(1963) 12 P&H CK 0008

High Court Of Punjab And Haryana At Chandigarh

Case No: Second Appeal No. 815 of 1962

Timber Traders Association, Pathankot		APPELLANT
	Vs	
District Board, Gurdaspur		RESPONDENT

Date of Decision: Dec. 17, 1963

Acts Referred:

- Constitution of India, 1950 - Article 301, 303, 304, 304(b), 305

Citation: AIR 1965 P&H 97

Hon'ble Judges: A.N. Grover, J

Bench: Single Bench

Advocate: D.N. Awasthy and Naginder Singh, for the Appellant; H.R. Sodhi and A.L. Bahri, for the Respondent

Judgement

A.N. Grover, J.

This is a second appeal arising out of a suit for a declaration that the sleeper tax imposed by the District Board, Gurdaspur, at the rate of six Naye Paise per sleeper imported into the area subject to the authority of the District Board, Gurdaspur by any road which came into force from 23rd July 1959, by virtue of notification No. 11992/LD/-58/13577A dated 23rd April 1959 was unauthorised, illegal, unconstitutional etc. and for a permanent injunction restraining the defendant Board from recovering the said tax. The trial Court decreed the suit to the extent of declaring that the imposition of tax on sleepers which were only transported through the area of the District Board and not consumed, used or sold therein was illegal and ultra vires and a permanent injunction was granted restraining the defendant Board from recovering that tax from the timber traders who were member of the plaintiff Association. The lower appellate Court came to a different conclusion and held that the tax had been validly imposed and that the plaintiff Association was not entitled to the declaration prayed for or to the injunction being granted.

It was held that the Board was entitled to realise the tax from 1st August 1959. The controversy now in the second appeal is confined to a few points only but before they can be discussed it is necessary to state certain facts. Originally by means of a notification dated 9th October 1956 the Governor of the Punjab at the request of the District Board, Gurdaspur was pleased to notify the imposition of sleeper tax of one anna per sleeper transported by Shahpurkandi-Madhopur and (sic)-Pathankot roads with effect from 1st February, 1957. The validity of the imposition of that (sic) was impugned by means of a regular action culminating in the decision in Mangat Ram Roshan Lal and Others Vs. Punjab State and Others, . The validity of section 80 of the Punjab District Boards Act, 1883, as also of the notification which was issued under it imposing the tax on sleepers as mentioned above was upheld by the Full Bench. On 6th April, 1957 the District Board passed a resolution No. 119 (II) which was as billows:

The present rate is one anna per sleeper transported on Madhopur-Shahpurkandi and Shahpurkandi-Pathankot roads only. There is a great leakage as timber merchants import sleepers by other roads or by Chakki river. It will be in the interest of the Board if this tax is imposed on sleepers imported in District Board limits by all routes. The equivalent of one anna is 614 Naya Paisas and the Government have substituted 6 Naya Paisas for one anna the Board will put to loss. So the Government may be requested to enhance to 10 Naya Paisas per sleeper. The following amendment may be approved.

Local Government Notification No. 10022-LB-56/7090 dated 9-10-1956 may be substituted by the following:

No.--------. In exercise of the powers conferred by clause (a) to sub-section (6) of S. 31 of the Punjab District Boards Act 1883, the Governor of the Punjab at the request of the District Board Gurdaspur is pleased to notify the imposition of sleeper tax of 10 Naya Paisas per sleeper imported into District Board limits by all routes. The sleeper tax will come into force with effect from 1-7-1957.

Board''s Order

Tax at 7 Naya Paisas is approved. Government sanction be obtained.

The Secretary, District Board, addressed a letter dated 13th May T957 to the Deputy Commissioner, Gurdaspur (Exhibit D. 4), the material part of which may be reproduced:

The District Board Gurdaspur was allowed by the Punjab Government vide their notification No. 10022-LB-56/7090 dated 9-10-56 to impose a sleeper tax @ one anna per sleeper transported by Shahpurkandi-Madhopur and Shahpurkandi-Pathankot roads, as timber was generally imported into the District by these roads. Experience has shown that there is great leakage of tax as some timber is imported by other roads etc. The Board has, therefore, decided vide

resolution No. 119(II) dated 6-4-57 to substitute the present tax by a tax on the import into District Board area of timber by all routes.

After certain other correspondence and after observing other formalities required by law a notification (Exhibit D. 34) was issued on 23rd April, 1959 which is the subject-matter of the present litigation and which was in the following terms-

In exercise of the powers conferred by sub-section (6) of section 31 of the Punjab District Boards Act 1883, (Act No. XX of 1883), the Governor of Punjab at the request of the District Board, Gurdaspur is pleased to sanction and notify the imposition of sleeper tax at the rate of six naye paisa per sleeper imported into the area subject to the authority of the said Board, by any road. The said tax shall come into force with effect from 1-7-1959 from which date the Punjab Government Notification No. 10022-LB-56/7090 dated the 9th October, 1956, shall be deemed to have been cancelled.

Explanation: For the purpose of this notification ''sleeper'' shall have the meaning assigned to it in the regulations published with Punjab Government Notification No. 11992-LB-58/13577A dated the 23rd April 1959.

2. Although a number of points were agitated in the Courts below, it is no longer disputed on behalf of the plaintiff-appellant that the notification dated 23rd April 1959 is valid so far as those sleepers are concerned which are imported within the jurisdiction of the District Board which was abolished on 8th February 1962 but which has now been replaced by the Zila Parishad. For the purposes of this case, however reference will be made to the District Board only. The controversy centres round the meaning and connotation of the words "imported into the area". According to the appellant, this expression can cover only those sleepers which are brought into the area subject to the authority of the District Board for purposes of consumption, use or sale therein, whereas it is maintained on behalf of the respondent that as soon as any sleeper is brought within such area it becomes liable to the levy of tax even if it is brought there merely in the course of transportation to places outside the area of the District Board. In other words, the position taken up on behalf of the respondent is that even those sleepers which passed through the area of the District Board in the course of transportation would be covered by the notification.

In this connection the decision in the The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, may be referred to with advantage. In that case the appellants before their Lordships used to transport bales of cotton from Yeotmal to Nagpur by road and vehicles carrying them passed through the limits of Wardha Municipality. The goods being in transit, the vehicles carrying them did no more than use the road which traversed the municipal limits of Wardha and was a P.W.D. road. The goods were neither unloaded nor reloaded at Wardha but were merely carried

across through the municipal area. The Municipal Committee purporting to act u/s 66(1)(o) of the Act and Rule 1 of the Rules made thereunder collected Rs. 240/- as terminal tax on those goods on the ground that they were exported from the limits of the Municipality of Wardha. In the litigation, which followed, the main question was whether the goods passing through the limits of Wardha Municipality by road dispatched from Yeotmal to their destination at Nagpur without being unloaded or reloaded at Wardha were liable for an export terminal tax? Rule 1 of the Terminal Tax Rules made under the provisions contained in the C.P. and Berar Municipalities Act, 1922. provided:

(1) On the following goods exported by rail or road a terminal tax shall be levied at the rate noted against each; at 2 as per mannd of 40 seers; Cotton.

(2) On the following goods imported by rail or road a terminal tax shall he levied at the rate noted against each.

While considering the rival contentions of the parties J.L. Kapur J. speaking for the Court observed that in construing the words of the taxing statute "imported into or exported from" etc., if there are two possible interpretations then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him. As regards the words "import" "export", reference was made to the Latin words from which they were derived which are "importare" and exportare", the first meaning "to bring in" and the second, "to carry out". It was observed that lexico-logically they did not have any reference to goods in "transit" a word derived from transire bearing a meaning similar to transport, i.e., to go across. The dictionary meaning of the words "import" and "export", as has been further observed, is not restricted to their derivative meaning but bear other connotations also. According to the Webster''s International Dictionary, the word "import" means to bring in from a foreign or external source; to introduce from without; especially to bring (wares or merchandise) into a place or country from a foreign country in the transactions of commerce; opposed to export. The word "transit" in the Oxford Dictionary means the action or fact of passing across or through; passage or journey from one place or point to another; the passage or carriage of persons or goods from one place to another; it also means to pass across or through (something) to traverse, to cross J.L. Kapur J. proceeded to observe:
Even according to ordinary meaning of the words which is relied upon by the respondent, goods which are in transit or are being transported can hardly be called goods "imported into or exported from" because they are neither being exported nor imported but are merely goods carried across a particular stretch of territory or across a particular area with the object of being transported to their ultimate destination which in the instant case was Nagpur.

Referring to certain cases which had been cited before their Lordships it was observed that in none of them was the argument as to qualification stemming from

the use of the words "terminal tax" considered nor was the signification of the word "terminal" as a prefix to the word tax discussed. Reference was also made to two English cases, Muller v. Baldwin, (1874) 9 QB 457 in which the meaning of the words "coals exported from the Port" and Wilson v. Robertson, (1855) 24 LJQB 185 in which the words "imported into or exported from Berwick harbour" had come up for interpretation. In the first case, Lush J. was of the view that there was nothing in the language of the Act to show that the word "exported" was used in am other than its ordinary sense. Therefore, the coals carried away from the port, not on a temporary excursion, hut taken away for the purpose of being wholly consumed beyond the limits of the port, were coals "exported" within the meaning of the Act. In the second case the duty was imposed on all goods "imported into or exported from Berwick harbour" which extended down the Tweed to the sea but no part of it extended above the bridge. Lord Campbell C.J. in that case observed:

We can, however, look only to what the legislature has enacted, in order to see whether this burthen is east upon the defendants. The dues are only to be paid upon goods imported into the harbour of Berwick, the limits of which are defined by the Act, and which does not extend above the bridge. Now, has this iron been so imported? It is admitted that, if it had been carried through the bridge to a port higher up the river, no dues would have been payable; and the plaintiff''s counsel by that admits himself out of court.

J.L. Kapur, J. then proceeded to express the following view:

By giving to the words "imported into or exported from" their derivative meaning without any reference to the ordinary connotation of these words as used in the commercial sense, the decided cases in India have ascribed too general a meaning to these words which it appears from the setting, context and history of the clause was not intended. The effect of the construction of ''import'' or ''export'' in the manner insisted upon by the respondent would make lail-borne goods passing through a railway station within the limits of a Municipality liable to the imposition of the tax on their arrival at the railway station or departure therefrom or both which would not only lead to inconvenience but confusion, and would also result in inordinate delays and unbearable burden on trade both inter State and intra State. It is hardly likely that that was the intention of the legislature. Such an interpretation would lead to absurdity which has, according to the rules of interpretation, to be avoided.

Reference was further made to the opinion of Chief Justice Marshall in Brown v. State of Marvland, (1827) 12 Wheat 419 at p. 442 dealing with the word "importation" which is as follows:

The practice of most commercial nations conforms to this idea. Duties, according to that practice, are charged on those articles only which are intended for sale or consumption in the country. Thus seastores, goods imported and re-exported in the

same vessel, goods landed and carried over land for the purpose of being re-exported from some other port, goods forced in by stress of weather and landed, but not for sale are exempted front the payment of duties.

Finally it was observed by J.L. Kapur J. at page. 347:

This supports the contention raised that ''import, is not merely the bringing into but comprises something more i.e. "incorporating and mixing up pf the goods imported with the mass of the property" in the local area. The concept of ''import'' as implying something brought for the purpose of sale or being kept is supported by the observations of Kelly C.B. in Harvey v. Corporation of Lyme Regis (1869) 4 Ex 260 at p. 282. There the claim for a toll was made under the Harbour Act and the words for construction were ''goods landed or shipped within the same cobb or harbour''. Construing these words Kelly C.B. said:

The ordinary meaning and purport of the words is perfectly clear, namely, that tolls are to be paid on goods substantially imported; that is, in fact, carried into the port for the purpose of the town and neighbourhood.

In view of the decision of their Lordships in the above case there could be little doubt that the words "imported into the area" could not be given their derivative meaning and would not cover those sleepers which were brought in and taken out of the limits of the District Board in the course of transportation without being unloaded there.

3. It is, however, contended by Mr. H.R. Sodhi, who appears for the respondent, that the entire background comprising the resolutions and the correspondence which preceded the issuance of the impugned notification shows that the intention was to use the word "imported" in its derivative sense and to give it a derivative meaning and that would include all such cases where sleepers were simply brought inside the limits of the District Board even though in the course of transportation to areas beyond those limits. It is pointed out that originally the sleeper tax was levied in clear words by means of the notification dated 9th October 1956 on all sleepers transported by Shahpurkandi-Madhopur and Shahpurkandi-Pathankot roads. The resolution dated 6th April 1937 (Exhibit D. 3) shows that the intention was to extend the scope of the levy of tax beyond the aforesaid two roads and to impose it on sleepers which were brought into the District Board limits by all routes. This is supported by Exhibit D. 4, copy of the memorandum dated 13th May 1957 from the Secretary, District Board, to the Deputy Commissioner. Exhibit D. 5 is a copy of memorandum dated 14/16th July 1957 from the Secretary to Government, Punjab, to the Deputy Commissioner, according sanction of the Governor to the imposition of sleeper tax on the sleepers imported in the area of the District Board, Gurdaspur, by all routes, instead of the existing sleeper tax on the sleepers imported by Madhopur-Shahpur Kandi and Shahpur kandi Pathankot Roads.

By means of Exhibit D. 8, the District Board invited objections to the imposition of the aforesaid tax and this was followed by a public notice in certain newspapers, copies of which have been filed. Exhibit D. 33 shows that no objection or suggestion was received within the prescribed period of 30 days and, therefore, the notification in question was finally issued on 23rd April 1959. It may be mentioned that the words which were to be found in the previous documents to which reference has been made regarding sleepers being imported in the District Board limits by all routes do not find any place in the notification dated 23rd April 1959. Mr. Sodhi says that even in the matter of a statutory enactment it is always open to the Court when the terms of the statute are ambiguous or vague that, resort can be had for the purpose of arriving at the true intention of the legislature to the statement of objects and reasons attached to a bill or the circumstances under which certain words came to be deleted from certain provision of the bill though ordinarily these are not aids to the construction or the terms of a statute which have to be given their plain and grammatical meaning, vide Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others, . He has also relied on the observations in a Full Bench decision in Hazara Singh Ganda Singh Vs. The State of Punjab and Others, in which it was laid down that where a word was used in an Act, which was capable of various shades of meaning, the particular meaning to he attached must be arrived at by reference to the scheme of the Act or of the section in particular taken as a whole. No exception could be taken to that rule. In that ease, however, the words appearing" in a remedial statute were being considered, the rule with regard to which is that the Court must give to the provision of law as wide an interpretation as possible consistently with the language used by the legislature. As has been previously noticed with regard to the taxing statutes or enactments, if two interpretations are possible then effect is to be given to the one that favours the citizen and not the one that imposes a burden on him.

It was admitted before the trial Court that the timber merchants who are the members of the plaintiff Association have their depots and shops within the limits of the Pathankot Municipality and that the timber is directly taken and stored for sale or consumption etc. there. The timber merchants pay octroi duty for the timber they import within the jurisdiction of the Pathankot Municipal Committee. It was found that none of the members of the plaintiff Association has any sale depot or factory where the sleepers are either consumed, used or sold anywhere else. They are only wrought from Kashmir and Himachal Pradesh Forests and transported on the road running through the area within the jurisdiction of the District Board. The trial Court followed the Supreme Court decision in The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha, and held that the goods which were merely in transit could not be deemed to have been imported into the area subject to the authority of the District Board. The lower appellate Court merely contented itself by referring to entry 56 in List II of Schedule VII of the Constitution of India which is "taxes on

goods and passengers carried by road or on inland waterways" and considered that the sleepers imported into the area by road could be validly subjected to tax under that entry.

In this connection it may be observed that the question that has to be considered is not so much as to whether the tax levied by the impugned notification was covered by item No. 56 as contended by the respondent or under item No. 52 as asserted by the appellant but what has to be seen is whether sleepers which merely passed through the area of the District Board in the course of transportation would be covered by the notification. It does appear that if it were permissible to look into the correspondence and the resolutions which preceded the promulgation of the notification, the object was to impose tax on all sleepers which came within the jurisdiction of the Board no matter whether they were being brought in only for purposes of transportation but it would be open to examine the previous background only if there is any ambiguity in the language employed in the notification itself. It there is no ambiguity and if the words "imported into the area" are clear enough I do not consider that it would be open to the Courts to look at the correspondence and the resolutions of the Board preceding the issuance of the notification. The word "imported" was used without any qualification or modification in the notification and the only meaning that can be given to it in the light of exposition of the law on the point in the Supreme Court decision would be the one which should have reference to the ordinary connotation of these words as used in the commercial sense. Thus the sleepers which are brought into the area of the Board merely in the course of transportation and carried from one place to another cannot be regarded to be covered by the notification in question. As held in The Commissioner of Income Tax, Bombay Vs. The Elphinstone Spinning and Weaving Mills Ltd., if the words of a taxing statute fail, then so must the tax. The Courts cannot, except rarely and in clear cases, help the draftsmen by a favourable construction.

4. It was contended before the lower appellate Court that if the words "imported into the area" are taken to mean that even those sleepers which are brought into the limits of the Board in the course of transit and carriage to other places have been subjected to tax by the impugned notification, there would be a contravention of the provisions contained in Part XIII of the Constitution. Article 301 provides that subject to the other provisions of this Part, trade, commerce and intercourse throughout the territory of India shall be free. Article 304 provides that notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law:

(a) * * * * *

(b) impose such reasonable restrictions on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest:

Provided that no Bill or amendment for the purposes of clause (b) shall be introduced or moved in the Legislature of a State without the previous sanction of the President.

Article 305 says that nothing in Article 301 etc. shall affect the provisions of any existing law except in so far as the President may by order otherwise direct. The lower appellate Court did not fully go into the matter but before me it has been argued by Mr. Awasthy that the impugned notification would be a law which would be covered by Article 304(b) read with the proviso. It is pointed out that the District Board can, with the previous sanction of the State Government, impose any tax which the State Legislature has the power to impose in the State under the Constitution by virtue of the provisions contained in S. 30 of the Punjab District Boards Act. It is said that if the State Legislature wanted to impose any such tax which would offend the provisions of Article 301 it could do so only by complying with the proviso to Article 304(b) and, therefore, the District Board could not possibly have promulgated the aforesaid notification which has the effect of imposing restrictions on the freedom of trade and commerce within the State. Mr. Sodhi has submitted that under Article 305 the provisions of any existing law would be exempt from the operation of Article 301 except in so far as the President may by order otherwise direct. As there is no such order by the President, section 30 of the Punjab District Boards Act is saved in its entirety and no question of reference to Article 301 and Article 304 arises at all.

Mr. Sodhi has relied on a decision of Wan choo C.J. (as he then (sic) and Bapna J. in Surajmal Baj v. State of Rajasthan, AIR 1934 Raj 200 wherein it was held that the rules and bye-laws framed by the Municipals Municipality at Jaipur imposing octroi duty from 1st September 1953, were valid and did not come into conflict with Article 301 in view of Article 305. It was observed that Art. 305 clearly showed that the intention was to save the provisions of existing laws and if those provisions authorised a municipal hoard to frame bye-laws and impose octroi duty, the power to frame such bye-laws and impose such duty in future was also saved. The words "existing law" as defined in Article 306 include not only laws but also bye-laws and rules. Mr. Awasthy says that the real decision in point is the one in VZ Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, . In that case it has been held that if the transport or the movement of goods is taxed solely on the basis that the goods are thus carried or transported that directly affects the freedom of trade as contemplated by Article 301.

The circumstances which gave rise to the litigation which came up before their Lordships were that certain tea companies carried on their trade of growing tea in the District of Sibsagar in Assam and in Jalpaiguri in West Bengal. They used to carry their tea to Calcutta in order that it might be sold in the Calcutta market for home consumption or export outside India. The tea produced in Jalpaiguri had to pass through a few miles of territory in the State of Assam, while the tea produced in

Assam had to pass through Assam to reach Calcutta. The Assam Taxation (On Goods Carried by Roads or Inland Waterways) Act, 1954, provided for the levy of a tax on certain goods carried by road or inland waterways in the State of Assam. The vires of that enactment came to be challenges on various grounds, one of which was the applicability of Articles 301 and 304(b). At page 255 Gajendragadkar J., delivering the judgment of the majority, observed:

It is thus obvious that the purpose and object of the Act is to collect taxes on goods solely on the ground that they are carried by road or by inland waterways within the area of the State. That being so, the restriction placed by the Act on the free movement of the goods is writ large on its face. It may be that one of the objects in passing the Act was to enable the State Government to raise money to keep its roads and waterways in repairs; but that object may and can be effectively achieved by adopting another course of legislation; if the said object is intended to be achieved by levying a tax-on the carriage of goods it can be so done only by satisfying the requirements of Article 304(b).

In that case as the requirements of that provision had not been satisfied, it was held that the validity of the taxing statute could not be sustained This decision came up for a more exhaustive consideration by a larger Bench in The Automobile Transport (Rajasthan) Ltd. Vs. The State of Rajasthan and Others, . In that case the question was whether the taxes imposed under the Rajasthan Motor Vehicles Taxation Act hindered the freedom of trade, commerce and intercourse assured by Article 301. S.K. Das J., who delivered the judgment of the majority, gave the following exposition of law at page 1424:

We have, therefore, come to the conclusion that neither the widest interpretation nor the narrow interpretations canvassed before us are acceptable. The interpretation which was accepted by the majority in the Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, is correct, but subject to this clarification. Regulatory measures or measures imposing compensatory taxes for the use of trading facilities do not come within the purview of the restrictions contemplated by Article 301 and such measures need not comply with the requirements of the proviso to Article 304(b) of the Constitution.

In that case the taxes imposed were really taxes on motor vehicles which used the roads in Rajasthan or were kept for use therein, either throughout the whole area or part of it. The tax was payable by owners of motor vehicles, traders or otherwise. The tax imposed, therefore, was held to be one for use of roads in Rajasthan and it could not be said that it hindered the tree movement of trade or commerce or intercourse. Mr. Awasthy points out that this decision was clearly distinguishable inasmuch as the tax was imposed on the motor vehicles for the use of roads and there was no question of any hindrance to free trade, commerce or intercourse whereas in the present case as in Atiabari Tea Co., Ltd. Vs. The State of Assam and Others, the tax was sought to be levied or imposed on goods in the course of transit

and that must be held to directly fall within the rule laid down in the previous decision. It does seem to me that there is a good deal of force in what Mr. Awasthy says and in that situation it would have been necessary to examine in greater detail the question whether Article 305 would save the levy of tax under the impugned notification but I do not consider it necessary to go into that matter which does not appear to me to be free from difficulty owing to my decision on the first point which is enough for the decision of the appeal.

5. In the result, the appeal is allowed, the decree of the lower appellate Court is set aside and that of the trial Court restored, but in the circumstances I make no order as to costs.