

hXPART-HEARD
ITEM NO.102

COURT NO.2

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO.1210 OF 2004

STATE OF RAJASTHAN & ORS.

Appellant (s)

VERSUS

HERITAGE CRAFTS
(With office report)

Respondent(s)

With Civil Appeal No.1211 of 2004
(With office report)

Civil Appeal No.1212 of 2004
(With office report)

Civil Appeal No.1213 of 2004
(With office report)

Civil Appeal No.1214 of 2004
(With office report)

Civil Appeal No.1215 of 2004
(With office report)

Civil Appeal No.1216 of 2004
(With office report)

Civil Appeal No.1217 of 2004
(With office report)

Date: 10/11/2009 These Appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.H. KAPADIA
HON'BLE MR. JUSTICE AFTAB ALAM

For Appellant(s)

Dr. Manish Singhvi,AAG.
Mr. Devanshu Kumar Devesh,Adv.
Mr. Milind Kumar,Adv.

For Respondent(s)
In C.As.1214/04,
1215/04 & 1217/04:

Mr. Puneet Jain,Adv.
Ms. Pratibha Jain,Adv.

Ex-parte

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UPON hearing counsel the Court made the following
O R D E R

Heard learned counsel for the appellants
and learned counsel appearing on behalf of the
respondents in Civil Appeal Nos.1214/2004,
1215/2004 and 1217/2004.

Delay condoned.

The civil appeals are disposed of with no
order as to costs.

[T.I. Rajput]
A.R.-cum-P.S.

[Madhu Saxena]
Court Master

[Signed order is placed on the file]
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.1210 OF 2004

State of Rajasthan & Ors.

...Appellant(s)

Versus

Heritage Crafts

...Respondent(s)

With Civil Appeal Nos.1211/2004, 1212/2004, 1213/2004,
1214/2004, 1215/2004, 1216/2004 and 1217/2004.

O R D E R

Delay condoned.

In this batch of civil appeals, the question which calls for consideration is whether imposition of additional tax on transfer of ownership of a vehicle under the second proviso to Section 4(1)(b) of the Rajasthan Motor Vehicles Taxation Act, 1951 is beyond the legislative competence of the State being outside the scope of Entry 57 of List II of Schedule VII of the Constitution of India.

The relevant part of Section 4 (charging section) of the 1951 Act, as amended by Rajasthan Finance Act, 2000, is extracted hereinbelow:

"4. Imposition of Tax - (1) Save as otherwise provided by this Act or by the Rules made thereunder or any other law for the time being in force, there shall be levied and collected on all motor vehicles used or kept for use in the State, -

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(a) a tax, in respect of such vehicles, which are not covered by clause (b), (c) or (d), at such rates as may be specified in the State Government by notification in official gazette which shall not exceed 10% of the cost of the chassis/ vehicle per annum:

Provided that where the rates are not specified, on quarterly or monthly basis, by the State Government, by notification in the official gazette, and if the tax is permissible to be paid quarterly or monthly, the amount payable shall be equivalent to the one fourth or one twelfth respectively of the annual rate of tax;

(b) a One Time Tax in the case of non

transport vehicles at such rates as may be notified by the State Government by notification in the official gazette which shall not exceed 10% of the cost of the vehicle:

Provided that in addition to One Time Tax there shall be paid by the owner or person having possession or control of a motor vehicle on which one time tax is payable, any tax or penalty as was payable under this Act for any period prior to the coming into force of the provisions of Chapter V of the Rajasthan Finance Act, 1997 (Rajasthan Act No. 9 of 1997) at such rates as were applicable to such vehicles from time to time.

Provided further that on every transfer of ownership of motor vehicle mentioned above, an additional one time tax shall be payable at such rates as may be notified by the State Government in the Official Gazette."

[Emphasis supplied]

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According to the Statement of Objects and Reasons, insertion of the said proviso by the said Finance Act, 2000 was to check frequent transfers of the vehicles. The said proviso was added to Section 4(1)(b) which makes a provision for payment of additional one time tax. It is the levy of this additional one time tax which stood challenged before the High Court. It is this levy of additional one time tax which has been struck down by the High Court. Hence, these civil appeals are filed by the State of Rajasthan.

The reason for striking down the impugned proviso by the High Court is given in para 13 of the impugned judgment, which we quote hereinbelow:

"13. In the instant case, the compensation for use of roads etc. by the vehicle was already paid by the vendor under Section 4(1)(b) of the Act of 1951. He paid the OTT for the life time of the vehicle. Keeping this in mind, each of the petitioners purchased vehicle from the vendor. Obviously, it carried element of tax in the purchase consideration of vehicle. Thus, the petitioner has already paid off his share of tax in the form of purchase price paid to the vendor. The object for insertion of the second proviso to Section 4(1)(b) as stated is to discourage the transfer of vehicle. We have not been able to understand the nexus between the transfer of ownership and the object of levy i.e. compensatory tax. Thus, in our view, the impugned additional tax under proviso second to Section 4(1)(b) of the Act is arbitrary inasmuch as it amounts to tax a person merely on the incidence of transfer of vehicle, which is clearly beyond the legislative competence being outside the scope of Entry 57 of List II of Schedule VII of the Constitution of India. The

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ratio laid down by the Division Bench of this

Court in East India Hotels Ltd.'s case (supra) equally applies to the facts of the instant cases. Thus, the second proviso to Section 4(1)(b) of the Act is violative of the Article 265 of the Constitution of India and is, therefore, liable to be struck down."

On reading the reasoning of the High Court for striking down the impugned proviso, as quoted above, it shows that according to the High Court the second proviso to Section 4(1)(b) violated Article 265 of the Constitution and, therefore, was liable to be struck down.

In the case of Atiabari Tea Company Limited vs. State of Assam and Ors. reported in AIR 1961 SC 232, the constitutional validity of Assam Taxation (on Goods Carried by Roads or Inland Waterways) Act, 1954 was challenged as violating Article 301. The Majority, speaking through Justice Gajendragadkar, rejected the contention of the State that the taxation laws are governed only by Part XII by saying that "Article 265 itself inevitably takes in Article 245 of the Constitution when in substance it says that a tax shall be levied by authority of law". Hence, power of Parliament and the Legislatures of the States to make laws including laws imposing taxes is subject to the provisions of the Constitution and hence it will come under the purview of Article 301. The Majority rejected the conclusion "Taxes may and do amount to restrictions; but it is only such taxes as directly and immediately restrict trade that would fall within the purview of Article 301". Therefore, in each case the court has to find out whether the impugned law puts a restraint in the form of taxation

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on the movement of trade and if so, only then, such law falls under Article 301 and it is only in such an event that State can take the plea as to the nature of impugned levy, viz., that the levy is compensatory/regulatory in nature and therefore falls outside scheme of Part XIII.

It is the doctrine of "direct and immediate effect" which constitutes the working test propounded vide para 19 of the judgment of this Court in the case of Automobile Transport (Rajasthan) Limited vs. State of Rajasthan, AIR 1962 SC 1406. Therefore, whenever the law is impugned as violative of Article 301, the courts have to examine the effect of the operation of the impugned law on the inter-State and the intra-State movement of goods which has not been done in the present case.

In the circumstances, we set aside the impugned judgment of the High Court and remit the cases back to it for de novo consideration in accordance with law. We, however, grant liberty to each of the assesseees to amend the writ petition, if so advised, within a period of four weeks from today. If the assessee carries out the amendment within the said period, the High Court shall then consider the matter in accordance with law. If any of the assessee failed to do so within the time so fixed, in that event, it would not be open to the assessee to amend the writ petition and, in such a case, the consequences have to follow.

Accordingly, civil appeals stand disposed of with no order as to costs.

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All issues are expressly kept open, subject to the assesseees making appropriate averment with regard to violation of Article 301 of the Constitution.

.....J.
[S.H. KAPADIA]

.....J.
[AFTAB ALAM]

New Delhi,
November 10, 2009.