
(1996) 01 KAR CK 0079
In the Karnataka High Court
Case No : Writ Appeal No's. 267-268 of 1993

Associated Cement Companies Ltd.

APPELLANT

Vs

Government of Karnataka

RESPONDENT

Date of Decision : 30-01-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Karnataka Sales Tax Act, 1957 — Section 8 (5)

Citation : (2004) 166 ELT 437 : (1999) ILR (Kar) 2910 : (1997) 42 KarLJ 113

Hon'ble Judges : M.L. Pendse, C.J.;B.N. Mallikarjuna, J

Bench : Division Bench

Advocate : M.N. Shankaregowda, for S.G. Shivaram, for the Appellant; K. Viswanath, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

M.L. Pendse, C.J.—The appellant is the dealer under the Central Sales Tax Act (hereinafter referred to as the "Act") having its registered office at Bombay and regional office at Bangalore. The appellant had filed returns for the assessment years 1986-87 and 1987-88 and the assessments were complete on February 29, 1992 and September 26, 1992 respectively. The assessments were completed on the basis of the appellant being entitled to the benefit of notification dated February 28, 1987 issued in exercise of powers conferred by Sub-section (5) of Section 8 of the Act. The notification inter alia provided that the rate of tax payable on the sales of cement made in the course of inter-State trade or commerce stands reduced from 15% to 2%.

2. On January 12, 1988 Supreme Court delivered the judgment reported in the Indian Cement and Others Vs. State of Andhra Pradesh and Others, . The Supreme Court was examining the notification issued by the Government of Andhra Pradesh and which notification was almost parallel to the notification issued by the Government of Karnataka. The Supreme Court while examining the notification issued by Andhra Pradesh had also issued notice to the State of

Karnataka to show cause why the notification of the Karnataka Government should not be struck down. The Supreme Court held that the notification issued by the Karnataka Government was null and void and was struck down. In pursuance of the decision of the Supreme Court the Government of Karnataka published notification on March 30, 1988 rescinding the earlier notification dated February 28, 1987.

3. The Addl. Deputy Commissioner of Commercial Taxes, Bangalore, re-assessed the appellant by order dated December 14, 1992 for the two assessment years 1986-87 and 1987-88 and the liability of about Rs. 10 crores was found payable by the appellant. The appellant had the right of appeal against the order of reassessment. The appellant preferred to approach this Court by filing writ petition under Articles 226 and 227 of the Constitution. The reliefs sought in the petition were (a) quashing of re-assessment order dated December 14, 1992 and demand notice dated December 18, 1992, (b) quashing of Government Order dated February 12, 1992, and (c) quashing of clarification issued by the Commissioner of Sales Tax on June 29, 1992 and February 11, 1988. The principal grievance of the appellant was that the re-assessment orders were passed on the basis of the circulars and Government Orders and, though the instructions and circulars were not as per the decision of the Supreme Court. The learned single Judge by order dated January 21, 1993 dismissed two petitions for the two assessment years observing that the circulars issued by the Government and the Commissioner are in conformity with the orders of the Supreme Court and therefore it is not necessary to entertain the writ petitions. The appellant carried the appeals before the Division Bench of this Court/ but the appeals ended in dismissal by order dated February 8, 1993. While dismissing the appeals Division Bench observed that the appellant is at liberty to file a review application before the learned Single Judge. Taking advantage of the observation, the appellant did file review petition before the learned single Judge, but it met the fate of dismissal by order dated February 15, 1993. The appellant has now come in appeal against the order of the learned single Judge refusing to review the order of dismissal. The appellants have secured the stay of demand notice for recovery of Rs. 10 crores.

4. Learned Counsel for the appellant submitted that though the notification dated February 28, 1987 conferring benefit on the appellant was struck down by the Supreme Court on January 12, 1988, the Government of Karnataka did not rescind the notification till March 30, 1988. It was contended that as the notification was rescinded only on March 30, 1988, the benefit of notification should be made available to the appellant till that date. It is impossible to accede to the submission. Once the notification dated February 28, 1987 is struck down by the Supreme Court as null and void, then the benefit under the notification cannot be claimed for any period. It surpasses our imagination as to how it can be suggested that the notification would remain in operation as long as it was not rescinded by the Government of Karnataka even though the notification was found to be invalid by the Supreme Court. In our judgment, benefit under the

notification dated February 28, 1987 cannot be claimed for any period because the notification was found to be invalid by the Supreme Court. Learned Counsel for the appellant submitted that the Government of Karnataka should be compelled to give the benefit of the notification which was struck down by the Supreme Court till March 30, 1988 by the doctrine of Promissory Estoppel. We are unable to find any merit in the contention. The doctrine of Promissory Estoppel has no application whatsoever in respect of the statutory exercise of powers. The expectation of the learned Counsel that even though the Supreme Court struck down the notification, the Government of Karnataka is bound to give the benefit to the appellant because the appellant had acted on the promise issued under the notification is unsustainable and in total breach of any principle of law. Notification was issued by the Government of Karnataka in exercise of statutory powers under Sub-section (5) of Section 8 of the Act and once the notification was struck down then it is impossible to imagine as to how the Government of Karnataka can be directed to continue the benefit on the spacious ground that the doctrine of estoppel is applicable. In our judgment, the contention that the benefit of notification dated February 28, 1987 should be continued till March 30, 1988 is without any merit and must be turned down.

5. It was then contended by the learned Counsel for the appellants that the notification dated February 28, 1987 should be considered as valid till the Supreme Court struck it down on January 12, 1988. Learned Counsel submitted that the principle of Prospective Invalidation is recognised by the Supreme Court and the notification should be deemed to have been struck down with effect from January 12, 1988 and the benefit for the earlier period should be made available. The contention has no merit whatsoever. The Division Bench of this Court to which one of us (Chief Justice) was the party considered the identical contention in W.A. 1390/1991 and by judgment dated September 18, 1995 the contention was turned down. It was observed :

"The doctrine of Prospective Invalidation is not permissible for the High Courts while exercising powers under Article 226 of the Constitution. The Supreme Court has repeatedly pointed out that the doctrine of Prospective Invalidation can be imported and the power to declare the notification as prospectively invalid can be exercised only by the Supreme Court and not by the High Courts. It is therefore not possible to grant the relief sought for. Once the notifications are found to be void ab initio, then in the eye of law the benefit given under the notifications never existed and consequently the claim that the petitioner should not be made liable to pay the difference of duty during the period of subsistence of notification cannot be accepted,"

We are in respectful agreement with the view taken by the Division Bench. Learned Counsel for the appellant referred to the decision of Andhra Pradesh High Court reported in *Coromandel Fertilisers Ltd. Vs. C.T.O., Company Circle, Punjagutta Division, Hyderabad and Another*, . Learned Counsel submitted that the Andhra Pradesh High Court gave relief in respect of the period during which

the notifications were in operation and before being struck down. We are afraid we cannot grant any such relief. Acceding to the submission of the learned Counsel will amount to holding that the notification dated February 28, 1987 would remain in operation till it was struck down by the Supreme Court. To give such a finding would amount to declaring that the notification was prospectively invalid and we decline to pass any such order in the face of the specific dictum laid by the Supreme Court. Learned Counsel referred to the decision of the Supreme Court reported in *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, , but we are unable to appreciate how this decision would advance the cause of the appellant. The Supreme Court while considering the validity of the actions during the subsistence of an Ordinance observed that any action done during the subsistence of the Ordinance which can remain in force for the duration of six months from the date of issuance would be valid. The Ordinance on issuance has force of law and can validly remain in existence for a duration of six months or till the date of its withdrawal. It hardly requires to be stated that any action taken during the subsistence of the Ordinance is in accordance with law. It is impossible to claim that the benefit of the notification which was struck down by the Supreme Court should be made available till the date of striking down. The Supreme Court struck down the notification on the ground that it was void ab initio and consequently in the eyes of law the notification never existed and the appellant cannot claim the benefit of the same.

6. Apart from our conclusion that the appellants have no case to approach this Court, it must be made clear that the appellants had an effective remedy of filing an appeal against the order of reassessment. The appellants have not chosen to adopt that remedy and have approached this Court. We have heard the learned Counsel for the appellants on the issue of availability of the benefit of the notification as it was claimed that the said contentions will not be entertained by the appellate authority. In our judgment, the order passed by the learned Single Judge is not required to be disturbed and the appeals must fail.

7. Accordingly, both the appeals are dismissed with costs.

8. At this stage, learned Counsel asks for stay of recovery under the demand notice for a period of 12 weeks. We refused to entertain any such plea. By adopting the proceedings which we have found to be totally without any merit, the appellants have successfully postponed the payment of Rs. 10 crores for last 4 years. Time has now come for the appellants to make payment forth with.