

## V. GURUVIAH NAIDU AND SONS ETC. A

v.

## STATE OF TAMIL NADU AND ANR. ETC.

November 2, 1976

[H. R. KHANNA AND V. R. KRISHNA IYER, JJ.] B

*Madras General Sales Tax Act, 1959, Schedule II, items 7(a) and (b)—If ultra vires.*

Raw as well as dressed hides and skins are declared goods under Central Sales Tax Act, 1956. Section 4 of the Madras General Sales Tax Act, 1959, provides that the tax shall be payable by a dealer, on the sale or purchase of declared goods inside the State, at the rate and only at the point specified in the Second Schedule to the Act, on the turnover in such goods. Item 7(a) of the Schedule provides that with respect to raw hides and skins, the rate of tax shall be at 3% and the point of levy shall be at the point of last purchase in the State. Item 7(b) provides that with respect to dressed hides and skins (which were not subjected to tax under the Act as raw hides and skins), the rate of tax shall be 1½% and the point of levy shall be at the point of first sale in the State. C

The appellants are dealers in hides and skins. They purchase raw hides and skins locally as well as in the course of inter-state trade and commerce, convert them into dressed hides and skins and sell them either locally or in the course of export. The appellants challenged the validity of items 7(a) and 7(b). The challenge to item 7(a) was that the item would also cover inter-state sales and as such was beyond the competence of the State Legislature; and the challenge to item 7(b) was that it was violative of Art. 304 (a) of the Constitution on the ground that whereas dressed hides and skins sold locally, but which have been made out of imported raw hides and skins, are subject to tax under the item similar sale of dressed hides and skins made out of raw hides and skins which have been subjected to tax at the purchase stage are not subject to tax under the item. D

HELD : (1) Item 7(a) relates only to intra state sales and not to inter-state sales. This is clear from the language used in the item, especially the words "purchase in the State". Assuming the language is ambiguous it should be so construed as would sustain its constitutional validity. [1067 F] E

(2) Article 304(a) does not prevent levy of tax on goods : what it prohibits is such levy of tax on goods as would result in discrimination between goods imported from other states and similar goods manufactured or produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a fiscal barrier and thus impede the free flow of inter-state trade and commerce. The scheme of items 7(a) and (b) is that in the case of raw hides and skins which are purchased locally in the State, the levy of tax would be at the rate of 3%. When such locally purchased raw hides and skins are tanned and sold locally as dressed hides and skins no levy would be made on such sales, as those hides and skins have already been subjected to tax at 3% when purchased in the raw form. On the other hand, in the case of hides and skins imported from other States in the raw form, thereafter tanned, and then sold inside the State as dressed hides and skins, the levy of tax is at 1½%. This levy however, cannot be considered discriminatory because the Legislature, while prescribing the rate in item 7(b) at half that levied under item 7(a) took into account the higher price of dressed hides and skins (nearly double) as compared to the price of raw hides and skins, and the fact that no tax under the State Act has been paid in respect of imported raw hides and skins. Even though dressed hides and skins are treated as a separate commodity there is a clear nexus between hides F

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**A** and skins in the raw form and those in the dressed form; and hence, there is no infirmity in the legislative provision, which, while levying tax on the sale of dressed hides and skins takes into account the levy in respect of raw hides and skins. [1070 D,H]

The onus of showing that there would be discrimination between raw hides and skins purchased locally and then tanned, and raw hides and skins imported and then tanned is on the appellant, and the appellant has not discharged the onus. [1070 C]

**B** *Firm A. T. B. Mehtab Majid & Co. v. The State of Madras & Anr.* 14 S.T.C. 355 and *A. Hajee Abdul Shukoor & Co. v. The State of Madras* 15 S.T.C. 719, explained and distinguished.

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 1577 and 1579 of 1971.

**C** Appeal from the judgment and Orders dated 23-3-1971 and 22-4-1971 of the Madras High Court in Writ Petitions Nos. 1088/70 and 1316/71.

*K. Srinivasan, I. Subramaniam and (Mrs.) S. Gopalakrishnan* for the Appellants.

**D** *K. Purasaran, Advocate General* for the State of Tamil Nadu, *A. V. Rangam and (Miss) A. Subhashini* for the Respondents.

The Judgment of the Court was delivered by

**E** KHANNA, J. These appeals by special leave are against the judgment of Madras High Court whereby that court repelled the challenge to the validity of items 7(a) and 7(b) of the Second Schedule to the Madras General Sales Tax Act, 1959 (hereinafter referred to as the State Act).

**F** The appellants are dealers in hides and skins. The appellants purchase raw hides and skins locally as well as in the course of inter-State trade and commerce. The raw hides and skins are converted into dressed hides and skins and are sold either locally or in the course of export. The matter relates to the assessment year 1968-69 and the dispute between the parties arises because of the inclusion in the turnover of the sale and purchase price of some of the above goods. The appellants by means of writ petitions challenged the validity of items 7(a) and 7(b) of the Second Schedule to the State Act. The High Court, as already mentioned, repelled the attack on the validity of those items and dismissed the writ petitions.

**G** Before dealing with the contentions advanced, it may be appropriate to refer to the relevant provisions. Section 4 of the State Act is the charging section in respect of declared goods and reads thus :

**H** "Tax in respect of declared goods.—Notwithstanding anything contained in section 3, the tax under this Act shall be payable by a dealer on the sale or purchase inside the State of declared goods at the rate and only at the point specified against each in the second schedule of the turnover in such goods in each year, whatever the quantum of turnover in that year."

It may be mentioned that raw hides and skins as well as dressed hides and skins are declared goods under section 14(iii) of the Central Sales Tax Act, 1956 (hereinafter referred to as the Central Act). Section 14(iii) of the Central Act reads as under :

“It is hereby declared that the following goods are of special importance in inter-State trade or commerce :

.....

(iii) hides and skins, whether in a raw or dressed state.”

Items 7(a) and 7(b) of the Second Schedule to the State Act and read as under :

Items 7(a) and 7(b) of the Second Schedule to the State Act read as under :—

S. No.	Description of goods	Point of levy	Rate of tax
1	2	3	4
7(a)	Raw hides and skins	At the point of last purchase in the State.	3
7(b)	Dressed hides and skins (which were not subjected to tax under this Act as raw hides and skins)	At the point of 1st sale in the State.	1-1/2 ”

So far as validity of item 7(a) of the Second Schedule is concerned, the argument of the learned counsel for the appellant is that this would cover also inter-State sales and as such is beyond the competence of the State legislature. We are unable to accede to this contention as we are of the view that item 7(a) relates only to inter-State sales and not to inter-State sales. This is clear from the language used in the item, especially the words “purchase in the State”. Assuming that the language of item 7(a) is ambiguous, it should be so construed as would sustain the constitutional validity of the said item. Considered in this light the occasion for the levy of tax under the above item would arise only when there is intra-State sale and not inter-State sale.

Regarding from 7(b), the learned counsel for the appellants has contended that it is violative of clause (a) article 304 of the Constitution. The said clause reads as under :

“304. Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law—

(a) 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

A so imported and goods so manufactured or produced; and

(b) . . . . .

According to the learned counsel, there can be three types of sale transactions in respect of dressed hides and skins :

- B (1) Dressed hides and skins imported from outside the State of Tamil Nadu. Tanning of the aforesaid
- (2) Import of raw hides and skins from outside the State of Tamil Nadu and sold within that State; raw hides and skins within the State of Tamil Nadu and the sale of the same within that State as dressed hides and skins; and
- C (3) Purchase of raw hides and skins within the State of Tamil Nadu and sale of the same within that State as dressed hides and skins after tanning those hides and skins.

D It is urged that in respect of hides and skins covered by the third category, the local sales of dressed hides and skins will not be liable to tax under State Act as the purchase of the raw hides and skins has already been subjected to tax under item 7(a). Regarding hides and skins mentioned at (1) and (2) above, the local sales of dressed hides and skins would be subjected to tax at the rate of  $1\frac{1}{2}$  per cent under item 7(b) as there was no levy of tax under the State Act in respect of those hides and skins. Learned counsel accordingly concludes from the above that imported hides and skins are subject to tax when sold as dressed hides and skins at the rate of  $1\frac{1}{2}$  per cent, whereas hides and skins purchased in raw form locally and dressed thereafter are not subject to tax under the State Act when sold as dressed hides and skins. The contention, in other words, is that whereas dressed hides and skins sold locally but which have been made out of imported raw hides and skins are subject to tax, similar sales of dressed hides and skins made out of raw hides and skins which have suffered tax at purchase stage are not subject to tax under

E item 7(b) of the Second Schedule of the State Act. Item 7(b) is therefore stated to be discriminatory and violative of article 304(a). Reliance in this connection is placed upon two decisions of this Court in the cases of *Firm A.T.B. Mehtab Majid & Co. v. The State of Madras & Anr.* (1) and *A. Hajee Abdul Shukoor & Co. v. The State of Madras.*(2)

G In the case of *Mehtab* this Court held that the provisions of rule 16 of the Madras General Sales Tax (Turnover and Assessment) Rules, 1939 discriminate between hides and skins imported from outside the State and those manufactured or produced inside the State and therefore they contravene the provisions of article 304(a) of the Constitution. Perusal of the facts of that case goes to show that the real grievance of the appellant in that case was that though there was a substantial disparity in the price of raw hides and skins and the price of dressed hides and skins, the same rate of tax was levied

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(1) 14 S.T.C. 355.

(2) 15 S.T.C. 719.

in respect of both types of hides and skins under section 3(1)(b) of the State Act. This is clear from the following observations in that case:

“The grievance arises on account of the amount of tax levied being different on account of the existence of a substantial disparity in the price of the raw hides or skins and of those hides or skins after they had been tanned, though the rate is the same under section 3(1)(b) of the Act. If the dealer has purchased the raw hides or skin in the State, he does not pay on the sale price of the tanned hides or skins he pays on the purchase price only. If the dealer purchases raw hides or skins from outside the State and tane them within the State, he will be liable to pay sales tax on the sale price of the tanned hides or skins.”

In the case of *Hajee Abdul Shukoor* this Court held that Sub-section (1) of section 2 of the Madras General Sales Tax (Special Provisions) Act, 1963 discriminates against imported hides and skins which were sold up to August 1, 1957. The rate of tax on the sale of tanned hides and skins, as would appear from that judgment, was “2 per cent on the purchase price of those hides and skins in the untanned condition, while the rate of tax on the sale of raw hides and skins in the State during 1955 to 1957 is 3 pies per rupee”. The Court in this context referred to *Mehtab's case* and observed :

“In the earlier case, discrimination was brought about on account of sale price of tanned hides and skins to be higher than the sale price of untanned hides and skins, though the rate of tax was the same, while in the present case, the discrimination does not arise on account of difference of the price on which the tax is levied as the tax on the tanned hides and skins is levied on the amount for which those hides and skins were last purchased in the untanned condition, but on account of the fact that the rate of tax the sale of tanned hides and skins is higher than that on the sale of untanned hides and skins. The rate of tax on the sale of tanned hides and skins is 2% on the purchase price of these hides and skins in the untanned condition while the rate of tax on the sale of raw hides and skins on the State during 1955 to 1957 is 3 pies per rupee. The difference in tax works out to 7/1600th of a rupee, i.e., a little less than  $\frac{1}{2}$  naya paise per rupee. Such a discrimination would affect the taxation up to the 1st of August, 1957, when the rate of tax on the sale of raw hides and skins was raised to 2% of the sale price.”

None of the circumstances which led this Court to strike down the relevant provisions in the above mentioned two cases exists in the present case. In *Mehtab's case* discrimination was found to exist because of the fact that tax was being levied at the same rate in respect of both raw hides and skins as well as dressed hides and skins, even though

- A** the price of dressed hides and skins was much higher. The position was worse in the case of *Hajee Abdul Shukoor* because in that case the sales tax was found to have been charged at a higher rate in respect of dressed hides and skins than that on the sale of raw hides and skins in spite of the fact that the price of dressed hides and skins was higher than that of raw hides and skins. The position in the present case is materially different, for here the rate of sales tax for raw hides and skins is 3 per cent, while that for dressed hides and skins is 1½ per cent. It is plain that the lower rate of tax in the case of dressed hides and skins has been prescribed with a view to offset the difference between the higher price of dressed hides and skins and lower price of raw hides and skins. No material has been brought on the record to show that despite the lower rate of sales tax for dressed hides and skins, the imported hides and skins are being subjected to discrimination. The onus to show that there would be discrimination between the hides and skins which were purchased locally in the raw form and thereafter tanned and the hides and skins which were imported from other States was upon the appellant. The appellant, we find, has failed to discharge such onus.

- Article 304(a) does not prevent levy of tax on goods; what it prohibits is such levy of tax on goods as would result in discrimination between goods imported from other States and similar goods manufactured or produced within the State. The object is to prevent discrimination against imported goods by imposing tax on such goods at a rate higher than that borne by local goods since the difference between the two rates would constitute a tariff wall or fiscal barrier and thus impede the free flow of inter-State trade and commerce. The question as to when the levy of tax would constitute discrimination would depend upon a variety of factors including the rate of tax and the item of goods in respect of the sale of which it is levied. The scheme of items 7(a) and 7(b) of the Second Schedule to the State Act is that in case of raw hides and skins which are purchased locally in the State, the levy of tax would be at the rate of 3 per cent at the point of last purchase in the State. When those locally purchased raw hides and skins are tanned and are sold locally as dressed hides and skins, no levy would be made on such sales as those hides and skins have already been subjected to local tax at the rate of 3 per cent when they were purchased in raw form. As against that, in the case of hides and skins which have been imported from other States in raw form and are thereafter tanned and then sold inside the State as dressed hides and skins, the levy of tax is at the rate of 1½ per cent at the point of first sale in the State of the dressed hides and skins. This levy cannot be considered to be discriminatory as it takes into account the higher price of dressed hides and skins compared to the price of raw hides and skins. It also further takes note of the fact that no tax under the State Act has been paid in respect of those hides and skins. The Legislature, it seems, calculated the price of hides and skins in dressed condition to be double the price of such hides and skins in raw state. To obviate and prevent any discrimination or differential treatment in the matter of levy of tax, the Legislature therefore prescribed a rate of tax for sale of dressed hides and skins which was half of that levied under item 7(a) in respect of raw hides and skins.

Lastly, it has been argued that dressed hides and skins are a commodity distinct and separate from raw hides and skins and that item 7(b) of the Second Schedule makes a discrimination between the sales of locally processed dressed hides and skins and those imported from other States. In this respect we find that it is not the case of the appellants that they import dressed hides and skins from other States and sell them as such in Tamil Nadu. On the contrary, the case of the appellants is that what they import from other States are only raw hides and skins which are thereafter tanned and sold as dressed hides and skins. In the circumstances, it is not clear as to what grievance the appellants can have on the score that there is discrimination between imported dressed hides and skins and the dressed hides and skins produced and manufactured within the State.

Apart that it seems to us that even though dressed hides and skins have been treated as separate commodity, there is a clear nexus between hides and skins in raw form and those in dressed form. So far as the Central Act is concerned, both the raw as well as the dressed hides and skins are specified together in clause (iii) of section 14. It has to be borne in mind that it is raw hides and skins which after being subjected to processing or tanning take the shape of dressed hides and skins. Dressed hides and skins cannot, therefore, be considered in isolation and we find no infirmity in a legislative provision which while levying tax on the sale of dressed hides and skins takes into account the levy of tax in respect of the purchase of raw hides and skins. Looked at in this light there appears to be no warrant for the proposition that preferential treatment has been shown to dressed hides and skins prepared from locally purchased raw hides and skins compared to the treatment accorded to imported hides and skins.

We are therefore, of the view that the attack on the validity of item 7(b) of the Second Schedule to the State Act is not well founded. We accordingly dismiss the appeals, but in the circumstances without costs.

V.P.S.

*Appeal dismissed.*