

(1995) 08 KAR CK 0063

In the Karnataka High Court

Case No : Writ Petition No's. 27023, 20201, 24331, 24351, 23465, 26223, 26801 to 26807, 27186, 27187, 26146, 27192 to 27194, 27530, 27531, 25937, 25938, 25821, 25822 and 25824 of 1995

Arun Manikchand Shah and others

APPELLANT

Vs

State of Karnataka and others

RESPONDENT

Date of Decision : 21-08-1995

Acts Referred:

Constitution of India, 1950 — Article 14, 19 (1) (g), 254
Karnataka Tax on Entry of Goods Act, 1979 — Section 4 B

Citation : (1995) ILR (Kar) 3080 : (1996) 41 KarLJ 137

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Judgement

G.C. Bharuka, J.—In this batch, of writ petitions, the common question of law involved is as to whether any person, not being a dealer in any goods, causing an entry of any motor vehicle into any local area for its use therein, is liable to levy of tax u/s 4B of the Karnataka Tax on Entry of Goods Act, 1979 (for short, "the Act").

2. According to the petitioners, they had purchased the motor vehicles of various makes at places outside the State of Karnataka for various reasons. After so purchasing they brought the vehicles in the State of Karnataka for their personal use. Petitioners have specifically averred that they do not carry on any business in any goods and as such are not dealers in any goods. Their complaint is that their application for registration of the said vehicles filed under the provisions of the Motor Vehicles Act, 1988, is not being entertained by the respective Transport Officers on the ground that unless they pay entry tax on the import of vehicles, the same can neither be registered nor any new registration mark can be granted as per the prohibition contained in section 4E of the Act.

3. In the case of State of Karnataka and Another Vs. Hansa Corporation, , it has been held that the Act does not in any way offend articles 14, 19(1)(g) and

304(a) and (b) of the Constitution of India and has been held to be constitutionally valid by the Supreme Court. Since no new ground has been made out for examining the constitutional validity of the provisions of the Act in relation to motor vehicles in particular, I find myself unable to enter into those issues.

4. The only ground of substance which has been raised on behalf of the petitioner is whether in view of exemption accorded u/s 28 of the Act which applies to all persons being not dealers in goods, the petitioners can still be made liable to pay entry tax on vehicles imported by them. Their submissions is that the said exempting provision is of general application irrespective of the nature of goods and no rule of construction can be employed to carve out any exception to the said exempting section so as to place the importers of motor vehicles in a separate class.

5. On the other hand, Mr. D'Sa, learned Additional Government Advocate, submitted that looking at the scheme of the Act and the purpose of incorporating Chapter II-A therein, it should be inferred that the Legislature never intended to apply the exemption contemplated u/s 28 to import of vehicles in any local area. Thus, according to him, it is wholly immaterial whether the importer of a motor vehicle is a dealer or not. His submission is that mere a factum of importing motor vehicle into a local area for use or sale by any person makes him liable to pay entry tax subject to special exemptions envisaged u/s 4D of the Act.

6. For appreciating the rival contentions we start with examining the scheme of the Act. Chapter I of the Act deals with preliminaries such as, short title, extent and commencement and also definition clauses. Chapter II provides for levy and collection of tax. Chapter III deals with filing of returns, assessment, payment, recovery and collection of taxes. Chapter IV constitutes tax authorities. Chapter V provides remedies like appeals, revisions or rectifications. Chapter VI takes care of miscellaneous provisions including section 28 providing for general exemption, which is crucial for the present purpose. The Act has two Schedules. The First Schedule sets out the list of goods which have been made liable to tax under the Act and the Second Schedule sets out the list of goods which have been specifically exempted from levy of tax.

7. Chapter II-A has been inserted in the Act by the Karnataka Tax on Entry of Goods (Amendment) Act, 1994 (Karnataka Act 45 of 1994) which has been brought into force with effect from June 1, 1995. By incorporating this Chapter, which contains sections 4-A to 4-E, certain special provisions have been made for levy of entry tax on motor vehicles. Though section 3 is the general charging section under the Act providing for levy of tax on entry of goods, specified in the First Schedule, for consumption, use or sale in any local area, section 4B starts with non obstante clause, sub-section (1) whereof reads as under :

"Notwithstanding anything contained in section 3, there shall be levied and collected a tax on the entry of any motor vehicle into a local area for use or sale

therein by an importer which is liable for registration, or assignment of a new registration mark in the State under the Motor Vehicles Act, 1988."

8. The importer has been defined u/s 4-A(1)(c) to mean a person who brings a motor vehicle into a local area from any place outside the State for use or sale therein and who owns the vehicle at the time of its entry into a local area. Admittedly, all the petitioners in this batch of writ petitions squarely fall within the definition of "importer", and, therefore, if the provision of Chapter II-A is permissible to be read in isolation and segregation from section 28, petitioners will squarely fall within the ambit of charging section 4B making them liable to pay tax on entry of their motor vehicles in the local areas concerned. But, the question is whether the provisions of Chapter II-A can at all be read in isolation of other provisions of the Act in general and section 28 in particular by applying any permissible rule of interpretation befitting the defined judicial parameters or through any judicial activism for attaining the supposed legislative intention as suggested by Mr. D'Sa.

9. Section 28 of the Act reads as under :

"Nothing in this Act shall apply to persons who are not dealers in goods".

The crucial words used in the said section 28 are "dealers in goods" which have been defined under clauses (4) and (4-a) of section 2 of the Act. The definition of "dealer" makes use of the expression "business" which has been defined under clause (2-b) of section 2. The said three definitions read as under :

"2(2-b) "business" includes any trade, commerce or manufacture or any adventure or concern in the nature of trade or manufacture whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern and any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern."

"2(4) "dealer" means any person who, in the course of business, whether on his own account or as a principal or any other person, brings or causes to be brought into a local area any goods or takes delivery or is entitled to take delivery of goods on its entry into a local area and includes an occasional dealer."

"2(4-a) "goods" means all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes livestock."

10. The meaning of the "dealer" as given in the Random House Dictionary of the English language are (1) one who conducts himself towards another or others in a specified manner : a plain dealer; (2) one who buys and sells articles without altering their condition; trader or merchant. In the popular sense or in common parlance, the word "dealer" means a person who carries on business of sale and purchase of properties, may be movable or immovable. But the word "dealer" has been defined by the Legislature giving different connotations to the word

keeping in view the object of the Act under which the said expression has been used. Therefore, the expression "dealer" has always to be construed in the sense the Legislature has intended it to be understood.

11. In the present Act, the dealer as defined under clause (4) of section 2, *inter alia*, signifies a person who in the course of business brings any goods in any local area. Therefore, for being a dealer under the provisions of the Act, a person need not be necessarily dealing in the goods which has been caused to be brought into the local area. For being a dealer under the Act, it will suffice if he brings the said goods in the course of any business conducted by him, because the expression "business" includes any transaction in connection with or incidental or ancillary to trade, commerce, etc. For example, if a person carrying on transport business, though in common parlance may not be a dealer in motor vehicles in the sense of selling and purchasing motor vehicles, imports a vehicle into the State for the purpose of using the same for carrying on his business of transportation of goods or passengers, he can well be said to be dealer in goods, namely motor vehicles, for the purpose of the present Act. Similarly, if a company or concern dealing in immovable properties or civil contracts, imports any motor vehicle of any nature in any local area in connection with its business or adventure, namely, for use of its officers personals or for carrying any material or goods, will also fall within the four corners of the word "dealer" as used in the Act. The instances may be many but need not be elaborated any further.

12. The said aspect will bear better clarity if one reads the definition of "dealer" as set out in clause (1)(k) of section 2 of the Karnataka Sales Tax Act, 1957. There the "dealer" has been defined, *inter alia*, to mean a person who carries on business of buying, selling, supplying or distributing goods, directly or otherwise, and includes commission agents, millers and manufacturers. If the definition of the word "dealer" as defined under the Act and that under the Karnataka Sales Tax Act are read in juxtaposition, it will bear out that under the Act the Legislature intended to identify a person as "dealer" who causes mere entry of goods in any local area in the course of business whereas under the Sales Tax Act, the person for being so identified must be found to be carrying on business in the said goods.

13. On analysing the ingredients of the word "dealer" as defined under the Act, it is quite clear that for the purpose of the Act, the words "dealer in goods", *inter alia*, mean a person who in the course of business brings any goods in the local area. Therefore, I am of the considered opinion that the expression "dealer in goods" as used u/s 28 and the word "dealer" as defined u/s 2(4) of the Act carry the same meaning for the purpose of the Act. Use of the words "in goods" in section 28 after the word "dealer" need not be understood to mean that the words "in goods" as used in section 28 after the word "dealer" are futile or otiose. In my opinion, these words have been used merely to make explicit what was very much implicit in the expression "dealer" and nothing more or less.

14. Now, coming to the submission made by Mr. D'Sa on behalf of the

respondents to the effect that the exempting section 28 should be held as non-applicable" to Chapter II-A of the Act pertaining to levy of entry tax on import of motor vehicles since according to him it is a casus amiss and the judicial interpretation warrants a construction remedying such situations. I am afraid, so far the courts have not gone to that extent. In the case of Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others, S.R. Das, J., speaking for the court has observed that :

"..... It must always be borne in mind, as said by Lord Halsbury in Commissioner for Special Purposes of Income Tax v. Pemsel [1891] AC 531, that it is not competent to any court to proceed upon the assumption that the Legislature has made a mistake. The court must proceed on the footing that the Legislature intended what it has said. Even if there is some defect in the phraseology used by the Legislature the court cannot, as pointed out in Crawford v. Spooner, 6 Moo PC 1, aid the Legislature in defective phrasing of an Act or add and amend or, by construction, make up deficiencies which are left in the Act. Even where there is casus omissus, it is, as said by Lord Russell of Killowen in Abdullah Ashgar Ali v. Ganesh Das, AIR (20) 1933 PC 63 for others than the courts to remedy the defect."

15. Coming to the present case, neither the scheme under the Act nor the phraseology of section 28 suggests any casus omissus. The suggestion of digging out a casus amiss and remedying the same by construction seems to be an ingenuity conceived by the respondents to widen their net of taxation under the executive fiat to cover the cases of entry of motor vehicles even where the same has been caused by non-dealers in goods. In my opinion, such a course is not only impermissible but also unwarranted. It is well-settled that a subject cannot be burdened with tax unless the Legislature has unambiguously expressed itself to that effect.

16. Section 28 of the Act imperatively declares that "nothing in this Act shall apply to persons who are not dealers in goods". This exemption strikes at the very application of the Act to persons who are not dealers in goods as explained above. The language employed in the section admits of no ambiguity. The Legislature has declared its intention in plain and simple language and its intention must prevail. That being so, the exemption envisaged u/s 28 will apply to the provisions contained in Chapter II-A as well which are very much part of the Act.

17. It was next contended on behalf of the petitioners that the provisions as contained in section 4E of the Act are ultra vires the powers of the State Legislature, since it seeks to impose additional conditions for registration of motor vehicles over and above what has been provided u/s 39 of the Motor Vehicles Act, 1988 read with rule 47 of the Central Rules framed thereunder. This challenge is based on the plea that the Motor Vehicles Act has been enacted by the Parliament pursuant to entry 35 of the Concurrent List, and, therefore in view of article 254 of the Constitution, the State Legislature could not have made a

law repugnant to Central legislation. This submission needs to be rejected out right because, admittedly the amending Act 45 of 1994, by which section 4E has been brought on statute book, has duly been assented by the President as required under article 254(2) of the Constitution which has duly been notified/published in the Karnataka Gazette under Notification No. LAW 22 LGN 94 dated 25th October, 1994.

18. It has further been contended that since section 4E does not only touch upon the legislative entry in the Concurrent List but it has also a bearing on leviability of entry tax in local areas which is a subject covered by entry 52 of the State List and therefore, the presidential assent cannot by itself cure the constitutional vice suffered by this provision. I am unable to appreciate the argument advanced on this score.

19. Making of composite legislations based on more than one legislative entries is not uncommon to the legislative process. In the case of Hari Krishna Bhargav Vs. union of india (UOI) and Another, , it has been held by the Supreme Court that there is no prohibition against the Parliament enacting a single statute, matters which call for exercise of powers under two or more entries in List I of Seventh Schedule, illustrations to such legislation are not wanting in our statute books; and the fact that one such entries is residuary entry does not attract any disability.

20. Again in the case of Ujagar Prints v. Union of India, AIR 1989 SC 516, paragraph 53, it has been held that :

"In defending the validity of a law questioned on ground of legislative incompetence, the State can always show that the law was supportable under any other entry within the competence of the Legislature. Indeed in supporting a legislation sustenance could be drawn and had from a number of entries. The legislation could be a composite legislation drawing upon several entries. Such a "rag-bag" legislation is particularly familiar in taxation."

21. Therefore, no doubt in the present case provisions u/s 4E are simultaneously referable to entry 35 of the Concurrent List and entry 52 of the State List, but the making of such a composite legislation is permissible and lies within the competence of the State Legislature subject to compliance with the requirement of article 254(2) of the Constitution as has been done in the present case. Therefore, this part of the contention is also insubstantial.

22. Before parting, I feel it necessary to address myself to one more contention raised on behalf of the petitioners towards close of the case. It is based on article 304(b) of the Constitution of India. Through a supplementary affidavit it has been stated that M/s. Sipani Automobiles, Peenya, Bangalore District, had been and are manufacturing motor cars under various trade names. Similarly M/s. Ideal Jawa, Mysore are manufacturing Jawa motor cycles (S.D.) at Mysore, within the State. But, under Chapter-II of the Act entry tax has been levied only on motor vehicles which are brought within the local areas from outside the State of

Karnataka. Therefore, according to the petitioners the provisions offend article 304(a) of the Constitution which reads as under :

"304. Notwithstanding anything in article 301 or article 303, the Legislature of a State may by law -

(a) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; ..."

23. To meet the said challenge, Mr. D'Sa, learned Additional Government Advocate has brought on record the Notification No. FD 63 CET 95 (II) (S.O. No. 545) dated May 29, 1995 which reads thus :

"In exercise of the powers conferred by section 11A of the Karnataka Tax on Entry of Goods Act, 1979 (Karnataka Act 27 of 1979), the Government of Karnataka being of the opinion that it is necessary in public interest so to do, hereby exempts with effect from the first day of June, 1995 the tax payable u/s 4B of the said Act by the dealers in motor vehicles who are registered under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), on motor vehicles in respect of which they pay sales tax in accordance with section 5 of that Act."

With reference to the said notification it has been submitted on behalf of the respondents that the rate of sales tax and entry tax both being 8 per cent in the State of Karnataka, if the motor vehicle has been manufactured in the State, instead of entry tax, the manufacturer as dealer, will become liable to pay sales tax; whereas if it is brought from outside the State by the dealers in motor vehicles and sales tax is paid over it, they will be exempt from paying entry tax. But an importer who is not a dealer will be liable to pay only the entry tax and not the sales tax. Therefore, the resultant effect is that in any event in relation to the motor vehicles only 8 per cent tax is required to be paid - either in the form of sales tax or entry tax. This legal position could not be disputed by the petitioners. In that view of the matter, in my opinion, the grievance of discrimination in terms of article 304(a) is unsustainable.

24. Accordingly it is held that in all these cases if it is found that the petitioners are not dealers in goods as defined under clause (4) of section 2 of the Act, they cannot be held liable for payment of entry tax under the Act in respect of vehicles which have been brought by them in the State after its purchase in other state for their own use, and, as such they cannot be denied the benefit of registering their vehicles or changing of registration mark by applying section 4E of the Act, if they are otherwise entitled to the same under the provisions of the Motor Vehicles Act.

25. Whether any of the petitioners is dealer under the Act or not is a question of fact to be determined by the authorities under the Act, keeping in view the materials placed before them. Therefore, this Court cannot make any

pronouncement in this regard in view of the limited scope of writ jurisdiction. Such questions are to be dealt with under the provisions of the Act which provide for effective remedies in this regard.

26. Writ petitions are accordingly disposed of with a declaration that only such petitioners will be liable to pay entry tax on motor vehicles brought by them into the respective local areas who are dealers within the meaning of clause (4) of section 2 of the present Act. Consequently, persons not falling in that category will be exempt from payment of entry tax in terms of section 28 of the Act.

27. There will be no order as to costs.

28. Writ petition disposed of accordingly.