

for determination of market value, the same could not be altogether ignored merely as a post-acquisition sale when there was no evidence indicating that there was sharp rise of the land after acquisition.

AIR 1989 SC 2051; 1988 SC 1652

Relied on

M.P. Abraham

For Appellant

Government Pleader (P.M. Paulose)

For Respondent

CASE NO. 37

Muhammed, J.

O.P. No. 5278 of 1994

31.7.1997

I.T.C. Ltd. v. State of Kerala

Constitution of India, Art. 304 (b) - State cannot impose even reasonable restrictions on the freedom of trade without obtaining previous sanction of the President.

Article 304 provides that notwithstanding anything in Article 301 or Article 303, the Legislature of a State may by law impose on goods imported from other States or the Union Territories any tax to which similar goods manufactured or produced in that State are subjected and impose such reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest. But the proviso to Article 304 mandates that no Bill or amendment for the purpose of clause (b) shall be introduced in the Legislature of a State without the previous sanction of the President. In other words, what the above provision indicates is that the State can impose reasonable restrictions on the freedom of trade, commerce and intercourse with or within that State as may be required in the public interest only after obtaining previous sanction of the President. Since no previous sanction of the President has been obtained before passing the impugned Act, the State cannot impose even reasonable restriction on the freedom of trade as may be required in public interest in the facts of this case. In this case, as pointed out above, neither previous sanction nor subsequent assent is available. Therefore, the invalidity attached to the impugned Act for the reason of the absence of the previous sanction cannot be wiped off by invoking Article 255.

AIR 1976 SC 182; AIR 1989 SC 1949 & 2015;

1961 SC 232; (1997) 106 STC 11;

1962 SC 1406; AIR 1963 SC 928 & 588;

1995 SC 1340; 1976 SC 182; 1966 SC 764

Referred to

Tax on Luxuries Act, 1976 (Kerala), S. 4A & Central Sales Tax Act, 1955
 15(a) - S. 4A of the Tax on Luxuries Act impose 5% tax, direct on the movement of cigarette which is higher than the rate specified under S. 15(a) of the Central Sales Tax Act (4%) - The levy directly and immediately impedes or restricts the movement of cigarette in the course of trade and commerce and is therefore violative of Art. 301 of the Constitution - Constitution of India, Art. 301.

Thus all forms of manufactured tobacco including cigarettes are declared by Parliament to be goods of special importance in inter-state trade and commerce as per Section 14(ix) of the Act. From the provisions contained in Section 15 (a) of the Act, it is crystalline that law of a State imposing or authorising imposition of a tax in the sale or purchase of declared goods shall conform to such restrictions and conditions in accordance with the system of levy, rates and other incidents of the tax. Therefore it is contended that the levy of tax at the rate of 5% on cigarettes under the impugned Act is opposed to the levy of tax at the rate of 4% specified in Section 15(a) of the Central Sales tax Act. The argument therefore is that the impugned Act is so far as it authorises the levy of tax at the rate more than what is prescribed under Section 15(a) of the Central Sales tax Act is invalid. The levy of tax under the impugned Act is not invalid for want of legislative competence. Then the question is the impugned Act can be regarded as a law of the State authorising the imposition of tax on the sale or purchase of good declared by Parliament at a rate higher than the rate specified in Section 15(a) of the Central Sales tax Act. It may be so, but this court cannot attach total invalidity though it contravenes Section 15(a) of the Central Sales tax Act because the enactment of the impugned Act is specifically authorised under Entry 62 of List II. When the power of the legislature to enact the law is admitted, then it has power to adopt any mode or any manner as it thinks appropriate. The legislature cannot be compelled to confine the levy only in one form and in one rate. The wisdom of the legislature is paramount as to the social life of the community and its economic necessities.

However, the impact of the levy is totally different when it is viewed within the framework of the guarantee of freedom of trade, commerce and intercourse declared under Article 301 of the Constitution. Section 4A of the impugned Act in substance and form imposes a levy of tax at the rate of 5% on the despatch of cigarettes for supply made in the course of inter-state trade and commerce which is declared to be free. In other words, it is an imposition of tax direct on the movement of goods at the rate higher than 4% specified under Section 15(a) of the Central Sales tax Act. It is an impediment or restriction which is direct and immediate. In the result, Section 4A of the Kerala Tax on Luxuries Act, 1976 and Schedule thereto as amended by the Kerala Finance Bill, 1994 are declared unconstitutional, invalid and inoperative. Accordingly, the said provisions are set aside.

AIR 1962 SC 1406; 1921 (1) KB 64;
 1969 SC 147; AIR 1957 SC 768;
 1990 SC 781; 1993 SC 1048;
 1989 SC 2015; 1982 SC 697;
 1985 (Supp.) SCC 476; 1965 SC 177;
 1956 SC 676; 1957 SC 628

Referred to