



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**



D.B. Civil Writ Petition No. 16656/2024

Paras Mines And Minerals, Having Its Address At Pratibha Nagar,
Gadrata, Tehsil Khetri, Jhunjhunu, Rajasthan 333501 Through
Power Of Attorney Holder And Authorised Signatory Umesh
Kumar Chauhan

-----Petitioner

Versus

1. Union Of India, Through Secretary, Department Of
Revenue, Ministry Of Finance, North Block, New Delhi-
110001.
2. State Of Rajasthan, Through Additional Chief Secretary
Finance, Finance Department, Government Of Rajasthan,
Government Secretariat, Janpath, Jaipur-302005 (Raj.)
3. Commissioner Of State Tax, Kar Bhawan Jaipur

-----Respondents

For Petitioner(s)	:	Mr. Daksh Pareek with Mr. Praveen Kumar Jain Mr. Arjun Singh Mr. Keshav Parashar Mr. Ashish Kabra
For Respondent(s)	:	Mr. RD Rastogi, ASG with Mr. Sumit Tatarwal, Mr. Devesh Yadav, Mr. Samaksh Dasot, Mr. Vaibhav Bhansali & Mr. Kshitiz Sharma Mr. Sandeep Taneja AAG with Mr. Kartikeya Sharma

**HON'BLE MR. JUSTICE AVNEESH JHINGAN
HON'BLE MRS. JUSTICE SHUBHA MEHTA**

Judgment

Reserved on: **29/01/2025**

Pronounced on: **13/02/2025**

AVNEESH JHINGAN, J:-

1. This petition is filed challenging vires of Section 8(3)(b) of
the Central Sales Tax Act, 1956 (for short 'the CST') as amended
by Finance Act, 2021.



2. The relevant facts are that the petitioner firm is engaged in Mining of all type of natural stones. The petitioner is registered under the Goods & Services Tax Act, 2017, CST and the Rajasthan Value Added Tax Act, 2003 (hereinafter referred to as the "VAT Act"). For mining, petitioner purchases High Speed Diesel (for brevity 'HSD') in course of interstate trade or commerce. Under erstwhile section 8(3)(b) of CST, petitioner was entitled to purchase HSD at reduced rates on furnishing of Form "C".

3. The grievance is that after amendment of section 8(3)(b) of CST, the goods used in telecommunication, mining or generation/distribution of electrical power cannot be purchased at reduced rate against Form "C".

4. Learned counsel for the petitioner contended that the exclusion of mining from Section 8(3)(b) of the CST is discriminatory, arbitrary and in violation of Article 14 of the Constitution of India. Submission is that the statute has been amended to overcome the decision in the case of **Carpo Power Limited vs. State of Haryana and Ors.** reported in **(2018) 53 GSTR 24**, against which the SLP was dismissed. It is argued that the working of the petitioner shall be adversely affected being not entitled to purchase HSD on the reduced rates. The argument is fortified by stating that Input Tax Credit ('ITC') cannot be claimed of the full rate of tax paid under the CST on purchase of HSD. Reliance is placed upon decisions of the Supreme Court in case of **Indian Express Newspapers (Bombay) Private Ltd. & Ors. Vs. Union of India and others (1985) 1 SCC 64**; **NHPC Ltd. Vs. State of Himachal Pradesh, Secretary and Ors. AIR 2023**



**SC 4457 and Deputy Commissioner of Income Tax and Ors.
Vs. Pepsi Foods Ltd. (2021) 7 SCC 413.**

5. As per contra, the amendment was within the domain of the legislature. The extending of benefit of making purchases on reduced rate against Form "C" to an industry is a policy decision.

6. It would be relevant to reproduce unamended and amended Section 8(3)(b) of CST Act.

"(3) The goods referred to in sub-section (1)-

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in thus behalf, for use by him in the manufacture or processing of goods for sale or in the telecommunication net work or in mining or in the generation or distribution of electricity or any other form of power.

**AMENDMENT TO THE CENTRAL SALES TAX ACT, 1956
by Finance Act, 2021**

In the Central Sales Tax Act, 1956, in section 8, in subsection (3), for clause (b), the following clause shall be substituted, namely:--"(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing for sale of goods specified under clause (d) of section 2;"

7. Under Section 3(a) of the CST, the sale and purchase of goods occasioned by the movements from one state to another are deemed to take place in course of interstate trade or commerce. These transactions are covered under the CST. In case in hand, the purchases of HSD are made by petitioner from the oil companies outside the State of Rajasthan for use in mining. The sale and





purchase of HSD therefore, is in course of interstate trade or commerce.

8. After the amendment in Section 2(d) of CST in 2017, the definition of 'goods' includes six items in which HSD finds mention.

9. Section 8 of CST Act prescribes lower rates of tax on sale in course of interstate trade or commerce in respect of "every dealer" who sells goods to the registered dealer for purpose referred to in sub-section 3. As per sub-section 3 of section 8 of CST, goods specified in the registration certificate of the purchasing dealer and purchased for use as stipulated in Section 8(3)(b) are liable to be taxed on reduced rate, upon furnishing Form 'C'.

10. The grievance raised in the petition is that after the amendment by Finance Act, 2021, the petitioner shall not be entitled to purchase HSD at reduced rate on furnishing of Form "C" as 'mining, telecommunication network and generation & distribution of power' no longer finds mention in section 8(3)(b) of the CST.

11. The Supreme Court in case of **State of M.P. versus Rakesh Kohli & Ors.** reported in **(2012) 6 SCC 312** summarized the principles enunciated for testing constitutional validity of taxation provisions i.e. (i) presumption is in favour of constitutionality of the statute; (ii) the onus is on the person challenging the vires to establish violation of constitutional provisions or infringement of fundamental rights; (iii) policy decisions are to be left to the legislature and courts should exercise self-restraint in interfering;





(iv) in fiscal statutes, legislature has larger discretion in matters of classification; (v) hardship cannot be a ground for striking down the provision (vi) there has to be constitutional infirmity, the vires cannot be struck merely by stating it to be unreasonable or arbitrary. These principles were reiterated in **State of Himachal Pradesh and Ors. Vs. Goel Bus Service** reported in **2023 SCC OnLine SC 46** wherein levy of tax under Section 3A of the Himachal Pradesh Motor Vehicles Taxation (Amendment) Act, 1999 was held to be regulatory, not penal, within legislative competence of State and that lumpsum tax could be levied. Relevant paras of the judgments are quoted:-

12. In the case of Rakesh Kohli (supra) the Supreme Court held:

"27. A well-known principle that in the field of taxation, the Legislature enjoys a greater latitude for classification, has been noted by this Court in long line of cases.

29. While dealing with constitutional validity of a taxation law enacted by Parliament or State Legislature, the court must have regard to the following principles: (i), there is always presumption in favour of constitutionality of a law made by Parliament or a State Legislature (ii), no enactment can be struck down by just saying that it is arbitrary or unreasonable or irrational but some constitutional infirmity has to be found (iii), the court is not concerned with the wisdom or unwisdom, the justice or injustice of the law as the Parliament and State Legislatures are supposed to be alive to the needs of the people whom they represent and they are the best judge of the community by whose suffrage they come into existence (iv), hardship is not relevant in pronouncing on the constitutional validity of a fiscal statute or economic law and (v), in the field of taxation, the Legislature enjoys greater latitude for classification."



13. In the case of Goel Bus Service (supra), Supreme Court held:

"27. It is by now well settled that any tax legislation may not be easily interfered with. The Courts must show judicial restraint to interfere with tax legislation unless it is shown and proved that such taxing statute is manifestly unjust or glaringly unconstitutional. Taxing statutes cannot be placed or tested or viewed on the same principles as laws affecting civil rights such as freedom of speech, religion, etc. The test of taxing statutes would be viewed on more stringent tests and the law makers should be given greater latitude. It would be useful to refer to a couple of judgments on the above proposition.

28. In the case of R.K. Garg etc. vs. Union of India and others, (1981) 4 SCC 675, the Constitution Bench was judging the constitutionality of economic legislation wherein challenge was to the validity of the provisions of Special Bearer Bonds (Immunities and Exemption Act, 1981) on the grounds of discrimination and violation of Article 14. P.N. Bhagwati J., speaking for himself, Chief Justice Chandrachud, A.C. Gupta, S. Murtaza Fazal Ali and A.N. Sen, J.J., observed in paragraph 7 regarding the presumption in favour of constitutionality of the statute and that the burden is on the person who attacks it, to establish that there has been clear transgression of the constitutional principles. In paragraph 8, it was laid down that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights such as freedom of speech, religion, etc. The views of Justice Frankfurter in the case of Morey vs. Doud, 354 US 457 (1957) was relied upon. The same is reproduced hereunder:





"In the utilities, tax and economic regulation cases, there are good reasons for judicial self-restraint if not judicial deference to legislative judgment. The legislature after all has the affirmative responsibility. The courts have only the power to destroy, not to reconstruct. When these are added to the complexity of economic regulation, the uncertainty, the liability to error, the bewildering conflict of the experts, and the number of times the judges have been overruled by events - self-limitation can be seen to be the path to judicial wisdom and institutional prestige and stability."

29. In case of *Bhavesh D. Parish and others vs. Union of India and another*, (2000) 5 SCC 471, the challenge was to the validity of section 9 of Reserve Bank of India Act as amended by the Amendment Act 1997 on the ground that it was violative of Article 14 and Article 19(1)(g) of the Constitution. This Court dismissed the challenge to the said provision in paragraph 26 of the report. It observed that matters of economic policy should be best left to the wisdom of the legislature. Further, it went on to state that in the context of a changed economic scenario the expertise of the people dealing with the subject should not be lightly interfered with. It was also observed that while dealing with economic legislation, this court would interfere only in those few cases where the view reflected in the legislation is not possible to be taken at all.

30. In the case of *Indian Oil Corporation Limited vs. State of Bihar and another*, (2018) 1 SCC 242, provisions of the Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act 1993, was under challenge. Justice Nariman speaking for the Bench observed in paragraph 25 that when it comes to taxing statute, the law laid down by this Court is clear that it can be said to be breach only when there is perversity or gross disparity resulting in clear and hostile discrimination without any rational justification for the same."



14. It would be profitable to quote following decisions on the issue that in case of classification for purpose of taxation liberal view is to be adopted, even if one commodity or category of good is picked for taxation the challenge cannot be posed on discrimination:-

14.1. In **East Indian Tobacco Co. Vs. State of Andhra Pradesh** reported in **AIR 1962 SC 1733**. Supreme Court held:-

"xxxxx If a State can validly pick and choose one commodity for taxation and that is not open to attack under Article 14, the same result must follow when the State picks out one category of goods and subjects it to taxation."

14.2. In **Ganga Sugar Corporation vs. State of UP** reported in **1980 (1) SCC 223**, the Supreme Court held:-

"42. Even so, taxing statutes have enjoyed more judicial indulgence. This Court has uniformly held that classification for taxation and the application of Article 14, in that context, must be viewed liberally, not meticulously."

14.3. In **Hiralal Rattanlal Etc. vs State Of U.P. And Anr. Etc.** [(1973) 1 SCC 216] dealing with challenge to separate classification of unprocessed and unsplit pulses from processed and split pulses for taxation purpose, the classification was held to be reasonable and not violative of Article 14 of the Constitution of India. The relevant paras are:-

"15. In Jagannath vs. Union of India (AIR 1962 SC 148) a question arose for decision whether it was open to the legislature to impose separate excise duty on tobacco leaf as well as on broken leaf of tobacco. This Court overruled the contention that such a



levy was invalid. It held that it was open for the legislature to separate the two items. We see no basis for the contention that the legislature cannot for the purpose of tax under the Act separate the split or processed pulses from the unsplit or unprocessed. The power of the legislature to specify the nature of the goods the sale or purchase of which, it will bring to tax is very wide.

19. In *Khandige Sham Bhat and Ors. v. The Agricultural Income Tax Officer*, this Court laid down the tests to find out whether there are discriminatory provisions in a taxing statute. Therein this Court observed that in order to judge whether a law was discriminatory what had primarily to be looked into was not its phraseology but its real effect. If there was equality and uniformity within each group, the law could not be discriminatory, though due to fortuitous circumstances in a peculiar situation some included in a class might get some advantage over others, so long as they were not sought out for special treatment. Although taxation laws could be no exception to this rule, the courts would, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the legislature in the matter of classification so long as there was no transgression of the fundamental principles underlying the doctrine of classification. The power of the legislature to classify must necessarily be wide and flexible so as to enable it to adjust its system of taxation in all proper and reasonable ways.

20. It must be noticed that generally speaking the primary purpose of the levy of all taxes is to raise funds for public good. Which person should be taxed, what transaction should be taxed or what goods should be taxed, depends upon social, economic and administrative considerations. In a democratic set up it is for the legislature to decide what economic or social policy it should pursue or what administrative consideration it should bear in mind. The classification between the processed or split pulses and unprocessed or unsplit pulses is a reasonable classification. It is based on the use to which those goods can be put. Hence,





in our opinion, the impugned classification is not violative of Article 14."

14.4. To similar effect is **Kerala Hotel and Restaurant Assn. Vs. State of Kerala (1990) 2 SCC 502,**



"24. The scope for classification permitted in taxation is greater and unless the classification made can be termed to be palpably arbitrary, it must be left to the legislative wisdom to choose the yardstick for classification, in the background of the fiscal policy of the State to promote economic equality as well."

15. The decisions cited below are to the effect that the difference in classification if is capable of being understood rationally, for object to be achieved and there is no special treatment to one of similarly situated class, the classification is not violative of Constitution of India.

15.1. In **Anant Mills Ltd. Vs. State of Gujarat** reported in **(1975) 2 SCC 175.** The Supreme Court held:-

"25. It is well-established that Article 14 forbids class legislation but does not forbid classification. Permissible classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and the differentia must have a rational relation to the object sought to be achieved by the statute in question. In permissible classification mathematical nicety and perfect equality are not required. Similarity, not identity of treatment, is enough. If there is equality and uniformity within each group, the law will not be condemned as discriminative, though due to some fortuitous circumstances arising out of a peculiar situation some included in a class get an advantage over others, so long as they are not singled out for special treatment. Taxation law is not an exception



to this doctrine. But, in the application of the principles, the courts, in view of the inherent complexity of fiscal adjustment of diverse elements, permit a larger discretion to the Legislature in the matter of classification so long as it adheres to the fundamental principles underlying the said doctrine. The power of the Legislature to classify is of wide range and flexibility so that it can adjust its system of taxation in all proper and reasonable ways (see *Ram Krishna Dalmia v. Justice S.R. Tendolkar and Khandige Sham Bhat v. Agricultural Income Tax Officer, Kasaragod*) Keeping the above principles in view, we find no violation of Article 14 in treating pending cases as a class different from decided cases. It cannot be disputed that so far as the pending cases covered by clause (i) are concerned, they have been all treated alike. *** *****"

15.2. In **Spences Hotel (P) Ltd. Vs. State of W.B. reported in (1991) 2 SCC 154** levy of flat rate of luxury tax on air conditioned floor space of hotel and restaurant without distinction of locality standard or size of hotel was upheld.

"23. From the propositions of law enunciated in the above cases by this Court, it is well settled that a taxation will be struck down as violative of Art. 14 if there is no reasonable basis behind the classification made by it, or, if the same class of property, similarly situated, is subjected to unequal taxation as was held in *L T. O. v. Lawrence Singh* (AIR 1968 SC 658).

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"26. What then 'equal protection of laws' means as applied to taxation? Equal protection cannot be said to be denied by a statute which operates alike on all persons and property similarly situated, or by proceedings for the assessment and collection of taxes which follows the course usually pursued in the State. It prohibits any person or class of persons from being singled



out as special subject for discrimination and hostile legislation; but it does not require equal rates of taxation on different classes of property, nor does it prohibit unequal taxation so long as the inequality is not based upon arbitrary classification. Taxation will not be discriminatory if, within the sphere of its operation, it affects alike all persons similarly situated. It, however, does not prohibit special legislation, or legislation that is limited either in the objects to which it is directed, or by the territory within which it is to operate. In the words of Cooley: It merely requires that all persons subjected to such legislation shall be treated alike, under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed. The rule of equality requires no more than that the same means and methods be applied impartially to all the constituents of each class, so that the law shall operate equally and uniformly upon all persons in similar circumstances. Nor does this requirement preclude the classification of property, trades, profession and events for taxation- subjecting one kind to one rate of taxation, and another to a different rate. "The rule of equality of taxation is not intended to prevent a State from adjusting its system of taxation in all proper and reasonable ways. It may, if it chooses, exempt certain classes of property from any taxation at all, may impose different specific taxes upon different trades and professions." "It cannot be said that it is intended to compel the State to adopt an iron rule of equal taxation." In the words of Cooley

"Absolute equality is impossible. Inequality of taxes means substantial differences. Practical equality is constitutional equality. There is no imperative requirement that taxation shall be absolutely equal. If there were, the operations of government must come to a stop, from the absolute impossibility of fulfilling it. The most casual attention to the nature and operation of taxes will put this beyond question. No single tax can be apportioned so as to be exactly just and any combination of taxes is likely in individual cases to increase instead of diminish the inequality."



15.3. The relevant paras of **Union of India & Ors. Vs. N.S.**

Rathnam & Sons reported in **(2015) 10 SCC 681** are:-

****** beyond any pale of doubt that the justiciability of particular Notification can be tested on the touchstone of Article 14 of the Constitution. Article 14, which is treated as basic feature of the Constitution, ensures equality before the law or equal protection of laws.*

****** The legislature is competent to exercise its discretion and make classification. Thus, every classification is in some degree likely to produce some inequality but mere production of inequality is not enough. Article 14 would be treated as violated only when equal protection is denied even when the two persons belong to same class/category*

****** What follows from the above is that in order to pass the test of permissible classification two conditions must be fulfilled, namely, (i) that the classification must be founded on an intelligible differential which distinguishes persons or things that are grouped together from others left out of the group and (ii) that, that differential must have a rational relation to the object sought to be achieved by the statute in question."*

16. There was no vested right with the mining industry for purchasing the raw material or inputs on concessional rate in course of interstate trade or commerce. The taxation scenario in the country changed with the implementation of GST. The applicability of VAT and CST is for the limited purposes. It is a policy decision to extend the benefit to class of industry permitting purchase of input at reduced rate of tax. This Court cannot sit over the wisdom of the Legislature to exclude mining from use of Form "C", and this decision is to be left on experts to decide that for what purpose and how long CST operates in the GST regime.





To bring home the challenge to amendment on the grounds of discrimination and arbitrariness, the onus is on petitioner. No case is made out that the industries excluded by the amendment of section 8(3)(b) are identically placed to dealers to whom benefit of use of 'C' form is still continuing. For discrimination there has to be similarity and hence the amendment cannot be held to be discriminatory. The classification is done on basis of nature of industries, there is reasonable basis to do so and is within the ambit of discretion to legislate.

17. The argument that the amendment has been brought to overrule the judgment in Carpo Power Limited (supra) may not be able to detain us for long. The principles of removal of vice by an amendment to overcome the judicial pronouncement need not be dilated as the issue in Carpo (supra) was entirely different i.e:-

"whether after the amendment of the CST Act, the petitioner is entitled to be issued "C" Forms in respect of the natural gas purchased by it in the course of inter-state sales and used by it for the generation of electricity. We have answered the question in the affirmative, in favour of the petitioner."

18. It was held that even after implementation of GST as the dealer continues to be liable to pay tax under the Sales Tax Law of the appropriate State hence, cannot be denied the usage of "C" form for six items mentioned in Section 2(d) and used as stipulated in Section 8 of CST.

19. The impugned amendment is not to the effect that the items mentioned in registration certificate cannot be purchased in course of inter-state trade or commerce at a reduced rate of tax despite the conditions under Section 8 of CST being fulfilled.



20. The argument that ITC for full rate of tax paid on HSD purchased shall not be available, does not fortify the challenge to the amended provision of Section 8(3)(b). Suffice to say that position of claiming ITC has not been changed with amendment of Section 8(3)(b) of CST. Moreover, the challenge is limited to amendment excluding mining from Section 8 (3)(b) of CST.

21. Taking the case of the petitioner at the highest, the payment of CST at full rate shall cause a hardship to the petitioner by increasing the costing of the product, in itself cannot be a ground for holding provision ultra-vires.

22. There is no quarrel with the propositions laid down in the decisions cited by the counsel for the petitioner, but are not applicable to the facts of the present case.

23. In Indian Express Newspaper (supra), the Supreme Court in view of the peculiar facts of the case wherein challenge was posed to validity of import duty levied on newspaper prints, issued directions for reconsideration of the decision by the Government and thereafter to take the necessary steps.

24. In case of DCIT & Anr. Vs. Pepsi Food (supra), the challenge was to the provision of Income Tax Act, 1961 whereby in case appeal was not disposed of by the Tribunal within a period of hundred eighty days, the stay granted by the Tribunal shall automatically stand vacated. The provision was struck down applying the principle that unequal cannot be treated equally and there was no differentiation made between the assessee delaying the proceedings, who was not responsible for doing so.



25. It would be appropriate to quote a para from decision of the Supreme Court in NHPC Ltd. vs. State of Himachal Pradesh (supra):-

"11. What follows from the aforesaid judicial precedent is, a legislature cannot directly set aside a judicial decision. However, when a competent legislature retrospectively removes the substratum or foundation of a judgment to make the decision ineffective, the same is a valid legislative exercise provided it does not transgress on any other constitutional limitation. Such a legislative device which removes the vice in the previous legislation which has been declared unconstitutional is not considered to be an encroachment on judicial power but an instance of abrogation recognised under the Constitution of India. The decisions referred to above, manifestly show that it is open to the legislature to alter the law retrospectively, provided the alteration is made in such a manner that it would no more be possible for the Court to arrive at the same verdict. In other words, the very premise of the earlier judgment should be removed, thereby resulting in a fundamental change of the circumstances upon which it was founded."

26. It was held that judicial decision cannot be directly set aside but it is within the competence of the legislature to remove the foundation forming basis of the decision, subject to the condition that amendment should be within the constitutional limitations. As discussed above, the amendment is not with the purpose to overcome a judicial decision. The issue in Carpo (supra) was different. There was no vice pointed out in the legislation for declaring it unconstitutional rather the provisions of the CST, GST and VAT were read harmoniously to conclude that even after implementation of GST, the registered dealer was entitled to



purchase natural gas on basis of "C" Form for generating electric energy.

27. In view of the above discussion it is concluded:-

(a) That the industries deleted from section 8(3)(b) of CST and retained therein are not from the same category and it is case of reasonable classification.

(b) No vested right was taken away from the mining industry by the amendment.

(c) It was the policy decision as to which class of industries the benefit of Form-C is to be extended.

(d) The amendment was not to overcome the decision in **Carpo Power Limited (supra)** as the issue involved therein was different.

(e) The effect of the amendment enhancing the costing of the industries excluded from section cannot be a ground for holding the amendment ultravires.

28. The amendment is not violative of fundamental rights or the provisions of the Constitution of India, the vires are upheld. The writ petition is dismissed.

(SHUBHA MEHTA),J

(AVNEESH JHINGAN),J

Chandan/S-1

Reportable: Yes