2024 INSC 240

Non-Reportable

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 3774 OF 2011

Saree Sansar **... Appellant**

versus

Govt. of NCT of Delhi & Ors. **... Respondents**

J U D G M E N T

ABHAY S. OKA, J.

FACTUAL ASPECTS

1. The appellant assessee has taken exception to the judgment dated 19th October 2006 passed by a Division Bench of Delhi High Court. In the exercise of powers under Section 4(1) of the Delhi Sales Tax Act, 1975 (the DST Act), the Government of Delhi issued a notification on 31st March 1999 stating that the rate of the State sales tax on silk fabrics was fixed at 3%. On 15th January 2000, another notification was issued by which silk fabric was included in Schedule I of the DST Act. Therefore, the State sales tax on silk fabric was increased to 12%. On 31st March 2000, silk fabric was shifted from Schedule I to Schedule II of the DST Act by amending the

Schedules. Therefore, the sales tax became payable on silk fabric at 4%. An assessment order was issued to the appellant on 31st October 2001 for the levy of the State sales tax at the rate of 12% for the period from 15th January 2000 to 31st March 2000. The amount demanded was Rs.4,22,095/-.

2. The appellant filed a writ petition before the Delhi High Court to challenge the order of assessment. By the impugned judgment, the writ petition was dismissed.

SUBMISSIONS

3. The learned counsel appearing for the appellant invited our attention to the provisions of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (the ADE Act). He submitted that the item "Silk Sarees" falls under item no.50.05 of the First Schedule to the ADE Act. Since "Silk Sarees" fall in the category of "declared goods" under the ADE Act, the Delhi Government was not empowered to levy State sales tax on the said goods. He submitted that under the scheme of the ADE Act, the additional duties are levied on declared goods in lieu of the sales tax and after deducting 2.203% of the total proceeds for distribution to the Union Territories, the remaining proceeds are distributed among the States as per the prescribed percentage. He relied upon Articles 266 and 269 of the Constitution of India, containing the scheme of collection and distribution of net proceeds of taxes and duties received by the Government of India under the Consolidated Fund. He submitted that Article 269(2) makes it very clear that the proceeds attributable to the Union

Territories are kept aside and would not form a part of the Consolidated Funds of India. He urged that Delhi was getting its share of ADE at the relevant time. Hence, the Delhi Government was debarred from levying sales tax on "Silk Sarees". He submitted that the ADE Act has been brought on the statute book to bring uniformity in the duty/tax throughout the country on the "goods of special importance". He relied upon a decision of this Court in the case of ***Godfrey Phillips India Ltd. v. State of U.P.***[1] and submitted that no State is entitled to levy sales tax when it is entitled to share proceeds under the ADE Act. He relied upon paragraph 6 of a decision of this Court in the case of ***State of Kerala v. Attesee***[2] to support his contention that the Delhi Government was not entitled to levy sales tax on silk sarees. He submitted that the fact that "silk fabric" was deleted from the list contained in Section 14 of the Central Sales Tax Act, 1956 (the CST Act) is entirely irrelevant. In the alternative, the learned counsel submitted that in view of sub-section (1) of Section 15 of the CST Act, the Government of Delhi cannot claim sales tax over 4%. Therefore, he would urge that the levy of the sales tax at the rate of 12% is certainly bad in law.

4. The learned counsel appearing for the respondents submitted that the Item of silk fabric was deleted from the list of items in Section 14 with effect from 11th May 1968. Therefore, there was no embargo on levying sales tax at the rate

[1] (2005) 2 SCC 515
[2] (1989) Supp.1 SCC 733

above 4%. The learned counsel submitted that though the item of silk sarees is covered by clause 50.05 of the First Schedule to the ADE Act, the additional duty payable on the item is shown as nil. Therefore, the Government of Delhi was not getting any share in duty on silk fabric as ADE was not leviable on the said item. He would, thus, submit that the view taken by the Delhi High Court calls for no interference.

OUR VIEW

5. In this appeal, we are concerned with the demand made for the period between 15th January 2000 and 31st March 2000. During the said period, silk fabric was a part of Schedule I of the DST Act, on which sales tax was leviable at the rate of 12%. Sections 14 and 15 of the Central Sales Tax Act were deleted by Act No. 18 of 2017. Section 14, before its deletion, declared certain goods specified therein as of special importance in inter-state trade or commerce. Until 11th May 1968, item (xi) was incorporated in Section 14, which covered the item of "silk sarees". However, with effect from 11th May 1968, the said item was deleted by Act No. 19 of 1968.

6. Section 15(1) of the CST Act, as existed during the period for which the impugned assessment was made, provided that the local sales tax rate on declared goods should not exceed 4% of the sale or purchase price of such goods. So long as the silk fabric was a part of the list of declared goods under Section 14 of the CST Act, the sales tax levy under the DST Act could not have exceeded 4% in view of Section 15(1) of the CST Act. However, silk fabric was deleted from the list contained in

Section 14 of the CST Act, effective 11 May 1968. Therefore, during the relevant period for which the impugned assessment order was issued, as silk fabric was not a part of the list under Section 14, there was no embargo on levying sales tax on silk fabric at a rate exceeding 4%. Therefore, the argument based on Section 15(1) of the CST Act will not help the appellant.

7. Now, we turn to the arguments based on the ADE Act. As stated earlier, silk sarees form part of item 50.05 of Schedule I of the ADE Act. However, the duty payable on the said item was shown as nil. The entire argument of the appellant is based on what is stated in the Second Schedule of the ADE Act, which reads thus:-

> "During each of the financial years commencing on and after the 1st day of April, 1995, there shall be paid to each of the States specified in column (1) of the Table below such percentage of the net proceeds of additional duties levied and collected during that financial year in respect of the goods described in column (3) of the First Schedule, after deducting therefrom a sum equal to 2.203 per cent, of the said proceeds as being attributable to Union territories, as is set out against it in column (2) of the said Table:
>
> Provided that if during that financial year there is levied and collected in any State a tax on the sale or purchase of the goods described in column (3) of the First Schedule, or one or more of them by or under any law of that State, no sums shall be payable to that State under this paragraph in respect of that

financial year, unless the Central Government by special order otherwise directs."

8. In the ***State of Kerala v. Attesee*[2]*,*** the issue was the interconnection of the three Acts: the CST Act, the ADE Act and the State Sales Tax Act. The appellant relied upon what is held in paragraph 6 of the said decision of this Court. Paragraph 6 of the said decision reads thus:

> **"6.** Article 286 of the Constitution of India imposed certain restrictions on the legislative powers of the States in the matter of levy of sales tax on sales taking place outside the State, sales in the course of import or export, sales in the course of interstate trade or commerce and sales of declared goods. The Sales Tax Acts in force in several States were not in conformity with the provisions of the Constitution and attempts to bring those laws to be in conformity with these provisions gave rise to a lot of litigation. This led to an amendment of Article 286. Clause (2) of the article, as it stands, since 11-9-1956, authorised Parliament to formulate principles for determining when sale or purchase of goods can be said to take place in the course of import or export or in the course of inter-State trade or commerce. Clause (3) was amended, in terms already set out, to restrict the powers of a State to

impose sales or purchase tax on declared goods. The CST Act, 1956 which came into force on 5-1-1957 formulated the principles referred to in Article 286(2). As already mentioned, this Act was amended, inter alia, by Act 16 of 1957 w.e.f. 6-6-1957 and by Act 31 of 1958 w.e.f. 1-10-1958. Section 14 listed the goods which are considered to be of special importance in inter-State trade or commerce which included the six items set out earlier. Section 15 of the Act, as originally enacted, was brought into force only w.e.f. 1-10-1958. It stipulated that levy of sales tax on declared goods should not be at a rate exceeding 2 per cent or be levied at more than one point in a State. Before this section came into force, it was amended by Act 16 of 1957 which retained the first restriction and, so far as the second is concerned, provided that the tax should be levied only on the last sale or purchase inside the State and even that should not be levied when that last sale or purchase is in the course of inter-State trade or commerce as defined. Act 31 of 1958 amended Section 15 to impose certain modified restrictions and conditions with the details of which we are not here concerned. **These restrictions clearly entailed loss of revenue to**

the States and it was considered expedient and desirable to compensate the States for the proportionate loss of sales tax incurred by them. Thus, even before Section 15 was brought into force, the Central Government decided to pass an Act 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 recommended by the Second Finance Commission in its report dated 30-9-1957. This proposal to levy additional duties of excise on certain special goods was a part and parcel of an integrated scheme under which sales tax levied at different rates by the States on certain goods was ultimately substituted by the levy of additional duties of excise on such goods and the States were compensated by payment of a part of the net proceeds of the said additional levy on such goods. That this clearly was the genesis and object of the 1957 Act also appears from its objects and reasons set out earlier. Some of the items liable to excise duty were picked out from the Schedule to the 1944 Act. They were

listed among the declared goods of Section 14 of the CST Act and also made liable to additional excise duty under the 1957 Act. A perusal of the lists under these three enactments show that out of the items listed in the schedule to the 1944 Act, sugar, tobacco, cotton fabrics, rayon or artificial fabrics and woollen fabrics were categorised as declared goods and subjected to additional excise duty. When the numerical order of these items in the 1944 Act (originally 8, 9, 12, 12-A, 12-B) came to be changed in 1960 (as 1, 4, 19, 22, 21) a corresponding change was effected in the 1957 Act. Silk fabrics as defined in item 20 of the 1944 Act was included in 1961 in the CST Act and the 1957 Act. The fact that cotton fabrics though listed as item 12 in the Schedule to the 1944 Act was not brought into the list in Section 14 till 1-10-1958 or that Silk fabrics was dropped from the list in Section 14 w.e.f. 11-6-1968 though it continues in the schedule to the 1944 Act does not alter the position that these three acts are interconnected and that certain goods taken out from the Schedule to the 1944 Act were to be subjected to the special treatment outlined in the CST Act and the 1957 Act.**"**

(emphasis added)

The second Schedule of the ADE Act provides that during each financial year, each State shall be paid a certain percentage of net proceeds of the additional duties levied and collected during the financial year in respect of the goods described in column (3) of Schedule I. However, no additional duty was made payable on silk fabric under the ADE Act. The proviso makes it clear that notwithstanding the ADE Act, there is no bar on the States levying sales tax. If the States do that, no part of the additional duty under the ADE Act will be payable to the concerned States. Therefore, the argument that as silk fabric formed a part of Schedule I of the ADE Act, it disentitled the State Government from levying sales tax is fallacious and cannot be accepted.

9. The High Court has noted that its Co-ordinate Bench in the case of ***M.R. Tobacco Pvt. Ltd. v. Union of India and Ors.***[3] upheld the validity of notification dated 31st March 2000 issued under the DST Act. We may note here that the view taken by the Delhi High Court in the said case has been affirmed by this Court by judgment dated 4th May 2023 in Civil appeal No. 8486 of 2011 and other connected appeals. The decision in the case of ***Godfrey Phillips India Ltd. v. State of U.P***. does not deal with the issue arising in this case.

[3] (2006) 145 STC 211 (Del)

10. Therefore, we find no error in the view taken by the Delhi High Court in the impugned judgment. Accordingly, the appeal is dismissed with no orders as to costs.

.....J.
(Abhay S. Oka)

.....J.
(Sanjay Karol)

New Delhi;
March 21, 2024.