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Case Comment: State of Andhra Pradesh v National Thermal Power Corporation Limited - Legal Analysis of NTPC's Transactions with State Electricity Boards: Inter-State or Intra-State Sales?

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INTRODUCTION

As outlined in the Constitution, India's federal system establishes clear roles and responsibilities for the Union and State governments. This division aims to enhance political, economic, and administrative efficiency. The challenge faced was to unite states with diverse characteristics and promote rapid economic development, social justice and balanced regional growth. The Seventh Schedule, encompassed by Article 246¹ of the Constitution, defines the Union List, State List and Concurrent List delineating the legislative powers of the respective authorities.

However, there were instances where legislatures passed laws that conflicted with individual interests, prompting the need to limit such unconstitutional legislation. In this case, the

¹ Constitution of India 1950, art 246

Supreme Court aimed to define the boundaries set by Article 246,²determining the scope of Parliament and State Legislatures to enact laws in specific fields. The judgment not only clarifies the authority of State legislatures in levying duties but also safeguards the freedom of trade and commerce across India's territory, ensuring the unity and integrity of the country³.

FACTS OF THE CASE

The National Thermal Power Corporation Ltd. (NTPC) had thermal power stations in the State of Andhra Pradesh (AP) and the State of Madhya Pradesh (MP). NTPC was generating and distributing electricity to various states, including Goa, Karnataka, Kerala, and Tamil Nadu. The States of AP and MP sought to levy electricity duty on NTPC under their respective electricity duty acts.

In AP, the AP Electricity Duty Act, 1939, defined NTPC as a 'licensee' and provided for the duty levy on all energy sales, subject to certain exclusions and conditions regarding the rate charged to consumers.⁴ The constitutional question arose as to whether Entry 53 under List II of the Seventh Schedule of the Constitution of India authorized the State of AP to impose such a duty.

Similarly, in MP, the MP Electricity Duty Act, of 1949, provided for the levy of duty on electrical energy sold or supplied to consumers or consumed by NTPC itself. Additionally, there was the MP Upkar Adhiniyam, 1981, which levied an energy development cess on the units of energy sold or supplied to consumers or consumed by NTPC. NTPC was also supplying electricity to Electricity Boards in neighboring states.

The argument put forth by both states was that the sale of electricity to the boards of other states is completed within the generating state itself, i.e., AP and MP. According to the bulk power supply agreements, metering was done within the state, and the delivery was considered complete at that point. Any wheeling loss, wheeling charges, transmission loss, and transmission charges incurred during the delivery of electricity to the home state of the

² Constitution of India 1950, art 246

³ *State of Andhra Pradesh v National Thermal Power Corporation Ltd & Ors* (2002) 5 SCC 203

⁴ Andhra Pradesh Electricity Duty Act 1939, s 3 (2)

buyers were their responsibility. NTPC claimed that it loses control over the electricity supplied once delivery is made, and the payment made by the beneficiaries is based on the delivery at the metering point. These clauses were presented as evidence that the sale is complete within the state and not an inter-state sale, as argued by NTPC. Therefore, the states contended that they had the power to levy duty on such sales.

The High Court of AP held that the state was not competent to levy such a duty. Subsequently, the State of AP filed an appeal before the Supreme Court against this order. In a similar case in MP, NTPC applied under Article 139A to transfer the matter from the MP High Court to the Supreme Court. Both cases were heard together by the Supreme Court due to their similar facts.

LEGAL ISSUES

1. Whether Electricity is good.
2. Which Entry covered the Andhra Pradesh Electricity Duty Act 1949 i.e. Entry 53 or Entry 54 of the State List?
3. Whether Electricity sold by NTPCL to Electricity Boards of other states was an Inter-State sale or an Intra-State sale.
4. Whether Inter-State sales thereof are taxable under Central Sales Tax 1956.

OBSERVATIONS OF SUPREME COURT

The Hon'ble Supreme Court examined various constitutional provisions and legal interpretations related to the taxation of inter-state sales of electricity. The Court referred to the *Bengal Immunity Co. Ltd. v State of Bihar* case⁵ and ruled that an inter-state sale or purchase of goods continues to be so irrespective of the state where the sale is located. The situs of the sale is immaterial for determining its inter-state character.

⁵ *Bengal Immunity Co. Ltd. v State of Bihar* (1955) 2 SCR 603

The Court noted the amendment in Section 6 of the Central Sales Tax (CST) Act⁶, which specifically exempted inter-state sales of electricity from taxation. This exemption was dependent on the rate of tax within the state. Thus, inter-state sales of electricity were liable to central sales tax before this amendment.

The Court recognized that electricity qualifies as ‘goods’ under the definition provided in Article 366(12) of the Constitution of India⁷. It can be abstracted, transmitted, sold and possesses the attributes of goods, despite the fact that it cannot be stored or preserved. The sale, supply, and consumption of electricity occur simultaneously.

The Court interpreted entry 53 of List II of the Seventh Schedule, which deals with ‘Taxes on sale or consumption of electricity’ as ‘Taxes on consumption or sale for consumption of electricity’. By this interpretation, the conflict between entry 53 and entry 54 is resolved, and both can be harmonized. Entry 54 covers goods, including electricity, subject to entry 92A of List I.

The Court rejected the argument that the absence of specific mention of entry 92A in entry 53 allows for the taxation of inter-state sales of electricity under entry 53. It held that the bans imposed by Articles 269⁸ and 286⁹ on taxing inter-state sales apply irrespective of the language used in the entries. The prohibition on taxing inter-state sales of electricity also applies to entry 53 of List II. The Court acknowledged that the movement of electricity between states in pursuance of sale contracts with bulk buyers, such as Electricity Boards, constitutes inter-state sales. The status of the sale cannot be determined by legislation, judgment, or contractual obligations contrary to the provisions of the CST Act¹⁰ and the restrictions in Articles 269 and 286. The Court emphasized that the definition of ‘consumer’ in the MP Electricity Duty Act, 1949,¹¹ should be read down to include only persons who receive electricity for consumption

⁶ Central Sales Tax Act 1956, s 6

⁷ Constitution of India 1950, art 366(12)

⁸ Constitution of India 1950, art 269

⁹ Constitution of India 1950, art 286

¹⁰ Central Sales Tax Act 1956

¹¹ MP Electricity Duty Act 1949, s 2(a)

within the state. Otherwise, it would result in multiple taxation of electricity in both the generating state and consuming state, which is not the legislative intention.

These points reflect the Supreme Court's interpretation of relevant constitutional provisions, statutory amendments, and legal principles in the context of taxation on inter-state sales of electricity.

DECISION

The Hon'ble Supreme Court, in both cases, determined that a contractual relationship exists between the parties involved, namely NTPCL as the seller and the buyers of electricity. According to the terms of these contracts, NTPCL generates and supplies electricity to other states without any interruption or pause between the various stages of generation, sale, transmission, supply, delivery, and consumption. As a result, the Court concluded that these sales can only be classified as inter-state sales.

The Court further emphasized that the state government does not possess the authority to convert an inter-state sale into an intra-state sale. The nature of the transactions and the continuous movement of electricity across state boundaries preclude such a conversion by the state government. Based on the arguments presented and the interpretation of relevant laws, the Hon'ble Supreme Court upheld the correctness of the judgment by the Andhra Pradesh High Court. The Court affirmed that electricity falls within the definition of goods and that inter-state sales of electricity are subject to taxation under the Central Sales Tax Act, of 1956.

The Court also clarified that state governments do not have the authority to impose duties on inter-state sales. Therefore, any attempt by a state to levy such duties on inter-state sales of electricity would be invalid. The Supreme Court's ruling confirms the applicability of the Central Sales Tax Act for taxation on inter-state sales of electricity and restricts the power of state governments to impose additional duties on such transactions.

ANALYSIS

"In levying taxes and in shearing sheep it is well to stop when you get down to the skin."

– Austin O'Malley

According to the Madhya Pradesh Electricity Duty Act 1949, the definition of 'consumer' includes individuals or entities who receive electrical energy, irrespective of whether it is consumed or not.¹² Additionally, it extends to persons who receive electricity in bulk for further distribution, without considering whether the distribution takes place within or outside the state. Based on this definition, the applicability of the Act and its provisions would generally be limited to consumers within the state of Madhya Pradesh. The Act does not explicitly address the scenario of distribution outside the state, suggesting that its scope may primarily cover consumers within the state boundaries.

The reasoning put forth by the States of Andhra Pradesh and Madhya Pradesh, which suggests subjecting electrical energy to taxation in both the state of the supplier and the states where it is delivered, goes against the constitutional provisions and the intent behind the Sixth Amendment¹³. If such reasoning were accepted, it would result in a situation where multiple states could impose taxes on the same electrical energy based on territorial nexus, similar to the complications faced before the Constitution and the Sixth Amendment came into force. The competence to legislate any law must be traced from the Constitution of India which provides the division of powers between Centre and State.¹⁴

This would hinder the free movement of electricity between states and undermine the principles of free trade, commerce, and interaction throughout India. It would be detrimental to the unity, integrity, and economic development of the country. The Constitution and the Sixth Amendment were enacted to address and remedy such situations, aiming to prevent multiple taxation and ensure smooth inter-state trade and cooperation. Therefore, In *Tata Steel Co. Ltd. Bombay v S.R. Sarkar & Ors.*¹⁵, held that levying tax on inter-state trade or commerce is out of the competence of the State legislature.

¹² Madhya Pradesh Electricity Duty Act, 1949, s 2(a)

¹³ Constitution (Sixth Amendment) Act, 1956, art 366

¹⁴ Constitution of India, art 245

¹⁵ *Tata Steel Co. Ltd. Bombay v S.R. Sarkar & Ors* (1961) 1 SCR 379

CONCLUSION

Therefore, Civil Appeal No. 3112 of 1990 was dismissed, meaning that the appeal was not successful. On the other hand, Civil Writ Petition T.C. No. 3 of 1998 was allowed, indicating that the petition was accepted. As a result, the demand raised by the Chief Electrical Inspector of the Madhya Pradesh government was quashed, meaning it was invalidated or set aside.

The decision protected the principles of economic unity, integrity, and the free flow of trade by preventing any hindrance or complications that could have emerged from conflicting taxation laws. It contributed to the overall efficiency and ease of doing business by promoting a harmonized and consistent approach to taxation on inter-state transactions. In essence, the judgment served as a guardian of the right to free trade, ensuring a favorable environment for commerce and upholding the principles enshrined in the Constitution.