth 82 C.L.R. 547, it was observed,

The separation of the Acts is a tried and venerated procedure for escaping the hitherto ineffectual menaces of Section 55.

16. In Moran Proprietary Ltd. v. N.S.W. Tax Commission (1940) 3 A.E.R. 269, the Privy Council observed:

Laws imposing taxation must deal with one subject of taxation only (Section 53 of the Constitution of the Commonwealth) and the established practice in Australia is to follow the taxation Act with an 'assessment' Act providing for the collection and recovery of the tax, for exemptions and for refunds in appropriate cases.

17. Therefore, the limited meaning given to 'a law imposing a tax' by the Australian cases was not so much the result of any statutory or judicial definition of the term, but mainly dictated by the constitutional procedure of that country. The decisions of the Australian Courts which interpreted the words 'law imposing a tax' in the light of the constitutional practice of that country cannot, therefore, really guide us in the interpretation of similar words in Article 286(3) of our Constitution.

18. But that conclusion would not be enough to dispose of the appeals. Another line of reasoning would, in our opinion, support the conclusion arrived at by the learned Judge in these cases.

19. Article 286(3) refers to two types of cases : (1) a law by the legislature of a State imposing taxation and (2) a law by the legislature of a State authorising imposition of taxation. The former case will be one where the enactment imposed taxation pro prio vigore, that is, directly by its own terms. On the other hand, the expression 'authorising imposition of tax' would apply to a case where the legislature lawfully vested another body with a power to make a law imposing a tax. Illustrations of the latter type are where a municipal or local authority is permitted to legislate with regard to imposition of certain taxes; customs duties imposed by the executive government by a notification. A law levying taxes may, thus, be in absolutely complete form, or it may be in a form which needs some further provision or further action to make it complete or operative. In such cases, it would properly be a law authorising imposition of tax, because the exigibility of tax would depend upon further provisions being made. Such an enactment would be one authorising the imposition of a tax, not one itself imposing tax. The Madras General Sales Tax Act, 1939, is of a composite character. It could be a law imposing the tax in regard to the sale of most of the commodities. By reason of our

conclusion, that in the case of hides and skins (and goods similarly placed by Section 5), the relevant Turnover and Assessment Rules would also be the charging provision, the Act should be held to be merely one authorising the imposition of a tax in regard to such goods. But both types of legislation would be covered by Article 286(3) of the Constitution. If, therefore, after the passing of Act LII of 1952, sales tax legislation was enacted in regard to the commodities declared by the former Act, it would require the assent of the President, notwithstanding the fact that it merely authorised imposition of the tax.

20. The learned Advocate for the appellants contended that as the rules framed under the Act are deemed to be part of the Act under Section 19(5), the rules should themselves be held to be a legislative enactment which would come within the ban of Article 286(3). Section 19(5) creates a fiction that the rules, though not passed by the legislature, are deemed to be so passed. That would only confirm the view that they are not really a law by the legislature of the State, but only deemed to be such for the purpose of the enforcement of the Act.

21. The restriction imposed by Article 286(3) is only with respect to the law imposing sales tax by the legislature of a State. A law directly imposing sales tax, or one authorising such imposition, passed by the State Legislature, if passed during the time when Act LII of 1952 was in force in order to be valid would have to comply with the requirements of Article 286(3). But can the impugned rules 15 and 16, though amounting to a charging provision, be held to be a law of the legislature of the State. Prima facie it would appear that cannot be so. In the case of a State legislation, which authorised the levy of a tax to a delegated authority, the assent of the President given to the main Act should be held to cover the delegation as well and the subsequent delegated legislation would also be covered by the President's assent, if one was necessary. It would follow that, if the original Act did not require the President's assent under Article 286(3) as having been passed before the Constitution or at a time when there was no legislation by the Parliament regarding essential commodities, the subordinate or delegated legislation, which should be deemed to be part of that Act, should not require assent.

22. The Madras General Sales Tax Act, 1939, was passed by the State Legislature long prior to the Constitution. Rules 15 and 16 were made by the State Government by virtue of Sections 3, 5 and 19 of the Act and, though they came in to force only on 9th August, 1955, they should be held to be part of that Act, as valid delegated legislation and would not require the assent of the President for their validity. This principle is supported by authority. In Singh v. State of Pepsu A.I.R. 1954 S.C. 311 and in Firm of Gowri Shankar v. Sales Tax Officer, Secunderabad (1958) 9 S.T.C. 407, it was held that Article 286(3) contemplated a law passed by the State after the Parliamentary law declared the goods as essential commodities. The law so passed could therefore only be a statute law and not any subordinate legislation. A similar question arose under Article 305 of the Constitution in Kutti Key a v. State of Madras A.I.R. 1954 Mad. 621, where the question was whether the notification, which extended the provisions of the Madras Commercial Crops Markets Act (Act XX of 1933) to certain places after the Constitution came into force, contravened Articles 302 and 304(a). It was held that the Madras Commercial Crops Markets Act would bean 'existing' law, as it was passed before the Constitution by an authority competent to enact it and the fact, that its operation had not been extended before the coming into force of the Constitution, would not be material for the purpose of the definition. In Surajmal v. State of Rajasthan , rules and by-laws were framed by the municipality, imposing octroi duty after the Constitution under the Jaipur Municipal Act, which was passed prior to the Constitution. It was held that the rules and by-laws were not invalid, as contrary to Article 305. Wanchoo, C.J., observed :

The present wording of Article 305, in our opinion, clearly shows that the intention was to save the provisions of the existing law and if these provisions authorise a municipal board for example to frame bye-laws and impose octroi duty, the power to frame such bye-laws and impose such duty in future was also saved.

23. We are of opinion that rules 15 and 16 of the Turnover and Assessment Rules, being only subordinate legislation, though imposing a tax in regard to an essential commodity covered by Act LII of 1952, could not be said to be a law passed by the State Legislature imposing a tax after the Constitution came into force and that, therefore, there was no necessity to reserve it for the consideration and assent of

the President.

24. The learned Advocate-General raised two further contentions. One was that the Act, providing a complete machinery for the assessment and collection of sales tax, was enacted and the rules thereunder were framed long prior to the passing of Act LII of 1952 and a mere substitution of a new rule in the place of an old one would not attract the provisions of Article 286(3). In this connection, he pointed out that, in view of the fact that the taking out of a licence by a dealer of hides and skins having been made compulsory, there was really no difference between the old rules and the new rules. The second contention was that, even if the new rules were held to be bad, the old rules would still remain, as not having been properly repealed. We think that it is unnecessary to deal with these contentions, in view of our conclusion that Article 286(3) would not apply to this case of subordinate legislation.

25. The appeals fail and are dismissed with costs. Counsel's fee Rs. 100 in each appeal.