

(1997) 08 GAU CK 0018

Gauhati High Court

Case No: Civil Rule No"s. 3561/93, 3562/93, 3574/93, 3583/93, 3728/93 and 3730/93 and 247/94, 383/94, 384/94, 483/94, 509/94, 1590/93 and 1593/94

Victory Veneers Pvt. Ltd and
Others

APPELLANT

Vs

State of Nagaland and Others

RESPONDENT

Date of Decision: Aug. 8, 1997

Acts Referred:

- Constitution of India, 1950 - Article 14, 19(1), 21, 269(1), 286
- Nagaland Purchase Tax Act, 1993 - Section 2(5), 4

Citation: (1997) 2 GLR 489

Hon'ble Judges: D.N. Chowdhury, J

Bench: Single Bench

Advocate: K. Gogai, A.K. Saraf, A.K. Maheswari, S. Mitra, A. Dutta, K.K. Gupta and A. Devi, for the Appellant; Govt. Advocate, for the Respondent

Final Decision: Dismissed

Judgement

D.N. Chowdhury, J.

The constitutional validity of the Nagaland Purchase Tax Act, 1993 is assailed in this batch of Writ petitions.

2. For deciding these cases, I shall confine only to the facts referred to in Civil Rule Nos. 3562/93. Since the facts in the other Civil Rules are of similar nature all these cases are taken up for hearing together.

3. The Petitioners Company purchase timber in log form from different owners of forests as well as persons who operates such forests in the State of Nagaland. The Petitioners claimed themselves as intermediary purchasers of timbers mainly in the log and no felling operations are carried out by the Petitioners. From the logs purchased by the Petitioners as intermediary purchasers, sawn timber is obtained by sawing the logs in the Mill factory owned by the Petitioner. A part of the

unconverted timber purchased is also converted to veneer which is the basic (sic) materials for manufacturer of plywood. In the factory of the Petitioners plywood and allied timber products are also manufactured.

4. According to the Petitioners the sawn timber converted by the Petitioners are sold entirely outside the State to buyers either on the basis of prior orders or in the common market. Delhi is the principal market in which the sawn timber of the Petitioners are sold. So far as veneer is concerned about 80 percent of the veneer is transported to Tinsukia for use in the Plywood Factories of the State of Assam. So far as plywood is concerned about 90 percent of the plywood manufactured by the Petitioners are sold outside the State. Petitioners therefore claimed that the sales transaction of timber products in the course of interstate trade. Prior to the Nagaland purchase Tax Act, 1993 (hereinafter referred to as Act) timber other than fire-wood was one of the items included in Schedule I to the Nagaland Sales-Tax Act, 1967, as amended and the effective rate of tax on timber was fixed as 8 percent under the said Act.

The Nagaland purchase Tax Act was enacted in the year 1993 to provide for the levy of tax on the purchase of certain commodities in Nagaland to impose tax on purchase point of certain commodities in Nagaland Sales Tax Act, 1967. The Schedule of the Act contains description of the taxable goods and the rate of tax. Item No. 1 of the said Schedule stipulates timber (converted or unconverted excluding fire-wood) as one of the taxable goods under the Act and the rate of tax is stipulated at 25 percent. The constitutional validity of the said Act is assailed principally on the following grounds:

(1) That the Act suffers from the vice of legislative incompetence.

(2) That the Act is a colourable piece of legislation.

(3) That the Act violates the fundamental rights of the Petitioners under Article 19(1)(g) and 21 of the constitution.

(4) That the Act is violative of Part XIII of the Constitution, more specifically Article 301 read with Article 304 of the Constitution.

5. Mr. Ranjan Gogoi, learned Counsel for the Petitioner submitted that the impugned Act in pith and substance impose a tax on inter-state trade, which is beyond the competence of the State legislature. Mr. Gogoi in support of his contention drew my attention to the statement, object and reasons for Nagaland Purchase Tax Bill, 1993 which inter alia recites as follows:" To obviate the leakage of revenue on account of stock transfer and consignment sales made to States outside Nagaland without suffering any tax at any stage as such transfers are outside the purview of sales under the existing law..." Mr. Gogoi the learned Counsel therefore submitted that in pith and substance it is a tax on stock transfer and consignment sales made outside the State of Nagaland, therefore, the subject matter in question,

is beyond the taken (sic) of the legislative competence of the State legislature in view of the constitutional provisions of Entry 54 read with Entry 92A of the 7th Schedule and Article 269(1)(g) of the Constitution. The real object of the legislation is to realise tax from the inter-state stock transfers and consignment sales, submitted the learned Counsel for the Petitioners. The enactment in question is therefore assailed as a piece of colourable legislative device designed to achieve collateral objects not stated in the bills. The learned Counsel further submitted that the object and reason for introduction of the legislation in question is a mere pretence and camouflage to cover the inability of the State Govt. to realise sales tax under the provisions of the Sales Tax Act from persons liable to pay such tax. Mr. Gogoi learned Counsel further submitted that under the provisions of the Sales Tax Act, 1967 timber was taxable till 30.9.93 at the rate of 8 percent only which was to be realised by the seller from the purchaser of the goods and deposited in the Government Treasury by the seller of the goods in question. Under the provisions of the purchaser has been fixed at 25 percent which in the facts and circumstances of the case is confiscatory in nature. Mr. Gogoi, learned Counsel further submitted that the Act in question has been enacted as a device and cloak to confiscate the property of the Petitioners and therefore, the same is a fraud on the legislative power conferred by the constitution on the State legislature. Mr. Gogoi also submitted that the rate fixed by the legislation in question would necessarily result in a complete stoppage of the occupation, trade and business in as much as it would not be possible to the Petitioners to sell their goods in a highly competitive market at the enhanced rate therefore, the same is violative of fundamental rights guaranteed to the Petitioners Under Article 19(1)(g) and 21 of the Constitution. Mr. Gogoi, learned Counsel finally submitted that the impugned legislation is violative of Article 301 read with Article 304 of the Constitution, more so, when the said bills was introduced in the State legislature without the previous sanction of the President. The tax purported to be collected under the Act is confiscatory in nature which will ultimately throw cut the Petitioners from business as submitted, Mr. Gogoi, learned Counsel. Mr Gogoi in support of his contention took pain to take me to the constitutional background of the Article 286 as well as the Constitutional scheme of Distribution of Revenues between the Union and the States, the decision of [The Bengal Immunity Company Limited Vs. The State of Bihar and Others](#), as well as the following decisions of the Supreme Court reported in (1982) 2 SCC 645, (1993) I SCC 364.

6. The Respondents submitted its affidavit, denied and disputed the assertions of the Petitioners. The Respondents asserted that since the Petitioner are purchasers of taxable goods and dealers within the meaning of Section 2(5) of the Act the Petitioners are liable to pay purchase tax if they purchase any taxable goods within the State of Nagaland. The Respondent asserted that the Petitioners purchased timbers within the State of Nagaland. The imposed by the impugned legislation is on the last point purchase made by the dealer inside the State of Nagaland which is within the legislative competence of the State legislature. The tax thus imposed by

the Act on the value of timber purchased by the dealers which is within the legislative competence of the State legislature and is referable to the legislative power vested in the State by virtue of entry 54 in the list II of the VII Schedule. Before enactment of the impugned legislation the Petitioners were paying Sales-Tax and after the enactment the Petitioners were paying sales tax and after enactment they are only required to pay purchase tax in lieu of sales tax. The impugned legislation therefore, can not termed as levy of tax on the inter-State trade but on the values of the raw materials i.e. logs/timbers purchased in the State of Nagaland. According to the Respondents the object of the Act was to convert the existing system of last point tax under the Nagaland Sales Tax Act, 1967 to purchase point tax on certain commodities in order to check evasion or tax. The said Act was enacted within the full competence of the State legislature. The Respondents also denied that the Act in question was enacted as a device and cloak to confiscate the property of the Petitioner and the same is fraud on the legislative power.

7. Mr. Misra, learned Counsel appearing for the State of Nagaland brought my attention to the provision of the Act and submitted that the Court while considering the validity of a legislation the Court is not required to go to the object and statement of the bills when the legislative enactment is clearly spelt out by the provisions of the Act itself. Mr. Misra, learned Counsel further submitted that an Act of the legislature Should normally presumed to be valid and burden of showing for want of legislative competence or otherwise as arbitrary and unreasonable, rests on the persons who impeached the law, Mr. Misra, the learned Counsel submitted that tax is levied in the instant case by the legislature and it is for the legislature to consider the motive for imposing tax and the or (sic) expediency of a particular tax law. Mr. Misra so submitted that the legislature is fully within its jurisdiction to lay down its own fiscal policy and since the power is legislative the Court should permit legislative branch to exercise its discretion with accordance with its legislative competence. Mr. Misra in support of his contention had brought my attention to the passage of constitutional law of India by H M Seervai and further relied on the following decision of the Supreme Court:

.. [Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc.,](#) Devi Das Gopal Krishna v. State of Punjab (1994) 2 SCC 59) , [Jagatjit Sugar Mills and Others Vs. State of Punjab and Another,](#)

Before dealing with the respective merits of the case it would be pertinent to look to the following provisions of the Act Section 2(5):

"dealer" means any person who for commission, remuneration, or otherwise carries on business of buying taxable goods in the State and includes-

(i) Government and local authority,

(ii) a cooperative society or a club or any association which supplies goods to its members or which sells goods supplied to it by its members.

(iii) a factor, a broker a commission on agent, delcredere agent, an auctioneer or any other mercantile agent whatever names called and whether of the same description as herein before mentioned or we who carries on the business of purchasing goods who has, in the custom of business, authority to purchase goods nor and on behalf of or belonging to principal whether residing within or outside the State, and includes a person delivering goods on hire purchase or any system of payment by instalment.

(22) "taxable goods" means goods specified in the Schedule:

4. Levy of tax

(1) Subject to the other provisions of this Act. every dealer liable to pay tax earlier under the Nagaland Sales Tax Act, 1967, shall with effect from the appointed day for the purpose of this section, be liable to pay tax on his turnover of purchase at such rate as may be specified in the Schedule,

Explanation:

Where the taxable turnover of a dealer is taxable at different rates the aforesaid formula shall be applied separately in respect of each such part of turnover.

(3) Incidence-the tax under Sub-section (1) shall be levied at the point of last purchase of the taxable goods in the State by a dealer:

Provided that when the tax has been levied under this Act in respect of the purchase within the state of any declared goods and such goods are sold in the course of inter-state trade or commerce the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be prescribed;

Provided further that where any dealer claims that any purchase of taxable goods by him is not the last purchase of goods in the State the burden of proof of the same shall be on the dealer....

8. There is always a presumption in favour of the constitutionality of statute and the burden of proof rests on the persons who assailed the constitutionality the statute. It must be assumed that the legislature understands and rightly appreciates the ground reality and legislative measures are taken to tackle the situation made manifest by its experience, Wherever the validity of enactment is attacked it become the duty of the Court to look to the legislation as a whole and to find out the real intention of the legislative. When the legislative instrument is plain and simple, the question of delving deep to ascertain the will of the legislature from the statement and objects of the bill will not arise. When the language of the Act is plain and unambiguous the question of exploring the legislative intent does not arise. The words in the Act is to be given the natural and ordinary meaning the intention as well as the real meaning of the act is to be gathered from the statute itself. The object of the interpretation is to give effect to the intention underlying the statute

which adherence the purpose of the Act of the legislature in the matters of taxation is supreme and not subject to control by judiciary. So it is for the legislature and not the judiciary to consider the motives for imposing a tax the necessity or expediency of a particular tax law, whether tax law is equitable and just or arbitrary or oppressive and confiscatory, the wisdom of a particular policy of Government or economics, the weighting of social (sic) the determination of the respective values to be assigned... "Furthermore subject to the Constitutional restrictions on such power, the legislative rather than judicial branch of Government has full and uncontrolled discretion in determining the scheme or system of taxation. Thus more specifically, the legislature rather than the judicial branch possesses discretion in selecting the subject of taxation, in the method of taxation in prescribing classifications and in fixing the amount and the rate of taxation and the imposition of taxes. Fiscal adjustments are knotty and complicated and therefore a wider latitude is naturally to be given to the legislature in such matter (16 Corpus Juris Secundum 188 (P. 583-587))

In the field of taxation wider is the discretion in formulating its fiscal policy.

9. The Scheme of the Act is to levy the tax on the turnover of purchase of the Dealer on the taxable goods specified in the Schedule. By the proviso to Section 4 the legislature provided that whether the tax is levied under the Act in respect of purchase within the State of any declared goods and such goods are sold in the course of inter-state trade or commerce the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be prescribed. Whenever the Dealer claims that any purchase of taxable goods by him is not the last purchase of the goods in the State, the burden of proof is on the dealer to prove and establish the same. The statute places the burden of proof upon the dealer. The object is to tax on the purchase of the taxable goods on the turnover of purchase at the point of last purchase. The statement of object and reasons assigned in Nagaland Purchase Tax Act, 1993 can not defeat the legislative intent as contained in Section 4 of the Act. There can not be any estoppel against the statute on a survey of the Scheme of the Act and more particularly provisions contained in Section 4 of the Act on the subject can not be said that the tax is levied on stock, transfer and consignment sales. The legislative intent is to give full effect to in spite of possible defect of draftsmen. Legislature, after all represents the will and faith of the people and the legislative will is to be given to full effect and the draftsman's devil if there be any is not to be allowed to act as an obstruction. The legislature is free to utilise its taxing power to improve the fiscal position of the State and the economic condition of the State. The following observation of the Supreme Court in *Hotel Balaji and Ors. v. State of Andhra Pradesh* reported in 1993 Suppl. 4 SCC 563 is usefully recalled.

I do not find any merit in the contention of Mr. Gogoi the learned Counsel on the issue of difference in rate of taxation in the neighbouring States as violative of the

equity clause of the Constitution.

A law can not be struck down as arbitrary and violative of Article 14 of the Constitution on the ground that the rate of taxation is higher than the rate of taxation in other states on the same subject matter. For that matter as State law cannot be faulted as discriminatory and unconstitutional on the basis of comparative study of the provisions of the enactments. (Reference P.M. Aswatnannarayana Shetty v. State of Karnataka reported in (1989) Suppl. 1 SCC 696 (paragraph 87). The mere fact that a tax falls more heavily on some even in the same category cannot be a ground to render the law invalid.

For the reasons stated above, I uphold the constitutional validity of the impugned provisions. The Writ Petitions accordingly fail and are dismissed. Stay orders, if any, automatically stand cancelled.

No order as to costs.