CIVIL MISCELLANEOUS

Before S. B. Capoor and Inder Dev Dua, JJ.

MESSRS EVEREST WOOLLEN MILLS,—*Petitioner*

versus

THE STATE OF PUNJAB AND ANOTHER,—*Respondents*

Civil Writ No. 1481 of 1965

1965

November, 18th.

Additional Duties of Excise (Goods of Special Importance) Act (LVIII of 1957)—S. 3—Levy and collection of additional excise duty on certain articles—Whether amounts to tax on sale or purchase of those articles—Constitution of India (1950)—Arts. 301 to 304—Levy of sales-tax at a rate higher than the rate of tax in the adjoining State—Whether impinges on the freedom of trade and commerce throughout the territory of India—Courts—Whether can question the levy of tax by Legislature—Interpretation of Statutes—Objects and reasons of statutes—Whether can be taken into consideration.

Held, that the additional excise duty sought to be imposed by section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957, can by no stretch be considered, because of the statutory objects and reasons, to be a tax either on sale or purchase of the goods concerned. An excise duty is attracted when goods are manufactured or produced, for it is the manufacture or production of goods alone which forms the basis of excise duty, whereas the base on which purchase tax operates is the transaction of sale or purchase. The said Act has clearly nothing to do with the transaction of sale or purchase and it is not possible to construe this levy as amounting to a sale or purchase tax on a transaction which brings about transfer of the ownership. In pith and substance excise duty and sale or purchase tax are essentially different. Besides, merely because an excise duty is intended to replace a sale or purchase tax does not of itself, by any logic, convert the former into latter.

Held,, that the levy of sales-tax at a rate higher than the rate of tax in the adjoining State does not impinge on the freedom of trade, commerce and intercourse throughout the territory of India nor does it place any kind of curb or a restriction on trade, commerce and intercourse between the Punjab and the adjoining State. If a person, for economic reasons and to make more profit, feels impelled to buy the goods, required in the manufacture of blankets, in the adjoining area for bringing them in the State of Punjab for consumption or use, it is matter of his choice and it does not in any way restrict the freedom of trade, commerce and intercourse between States *inter se* or throughout the territory of India, freedom of which has been

guaranteed by the Constitution. If anything this may boost up such freedom.

Held, that to abandon one form of tax and to replace it by another is a matter of policy which is entirely and exclusively within the domain and jurisdiction of the legislative wing of the Government. The Courts have nothing to do with the legislative policy, which is dictated by legislative wisdom, in enacting tax laws, so long as they are within the constitutional competence of the Legislature. The Court is only concerned with plain language of the law. It is well to remember that there is no equity in a taxing statute, which the Courts are empowered to enforce, and also, that revenue is the very life-blood of a domocratic welfare State of our pattern. The question of ensuring fair distribution of the burden of taxation is the patriotic privilege and sacred duty of the elected representatives of the nation, who are entrusted with this solemn obligation to be discharged faithfully, and conscientiously and who are answerable to the people for their acts of commission and omission. The Courts cannot intrude into this sphere except to enforce the constitutional mandates and to keep every one, including the State itself, within the bounds of law.

Held, that the objects and reasons of a statute cannot control the plain meaning of a statutory language; they can only be referred to for the limited purpose of discovering the historical background leading up to the legislation in order to understand the mischief sought to be remedied, and that too if there is some ambiguity in the language of the Act.

Petition under Articles 226/227 *of the Constitution of India, praying that a writ in the nature of certiorari,* mandamus *or any other appropriate writ, order or direction be issued quashing the order of the Assessing Authority, dated the* 16*th March,* 1965.

H. L. SIBAL, SATISH AND R. C. DOGRA, ADVOCATES, for the Petitioner.

J. N. KAUSHAL, ADVOCATE-GENERAL, for the Respondents.

ORDER

Dua, J.

DUA, J.—This petition under Articles 226 and 227 of the Constitution was admitted by the Motion Bench to a Division Bench because it was urged that levy of six per cent by way of sales tax by the Punjab Government on lubricants and chemicals used for the manufacture of blankets is a hindrance in the free right of inter-State trade or commerce and is, therefore, violative of the constitutional mandate in Article 301 of the Constitution that commerce and intercourse throughout the territory of India shall be free. The argument as put, though ingenious was *prima facie* attractive and apparently, it

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was for this reason that it was admitted to a Division Bench.

The facts pleaded in the writ petition are that the petitioner Messrs Everest Woollen Mills, Ludhiana, a registered dealer both under the Punjab General Sales Tax Act and the Central Sales Tax Act, deals in the manufacture and sale of Woollen blankets and also sometimes manufactures and sells yarn. The petitioner has, therefore, to make purchases of raw material for the purpose of manufacturing such blankets and, also lubricants and other chemicals which are essential for running the machinery for their manufacture. In the year 1963-64, the petitioner was assessed under the Punjab General Sales Tax Act to a sum of Rs. 2,800.64 out of which a sum of Rs. 2,200 had already been paid and the balance was paid thereafter. The petitioner had purchased lubricants of the value of Rs. 31,656.78. Lubricants of the value of Rs. 7,396.95 out of the total quantity had been purchased from outside the State of Punjab. The quantity purchased from outside the State of Punjab was subjected to an inter-State tax of two per cent under the Central Sales Tax Act, as these lubricants were purchased for using them for manufacturing purposes. Deducting the purchase price of lubricants purchased from outside the State from the gross purchase price of the entire quantity, the Assessing Authority came to the conclusion that the petitioner was liable to purchase tax at Rs. 24,259.83. Out of this amount, a sum of Rs. 3,465.69 was also deducted by the Assessing Authority as the amount spent on the purchase of lubricants used in the manufacture of yarn which is included in "taxable goods". Deducting this amount from Rs. 24,259.83, the balance came to Rs. 20,794.14. To this was added a sum of Rs. 6,000 spent in purchasing chemicals used in the manufacture of tax free goods, etc., bringing the total value of goods purchased to Rs. 26,794.14 which was subjected to tax under the Punjab General Sales Tax Act. On this amount, the purchase tax levied came to Rs. 1,736.05 computed according to the rates fixed at different periods of the period of assessment during the year in question. It is this amount which is the subject-matter of challenge in the present proceedings and the principal argument urged is that blankets which are manufactured by the petitioner-firm are not tax free on their sale as has been wrongly held by

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the Assessing Authority. It is argued that on the manufacture of blankets, the petitioner is liable to pay five per cent excise duty and an additional excise duty has since been levied by the Central Government in lieu of sales tax. This additional excise duty in lieu of sales tax has been imposed upon the mannfacture of blankets with the consent of the Punjab Government, with the result that this must be construed to be in the nature of either sales tax or purchase tax which has actually been handed over by the Central Government to the Punjab Government. It has been averred that this position is also clear from the budget of the Central Government as laid before the Parliament and reference has also been made to the Explanatory Memorandum on the budget of the Central Government for 1965-66 as laid before the Parliament.

Our attention has in support of this contention been drawn to the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Act 58 of 1957), which was published in the Government Gazette on 26th December, 1957. This Act, as the Preamble shows, was intended to provide for the levy and collection of additional duties of excise on certain goods and for the distribution of a part of the net proceeds thereof among the States in pursuance of the principles of distribution formulated, and the recommendations made, by the Finance Commission in its report, dated 30th September, 1957, and to declare those goods to be of special importance in inter-State trade or commerce. The counsel has also tried to seek assistance from the object of this statutory measure by contending that the additional duty has been imposed in replacement of the sales tax levied by the Union and the States. Section 3 of this enactment authorises levy and collection of additional duty on certain articles including woollen fabrics produced or manufactured in India and the First Schedule fixes the amount of duty. Section 4 of this Act provides for the distribution of the additional duty levied amongst the States and the Second Schedule contains the details of such distribution. Certain goods including woollen fabrics have been declared to be of special importance in inter-State trade or commerce and every sales tax law of a State, in so far as it imposes or authorises the imposition of a tax on the sale or purchase of such declared goods, has been subjected, from 1st April 1958, to the restrictions and conditions specified in section 15 of the Central Sales Tax Act No. 74 of 1956.

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As a consequence of this Act, the Punjab Legislature passed the Punjab Textiles and Sugar (Existing Stocks) Purchase Tax and Miscellaneous Provisions Act No. 8 of 1958, for providing for the levy of purchase tax on stocks of textiles and sugar and for abolition of tax on sales of certain goods, etc. Section 20 of this Act amended, *inter alia,* Schedule 'B' to the East Punjab General Sales Tax Act XLVI of 1948 by including woollen textiles in the list of tax free goods within the contemplation of section 6 of that Act. The argument boldly pressed is that although Act No. 58 of 1957 passed by the Parliament expressly purports to levy additional duties of excise, nevertheless, it must be construed to amount in pith and substance to a tax under the Punjab General Sales Tax Act, and, therefore, the blankets cannot be considered to constitute tax free goods within the meaning of the latter statute. In my opinion, the submission is completely devoid of force and is extremely difficult to sustain. Objects and reasons of a statute, as is well-known, cannot control the plain meaning of statutory language; they can only be referred to for the limited purpose of discovering the historical background leading up to the legislation in order to understand the mischief sought to be remedied, and that too if there is some ambiguity in the language of the Act. In the case in hand, there is absolutely no ambiguity in the statutory language and the duty of excise sought to be imposed can by no stretch be considered, because of the statutory objects and reasons, to be a tax either on sale or purchase of the goods concerned. As observed by a Bench of this Court in *Nabha Rice and Oil Mills* v. *State of Punjab* (1), an excise duty is attracted when goods are manufactured or produced, for it is the manufacture or production of goods alone which forms the basis of excise duty, whereas the base on which purchase tax operates is the transaction of sale or purchase. Act No. 58 of 1957 has clearly nothing to do with the transaction of sale or purchase and, therefore, I do not find it possible to construe this levy as amounting to a sale or purchase tax on a transaction which brings about transfer of the ownership. In pith and substance excise duty and sale or purchase tax are essentially different. Besides, merely because an excise duty is intended to replace a sale or purchase tax does not of itself, by any logic, convert the

(1) A.I.R. 1963 Punj. 549.

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former into latter. No principle nor any precedent has been cited in support of his submission by the petitioner's counsel; of course, there is no statutory provision on which this argument has been shown to be founded.

Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce, is certainly a subject on which the Union Parliament can make laws, but subject to this item taxes on the sale or purchase of goods other than newspapers are within the domain of the State Legislature. On the plain language of Act 58 of 1957, this enactment does not impose a tax on a transaction of sale or purchase at all, and a *fortiori,* nor on sale or purchase in the course of inter-State trade or commerce. Indeed, according to the permissible initial presumption, this Act should be held only to impose excise duty. It may in this connection be remembered that there is hardly any question of intendment in a taxing statute and regard is to be had only to the clear wording of the statutory instrument.

Shri Sibal has in support of the second ground of challenge referred us to Articles 301, 303 and 304 of the Constitution. These Articles find place in part XIII of the Constitution headed as "Trade, Commerce and Inter-course within the territory of India". Article 301 guarantees freedom of trade, commerce and inter-course throughout the territory of India, of course, subject to the other provisions of this Part. Article 303 imposes restrictions on the legislative powers of the Union and of the States with regard to trade and commerce. It lays down that notwithstanding anything in Article 302, neither Parliament nor the Legislature of a State shall have power to make any law giving, or authorising the giving of, any preference to one State over another, or making, or authorising the making of, any discrimination between one State and another, by virtue of any entry relating to trade and commerce in any of the Lists in the Seventh Schedule. But this provision does not prevent Parliament from making any law giving, or authorising the giving of any preference or making, or authorising the making of, any discrimination, if it is declared by such law, that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any

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part of the territory of India. A faint attempt has been made on the basis of this article to urge that higher purchase tax in Punjab than in the adjoining area of the Union territory of Delhi is hit by this Article because it discriminates between one State and another. Apart from bald assertion at the bar, this argument has not been sought to be developed or supported by reference to an authority or principle. It is quite clear that Act 58 of 1957 does not give any preference to one State over another. Merely because a certain commodity is also taxed by some State, that would not visit Act 58 of 1957 with the vice underlying Article 303 for the reason that some other States have imposed a lower duty on that very commodity. And this is all that may be said to have happened in the case in hand. The counsel has also placed some reliance on Article 304, which provides for some restrictions on trade, commerce and intercourse among the States. According to this Article, notwithstanding anything in Article 301 or Article 303, the Legislature of a State is empowered by law to 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, and also to impose such reasonable restriction on the freedom of trade, commerce or intercourse with or within that State as may be required in the public interest. There is a proviso to this Article, according to which no bill or amendment for the purpose of the latter category of imposition can be introduced or moved in a State Legislature without the previous sanction of the President. The challenge to the impugned Act which is developed by the petitioner's learned counsel is that by imposing a rate of tax on the goods which are to be used by the petitioner in the manufacture of blankets in the State of Punjab at a higher rate than the rate of tax in the adjoining area known as Delhi, the petitioner is being virtually forced to buy the goods from Delhi in preference to their purchase in the State of Punjab itself. This, according to the counsel, impinges on the freedom of trade, commerce and intercourse throughout the territory of India. In other words, according to the counsel, this places some kind of a curb or a restriction on trade, commerce and intercourse between the Punjab and the adjoining State. I must confess my inability to appreciate

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this contention. If the petitioner is for economic reasons feeling impelled in order to make more profit, to buy the goods, required in the manufacture of blankets, in the adjoining area for bringing them in the State of Punjab for consumption or use, it is a matter of his choice. I am, however, unable to see how this would restrict the freedom of trade, commerce and intercourse between States *inter se* or throughout the territory of India, freedom of which has been guaranteed by the Constitution. If any thing, this may boost up such freedom. In fairness to the petitioner's learned counsel, I must refer to two Supreme Court decisions to which our attention has been drawn by him. *Atiabari Tea Co. Ltd.* v. *State of Assam* (2), is the first decision to which our attention has been drawn and inspiration for his argument has been drawn by the counsel from the very first head-note which reads as follows: —

> "The provision contained in Article 301 guaranteeing the freedom of trade, commerce and intercourse is not a declaration of a mere platitude, or the expression of a pious hope of a declaratory character, it is not also a mere statement of a directive principle of State policy; it embodies and enshrines a principle of paramount importance that the economic unity of the country will provide the main sustaining force for the stability and progress of the political and cultural unity of the country. *Baldwin* v. *Seeling* (3), Ref.
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> Though the power of levying tax is essential for the very existence of the Government, its exercise must inevitably be controlled by the constitutional provisions made in that behalf. It cannot be said that the power of taxation *per se* is outside the purview of any constitutional limitations. *Joylal Agarwala* v. *The State* (4), Expl., *M' Culloch* v. *The State of Maryland Et Al* (5), Ref.
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> The power of Parliament and the Legislatures of the States to make laws including laws imposing taxes is subject to the provisions of the

(2) A.I.R. 1961 S.C. 232.
(3) (1934)79 Law. Ed. 1032.
(4) A.I.R. 1951 S.C. 97.
(5) (1819)4 Law. Ed. 579.

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Constitution and that must bring in the application of the provisions of Part XIII. Therefore, the argument based on the theory that tax laws are governed by the provisions of Part XII alone cannot be accepted.

Article 301 read in its proper context and subject to the limitations prescribed by the other relevant Articles in Part XIII, must be regarded as imposing a constitutional limitation on the legislative power of Parliament and the Legislatures of the States. Wherever it is held that Article 301 applies, the legislative competence of the Legislature in question will have to be judged in the light of relevant Articles of Part XIII. * * * * *.

The freedom of trade guaranteed by Article 301 is freedom from all restrictions except those which are provided by the other Articles in Part XIII."

The ratio of this decision, in my opinion, has no application to the facts before us. In the reported case, the appellants were growers of tea in West Bengal or in Assam and carried their tea to the market in Calcutta from where it was sold for consumption in the country or was exported for sale out of the country. The sale of tea inside Assam bore a very small proportion to the tea produced and manufactured by them and the bulk of produced and manufactured tea was carried out of Assam. Besides, the tea carried by rail, a large quantity was carried by road or by inland waterways from Assam to Bengal. The Assam Legislature passed an Act for the purpose of levying taxes on certain goods carried by road or inland waterways in the State of Assam. It was this Act, the constitutionality of which was canvassed before the Supreme Court and it was held that the Act had put a direct restriction on the freedom of trade, and since in doing so, it had not complied with the provisions of Article 304 (b), it had to be declared void. The question posed and answered by the majority of the Judges constituting the Bench was:

"Does the impugned restriction operate directly or immediately on trade or its movement?".

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In the light of this test, the provisions of the Act were scrutinised and the opinion formed. It was, however, made quite clear that the Court was confining its opinion only to the Act with which it was concerned and if any other laws were to be similarly challenged, the validity of the challenge would have to be examined in the light of the provisions of those laws. With this caution, it was observed:—

> "Our conclusion, therefore, is that when Article 301 provides that trade shall be free throughout the territory of India, it means that the flow of trade shall run smooth and unhampered by any restriction either at the boundaries of the State or at any other points inside the States themselves. It is the free movement or the transport of goods from one part of the country to the other that is intended to be saved, and if any Act imposes any direct restrictions on the very movement of such goods, it attracts the provisions of Article 301 and its validity can be sustained only if it satisfies the requirements of Article 302 or Article 304 of Part XIII. At this stage we think it is necessary to repeat that when it is said that the freedom of the movement of trade cannot be subject to any restrictions in the form of taxes imposed on the carriage of goods or their movement all that is meant is that the said restrictions can be imposed by the State Legislatures only after satisfying the requirements of Article 304(b). It is not as if no restriction at all can be imposed on the free movement of trade."

It is quite clear that the ratio of this decision does not by any means touch the present case. The Supreme Court about a year later in *Automobile Transport Ltd.* v. *State of Rajasthan* (6), made the position more clear. It is, of course, manifest from this decision that what in reality facilitates trade and commerce is not a restriction and it is only what in reality hampers or burdens trade or commerce that can amount to a restriction. It is the reality or the substance of the matter that has to be

(6) A.I.R. 1962 S. C. 1406.

determined. It is not possible *a priori* to draw a dividing line between that which would really be a charge for a facility provided and that which would really be a deterrent to a trade; but the distinction, if it has to be drawn, is, according to this decision, real and clear. For the tax to become a prohibited tax, it has to be a direct tax, the effect of which is to hinder the movement part of trade. So long as a tax remains compensatory or regulatory, it cannot operate as a hindrance. This appears to be the real ratio of this decision. As a matter of fact, I am aware of some cases in which the impositions have been struck down by the Supreme Court following the two decisions just noticed; but in those cases the taxes directly and immediately operated to hamper or hinder the movement part of the trade. Such is not the position before us. The lower rate of tax in the Delhi territory does not directly affect the movement of the trade, commerce or intercourse from Delhi to Punjab or to any other State, and indeed those, who do not want to bring the goods into Punjab are wholly unaffected by the considerations which have been placed before us on behalf of the petitioner. The petitioner's learned counsel has during the course of arguments very strongly argued that the rate of tax is very high and it operates adversely to the petitioner's interest. He has developed this argument by virtually submitting that the enactment in question is, for all practical purposes, a fraud on the Constitution because sales and purchase tax has been replaced by an excise duty with the collateral purpose of realising higher duty from dealers like the petitioner, who purchase goods to be used in the manufacture of blankets. The goods which the petitioner has to purchase for the manufacture of blankets have been subjected to heavier taxes in the form of excise duty. I have already repelled the submission and declined to strike down Act 58 of 1957 on the basis of the challenge that it is in pith and substance an Act imposing tax on sales and purchases in the guise of excise duty. To abandon one form of tax and to replace it by another is, in my opinion, a matter of policy which is entirely and exclusively within the domain and jurisdiction of the legislative wing of the Government. The Courts have nothing to do with the legislative policy, which is dictated by legislative wisdom, in enacting tax laws, so long as they are within the constitutional competence of the Legislature. The Court is only concerned with the plain language of the law.

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Dua, J.

It is well to remember that there is no equity in a taxing statute, which the Courts are empowered to enforce, and also, that revenue is the very life-blood of a democratic welfare State of our pattern. The question of ensuring fair distribution of the burden of taxation is the patriotic privilege and sacred duty of the elected representatives of the nation, who are entrusted with this solemn obligation to be discharged faithfully, and conscientiously and who are answerable to the people for their acts of commission and omission. The Courts cannot intrude into this sphere except to enforce the constitutional mandates and to keep every one, including the State itself, within the bounds of law.

For the foregoing reasons, this petition fails and is hereby dismissed, but without costs.

Capoor, J.

S. B. CAPOOR, J.—I agree.

B.R.T.

APPELLATE CIVIL

Before S. K. Kapur, J.

SURJIT KUMAR,—*Appellant*

versus

RAJ KUMARI,—*Respondent*

F.A.Q. (M) 108-D of 1963

1965

December, 1st.

Hindu Marrigae Act (XXV of 1955)—*S.* 12(1)(*c*)—*Consent obtained by fraud—Pre-nuptial unchastity of the girl not disclosed by her relations—No enquiry made by the husband about her chastity—Whether amounts to obtaining his consent by fraud—Pre-nuptial unchastity of the girl—Whether* per se *a ground for annulment of marriage.*

Held, that if no enquiry is made by the husband, it is not the duty of the girl or her relations to inform him of her pre-nuptial unchastity. Merely representing that the girl is good or gold or good-natured and will suit the husband without disclosing her past unchastity when no inquiry is made about this matter does not amount to obtaining his consent by fraud. As a general rule pre-nuptial unchastity of a girl *per se* is no ground for the annulment of marriage even if unknown to the husband and not disclosed to him. The consent will be said to have been obtained by fraud and will be a ground for the annulment of marriage not only if the consent is obtained by practising a fraud at the time of solemnisation of marriage but even if it was so obtained at an earlier stage.

First Appeal from the order of the Court of Shri Des Raj Dhameja, Additional District Judge, Delhi, dated the 3rd day of May, 1963, *dismissing the petition.*

SHRI FRANK ANTHONY AND O. P. SONI, ADVOCATES, for the Petitioner.

A. R. WHIG, ADVOCATE, for the Respondent.