

## **R.S Joshi, STO Gujrat vs Ajit Mills, Ahmedabad & Anr, 1977**

Supreme Court of India

31 August 1977

### **Bench:**

J. V.R. Krishna Iyer, J. M.H BEG (CJI), J. Y.V Chandrachud, J. P.N Bhagwati, J N.L Untwalia, and J Fazal Ali.

### **Cited:**

1977 Supreme Court of India, AIR 2279, 1978 SCR (1) 338

### **Legislation Cited:**

1. Bombay Sales Tax Act, 1955

### **Issue:**

Bombay Sales Tax Act, 1955 Sec 37, 46, 63 – validity of section of this act – Sec 46 Prohibits any person from collecting any sort of money by way of tax in respect of sale of any good on which tax is payable by virtue of Sec 5 of same Act – No person, who is unregistered dealer, shall collect any money by virtue of tax on Sale of good, from any person, and no registered dealer shall collect money excess than that payable by him under the provision. – Sec 63 provides punishment for contravention of the Sec 46, states that any person, not being dealer liable for pay tax under this act, collects any sum of money excess than that payable by him, or otherwise contravenes the provision of sec 46, shall be liable for penalty which does not increases than 2 thousand rupee and in addition to sum collected by him by way of tax from other person. The excess amount collected as tax shall be forfeited to the government.

### **Facts:**

Respondent were registered dealer of sale tax, which was collected from various customers, this amounts to violation of S.46 of Sales Tax Act, 1955 r/w S.37(1), on which sale tax officer imposes penalty and forfeited the sum collected (Less amount refunded). It was also contended that the aforementioned provision violates Article 14 and 19(1) (f) of the Constitution of India. Also determination of the word “Forfeiture”.

High Court struck down Sec.37 (1) and declared it to be unconstitutional on the grounds of – It was incompetent for state legislature to forfeit the public exchequer punitively – Entry 54 r/w 64 of List U – Sums collected by the dealer of way of tax, was not exigible under the Act.

**Decision:**

The Supreme Court held the S. 37 (1) to be Legitimate and Valid. The High Court interpretation was wrong as exceeding legislative competence or colorable device or as supplementary not complementary. In *Orient Mill Case*, court held that the legislature was competent to grant refund of tax, collection of unauthorized tax and unauthorized tax shall be paid to government, to a person from whom the dealer had realized the amount. This view was already accepted in the *Abdul Quadar's Case* as well as *Ashoka Marketing Case*. While The Violation of Article 14 and 19 (1) (f) was already settled out by the High Court that the provision of this act, was not violating the aforementioned Article as the act provides discretion under Section 37 or under 63(1), and does not provides any guideline for the same. Under Sec 37, there is no arbitrary or un-channelized power given to the authority, which therefore does not contravene Article 14. The word “penalty” includes the “Forfeiture” under the sec 37 (4). Apart from it the act consist of the provision for appeal and revision against any order made by Commissioner, which fails the plea from violating Article 19 1 (f).

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