

ask for a refund of the money paid. It is a well-established principal that courts will not entertain an action for money had and received, where, in order to succeed, the plaintiff has to prove his own fraud. We are further in agreement with the High Court that in cases in which there is stipulation that by reason of a breach of warranty by one of the parties to the contract, the other party shall be discharged from the performance of his part of the contract, neither s. 65 nor s. 64 of the Indian Contract Act has any application.

For the reasons given above we have come to the conclusion that there is no merit in the appeal. The appeal is accordingly dismissed with costs.

Appeal dismissed.

M/s. STEELWORTH LTD.

vs.

STATE OF ASSAM

(B. P. SINHA, C. J., J. L. KAPUR, M. HIDAYATULLAH,
J.C. SHAH and J. R. MUDHOLKAR, JJ.)

Sales Tax—Provincial legislation imposing tax in certain circumstances—Constitutional validity—Amendment—Effect—Assam Sales Tax Act, 1947 (Act, XVII of 1947), as amended by Assam Sales Tax (Amendment Act, 1960) (Act, XIII of 1960) s. 15 (1) (b) (i) (b) and (c)—Constitution of India, Arts. 14, 19 (1)(f).

The petitioner carried on business of manufacturing, selling and supplying iron and steel materials in the State of Assam. Before the Assam Sales Tax Amendment Act of 1960, it held a registration certificate under which all its purchases for use in manufacture or production of goods taxable under the Act were exempted from Sales Tax, but after the amendment it became liable to pay tax on those goods. It was contended that by omission of sub-cl. (b), discrimination was introduced by differentiating between materials bought for articles to be supplied against a contract and articles produced and sold by the petitioner and that this was not a reasonable classification

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based on any intelligible differentia and therefore, the amendment by Act XIII of 1960, was violative of Arts. 14 and 19(1) (f) of the Constitution.

Held, that the object of the amending Act was to raise revenue for the State. It was for the legislature to decide as to what articles it should tax and what articles it should not tax and if it decided to impose the tax on certain articles it thought necessary, that was a question of policy into which the courts cannot enter and in such circumstances *per se* there is no discrimination. Besides, the provision against discrimination was not on articles but on persons and the petitioner failed to show how the imposition of this tax was an unreasonable restriction on the right to carry on trade.

ORIGINAL JURISDICTION Writ Petition No. 184 of 1961.

Petition under Art. 32 of the Constitution of India for enforcement of Fundamental Rights.

C. B. Agarwala, R. L. Agarwala and P. C. Agarwala, for the petitioner.

Naunit Lal, for the respondents.

1962. January 16. The Judgment of the Court was delivered by

Kapur J.

KAPUR J.—This is a petition under Art. 32 of the Constitution challenging the legality of the amendment introduced in s. 15 of the Assam Sales Tax Act, 1947 (Act XVII of 1947), by s. 2 of the Assam Sales Tax (Amendment) Act, 1960 (Act XIII of 1960), by which sub-s. (b) of item (i) of sub-cl. (b) of cl. (1) was deleted and thereby sales of goods to a registered dealer intended for use in production of goods for sale became liable to sales tax.

The appellant Company is a limited company carrying on in the State of Assam its business of manufacturing, selling and supplying iron and steel materials. It held a Registration Certificate under the Assam Sales Tax Act, as it was before the amendment of 1960. Under that Act all its purchases for use in manufacture or production of goods taxable under the Act were exempt from sales tax but after the amendment of the Act there was a deletion in

the Registration Certificate of certain goods, e.g., cast iron, iron plates, steel bars and galvanised wire which were used by the petitioner in the manufacture of its finished products which were also taxable in the State. Consequently it has become liable to pay tax on those goods purchased for use in the manufacture of goods and the cost of production has thereby gone up.

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Three points were raised by the petitioner :—

(1) that the amendment introduced by Act XIII of 1960 is violative of Art. 14 because it discriminates between manufacturers who supply goods according to orders received and others who manufacture goods on their own account and sell them ;

(2) that the restriction imposed by the Amending Act is excessive and violative of Art. 19 (1)(f) ; and

(3) that the refusal to amend the Registration Certificate by not reinstating the articles mentioned above affects the rights of the petitioner Company under Art. 19(1)(f).

For the purpose of deciding these questions it is necessary to refer to the scheme of the Assam Sales Tax Act, 1947 (Act XVII of 1947). By s. 2(2)(a)(b) of that Act 'Contract' is defined as :

"2. In this Act, unless there is anything repugnant in the subject or context,—

(2) "contract" means any agreement for carrying out for cash or deferred payment or other valuable consideration,—

(a) the preparation, construction, fitting-out, improvement or repair of any moveable property or of any building, road, bridge or other immoveable property, or

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(b) the installation or repair of any machinery affixed to a building or other immoveable property."

Section 9 of that Act provides for compulsory registration. Section 12 provides that a dealer registered under s. 9 shall be granted a certificate of registration which shall specify the class or classes of goods in which the said dealer carries on business and such other particulars as may be prescribed. Section 15(1)(b)(i)(b) and (c) deals with exemptions. It reads :—

"15 The net turnover shall be determined by deducting from dealer's gross turnover during any given period—

(1) his turnover during that period on.

(a)

(b) sale to a registered dealer of—

(i) goods specified in the purchasing dealer's certificate of registration as being intended by him for—

(a)

(b) use in manufacture or production of any goods, the sale of which is taxable under this Act,

(c) use in the execution of any contract."

Sub-clause (b) has now been omitted by the amending Act above referred to as a result of which from the gross turnover of a dealer goods specified in the certificate of registration as being intended by him for use in manufacture or production of any goods for sale has now been omitted.

The argument raised was that by the omission of sub-cl. (b) discrimination was intended as between materials which were to be used for manufacture of goods and to be sold on their own account by the petitioner Company and materials which were purchased for use in the execution of any contract,

It was also contended that the object of the amendment of the Sales Tax Act was to prevent evasion of Sales Tax by manufacturing goods and sending them out of the State and therefore that object could have been achieved by taxing only those material which were so intended. The amending Act is really a part of the General Sales Tax Act of the State of Assam the object of which is to raise revenue in the State. It is for the Legislature to decide as to what articles it should tax and what articles it should not tax and if it decided to tax certain articles in order to effectuate its policy it is difficult to see how that would introduce discrimination. But it was argued that discrimination is introduced by differentiating between materials bought for articles to be supplied against a contract and articles produced and sold by the petitioner and that this was not a reasonable classification nor was there any intelligible differentia in this classification. In our opinion this argument is without force. The Legislature, having chosen the articles on which it thinks necessary to impose a tax, has decided to impose the tax and it is difficult to see how it can be said that the goods supplied against a contract and goods manufactured and sold by the petitioner are similarly situated. Besides the provision against discrimination is not on articles but on persons.

It has not been shown how the imposition of this tax is an unreasonable restriction on the rights of the petitioner to carry on trade, but it was submitted that by this means the petitioner will not be able to compete with the manufacturers outside the State of Assam. Assuming that this is so, it is clear that goods which are purchased are put to different uses and if the legislature thinks that certain classes of goods should pay the tax and not others that is a question of policy into which the courts cannot enter. We can only say that in such circumstances, *per se* there is no discrimination. There is no force in the second contention either.

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In view of our decision on these two points the third point, that is, the refusal of the Sales Tax Officer to amend the registration certificate will have no force.

In the result this petition fails and is dismissed and the rule is discharged. The petitioner will pay the costs of the respondent.

Petition dismissed.

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SOUTHERN ROADWAYS PRIVATE LTD.

v.

UNION OF INDIA AND ANOTHER

(B. P. SINHA, C.J., J. L. KAPUR, M. HIDAYATULLAH,
J. C. SHAH and J. R. MUDHOLKAR, JJ.)

Income Tax—Development Rebate—Disallowance on office appliances and transport vehicles If discriminatory—Income-tax Act, 1922 (11 of 1922) as amended by the Taxation Laws (Amendment) Act (28 of 1960, s. 10(2) (vi-b) second proviso.

The assessee company owned a fleet of buses and carried on the business of transport. The income-tax officer disallowed development rebate on the transport vehicles owned by the company as provided by the second proviso to s. 10(2) (vi-b) of the Income-tax Act. The company challenged the section on the ground that the said proviso offends Art. 14 in that it discriminates between machinery which is office appliances or road transport vehicles and other kinds of machinery.

Held, that there is nothing in the Constitution which prevents the Legislature from choosing the objects of taxation from amongst various classes of machinery for purpose of giving development rebate.

ORIGINAL JURISDICTION : Petition No. 143 of 1961.

Petition under Art. 32 of the Constitution of India for the enforcement of Fundamental rights.

S. Swaminathan and R. Gopalakrishnan, for the petitioner.

K. N. Rajagopala Sastri and P. D. Menon, for the respondents.