

**P. Abdul Subhan and Co. Vs. the State of Madras and anr.**

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**Court :** Chennai

**Decided On :** Dec-01-1959

**Reported in :** (1960)IIMLJ542; [1960]11STC173(Mad)

**Judge :** Rajagopalan and ;Ramachandra Iyer, JJ.

**Appeal No. :** Writ Petition No. 400 of 1957 and Civil Miscellaneous Petition No. 5527 of 1959

**Appellant :** P. Abdul Subhan and Co.

**Respondent :** The State of Madras and anr.

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

**Advocate for Pet/Ap. :** M.K. Nambiyar and ;T.S. Krishnamoorthi Iyer, Advs.

**Disposition :** Petition dismissed

**Judgement :**

**Ramachandra Iyer, J.**

1. This petition is filed under Article 226 of the Constitution for the issue of a writ of certiorari or other appropriate writ, calling for the records and quashing the order, dated 23rd November, 1956, in A-4-3774-55/56, on the file of the Deputy Commercial Tax Officer, Gudiyatham.

2. The petitioner-firm is a licensed dealer in hides and skins. In the course of its business, raw skins from places within and outside the State are purchased, tanned and the tanned skins exported to foreign countries. For the year 1955-56, the 2nd respondent, the Deputy Commercial Tax Officer, Gudiyatham, made an assessment on the petitioner on the basis of the re-enacted Rule 16 of the Turnover and Assessment Rules, under the Madras General Sales Tax Act of 1939, on a turnover of Rs. 8,23,513-14-0. The legality of the assessment is challenged in this petition by impugning the constitutional validity of Rule 16 of the Turnover and Assessment Rules.

3. Section 3(1) of the Madras General Sales Tax Act makes it obligatory on every dealer to pay a tax for each year on the total turnover (which is to be determined in accordance with rules prescribed in that behalf) at the rate specified in the section. The term 'turnover' as defined in the Act is the aggregate amount, for which goods are bought or sold. Section 3(1) would, if unrestricted, enable a levy of sales tax on as many occasions as there are sales by dealers of particular goods, resulting in what is called a multi-point levy. Section 3(3) exempts a dealer whose turnover is less than Rs. 10,000 in any year from payment of sales tax for that year. There are also exemptions and reductions in respect of the taxes leviable on certain goods. Section 5 enumerates them. In two cases there is a total exemption and in four others a multi-point levy was avoided by prescribing a single point in the series of sale transactions which the goods may undergo within the State. Section 5(vi) relates to the levy of tax on the sale of hides and skins, modifying the otherwise multi-point liability into a single point one, the point in the series of sales being left to be prescribed by the rules. Section 19 confers powers on the State Government to make rules prescribing the determination of the turnover and fixation of the point of levy in regard to cases of single point levy. Accordingly the State Government framed the Turnover and Assessment Rules of 1939, which came into force on 1st October, 1939. Those rules have been amended, repealed and re-enacted from time to time.

4. Rule 16 of the Turnover and Assessment Rules framed in 1939 provided for the levy of taxes on tanned and untanned skins by licensed and unlicensed dealers. Since then in three decisions of this Court certain defects in Rule 16 were brought

to light. Rule 16(5) which did not give the benefit of single point levy to unlicensed dealers, Was declared invalid as contrary to Section 5(vi), the assessable turnover was held not to include purchases from unlicensed dealers and the transactions by unlicensed dealers were held not taxable as no point of levy was fixed. The result was that under the rules the unlicensed dealer escaped taxation while the licensed dealer had to pay it. The rules had therefore to be revised. Some months before the issue of the new rules, it was made obligatory on all dealers in hides and skins to take out licences. The new Rule 16, which took the place of the old, was made by G.O. (P) No. 2733, Revenue, dated 3rd September, 1955. That runs:-

16. (1) In the case of raw hides and/or skins the tax under Section 5-A(iv) shall be levied from the dealer who is the last purchaser in the State not exempt from taxation under Section 3(3) on the amount for which they are bought by him.

(2)(i) In the case of hides or skins which have been dressed out-side the State the tax under Section 5-A(iv) shall be levied from the dealer who in the State is the first dealer in such hides or skins not exempt from taxation under Section 3(3) on the amount for which they are sold by him.

(ii) In the case of dressed hides or skins which have been dressed within the State, the tax under Section 5-A(iv) shall be levied from a person who is the first dealer in such hides and skins not exempt from taxation under Section 3(3) on the amount for which they are sold by him :

Provided that, if he proves that the tax has already been levied under Sub-rule (i) on the raw hides and skins out of which the dressed hides and skins had been produced, he shall not be so liable.

(3) The burden of proving that a transaction is not liable to taxation under this rule shall be on the dealer

5. A comparative study of the old and the new rules shows that essentially there has been no change in the system of taxation since 1939 in respect of hides and skins. They have been treated as one commodity, whether tanned or untanned. The rules proceed to fix only the point at which the tax has to be levied; under the

present rule tax is levied at the point of the last purchase of the untanned skins in the State or on the first sale of tanned skins in the State, with an exemption in case tax was paid on the skins, while they were in untanned condition. The new rules have remedied the defects noticed in the old and as dealers in hides and skins are now obliged to take out licences the anomaly of a licensed dealer paying the tax while an unlicensed dealer escaped it is avoided. It is the validity of the new rule that is impugned in this petition.

6. Mr. M.K. Nambiyar, the learned Advocate for the petitioner, contended that the new rule would be invalid as the operation of it would result in discriminatory taxation. Two cases in which it was alleged there would be discrimination are : (i) There would be discrimination in the matter of sale of tanned hides and skins between the goods that are tanned within the State and those that are tanned outside the State and brought into the State, the tax on the former being less than on the latter. That is because tanned hides and skins cost more than they cost in their untanned condition. It is stated that, normally, a tanned skin costs 70 per cent, more than an untanned skin. Therefore, in respect of a skin tanned in the State a dealer would be liable to tax only on the basis of purchase price of the raw skin, while, in regard to a skin tanned outside the State and brought and sold within the State, the dealer would be bound to pay tax on the value of the tanned goods, which would be 70 per cent, more than its price in raw condition, (ii) Even in regard to skins tanned in the State, there would be difference in the tax between a case where the raw skins are purchased inside the State and the case where the same quantity is purchased outside the State. In the former case, the sales would be liable to tax according to their purchase price. While in the latter case no tax would be payable on the raw skins purchased from outside the State, but when the purchaser tans and sells the same he would be liable to pay tax on the sale of the tanned skins, which would result in a turnover higher than what a dealer who bought the raw goods inside the State would be taxed on. It is, therefore, contended that the effect of the new Rule 16 is to discriminate between cases where goods were manufactured or produced within the State and those where they were manufactured or produced outside the State. Article 304(1)(a) of the Constitution which provides for safeguards in respect of inter-State trade and commerce, runs :-

304. Notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law-

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced;

7. It was urged on behalf of the petitioner that Rule 16 being deemed a part of the Sales Tax Act, would amount to a legislation imposing a discriminatory tax on goods imported from other States and should therefore be declared invalid. On the other hand, the learned Advocate-General, appearing for the respondents, contended thus: Article 304 did not affect taxation in respect of sale of goods within a State, in respect of which the State Legislature had plenary powers under Article 246(3) read with List II to the Seventh Schedule of the Constitution. A sales tax which is levied on the occasion of a sale within a State could not be conceived in any sense as a tax on the goods of another State and even if there be any discrimination in the levy of a sales tax with respect to sales in a State, it could not properly come within the ban imposed by Article 304(a). Article 304(a) could only relate to taxes imposed on goods when they are imported from other States or by reason of importation, but once that stage is past, the goods become the goods in the taxing State and there would be no limitation on the powers of the State Legislature to tax sale of those goods. Article 304(a) does not by itself authorise a taxation for which authority has to be found only in Article 246. Reliance was placed on the observation of Venkatarama Iyer, J., in *Sundararamier & Co. v. State of Andhra Pradesh* [1958] S.C.R. 142, who while considering List II of the Seventh Schedule to the Constitution observed that taxation etc., is dealt with only in entries 45 to 68 and that entries 1 to 44 deal with subjects in which there could be legislation on other matters. On that basis, if one were to scrutinise the entries 45 to 68 in List II of Schedule VII, the appropriate Article to which Article 304(a) could be correlated would be only item 51 which runs:

Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or

produced elsewhere in India :-

(a) alcoholic liquors for human consumption;

(b) opium, Indian hemp and other narcotic drugs and narcotics; but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

8. What, therefore, Article 304(a) intended to prescribe was that the countervailing duties on goods imported from other States should not exceed the excise duty on goods manufactured or produced in the State.

9. We are not, however, prepared to place such a limited or narrow interpretation of Article 304(a). That Article occurs in Part XIII of the Constitution which deals with trade, commerce and intercourse within the territory of India and should prima facie comprehend every kind of disability which would be imposed by the legislature of a State on the sale of the products of other States. Article 301 declares that inter-State trade, commerce and intercourse would be free subject to the provisions following in that part. Taxation is a recognised means of giving protection and preventing free trade. Article 304(a) should not, therefore, be so construed as to nullify practically the declaration contained in Article 301. Neither the terms of Article 304(a) nor the context of the law prior to the Constitution would support the contention.

10. Section 297(1)(b) of the Government of India Act, 1935, imposed restrictions in respect of legislative, as well as executive action of the Provinces, in regard to inter-provincial exports and imports and also imposition of discriminatory taxes as against the goods produced or manufactured in other Provinces. Section 297(1)(b) of that Act stated :-

No Provincial Legislature or Government shall-...(b) by virtue of anything in this Act have power to impose any tax, cess, toll, or due which, as between goods manufactured or produced in the Province and similar goods not so manufactured or produced, discriminates in favour of the former, or which, in the case of goods manufactured or produced outside the Province discriminates between goods

manufactured or produced in one locality and similar goods manufactured or produced in another locality.

11. The Government of India Act, 1935, did not contain a guarantee of free trade like Article 301 under the Constitution. The prohibition imposed by Section 297(1)(b) limited only the powers of legislature etc. of the Provinces and not of the Centre. That section prohibited discriminatory tax by a Province as against the goods produced or manufactured in other Provinces and such prohibition was not confined to import taxes alone. In *Bharat Automobiles v. State of Assam* [1957] 8 S.T.C. 537, the validity of a provision in the Assam Sales Tax Act, 1947, namely Section 29, arose for consideration. Under that section, a dealer, who would not be liable to tax on the sale of goods if he had obtained the same within the Province, was made liable to a tax in respect of the goods obtained outside the Province. The learned Judges held that that provision contravened Section 297 of the Government of India Act and observed at page 547 :-

The tax, therefore, which purports to be levied on the dealer who sells goods obtained from outside the State, under Section 29 of the Act is, in substance, a tax on those goods and directly attracts the inhibitions prescribed by Section 297 of the Government of India Act, 1935, or Article 304 of the present Constitution, because of its discriminatory character in favour of goods produced or manufactured in the State. I am, therefore, constrained to hold that Section 29 of the Act is ultra vires.

12. That was a case where there was no tax liability on the sale of goods having their origin in that Province, while the tax was imposed on goods brought from outside the Province. Section 297 of the Government of India Act, 1935, was not understood in the limited sense now contended for but was held to invalidate a discriminatory sales tax based with reference to the origin of the goods. Under the Constitution inter-State free trade is placed on a firmer footing in the declaration in Article 301 and even Parliament cannot interfere with free trade except in a very limited class of cases. The decision of the Assam High Court dealt with a case where there was no levy of tax on indigenous goods while one was imposed on sale of goods brought from another State.

13. The same principle would apply to a case where the rate of tax on the goods having their origin in a State is different from the rate of tax levied on goods brought from outside the State, for a higher tax on the latter class of goods would impede their free flow.

14. Article 304(a) prohibits levy of any tax of discriminatory character as between the goods manufactured or produced in the State and those imported from outside that State. The words 'manufactured or produced' would exhaust all categories of goods that can be found in a State other than the goods imported and should be understood as contra-distinguished from goods imported from outside the State. They cannot be limited to goods in respect of which excise duty can be levied. The words 'any tax' would seem to indicate that it was a term of wide import, not confined to excise duty alone. It was contended by the learned Advocate-General that the words 'any tax' should be governed by what followed, that is, 'goods manufactured or produced' and should therefore be taken to mean only excise duties. If that were so, there would be no necessity for Article 304(a) at all as Article 246 read with Schedule VII, List II, entry 51, would itself enable a State Legislature only to impose countervailing duties on goods imported from other States at rates not exceeding those levied on similar goods manufactured or produced in that State. Independent of item 51 there are other entries in that list which would authorise a taxation by the State, e.g., 52 to 58. Independent of entry 51 it is possible to conceive of a State being anxious to levy a higher tax on goods from other States. It would be a reasonable construction of the Article 304(1) to hold that it contemplated a ban on all heads where discriminatory taxation was possible, as such a construction would advance the object and prevent the mischief sought to be prohibited by Article 301.

15. Article 301 deals with the freedom of inter-State trade. Its undoubted purpose is to preserve the economic integrity of India by facilitating and providing for free flow of trade and commerce between the States. In the State of Bombay v. R.M.D. Chamarbaugwala : [1957]1SCR874 , S.R. Das, C.J., observed :-

Our Constitution also proclaims by Article 301 the freedom of trade, commerce and intercourse throughout the territory of India subject to the provisions of Articles

302 to 305 which permit the imposition of reasonable restriction by Parliament and the State Legislature. The underlying idea in making trade, commerce and intercourse with, as well as within, the States free undoubtedly was to emphasise the unity of India and to ensure that no barriers might be set up to break up the national unity.

16. The ordinary conception of a free trade would imply that it should be without any barriers and that there should be no special levy on the imported goods so as to place the goods of other States passing into a State for sale in a comparatively disadvantageous position as against the goods manufactured or produced by that State. In *Kutti keya v. The State of Madras* A.I.R. 1954 Mad. 621, the word 'free' is interpreted to mean, 'in its technical acceptation freedom from economic restrictions such as duties which one State levys on goods passing into it from, or out of it into, other State.' Mr. K. Rajah Iyer quoted the following definition of free trade by Prof. Bastable in Palgraves' 'Dictionary of Political Economy', Vol. II, page 143 :

'Free trade is that system of commercial policy which draws no distinction between domestic and foreign commodities and, therefore, neither imposes additional burdens on the latter nor grants any special favours to the former'.

That clearly is the sense which the words bear in Article 301 in so far as it relates to inter-State trade.

17. From the definition extracted above it is plain that impediments and barriers for free trade need not be solely confined to barriers at the state of import. Taxation or other impediments with reference to the origin of the goods at subsequent stages after import might well impede free trade. For example if a tax is levied on the sale of goods brought from other States at a very much higher rate than that levied on sale of local goods it would be uneconomical for the person to sell the goods brought from outside and would inevitably impede free flow of trade within India.

18. Article 301 prohibits barriers of any kind which would stand in the way of free inter-State trade and commerce. Barriers can take various forms. There may be direct legislation prohibiting or restricting entry of goods from other States. Indirect

barriers can also be created by taxation. Article 303 relates to the former category, while Article 304 would relate to the latter. In *The State of Bombay v. The United Motors (India) Ltd.* : [1953]4SCR1069 , Patanjali Sastri, C.J., observed at page 1081.

It will be seen that the principle of freedom of inter-State trade and commerce declared in Article 301 is expressly subordinated to the State's power of taxing goods imported from sister States, provided only no discrimination is made in favour of similar goods of local origin. Thus the States in India have full power of imposing what in American State legislation is called the use tax, gross receipts tax etc., not to speak of the familiar property tax, subject only to the condition that such tax is imposed on all goods of the same kind produced or manufactured in the taxing State, although such taxation is undoubtedly calculated to fetter inter-State trade and commerce. In other words, the commercial unity of India is made to give way before the State-power of imposing 'any' non-discriminatory tax on goods imported from sister States.

19. Again at page 1087-the learned Chief Justice of India observed:-

It is, however, reasonable to suppose that this particular form of protection to inter-State trade and commerce provided in Article 286(2) was not intended to have a wider operation than what is contemplated in Part XIII which enshrines the general principle of freedom of inter-State commerce and defines the measure of Constitutional protection it should enjoy. If such protection is intended to give way before the State-power of taxing goods imported from sister States, subject only to the condition against discrimination, it is legitimate to suppose that the ban under Article 286(2) should not operate so as to nullify that power. True, Article 304(a) deals with the restrictions as to imposition of tax on goods, while Article 286 deals with the restrictions as to imposition of tax on sales or purchases of goods.

20. Bose, J., observed at page 1102 :-

I am with respect unable to agree that Article 286(2) is to be interpreted in the light of Article 304(a). In my opinion, the two articles deal with different things. Article 286 is concerned with sales and purchases, while Article 304 relates to goods

imported from other States. The stress in the one case is on the transaction of sale or purchase; in the other, on the goods themselves and on the act of import. Article 286 is related to Entry No. 54 of List II and to Entries 41 and 42 in List I. Article 304(a) to Entries 26 and 27 of List II read with Entry 33 in List III and to Entries 51, 52 and 56 of List II. The distinction is, I think, clear....

21. It is clear from the observations of the learned Judges of the Supreme Court that freedom of inter-State trade can be fettered by taxation and that Article 304(a) related also to items other than item 51 of List II.

22. Article 304(a) prevents discrimination in the matter of taxation between the goods manufactured or produced in the State which is legislating and goods brought into that State from outside. Tax on goods in a State can be levied in two ways : (1) at the point of manufacture or production which is known as excise duty, or (2) at any late stage, as in the case of sales tax. There is no limitation in Article 246 as regards the time at which a State Legislature Can tax the goods. Therefore goods though not manufactured or produced in a State could be taxed after they come into the State. It is undoubted that a power should exist in a State to tax goods which are brought into it from outside. In *State of Bombay v. The United Motors (India) Ltd.* : [1953]4SCR1069 , it is observed :

Does the principle of freedom of inter-State commerce require that a State should foster such commerce to the detriment of domestic trade It is one thing to avoid impeding inter-State commerce by imposing discriminatory burdens upon it which internal trade does not have to bear, but quite another to place local products and local business at a disadvantage in competition with outside goods and dealers. It would be a curious perversion of the principle of freedom of inter-State commerce to drive local custom across the border to outside dealers and that, in our opinion, could not have been contemplated.

23. But that power should be limited in the wider interests of the country and its unity. Article 304(a) is, therefore, intended to safeguard the right of a State to tax goods coming into it from other States. But, at the same time, in conformity with the declaration made in Article 301, it states that the tax levied on goods brought into it from other States shall not be higher than what the State imposes on the

goods, either manufactured or produced by it. Having regard to the object of Article 301 and 304, no discriminatory power of taxation should be vested in a State, either at the point of import or at a later time. To permit levy of discriminatory tax at a stage subsequent to the actual importation of goods from the other States would, as pointed out before, have as great a retarding effect on free inter-State trade as a levy made by way of import duty. In our opinion, it would not be open to any State to levy a tax on goods having its origin in a different State at any stage of its existence in the former State so as to discriminate it from goods of a similar kind manufactured or produced therein.

24. The question, however, remains whether Rule 16 has a discriminatory effect, as contended by the learned Advocate for the petitioner. To ascertain whether there has been any discrimination, the substance of the rule and not the form, has got to be looked into. In our opinion, Rule 16 is based on the principle of single point levy of tax and prescribes points for the levy according to the circumstances in which a sale may take place in the State and not on any principle with reference to the origin of the goods. Section 14(3) of the Central Sales Tax Act, 1956 (Act 74 of 1956) also treats hides and skins, whether dressed or raw, as a single commodity. To bring it under the taxing provisions of the Sales Tax Act, it is necessary that a point in the course of its sale in the State will have to be fixed. It may happen that goods are bought in other States and brought into the State. The purchase having been completed outside the State cannot be taxed. If subsequently a sale takes place inside the State in the tanned or untanned condition, a point for levy has to be fixed. There would therefore be a necessity for fixing alternative points, so that sales of either tanned or untanned skins might be brought within the Sales Tax Act. In the case of untanned hides and skins, the point is fixed at the last purchase in the State. In the case of tanned hides and skins, the point is fixed at the first sale by the tanner, with exemption in a case where he has paid tax on the skins in their raw condition. Since skins, tanned or untanned, constitute only one class of goods and the sale of that class of goods can be taxed only at a single point, obviously there can be no tax on a sale of tanned goods, if tax has already been paid on an earlier transaction when those skins were untanned; thus in substance the points of levy on transactions in untanned skins and tanned skins are mutually exclusive. The points fixed are not

with respect to the origin of the goods, but with respect to a single point available to the State in the circumstances of a case. That no exemption would be available where the goods were tanned outside the State is due to the fact that the goods were not in existence in the State at an earlier stage and no tax could be levied while there was a sale in its raw state. Further the tax on the sale of tanned hides and skins is not only on those imported from other States. Even in regard to hides and skins produced in this State, if, no tax was levied or leviable in their raw state, the assessment will be made only on the basis of its sale after being tanned., By way of illustration, let us take for instance a case where a dealer is not liable to assessment by reason of the turnover in raw hides and skins bought within the State being less than Rs. 10,000; if he tans them and the tanned goods are sold and the turnover therein exceeds Rs. 10,000 he would be liable to tax on the price of the tanned goods sold. Take again a case where a fanner owns a flock, slaughters, skins and tans, all within the State, he would be liable to pay only on the tanned goods as there was no purchase by him of untanned hides and skins. The levy on the sale of tanned goods is therefore not only in respect of goods bought outside the State but would also be in respect of the goods in the State. Therefore the two points of taxation alternatively fixed in Rule 16 would apply irrespective of the place of origin of the goods according to the earliest point in the sale available for taxation.

25. In that view it is unnecessary to consider whether even if Article 304(a) were to apply, Article 305 would validate the rules as the Madras General Sales Tax Act was an existing law within the latter Article; or whether a rule under the enactment could be deemed to be a statute law within the meaning of Article 304(a).

26. In our opinion, Rule 16 as re-enacted does not contravene Article 304(a) and is valid.

27. Even before we took up this case for delivering judgment, the learned counsel for the petitioner brought to our notice that in C.M.P. No. 5527 of 1959 permission had been sought to raise additional grounds. When the writ petition itself was heard and judgment reserved, it was not brought to our notice that the petitioner proposed to rely upon the additional grounds to raise which permission was

sought in C.M.P. No. 5527 of 1959. But this morning when we took up the case for delevoring judgment which had been prepared, the learned counsel pointed out that orders had to be passed in C.M.P. No. 5527 of 1959 and that if permission is granted a decision would have to be given on the basis of the additional grounds also. The questions raised in C.M.P. No. 5527 of 1959 are identical with those in other petitions which stand posted to 21st October, 1959, for disposal. Therefore further proceedings in this case will stand to 21st October, 1959.

28. This case along with C.M.P. No. 5527 of 1959 coming on for further hearing along with W.A. No. 40 of 1958 and W.P. No. 282 of 1957 on Thursday the 12th and Friday the 13th days of November, 1959 and having stood over for consideration this day the Court made the following order.

29. In our judgment in W.A. 40 of 1958 in which we considered W.P. 400 of 1957 also, we upheld the validity of Rule 16 of the Turnover and Assessment Rules the only point reserved for decision. In accordance with our directions in that judgment we direct that this petition be dismissed and rule nisi be discharged. The respondent will be entitled to his costs. Counsel's fees Rs. 250 as fixed in the consolidated judgment in W.A. 40 of 1958 etc.

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