(1999) 02 J&K CK 0001

In the Jammu And Kashmir High Court

Case No : Others Writ Petition (OWP) No. 462/1993

Allied Shabir and Co APPELLANT

Vs

State RESPONDENT

Date of Decision : 24-02-1999

Acts Referred:

Central Sales Tax Act, 1956 — Section 13
Constitution of India, 1950 — Article 19

Citation : (1999) 1 SriLJ 142 : (1999) SriLJ 142

Hon'ble Judges : Nisar Ahmad Kakru, J

Bench : Single Bench

Advocate : M.H.Attar, Advocates appearing for the Parties

Judgement

1. The respondent No. 1 has amplified sub rule(99) of rule6 of the General Sales Tax Act (Jammu and Kashmir) rules 1958 vide SRO 297 dated:

16th Dec. 1992 which reads as under:

GOVERNMENT OF JAMMU AND KASHMIR CIVIL SECRETARIATFINANCE DEPARTMENT NOTIFICATION

Jammu the 16th Dec. 1992 SRO297 In exercise of the powers conferred by subsections(3),(4) and{5) of the section 13 of the Central Sales Tax

Act, 1956 (No.74 of 1956) the Government of Jammu and Kashmir hereby directs that in the Central Sales Tax (Jammu and Kashmir) rules 195S

at the end of sub rule (aa) of rule 6 'full stop(.)' shall be substituted by semicolon (;) and thereafter the following proviso shall be added:

Provided that if the registered dealer at the time of making an application for supply of Forms has defaulted in furnishing any return or revised

return together with receipted challan or challans showing payment of the tax due from him according to such return or revised return the Assessing

Authority after giving him a reasonable opportunity of being heard may, for reasons to be recorded in writing, withhold the issue of such forms to

him till he furnishes such return or revised return together with such receipted challan or challans.

By order of the Government of Jammu and Kashmir.

Sd/Director Finance Department.

2. The registered dealers of the valley have challenged the aforementioned SRO through several writ petitions and relevant particulars of these writ

petitions are reflected in the schedule appended to this judgment. In these petitions similar questions of law are involved, therefore, I proceed to

dispose of bunch of petitions by this common judgment.

3. The learned counsel for the respondents have defended the state action on the ground that the petitioners obtain the forms and avail of the

benefit of concessional rates of tax but are not prepare to furnish the information which is relevant for imposing

Tax. It is contented that the Govt. has evolved an amnesty scheme as well but petitioners have not chosen to avail of its benefit and continue to

detain the forms on the strength of interim directions passed in the writ petitions by the court which interim directions work detrimental to the

interests of the State. Mr. Advocate General has placed reliance on commercial Tax Officer, Rudha Bazar Vs. Bengal Poultries Ltd. (1986) 61

STC 219 in which case a question had arisen as to whether commercial officer had the jurisdiction to withhold the declaration forms under rule 27

AA (2)(c) of the Bengal Sales Tax Rules unless the returns are filed whereas in the case in hand challenge is thrown to the impugned insertion to

sub rule (aa) of rule 6 of Central Sales Tax (J and K), Rules 1958. Thus controversy is slightly different in the case in hand and with a view to

address to the contentious legal issues same are set out hereunder for purposes of consideration:

i. ""The SRO is outside the scope of subsection (3), (4) and (5) of section 13 of the General Sales Tax Act 1956.

ii. The SRO impugned has imposed unreasonable restrictions which are violative of article 19(1) (g) of the Constitution of India.

4. It is appropriate to notice here that insertion to subrule (aa) of rule6 authorises an Assessing Authority to withhold the forms till such registered

dealer furnishes the return or revised return together with receipted challan or challans showing payment of the tax due from him according to the

return or revised return. The SRO does not levy any charge by itself but envisages furnishing of returns as a condition precedent so as to prevent

evasion of tax and the question which is raised in the these petitions is whether such condition could be imposed and to have an answer to this

question it is relevant to refer to section 13 (3) (4)(e) which reads as under: ""(3) The State Government may make rules, not inconsistent with the

provisions of this Act and the rules made under subsection (1), to carry out the purposes of this Act.

(4) In particular and without prejudice to the powers conferred by subsection (3) the State Government may make rules for all or any of the

following purposes, namely:(e) the authority from whom the conditions subject to which and the fees subject to payment of which any form of

certificate prescribing under clause (a) of the first proviso to subsection (2) of section 6 or of declaration prescribed under subsection (1) of section

6 A or subsection (4) of section 8 may be obtained, the manner in which such forms shall be kept in custody and records relating thereto

maintained and the manner in which any such form may be used any such certificate or declaration may be furnished;

The subsection (3) makes it amply clear that State Government has the power, to make rules which are not inconsistent with the Act. and (SIC)

Clause (e) begins with the words the authority from which the conditions subject to which and.....any form... may be obtained..."" and a plain

reading of the rule read with subsection (3) reveals that the State Government has the power to impose conditions subject to fulfillment of which

forms can be issued and a condition has been introduced by the State Government vide SRO 297 which condition is consistent with the mandate

of the Act, obviously insertion so made at the end of sub rule (aa) of rule6 is not incompetent. The averment of the petitioners is otherwise also

unfounded because a statue is enacted to make the tax law workable and once the liability is fixed by the Act the statue has to make liability

effective and to achieve this object the respondents have opted for the insertion which falls within the ambit of section 13 (3),(4) and (5) of the

General Sales Tax Act 1956.

6. Now coming to the challenge thrown by the petitioners to the validity of the impugned insertion and to deal with the challenge it is appropriate to

refer to the law laid down by the constitutional bench of the apex court in R.K.Gerg Vs. Union of India AIR 1981SC 2138 at page 2146 and

2147, paras 7 and 8 which reads as under:

7. Now while considering the constitutional validity of a statute said to be violitive of article 14, it is necessary to hear mind certain well established

principles which have been evolved by the Courts as rules of guidance in discharge of its constitutional function of judicial review. The first rule is

that there is always a presumption in favour of the constitutionally of a statute the burden is upon him who attacks it to show that there has been a

clear transgression of the constitutional principles. This rule is based assumption, judicially recognised and accepted, that the legislature understands

and correctly appreciates the needs of its own people, its laws are directed to problems made manifest by experience and its discrimination are

based on adequate grounds. The presumption of constitutionality is indeed so strong that in order to sustain it, the court may take into

consideration matter of common knowledge, matters of common report, the history of the times and may assume every state of facts which can be

conceived existing at the time legislation.

8.Another rule of equal importance is that laws relating to economic activities should be viewed with greater latitude than laws touching civil rights

such as freedom of speech, religion etc. It has been said by no less a person than Holmes. J., that the legislature should be allowed some play in

the joints, because it has to deal with complex problems which do not admit of solution through any doctrinaire or straight jacket formula and this is

particularly true in case of legislation dealing with economic matter, where, having regard to the nature of the problems required to be dealt with,

greater play in the joints has to be allowed to the legislature. The Court should feel more inclined to give judicial deference to legislative judgment in

the field of economic regulation than in other areas where fundamental human rights are involved...

7. The principle of law laid down by the constitutional bench requires this court :o draw a presumption in favour of constitutionality of impugned

insertion unless the 3etitioners show that the impugned insertion s violative of legal and constitutional mandates but pleadings of the petitioners do

lot contain any specific particulars which would lend support to their bald assertion. Law is no more res integra that onus to prove an infirmity of a

provision of law lies on one A/ho impeaches it and the allegations cannot he proved unless reasons and particulars are stated in unambiguous and

specific terms which are wanting in the case in hand and the petitioners have miserably failed to show that the SRO is irrational, unreasonable or

infirm and such failure on the part of the respondents renders the writ petitions liable to dismissal.

8. In R.K.Gerg's case the apex court while stating law in respect of presumption of constitutionality held that the court may assume every state of

facts which can be conceived existing at the time of legislation and the principle so laid down makes a provision to draw inferences in respect of

object to be achieved in view of the circumstances in which a particular provision of law has been enacted and it is appropriate to notice that the

SRO has been issued in the area of economic regulation and the scenario which was prevalent at the time when SRO was issued depicts that it has

been aimed at to make the tax laws effective in the state and while conferring the power on an Assessing Authority to withhold the issue of forms,

the interests of registered dealers have also been safeguarded by requiring the authority to provide them a reasonable opportunity of being heard

and considering the impugned SRO upon the context and circumstances which prevailed then in the State, the only presumption available is that the

insertion to the rule has been made in the public interest which presumption is otherwise also in favour of tax laws and relevant it is to refer here to

the constitution bench of Supreme Court in State of Madras Vs. HK.Nataraja Mudaliar, AIR 1969 SC 147 at page 155 in para10 (last four lines

of the para) held:

. There is also no doubt that exercise of the power to tax may normally be presumed to be in the public interest.

Thus examining the impugned insertion in the light of law governing the field, the condition imposed by the SRO is both just and reasonable and

cannot be held to be beyond the competence of the State Government.

9. The petitioners have pressed into services articles 19(l)(g) of the constitution to submit that the said article confers a right on a citizen to practice

any profession or to carry on any occupation, trade or business. No doubt mandate of the article does place a restriction on the state from

preventing a citizen from carrying a business but the guarantee enshrined in the article is subject to exception as well which exception makes the

power available to the state to impose a reasonable restriction in the interest of general public on the business o a citizen and the restriction

imposed by the SRO besides being reasonable, falls within the permissible limits and it does not in any way hamper the trade of the petitioners,

therefore, cannot be termed to be an unreasonable restriction, obviously contention lased on article 19 (1) (g) of the constitution s without any

substance.

10. In view of the legal and factual position enumerated hereinabove I am of the opinion that the impugned insertion made videSRO 297 is valid.

11. For the aforementioned reasons all these writ petitions are dismissed alongwith the CMPs. Interim directions shall stand vacated.

12. Before parting with it needs to be observed that dismissal of the writ petitions shall not disentitle the petitioners to the benefits of the amnesty

scheme evolved by the RespondentsState if otherwise entitled to.

13. No order as to costs in view of the peculiar circumstances of the case.

