
(2005) 11 KAR CK 0018

In the Karnataka High Court

Case No : Civil Revision Petition No. 423 of 2005

Associated Cement Companies Limited

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 29-11-2005

Acts Referred:

Companies Act, 1956 — Section 2 (8), 2 (8-a), 2 (9), 3, 3 (1)
Karnataka Tax on Entry of Goods Act, 1979 — Section 15 A

Citation : (2006) ILR (Kar) 1446 : (2006) 2 KCCR 97 SN : (2008) 11 VST 811

Hon'ble Judges : H.N. Nagamohan Das, J;H.L. Dattu, J

Bench : Division Bench

Advocate : Sarangan, for Venkatesh, for the Appellant; Sujatha, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

H.L. Dattu, J.—The assessee is a company incorporated under the provisions of the Companies Act, 1956, and also a dealer registered under the provisions of the Karnataka Tax on Entry of Goods Act, 1979 (KTEG Act" for short). It is engaged in the activity of manufacture and sale of cement in the State of Karnataka.

2. The State Government, after considering the proposal of the petitioner company for expansion of its cement plant at Wadi, Gulbarga District, has issued Government Order No. CI22 SPI97, dated 26-2-1997, granting certain incentives and concessions, and one such incentive was concessions of tax payable under the provisions of the Sales Tax Act as well as the Central Sales Tax Act. The incentive so provided is as under:

INCENTIVES AND CONCESSIONS: The Company is sanctioned the following incentives and concessions:

(a) 100% exemption of Sales Tax (KST and CST) on the sale of finished goods for a period of 9 (nine) years, or, deferment of sales tax on sale of finished goods for

a period of 11 (eleven) years from the date of commencement of commercial production, subject to a limit of 80% of the value of fixed assets created for the expansion.

(b) For purchase of capital goods/equipments/costing Rs. 1.00 crores or above. In each case made by the company during the construction phase of the project, the KST exemption is given as under:

Purchase Tax exemption from the tax payable under the Karnataka Sales Tax Act, 1957, by a recognised dealer in Karnataka, on the sale of capital goods/equipment costing more than Rs. 1.00 crore in each individual purchase invoice in respect of the new industrial unit".

3. Subsequently, the State Government has issued another Government Order No. CI 22 SPI 97, dated 5-9-1998 modifying the earlier Government Order No. CI 22 SPI 97, dated 26-2-1997 for their proposed new industrial unit for manufacture of Pozzuolana Portland Cement at its industrial unit Wadi, Gulbarga District. The Government Order dated 5-9-1998 is as under:

Government Order No. CI 22 SPI 27, Bangalore, Dated 5th September, 1998

In modification of the incentives and concessions granted vide Government Order No. CI 22 SPI 97, the Government is pleased to sanction the following incentives and concessions to M/s Associated Cement Companies Limited for their proposed new industrial unit at Wadi in Gulbarga District for manufacture of Pozzuolana Portland Cement using the fly ash:

(a) 100% exemption from payment of Sales Tax (KST and CST) on the sale of finished goods for a period of 9 (nine) years, or deferment of sales tax on sale of finished goods for a period of 11 (eleven) years subject to a limit of 100% of the value of the fixed assets.

(b) For purchase of capital goods/equipment costing Rs. 1.00 crore or above, in each case made by the company during the construction phase of the project, the KST exemption is given as under:

Purchase Tax exemption from the tax payable under the Karnataka Sales Tax Act, 1957, by a recognised dealer in Karnataka, on the sale of capital goods/equipment costing more than Rs. 1.00 crore in each individual purchase invoice in respect of the new industrial unit.

The sanction of the above incentives and concessions is subject to the condition that the tax liability on the existing production of Ordinary Portland Cement would continue and would be charged based on the average tax liability of three years period prior to the commissioning of new plant, or actual tax liability based on the actual production of Ordinary Portland Cement after commissioning of the new plant, whichever is higher.

Sanction of infrastructural facilities and other terms, conditions indicated in the Government Order No. CI 22 SPI 97, dated 26-2-1997 remains unaltered.

This order has been issued with the concurrence of Finance Department vide U.O. Note No. FD 242.Exp-I. 98, dated 17-7-1998.

4. The State Government by a corrigendum dated 27-7-2000 has substituted and inserted additional incentives and concessions to petitioner's industrial unit at Wadi, Gulbarga District. The Corrigendum so issued reads as under:

CORRIGENDUM

Sub: Sanction of Incentives and Concessions to M/s ACC Limited, for their proposed cement plant at Wadi, Gulbarga District, for manufacture of Pezzuolane Portland Cement-reg.

Read: GO No. CI 22 SPI 97, dated 5th September 1998. In the order portion of the GO. No. CI 22 SPI 97, dated 5th September 1998 vide para 1 of page 2, the following words shall be substituted and read as:-

The exemption of sales tax payable on purchase of machinery/equipments costing more than Rs. 25 lakhs in each individual purchase invoice purchased from the registered dealers in Karnataka.

In the order portion of the GO dated 5th September, 1998, after the Sl.No. b, the following words shall be inserted and read as:

"(c) Exemption from payment of entry tax on machinery/ equipment of more than Rs. 25.00 lakhs in each invoice.

(d) Exemption from payment of turnover tax on the sale of finished goods for a period of 9 years or deferment for a period of 11 years subject to the condition that the maximum cap of 100% of investment in the fixed assets includes both sales tax and turnover tax.

All other terms and conditions indicated in the GO dated 26-2-1997 remain unaltered.

By Order and in the name of the Governor of Karnataka Sd/- T. PREMANARASIMAIAH Under Secretary to Government (ID) Commerce and Industries Department.

5. In the annual returns filed under the provisions of the KTEG Act, for the assessment year 2000-2001, the petitioner company had claimed exemption from payment of entry tax on the machinery and equipment including cranes before the assessing authority. The assessing authority being of the view that the returns filed by the petitioner company is incorrect and incomplete, had issued a proposition notice before passing the order under Sub-section (4) of Section 5 of the Act, proposing to disallow the exemption claimed and to levy tax on the turnover of Rs. 77,55,25,499/- relating to machinery and earth moving equipment, including cranes, on the ground that the petitioner company is not eligible for exemption during the period from 1-4-2000 to 26-7-2000 under Government Order No. CI 22 SPI 97, dated 5-9-1998 read with corrigendum No.

CI 22 SPI 97, dated 27-7-2000, on the ground that the corrigendum notification will be effective only from 27-7-2000 and not from the beginning of the financial year, for the reason, that the tax payable under the provisions of Entry Tax Act is a monthly tax and not yearly tax and the exemption notification issued in the middle of the year cannot be applied from the beginning of the year. In response to the proposal so made, the petitioner company had filed a detailed reply inter alia contending that the petitioner company is entitled to the exemption claimed by it under the notification dated 27-7-2000 from the beginning of the financial year, though the notification granting exemption is issued in the middle of the year, since the levy under the provision of Entry Tax Act is the annual tax.

6. The assessing authority after considering the objections filed, has rejected the same, vide his order dated 19-8-2003 and has confirmed the proposal to levy tax on the turnover of Rs. 77,55,28,499/ for the period 1-4-2000 to 27-7-2000 and has allowed exemption from 27-7-2000 till the end of the assessment year, on the turnover relating to machinery and equipment including cranes and earth moving equipment.

7. The petitioner company was unsuccessful in the appeals filed against the said assessment order both before the first appellate authority and the Karnataka Appellate Tribunal. It is the correctness or otherwise of the order passed by the Karnataka Appellate Tribunal is called in question by the petitioner company in this Civil Revision Petition filed u/s 15(A) of the KTEG Act, being aggrieved by the same.

8. The assessee company has raised the following questions of law said to be arising out of the orders passed by the Karnataka Appellate Tribunal in STA No. 110/2004 dated 28-2-2005 for our consideration and decision. They are:

I. Whether the Karnataka Appellate Tribunal was right in law in holding that the entry tax is a monthly tax and not yearly tax?

II. Whether the Karnataka Appellate Tribunal was right in holding GO. No. CI 22 SPI 97, dated 27-7-2000 was operative only from 27-7-2000 and not from 1-4-2000 i.e. the beginning of the financial year?

9. The matter is posted for admission. By consent of the Learned Counsel for the parties to the lis, the matter is taken up for final hearing. Sri Sarangan, Learned Senior Counsel for the assessee company would submit that the Government Order No. CI 22 SPI 97, dated 5-9-1998 read with corrigendum No. CI 22 SPI 97, dated 27-7-2000, contemplates exemption from payment of entry tax on machinery and equipment including cranes and earth moving equipment during the expansion phase of petitioner company's cement plant at Wadi, in Gulbarga District for the assessment year 2000-2001 and therefore, the corrigendum granting exemption from entry tax should be applied for the entire assessment year, commencing from 1-4-2000 to 31-3-2001, though the corrigendum notification is issued in the middle of the assessment year 2000-2001. Alternatively, it is contended that the entry tax is yearly tax and any exemption

notification issued with reference to entry tax in the middle of the year and if no effective date is mentioned in the notification, then the exemption granted in the notification requires to be made applicable for the entire financial year. Strong reliance is placed on certain the observations made by the Supreme Court in the case of Mathra Parshad and Sons v. The State of Punjab and Ors. (1962) 13 STC 180 SC, Commissioner of Sales Tax v. Cooper and Company (1968) 22 STC 111 SC, Commissioner of Sales Tax, U.P., v. Dunlop India Limited, State of Andhra Pradesh v. VBC Exports Limited and Ors. (1994) 92 STC 571 SC and State of Andhra Pradesh Vs. VBC Exports Ltd. and Others, .

10. Per contra, Smt. Sujatha, Learned Additional Government Advocate would submit that the tax payable under Karnataka Tax on entry of Goods Act, 1979, is a "transaction tax" payable on entry of goods into local area for consumption, use or sale therein, and therefore, by no stretch of imagination, the levy under the entry tax could be construed as yearly tax and therefore, none of the decisions on which reliance was placed by Learned Senior Counsel has any bearing on the interpretation of exemption notification issued under the provisions of Karnataka Tax on Entry of Goods Act. Nextly, it is contended that since no effective date is mentioned in the corrigendum issued by the State Government, it must be understood that the notification is prospective, in the sense, that the notification can be made applicable from the date it was notified and not for the earlier period. Reference is made to the decision of the Apex Court in the case of Income Tax Officer, Alleppey Vs. M.C. Ponnose and Others, , Ananda Soap Factory Vs. State of Karnataka, , Silical Metallurgic Limited v. State of Kerala (1999) 115 STC 304 (Ker), and Ganesh International and Another Vs. Assistant Commissioner and Others, .

11. The reference to the case laws on which reliance was placed by the Learned Counsels will be made by us at the appropriate stage.

12. In our view, after hearing the Learned Counsels, two issues would arise in this revision petition for our consideration and determination. They are:

I. Whether the levy of tax under the provisions of Entry Tax Act is "annual tax"? and

II. Whether the exemption notification issued under the Act in the middle or fag end of the year and if no effective date is mentioned in the notification, whether it should be applied for the entire financial year while computing the tax liability under the provisions of Entry Tax Act?

13. Before we consider the contentions canvassed by the Learned Counsels. It would be useful to remind ourselves the pertinent observations made by the Apex Court, while explaining the concept of "doctrine of law of precedents" in the case of Bharat Petroleum Corporation Ltd. and Another Vs. N.R. Vairamani and Another, . In the said decision the Court has stated

9. Courts should not place reliance on decisions without discussing as to how the

factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's theorems nor as provisions of a statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of Courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Limited v. Horton*, Lord Macdermott All ER. p. 14 C-D Observed:

The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge,...

10. In *Home Office v. Dorset Yacht Co.* All ER p.297 g-h Lord Reid said, "Lord Atkin's speech...is not to be treated as if it were a statutory definition. It will require qualification in new circumstances." Megarry J. in *Shepherd Homes Limited v. Sandham* (1971) 28 STC 399 SC (No. 2) observed: "One must not, of course, construe even a reserved judgment of Russell, L.J. as if it were an Act of Parliament". And, in *Herrington v. British Railways Board* All ER p. 761 C LORD MORRIS said:

There is always peril in treating the words of a speech or a judgment as though they were words in a legislative enactment, and it is to be remembered that judicial utterances made in the setting of the facts of a particular case.

11. Circumstantial flexibility, one additional or difference fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly placing reliance on a decision is not proper.

12. The following words of Lord Denning in the matter of applying precedents have become locus classicus:

Each case depends on its own facts and a close similarity between one case and another is not enough because even a single significant detail may alter the entire aspect, in deciding such cases, one should avoid the temptation to decide cases (as said by Cardozo) by matching the colour of one case against the colour of another. To decide therefore, on which side of the line a case falls, the broad resemblance to another case is not at all decisive.

Precedent should be followed only so far as it marks the path of justice, but you must cut the dead wood and trim off the side branches else you will find yourself lost in thickets and branches. My plea is to keep the path to justice clear of obstructions which could impede it.

14. Now coming to the issues, which we have formulated ourselves for our determination, the object of the Act and some of the relevant provisions which have bearing on the issue requires to be noticed.

The object of the Act is to provide for the levy of tax on entry of specified goods into local areas for consumption, use or sale therein.

Section 2(8) of the Act defines "tax" to mean tax leviable under the Act.

Section 2(8-a) of the Act defines the meaning of the expression "value of the goods" to mean, the purchase value of such goods, that is to say, the purchase price at which a dealer has purchased the goods inclusive of charges borne by him as cost of transportation, packing, forwarding and handling charges, commission, insurance, taxes, duties and the like, or if such goods have not been purchased, the prevailing market price of such goods in the local area.

Section 2(9) of the Act defines the meaning of the expression "year" to mean the year commencing on the first day of April.

Section 3 of the Act is the charging provision in the Act. It authorises the levy and collection of a tax on the entry of any goods specified in the First Schedule into local area for consumption, use or sale therein, at such rates not exceeding five percent of the value of the goods as may be specified prospectively or retrospectively by the State Government by issuing a notification. Sub-section (2) of Section 3 of the Act provides for payment of entry tax by a dealer. The Sub-section provides that the tax levied under Sub-section (1) of Section 3 of the Act shall be paid by every registered dealer or a dealer liable to get himself registered under the Act, who brings or causes to be brought into local area the goods whether on his own account or on account of his principal or any other person or who takes delivery or is entitled to take delivery of such goods on its entry into a local area. Sub-section (8) of Section 3 of the Act envisages that the tax under the Act shall be assessed, levied and collected in such manner and in such installments, if any, as prescribed in the Rules. Sub-section (9) of Section 3 of the Act, provides, that subject to such Rules as may be prescribed, the assessing authority may assess a dealer for any year, as if, the aggregate value of the goods brought or caused to be brought into local area in such year had been received as in the previous year.

Chapter III of the Act, provides for filing of returns, assessment, payment, recovery and collection of taxes.

Section 5 of the Act commences with a non-obstinate clause, i.e., notwithstanding anything contained in Section 7 of the Act which provides for payment of tax in advance, on the basis of the goods brought by a dealer during the preceding month into the local area, every registered dealer and every dealer, who is liable to get himself registered under the Act, shall submit a return every year to the assessing authority within such period and in such manner containing such particular as may be prescribed in the Rules. Sub-section (2) of

Section 5 of the Act mandates that before any dealer submits any return under Sub-section (1), he shall in the prescribed manner pay in advance the full amount of tax payable by him on the basis of such return as reduced by any tax already paid u/s 7 of the Act and shall furnish along with the return satisfactory proof of the payment of such tax. Sub-section (3) of Section 5 of the Act says that, if the assessing authority is satisfied that any return submitted under Sub-section (1) is correct and complete, he shall assess the dealer on the basis of such return. Sub-section (4) of Section 5 of the Act provides for best judgment assessment and Sub-section (5) of Section 5 of the Act provides for levy of penalty when an assessment is made under Sub-section (4) for the reasons mentioned therein. Sub-section (6) of Section 5 of the Act puts an embargo on the assessing authority that he shall not make any assessment u/s 5 of the Act for any year after a period of three years from the date on which return u/s 5 of the Act for that year is submitted by the dealer. The other sub-sections are not relevant for the purpose of this case.

Section 7 of the Act provides for payment of tax in advance. The said provision imposes an obligation on every registered dealer and every dealer liable to get himself registered under the Act to send every month to assessing authority, a statement containing the goods brought by him during the preceding month into the local area and pay in advance the full amount of tax payable on the basis of such statement. The other sub-sections of Section 7 of the Act provide for consequences of failure to file such statement and payment of advance tax.

Section 11-A of the Act authorises the State Government to exempt or reduce tax, if in its opinion it is necessary to do so in public interest, by issuing a notification, subject to such restrictions and conditions and for such period as may be specified in the notification either prospectively or retrospectively the tax payable under the act, by any specified class of persons or class of dealers or in respect of any goods or class of goods or on entry of all or any goods or class of goods into any specified local area.

Part III of Karnataka Tax on Entry of Goods Rules, 1979, prescribes the manner and method of filing tax returns u/s 7 of the Act. Under Rule 7 of the Rules, the statement requires to be filed accompanied by proof of payment of full amount of tax payable on the basis of total value of the goods liable to tax during the month to which the statement relates.

Rule 9 of the Rules provides for filing of annual returns by a dealer registered under the Act, so as to reach the assessing authority within thirty days after close of the year to which the return relates along with the proof of payment of full amount of tax payable for the year on the basis of the returns, after deducting therefrom, the tax, if any, already paid for the year.

15. A fiscal statute, in particular, indirect tax laws will have three essential features, namely, the provisions declaring liability to pay tax, i.e. charging provisions; secondly, provisions for assessment of tax; and thirdly, provision for

collecting or recovering the tax including provisions for checking evasion of tax. These are known as machinery or procedural provisions. In the instant case, the object of Entry Tax Act as we have already noticed is to provide for levy of tax on entry of goods into local areas for consumption, use or sale therein. A "year" means year commencing on the 1st day of April. As a result, the dealers are required to submit returns not only for every completed month after 1st of April, but also submit the return of the turnover for the year, such year being reckoned from the 1st of April. Section 3 of the Act is the charging provision. It provides for taxable event attracting the levy, the taxable person on whom the levy is imposed and who is obliged to pay tax, the rate at which tax could be imposed by the State Government by issuing notification either prospectively or retrospectively and lastly, the measure or value to which the rate will be applied for computing the tax liability. The charging provision empowers the State Government to levy and collect tax on entry of scheduled goods into local area for consumption, use or sale therein. Under the scheme of entry tax, a dealer is required to send every month to the assessing authority, a statement containing the particulars of total value of goods liable to tax during the preceding month and pay tax in advance. This requirement is in addition to and complementary to the provisions of Section 5 of the Act, under which every dealer shall submit its annual returns to the assessing authority and pay full amount of tax payable for the year on the basis of the returns after deducting therefrom, the tax, if any, already paid for the year, if the return is correct and complete, the assessing authority shall assess the dealer on the basis of the returns, the tax payable under the Act for the preceding the year or part of the year to which the return relates, as the case may be. It is now well settled principle of law that the basis adopted for quantification of tax is not a decisive as to the character of tax. The character of tax requires to be determined at the "taxable event". The taxing event under the Act is the entry of scheduled goods into local area for consumption, use or sale therein at the instance of a dealer which in the trade circles known as "transaction tax", the quantification of tax payable if such transaction is done after the expiry of the month or at the end of the year. To arrive at this conclusion, we have taken note of the observation made by the Apex Court in case of State of Karnataka and Another Vs. Hansa Corporation, , wherein the Court has observed, that the taxing event under the Act is the entry of scheduled goods into local area at the instance of a dealer and the volume or quantum of business of the dealer is not at all relevant. In the said decision, the Court after noticing the procedure that was in vogue under the octroi system, has further observed, that "the noteworthy departure made by the Act is that now unlike every importer only a dealer dealing in scheduled goods will have to pay the tax that too not at the octroi limits, but afterwards while submitting the returns".

16. Therefore, in our view, the taxable event under the Act is the entry of scheduled goods into local area for consumption, use or sale therein. The quantification of tax payable is postponed to a later point of time i.e. it is

monthly and yearly. It is relevant at this stage itself to notice Sub-section (9) of Section 3 of the Act on which reliance was placed by Learned Senior Counsel for petitioner company. The language employed in the Sub-section is clear and therefore, it does not pose any problem in understanding the purport of the Sub-section. The said Sub-section authorises the assessing authority to assess a dealer for any year as though the value of the goods brought or caused to be brought into local area in such year had been received in the previous year. The previous year as the expression denotes is previous to the assessment year, i.e. it is the year immediately preceding the assessment year. Therefore, tax is assessed and paid in the next succeeding year upon the results of the year before. Alternatively, it can be said that the liability to the entry tax arises the moment a registered dealer or dealer liable to get himself registered under the Act causes entry of scheduled goods into local area for the purpose of consumption, use or sale therein, although that liability cannot be enforced till the completion of assessment proceedings. The entry tax is levied monthly as well as after the expiry of assessment year. It only means it is quantified at the end of the month and after the expiry of the preceding year and collected accordingly and therefore, in our view, it cannot be said that the levy under the provision of entry tax is yearly or annual tax.

17. Now coming to the second issue, reference to the corrigendum issued by the State Government dated 27-7-2000 once again is necessary. In the Government Order dated 5th September, 1998, the State Government while granting incentives and concession to petitioner's industrial unit for its expansion of its cement plant had not specifically granted exemption from payment of entry tax. By issuing a corrigendum dated 27-7-2000, it has substituted the exemption of sales tax payable on purchase of machinery costing more than Rs. 25 lakhs and inserted in the Government order dated 5th September, 1998, the exemption from payment of entry tax on machinery equipment of more than Rs. 25.00 lakhs in each invoice. However, no effective date is mentioned in the corrigendum and this has resulted in so much of debate before this Court at the time of hearing of the petition.

18. To resolve the controversy, it is necessary to know the meaning of the expression "corrigendum". Again a search to understand this expression may not be necessary in view of the decision of this Court in the case of Falma Laboratories Pvt. Ltd. Vs. State of Karnataka and others, , wherein this Court has stated that a corrigendum to a notification only means correction or rectification of a mistake in the original notification and such correction dates back to notification corrected. In the context of the present case, in the earlier Government Orders dated 26-2-1997 or in 5-9-1998, there was neither a clerical mistake or a rectification required in so far as entry tax is concerned. The mistake, if any, was with regard to exemption of sales tax payable on purchase of machinery/ equipment. Therefore, in a situation like this, the only view that could be taken is, that by issuing the corrigendum, the State Government for the first time has granted exemption from payment of entry tax to the petitioner's

industrial unit when it brings or causes to be brought into local area the machinery, equipment etc. The effective date since it is not mentioned in the notification, it should be presumed that the said exemption from payment of entry tax is prospective i.e. that is the date on which corrigendum is issued. The other significant feature in the corrigendum/notification is that, it uses two key words. When it comes to granting of exemption of sales tax on purchase of machinery/equipment, the expression used is "substituted" and when it comes to exemption from payment of entry tax, it uses the expression "inserted". The word "substitution and insertion" do not have the same meaning. The word "inserted" connotes that whatever is inserted, it is done from the date it is inserted, unless a specific date is mentioned giving effect to the inserted provision from the date earlier to the date of insertion. Therefore, the exemption granted for the first time by inserting the exemption to the earlier Government Order requires to be given effect only from the date of insertion and not from earlier date. However, Sri Sarangan, Learned Senior Counsel would argue, that since the notification is issued in the middle of the year, it has to be given effect from the commencement of the financial year. Strong reliance is placed for this proposition on the decision of the Supreme Court in the case of Mathra Parshad and Sons v. State of Punjab (Supra). The dicta of the Court is :

The exemption thus must operate either from the date of the notification or from the commencement of the financial year. Here the nature of tax, as disclosed in Sections 4 and 5 is decisive. In Section 5, the tax is made leviable "on the taxable turnover every year of a dealer". The divisions of the year and the taxable turnover into different parts are to make easy collection of tax, and form part of the machinery sections. If the tax is yearly and is to be paid on the taxable turnover of a dealer, then the exemption, whenever it comes in, in the year for which tax is payable, would exempt sales of those goods throughout the year, unless the Act said that the notification was not to have this effect, or the notification fixed the date for commencement of the exemption. In the present case, the notification did not fix the date from which the exemption was to operate, probably because the Act omitted to make such provision enabling the State to do so, and the exemption must, therefore, operate for the whole year, during which it was granted.

19. In our opinion, the said decision would not assist the petitioner's Learned Senior Counsel for two reasons. Firstly, in Mathra Parshad's Case (Supra), the Supreme Court was dealing with Punjab General Sales Tax Act, where tax is made liable on the taxable turnover every year of a dealer and secondly, the Act did not provide for issuing an exemption notification retrospectively. That is not the case in the present proceedings. The charging provision under Entry Tax Act is different from the charging provision of Punjab General Sales Tax and secondly, the Act authorises the State Government issuing exemption notification either prospectively or retrospectively. A Full Bench of Andhra Pradesh High Courts in the case of The State of Andhra Pradesh Vs. Murali Cafe, has considered the decision of the Supreme Court in Mathra Parashad's Case (Supra)

and has observed:

We do not consider that *Mathra Parshad and Sons v. State of Punjab* decided anything contrary to what we have laid down. In our view, on facts it does not help the respondents either. That was a case in which on 27th September, 1954, the State Government issued a notification by which manufacturer tobacco was exempted from the levy of sales tax. The appellants had paid sales tax for the first quarter ending 30th June, 1954. On a demand being made by the department on the remaining three quarters of the year, the appellants filed unsuccessfully a writ petition in the High Court. The Supreme Court formulated the question for consideration:

Did the exemption in the notification issued on September 27, 1954, have effect from that date, or from the beginning of the financial year?

In determining that question, the majority reached the conclusion that the tax is a yearly tax. It was observed:

Here, the nature of the tax, as disclosed in Sections 4 and 5 is decisive. In Section 5, the tax is made leviable on the taxable turnover every year of a dealer.

It is because of this scheme of taxation that it was held:

If the tax is yearly and is to be paid on the taxable turnover of a dealer, then the exemption, whenever it comes in, the year for which the tax is payable, would exempt sales of those goods throughout the year....

In this context it is relevant to note that Kapur, J., who wrote a dissenting judgment, noted the argument advanced:

The argument was that it was a yearly tax on the turnover and not that every year a tax was to be levied on the taxable turnover, i.e. aggregate of the sales made during a given period.

This contention was rejected by the Learned Judge in the following observation:

I am unable to agree that the effect of the collocation of the words in Section 5 and particularly on the words "shall be levied on the taxable turnover every year...a tax" is what was argued by the appellants, i.e.. it was a yearly tax like the income tax.

It will immediately be plain that the said decision has no bearing whatsoever on the question, which we are considering. Firstly, because the scheme of the Act in that case was different. There the tax was a yearly tax. In the present case as we have observed the tax is immediately imposed the moment the taxable event happens and the taxable transaction is completed. It is not a yearly tax. Secondly, that was a case relating to exemption, a question with which we are not concerned in this case. The distinction between the two is obvious, In *Bhawani. Cotton Mills Limited v. State of Punjab*, the Supreme Court pointed out the difference as follows:

There is a broad distinction between the provisions contained in the statute in regard to the exemptions of tax or refund or rebate of tax on the one hand and in regard to the non-liability to tax or non-imposition of tax on the other. In the former case, but for the provisions as regards the exemptions or refund or rebate of tax, the sales or purchases would have to be included in the gross turnover of the dealer because they are prima facie liable to tax and the only thing which the dealer is entitled to in respect thereof is the deduction from the gross turnover in order to arrive at the net turnover on which the tax can be imposed. In the latter case, the sales or purchases are exempted from taxation altogether.

20. We are of the opinion that the approach of the Andhra Pradesh High Court while understanding the dicta of the Apex Court in Mathra Parshad's Case (Supra) is the correct approach. Therefore, we also adopt the same approach in understanding the dicta of the Apex Court in the aforesaid decision.

21. Reference is made to the decision of the Bombay High Court in the case of Commissioner of Sales Tax v. Cooper and Company (Supra). That was a case under the provisions of Central Sales Tax Act, 1956 and the Court held that "under the Act, the year being the unit both for the purpose of chargeability and assessment proceedings under the Central Sales Tax Act, if any, notification granting deduction comes into force during the year, it must be given effect to as from the beginning of the assessment year."

22. Reference is made to the decision of Andhra Pradesh High Court in the case of State of Andhra Pradesh v. VBC Exports Limited and Ors. (Supra). In the said decision, the Court has observed that "sales tax is a yearly tax and the turnover of the whole year is liable to be taxed, the exemption granted during the course of the year would enure to the benefit of the dealer for the whole year. For the purpose of exemption, the assessment cannot be split into different periods."

Proceeding Further, the Court has observed that "since there was nothing in the Andhra Pradesh General Sales Tax Act, 1957, which prohibited grant of exemption u/s 9 of the Act for the whole of the year of assessment and no date from which notification GO. Ms No. 116 dated February 8, 1989, would be operative was specified in the notification, the notification would exempt the turnover for the whole year commencing from 1st of April and ending with 31st of March".

23. We do not intend to comment on the aforesaid decision. Suffice to say that in the said decision, the Court has not taken note of the decision of the Full Bench of the Andhra Pradesh High Court in the case of The State of Andhra Pradesh v. Murali Cafe (Supra).

24. Our attention is also invited to the decision of the Madras High Court in the case of Nagammal Cotton Mills v. State of Tamilnadu (Supra). That was a case under the provisions of Central Sales Tax Act and the said decision, in our view, would not assist the petitioner's Learned Senior Counsel. We may only add that the tax under the provisions of Central Sales Tax Act, is not strictly speaking an

annual tax, but is payable on sale of goods effected by the dealer. The words "during the year" may signify that the assessment of tax is for the period of the year as defined in Section 2(k) of the Act.

25. A notification granting an exemption or concession in the rate of tax takes effect from the date mentioned therein and if no such date is mentioned, from the date of its publication in the official gazette. Reference can be made to the observations of the Supreme Court in the case of *Income Tax Officer v. M.C. Poonnoose* (Supra) wherein the Court has observed:

Now it is open to a sovereign legislature to enact laws which have retrospective operation. Even when Parliament enacts retrospective laws such laws are - in the words of Willies J. in *Phillips v. Eyre*:

...no doubt, prima facie of questionable policy, and contrary to the general principle that legislation by which the conduct of mankind is to be regulated ought, when introduced for the first time, to deal with future acts

, and ought not to change the character of past transactions carried on upon the faith of the then existing law.

The Courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the Courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.

26. Infact, a similar question of law came up for consideration before a Learned Single of Kerala High Court in the case of *Silical Metallurgic Limited v. State of kerala* (supra). The Court after referring to the "interpretation of statutes" by Learned Author Vepa P. Sarathi has observed:

6. The next point urged by the Learned Counsel is that the notification has to be given retrospective operation since the notification has come during the financial year and the entry tax is on the taxable turnover of the financial year. Non-mentioning of the goods, its tax and its commencement will have to be decided considering the entire year. Such an argument cannot be countenanced. Entry tax is payable on entry of goods into local areas which has been defined u/s 2(d). According to this Section, "entry of goods means entry of goods into a local area" with all its grammatical variations and cognate expressions, means entry of goods into a local area from any place outside the State for use or sale therein.

The charging Section 3 provides that tax shall be levied and collected on the entry of any goods into any local area for consumption. Therefore, it is not correct to say that the entry tax is payable on the taxable turnover of a dealer for one financial year. Tax is payable on the entry of goods into the local area. Section 12, exemption clause, does not provide for giving exemption retrospectively. The power is given to the Government as a subordinate legislative authority to notify the exemption. The notification also does not state that the exemption is retrospective in operation. Therefore, the notification and exemption can only be prospective in operation and cannot be given retrospective effect.

27. We think this appears to be the correct position in law and therefore, we are in full agreement with the observations made by the Learned Single Judge of Kerala High Court on this aspect of the matter.

28. In view of the above discussions, we are of the opinion that the Tribunal is justified in rejecting the appeal filed by the assessee for the assessment year 2000-2001 by its order dated 28-2-2005. Therefore, while confirming the findings and the conclusion reached by the Tribunal, we reject the present revision petition filed by the petitioner company. In the facts and circumstances of the case, there is no order as to costs. Ordered accordingly.