

A M/S RAPTI COMMISSION AGENCY  
v.  
STATE OF U.P. AND ORS.

AUGUST 2, 2006

B [ARIJIT PASAYAT AND S.H. KAPADIA, JJ.]

C *U.P. Trade Tax Act, 1948—Section 8-E—Agent purchases and consigns goods to its principal situated outside the State—Revenue detained one of the consignments for not deducting tax from payments made to sellers and depositing tax—Writ Petition before High Court by the agent challenging constitutional validity of section 8-E of the Act for levying tax on an inter-state transaction—High Court upheld the constitutional validity of the Section by reading down the provision to make it applicable only to intra-State sales/purchases—Correctness of—Held, Section 8-E of the Act cannot be made D applicable to inter—State transactions—High Court was in error by reading down the provision without going into the facts—Directions issued to Revenue to deal with the case in accordance with law.*

E **Appellant-agent purchases Mentha Oil from sellers/agriculturists and consigns them to its principal situated in another State. Respondent-State Revenue detained one of the consignments and issued a notice to the appellant stating that the detention was made for not deducting tax from the payment made to the seller/agriculturists and depositing the same as required under section 8-E of the Uttar Pradesh Trade Tax Act, 1948. The appellant replied to the notice stating it is not liable to deduct and deposit F tax under the Act as it merely purchases and consigns them for and on behalf of its principal situated outside the State. When the Revenue insisted on the deposit of the tax, the appellant, by a Writ Petition before High Court, challenged the constitutional validity of section 8-E of the Act contending that the sellers/agriculturists cannot be treated as a ‘dealer’ under the proviso to section 2(c) of the Act; and that, the State does not G have legislative competence to levy tax on inter-State transactions. The High Court dismissed the Writ petition holding that the language of a statutory provision can be narrowed down to sustain its constitutional validity and accordingly held that Section 8-E of the Act is valid and is applicable only to intra-State sales/purchases; and that the appellant,**

H 250

though not liable under section 8-E of the Act, is otherwise liable to pay purchases tax on the purchases made from them under section 3(1) of the Act. A

In appeal to the Court, the appellant contended that the State has no competence to collect tax under the Act as the transactions are inter-State in nature; and that, when it is not liable to pay tax under the Act, it cannot be compelled to go through the procedure under the Act for the purpose of assessment and determination of tax, if any. B

The State, supporting the High Court judgment, raised a preliminary objection contending that the Writ Petition will not lie since there is an alternative remedy available under the Act. C

Allowing the appeal with directions, the Court

**HELD: 1.1.** The plea of alternative remedy has not been raised by the State before High Court as there is no discussion in its judgment in this regard. Further, the constitutional validity of Section 8-E of the Uttar Pradesh Trade Tax Act, 1948 cannot be decided by the statutory authorities under the Act. [254-B] D

**1.2.** The High Court observed that the language of Section 8-E of the Act can be narrowed down so as to make it applicable only to intra-State sales/purchases. The appellant raised the dispute on the factual aspects contending that the transaction was one of inter-state character. Its emphasis was on the validity of the provision *vis-a-vis* inter-state transactions. There was no necessity of any reading down as there was no dispute in the case at hand relating to intra-states. The question of the appellant having liability to pay purchases tax was also not a relevant factor for determination of the basic question regarding validity of section 8-E of the Act. The nature of a transaction cannot be decided on the basis of the provisions of a taxation statute. It has to be factually examined. The High Court, instead of focussing on the factual aspects, dealt with issues not relevant, and that too giving clearly indefensible interpretations. The factual aspects should have been asked to be dealt with by the authorities. By directing the authorities to do it after laying down the law, which was not the correct position in law, would really serve no purpose. Section 8-E of the Act cannot be held to be applicable to inter-State transactions. E F G  
[257-D-E-F-G-H; 258-B]

*Steel Authority of India v. State of Orissa and Ors.*, [2000] 3 SCC 200 H

A and *Nathpa Jhakri Joint Venture v. State of H.P. and Ors.*, [2000] 3 SCC 319, relied on.

*Minerva Mills Ltd. and Ors. v. Union of India and Ors.*, [1980] 3 SCC 625; *M/s Bhawani Cotton Mills Ltd. v. State of Punjab and Anr.*, AIR (1967) SC 1616 and *M.P. Cement Manufacturers' Association v. State of M.P. and Ors.*, [2004] 2 SCC 249 referred to.

*Northern Securities Company v. United States*, 193 US 197, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 9687 of 2003.

From the Judgment and Order dated 8.7.2003 of the High Court of Allahabad, in Civil Misc. Writ Petition No. 865 of 2001.

Dhruv Agarwal and Praveen Kumar for the Appellant.

D R.G. Padia, S. Wasim A. Qadri, Kamendra Mishra, R.K. Dubey and Rashmi Singh for the Respondents.

The Judgment of the Court was delivered by

E **ARIJIT PASAYAT, J.** Challenge in this Appeal is to the judgment rendered by a Division Bench of the Allahabad High Court repelling the challenge to constitutional validity of Section 8-E of the Uttar Pradesh Trade Tax Act, 1948 (in short the 'Act'). By the impugned judgment several writ petitions involving identical challenge were disposed of. Aforesaid Section 8-E of the Act was inserted by Section 7 of the U.P. Act No. 11 of 2001.

F A brief reference to the factual aspects would suffice.

Appellant filed the writ petition, *inter alia*, with following stands:-

G Appellant is an agent of principals situated outside the State of Uttar Pradesh, who for the sake of convenience are described as 'Ex-U.P. Principals'. Appellant purchased Mentha Oil for and on behalf of Ex-U.P. Principals and dispatched them to the said principals on the basis of agreements entered into. One consignment of Mentha Oil was detained by the Trade Tax officer, Mobile Squad, Jhansi and the driver was informed by a notice that the detention was made because the appellant had not deducted the tax from the sellers/H agriculturists and had not deposited the same in terms of Section 8-E of the

Act. Appellant sent a reply on 11.7.2001 stating that the purchase of Mentha Oil was for and on behalf of Ex-U.P. Principals from the agriculturists and all the documents accompanying the consignment clearly established this fact. When the authority insisted on deposit of the tax in terms of Section 8-E of the Act the Writ Petition was filed. Because similar detentions were made in case of others, writ petitions were filed challenging constitutional validity of Section 8-E of the Act. The primary challenge was that the seller was not a "dealer" as defined in the Act i.e. Section 2(c). Reference was made to proviso to the provision in this regard. Further the transactions in question being inter-state in character the State Government did not have legislative competence to provide for deduction of tax in respect of such transactions. The respondents-State and its functionaries who were respondents in the writ petition supported the constitutional validity of the impugned provision.

The High Court basically came to the conclusion that the language of a statutory provision can be narrowed down if that is necessary to sustain the constitutional validity. Accordingly it was held that the language of Section 8-E of the Act shall be narrowed down so as to make it applicable only the intra-State sales/purchases and held the provision to be valid. It was further held that even though the agriculturists/farmers who sell their produces to the appellant cannot be treated as "dealer" in view of proviso to Section 2(c), yet appellant had a liability to pay purchase tax on the purchases made in view of Section 3(1) of the Act. Though the High Court held that the trade tax authority concerned may decide in respect of each transaction on the facts of each case whether it is an intra-State sale or purchase or not, that according to the High Court did not affect validity of Section 8-E.

Questioning correctness of the judgment of the High Court learned counsel for the appellant submitted the High Court clearly missed to notice the basic issues involved. The transactions being undisputedly inter-State transactions, the State legislature had no competence to provide for deduction of tax at the time of making purchase. Strong reliance was placed on the decisions of this Court in *Steel Authority of India Ltd. v. State of Orissa and Ors.*, [2000] 3 SCC 200 and *Nathpa Jhakri Joint Venture v. State of H.P. and Ors.*, [2000] 3 SCC 319 with reference to the decisions of this Court in *M/s Bhawani Cotton Mills Ltd. v. State of Punjab and Anr.*, AIR (1967) SC 1616. It was submitted that when a person has ultimately no liability to pay tax, he cannot be compelled to go through the procedure provided under the statute for the purpose of assessment and determination of tax liability, if



when, especially, it undertakes a constitutional amendment.

A

65. xxx

xxx

xxx

If the Parliament has manifested a clear intention to exercise an unlimited power, it is impermissible to read down the amplitude of that power so as to make it limited. The principle of reading down cannot be invoked or applied in opposition to the clear intention of the legislature. We suppose that in the history of the constitutional law, no constitutional amendment has ever been read down to mean the exact opposite of what it says and intends. In fact, to accept the argument that we should read down Article 31C, so as to make it conform to the ratio of the majority decision in *Kesavananda Bharati* is to destroy the avowed purpose of Article 31C as indicated by the very heading "Saving of certain laws" under which Articles 31A, 31B and 31C are grouped. Since the amendment to Article 31C was unquestionably made with a view to empowering the legislatures to pass laws of a particular description even if those laws violate the discipline of Articles 14 and 19, it seems to us impossible to hold that we should still save Article 31C from the challenge of unconstitutionality by reading into that Article words which destroy the rationale of that Article and an intendment which is plainly contrary to its proclaimed purpose."

B

C

D

E

There is no, and can be none, quarrel to the proposition that if on one construction a given statute will become ultra vires the powers of the Legislature whereas on another construction, which may be open, the statute remains effective and operative, the Court will prefer the latter, on the ground that the Legislature is presumed not to have intended an excess of its jurisdiction. But as observed by Holmes J. in *Northern Securities Company v. United States* 193 US 197, the rule requires that "the statute must be construed in such a way as not merely to save its constitutionality but so far as it is consistent with fair interpretation, not to raise grave doubts on that score".

F

G

The rule does not apply when the offending words have only one meaning e.g. when the restricted meaning makes them useless or redundant (See *M.P. Cement Manufacturers' Association v. State of M.P. and Ors.*, [2004] 2 SCC 249).

In other words, the rule applies only where two views are possible as

H

A to the meaning of the statutory language. In neither *Steel Authority's* case (supra) nor *M/s Nathpa Jhakri's* case (supra) that was the position. The basic issue related to power to provide for any deduction of tax in respect of inter-state transactions. There was no issue relating to intra-state transactions. Therefore, the question of any reading down was of no relevance.

B In *Steel Authority of India's* case (supra) it was inter alia observed as follows:

C 8. By virtue of Entry 54 of List II of the Seventh Schedule read with Article 246 of the Constitution of India, the States are empowered to levy taxes on the sale or purchase of goods, other than newspapers. The Forty-sixth Amendment to the Constitution introduced, inter alia, Clause (29A)(b) in Article 366 of the Constitution; as a result, tax on the purchase or sale of goods included a tax "on the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract". Article 286(1) of the Constitution states that no law of a State shall impose, or authorise the imposition of a tax on the sale or purchase of goods where such sale or purchase takes place outside the State or in the course of the import of goods into, or export of goods out of the territory of India. Article 286(2) authorises Parliament by law to formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in sub-Article (1). Acting upon this power, Parliament has set out in Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 principles for determining when a sale or purchase of goods can be said to take place in the course of inter-State, trade or commerce, when a sale or purchase of goods can be said to take place outside the State and when a sale or purchase of goods can be said to take place in the course of import or export. In *Gannon Dunkerley and Co. and Ors. v. State of Rajasthan and Ors.*, [1993] 1 SCC 364, this Court has held that it is necessary to exclude from the value of a works contract the value of goods which are not taxable by a State in view of Sections 3, 4 and 5 of the Central Sales Tax Act, 1956. The value of goods involved in the execution of a works contract has to be determined after making these exclusions from the value of the works contract.

H 13. There can be no doubt, upon a plain interpretation of Section 13AA, that it is enacted for the purposes of deduction at source of the State sales tax that is payable by a contractor on the value of a works

contract. For the purposes of the deduction neither the owner nor the Commissioner who issues to the contractor a certificate under Section 13AA(5) is entitled to take into account the fact that the works contract involves transfer of property in goods consequent upon of an inter-State sale, an outside sale or a sale in the course of import. The owner is required by Section 13AA(1) to deposit towards the contractor's liability to State sales tax four per cent of such amount as he credits or pays to the contractor, regardless of the fact that the value of the works contract includes the value of inter-State sales, outside sales or sales in the course of import. There is, in our view, therefore, no doubt that the provisions of Section 13AA are beyond the powers of the State legislature for the State legislature may make no law levying sales tax on inter-State sales, outside sales or sales in the course of import."

In *M/s Nathpa Jhakri's* case (supra) the view expressed in *Steel Authority of India's* case (supra) was reiterated.

The High Court also observed that it was reading down and narrowing down the language of the provision to sustain the constitutional validity of the same. It was observed that the language of Section 8-E can be narrowed down so as to make it applicable only to intra-state sales/purchases. The appellant in fact raised the dispute on the factual aspects contending that the transaction was one of inter-state character. Its emphasis was on the validity of the provision *vis-a-vis* inter-state transactions. There was no necessity of any reading down as there was no dispute in the case at hand relating to intra-state sales. The question of appellant having liability to pay purchase tax was also not a relevant factor for determination of the basic question regarding validity of Section 8-E. The nature of a transaction cannot be decided on the basis of the provisions of a taxation statute. It has to be factually examined. The High Court instead of focussing on the factual aspects dealt with issues not relevant, and that too giving clearly indefensible interpretations. The factual aspects should have been asked to be dealt with by the authorities. By directing the authorities to do it after laying down the law, which as noted down was not the correct position in law, would really serve no purpose. On the facts of the case, there is no need to decide the question relating to validity of Section 8-E of the Act except stating that the provision is subject to what has been stated in *Steel Authority's* case (supra) and *M/s Nathpa Jhakri's* case (supra), for which the factual determination has to be done by the authorities. Therefore, we allow the appeal subject to the following

A directions:

(1) The reply filed by the appellant on 11.7.2001 shall be dealt with by the respondent no. 3 in accordance with law. The said authority shall decide as to the nature of the transaction i.e. whether it is of intra- state or inter-state character. If it is of inter-State character, the decisions in *Steel Authority's* case (supra) and *Nathpa Jhakri* case (supra) shall apply. Section 8-E, therefore, cannot be held applicable to inter-State transactions.

B

(2) The question whether the appellant has any liability to pay purchase tax shall not be dealt with in the proceedings relating to which the notice was issued on 8.7.2001 and the reply was filed on 11.7.2001.

C

(3) It will be for the appellant to establish that the transaction in question was of inter-State character.

(4) The appellants shall be given opportunity to file further reply and place such materials as according to it are relevant before the concerned authority within four weeks from today.

D

(5) Considering the reply and further reply and materials to be placed for consideration by the appellant, the concerned trade tax authority shall decide the issue in accordance with law.

E

Before we part with the case, it would be appropriate to remind the legislatures of what was stated in *Bhawani Cotton Mill's* case (supra) that if a person is not liable for payment of tax at all, at any time, the collection of a tax from him, with a possible contingency of refund at a later stage, will not make the original levy valid, because if sales or purchases are exempt from taxation altogether, they can never be taken into account, at any stage, for the purpose of calculating or arriving at the taxable turnover and for levying tax. The view was reiterated in *Steel Authority's* case (supra) and *Nathpa Jhakri* case (supra). In the latter case, it was noted, echoing the view in *Bhawani Cotton Mill's* case (supra) that it is no solace to say that such a person can get refund after completion of assessment. If the principles indicated in these cases are followed, large number of unnecessary litigations can be avoided.

F

G

The appeal is allowed to the aforesaid extent without any order as to costs.

B.S.

Appeal allowed with directions.