

(1991) 08 KAR CK 0021
In the Karnataka High Court
Case No : S.T.R.P. No. 62 of 1991

Bhiriya and Sons

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 23-08-1991

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 A, 5 (1), 8, 8 A

Citation : (1992) 85 STC 168

Hon'ble Judges : M.N. Venkatachaliah, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : M/s Narayan and Co, for the Appellant; Shimoga Subbanna, Government Pleader, for the Respondent

Judgement

K. Shivashankar Bhat, J.—The petitioner in this revision petition is a dealer registered under the provisions of the Karnataka Sales Tax Act, 1957 ("the Act" for short). The question involved pertains to the assessment period July 1, 1985 to June 30, 1986. The petitioner questions the levy of sales tax u/s 5(1) of the Act on the turnover relating to pens costing less than Rs. 10 per piece (for the sake of convenience these pens are referred hereinafter as the "low priced pens", in contradiction to pens costing Rs. 10 and above per piece).

2. Section 5 of the Act levies tax either on the sale or purchase as the case may be, of any goods by a dealer, as stated under the various sub-sections of section 5. As per section 5(1) every dealer shall pay tax on his taxable turnover at the rate of the prescribed percentage of such turnover. This prescribed rate was 7 per cent during the relevant period. The proviso to the said sub-section imposes a lower rate of tax in respect of certain goods with which we are not concerned. As per sub-section (3)(a), notwithstanding anything contained in sub-section (1), the tax shall be levied at a single point and is imposed on the first or the earliest of successive dealers in the State at the rates specified in column (3) of the Second Schedule in respect of the goods mentioned in column (2) of the Second Schedule. Further sub-clauses of section 5(3) provide different rates of taxes,

with which also, we are not concerned now. Sub-section (4) of section 5 pertains to the declared goods. As per section 8, sale of goods specified in the Fifth Schedule to the Act is not taxable and are thus exempted. Similarly u/s 8-A State Government is given power either to grant exemption or reduce the rate of tax payable under the Act, by issuing appropriate notification.

3. Therefore, the tax payable in respect of the sale of goods specified in the Second Schedule, is only at the rate stated in the said Schedule and the tax is levied on the first or the earliest of the successive dealers. The sale or purchase of those goods are not taxed under the Act anywhere else in the Act. The petitioner, inter alia, deals in pens. Entry 164 of the Second Schedule mentioned pens costing Rs. 10 and above and the tax payable per piece was 8 per cent during the relevant period. However, the Second Schedule was silent about the pens costing less than Rs. 10 per piece.

4. The assessing authority by its order dated May 22, 1987, held that the turnover of the petitioner pertaining to the low priced pens were exempted from taxation under the Act, obviously because he opined that "pens" were referred in the Second Schedule. We are not concerned with other aspects of the assessment orders here. This order was reopened u/s 12-A of the Act holding that the sales turnover pertaining to the low priced pens escaped assessment and that the said turnover was actually taxable u/s 5(1) at the rate of 7 per cent. The assessee questions this. The assessee's appeal to the Deputy Commissioner of Commercial Taxes failed. Further appeal of the assessee to the Appellate Tribunal was also dismissed.

5. According to the assessee, when Second Schedule refers to pens costing Rs. 10 and above per piece, it follows that all the goods bearing the nomenclature "pens" should be presumed to have been dealt with by the Legislature as the goods mentioned in column (2) of the Second Schedule and therefore by virtue of section 5(3)(a), section 5(1) gets excluded; however, for the purpose of levy of tax the description of the said goods with reference to the price alone should govern as stated in the Second Schedule. According to the assessee-petitioner, the purpose of classifying pens into those, priced at Rs. 10 and above per piece and those which are low priced ones and then levy tax on the former u/s 5(3) is to exclude the low priced pens from the tax burden so that the poorer section of the society who purchase the low priced pens need not bear the said burden. Mr. Narayan, learned counsel for the petitioner, also pointed out that in case section 5(1) is attracted and the low priced pens are taxed under the said provision there may be a stage in which the cost of the said pen would become Rs. 10 or more in view of the addition of the earlier taxes and thus it may fall within the Second Schedule and in such a situation, if again such a pen should be taxed in the hands of the first or the earliest dealer who sells the same at Rs. 10 or above, it will lead to an anomalous situation. We are of the view that this last submission need not detain us long because the question raised in this manner by the learned counsel is purely imaginary and the appropriate answer if at all to the

question could be arrived at as and when really the said question arises. Prima facie it looks to us that section 5(3)(a) will be attracted and will govern such pens as and when the pens would fall within the description of "pens costing Rs. 10 and above".

6. Mr. Narayan, the learned counsel for the petitioner, narrated the history of the provisions levying tax under the Act, on pens. Initially when the Act came into force, pens were included in entry 62 of the Second Schedule to the Act; this continued till about the year 1970; thus pens were subjected to a single point levy u/s 5(3)(a). In the year 1970, this entry 62 was omitted and therefore pens went out of the Second Schedule and section 5(3)(a) ceased to apply to pens; consequently, pens attracted levy u/s 5(1) and every dealer had to pay tax on his turnover of pens comprised in his taxable turnover. This was the position till March 31, 1984. Thereafter present entry 164 was inserted in the Second Schedule; therefore pens costing Rs. 10 and above were brought under the purview of section 5(3)(a). The implication was to tax those low priced pens u/s 5(1); but the assessing authority held in his order dated May 22, 1987, that those low priced pens were not taxable at all during the year July 1, 1985 to June 30, 1986; on discovery of this error, proceedings u/s 12-A were initiated to net in the turnover of low priced pens u/s 5(1); this was due to the clarification issued by the Commissioner of Commercial Taxes, on May 28, 1986; stating that those low priced pens were to be taxed u/s 5(1), as they were not included in the Second Schedule.

7. According to the learned counsel for the petitioner, the State Government realised the hardship caused to the consumers of low priced pens by the above action of the Commissioner, which resulted in multiple point levy of tax on low priced pens and therefore issued a Notification dated August 7, 1986, in the exercise of its power u/s 8-A, granting exemption to the low priced pens from the levy of tax under the Act. The petitioner's contention is that, as the intention is not to burden the low priced pens with the tax element and increase its price, such an intention, existed throughout in the Legislature, while enacting entry 164 in the Second Schedule and the court should interpret the Act in such a manner as not to impose any tax on the low priced pens, u/s 5(1) of the Act. We find at least two reasons barring the way of the petitioner, in this regard, firstly, there is no scope to interpret any permanent legislative intent not to tax the turnover relating to low priced pens; secondly, if there is any omission on the part of the Legislature while enacting the law and the language of the law is otherwise clear and unambiguous, there is no power in the courts to supply the omission, by the application of any acceptable principle of interpretation. In *The Commissioner of Sales Tax, U.P. Vs. Mangal Sen Shyam Lal*, , speaking for the Supreme Court, Sarkaria, J., observed that, a statute is supposed to be an authentic repository of the legislative will and the function of a court is to interpret it "according to the intent of them that made it"; from this function court cannot resile; intention of the Legislature should not go in vain or be left to evaporate. Intention as expressed in an unambiguous and clear language has to be given effect to.

Where the intention is covert and couched in language which is imperfect, imprecise and deficient or is ambiguous or enigmatic and external aids to interpretation are scanty and indeterminate, court is in no better position than any other person faced with an unsolvable puzzle and in such a situation, solution to the ambiguity has to come from legislative amendment to the language used in the statute. Interpretative skill of the court has to function only when it is possible to operate judicially and not legislatively. In the words of Lord Denning, ironing out the creases would be a judicial function, and if we may add to this, we say that, stretching by ironing out the creases is not the same thing as stitching an addition to the existing garment.

8. In *The Commissioner of Sales Tax, U.P., Lucknow Vs. Parson Tools and Plants, Kanpur*, , the principle is stated thus :

"..... or even if there is a casus omissus in a statute, the language of which is otherwise plain and unambiguous, the court is not competent to supply the omission by engrafting on it or introducing in it, under the guise of interpretation, by analogy or implication, something what it thinks to be a general principle of justice and equity."

In *Nalinakhya Bysack Vs. Shyam Sunder Haldar and Others*, , it was found that one set of tenants who suffered decree for eviction was benefited by the statute in question, while another set of tenants was not extended with the same benefit; this was argued as a mistake that should be rectified by the court by an appropriate interpretation; however, the language of the statute in question was clear and unambiguous. The Supreme Court observed, at page 152 :

"It must always be borne in mind, as said by Lord Halsbury in *Commr. 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* (1846) 6 Moo PC 1, aid the Legislature's 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. In our view it is not right to give to the word "decree" a meaning other than its ordinary accepted meaning and we are bound to say, in spite of our profound respect for the opinions of the learned Judges who decided them, that the several cases relied on by the respondent were not correctly decided."

9. Language of the Act with which we are concerned here is quite clear and unambiguous; there is no scope at all to interpret the language of any provision to effectuate any supposed intent of the Legislature not to levy tax on the sale or purchase of low priced pens. If an article or goods, is not covered by section 5(3) (a) read with the Second Schedule to the Act, and no other provision of the Act is

attracted to the particular goods and its sale, then, tax levied u/s 5(1) is attracted. The learned counsel for the petitioner quite rightly, was not in a position to point out any other provision in the Act governing the low priced pens.

10. If the intent was to exempt the low priced pens from the purview of taxation, at least, the State Government while issuing the notification u/s 8-A would have extended the exemption retrospectively; that has not been done; admittedly, the Notification issued on August 7, 1986, was prospective in operation and did not grant exemption to the earlier sale transactions in respect of low priced pens.

11. The history of the legislation stated by the learned counsel for the petitioner shows that, till at least the year 1970 all classes of pens were taxed u/s 5(3)(a) at single point; thereafter till March 31, 1984, all the pens were taxed u/s 5(1). Thus, at least till March 31, 1984, low priced pens were not exempted from taxation and therefore, a permanent intention not to tax low priced pens, is not deducible at all.

12. Further, we fail to understand as to how, low priced pens could be brought out of section 5(1). Language of section 5(1) read with section 5(3)(a) is quite clear. The goods not mentioned in the Second Schedule, or any other Schedule, would be subjected to tax u/s 5(1). Primarily, tax is levied u/s 5(1). This liability is removed to the extent of the liability to tax under other provisions, or by any exemption notification issued u/s 8-A or exemption given by the Legislative u/s 8 read with the Fifth Schedule. Mr. Narayan contended that, when any goods is mentioned in the Second Schedule along with its price, the description of the goods with reference to the price should be ignored for the purposes of reading section 5(1) along with section 5(3)(a). In other words, it is the name of the goods found in the Second Schedule that is relevant to exclude the entire class of named goods irrespective of the prices of goods, for the purposes of section 5(1). This contention ignores the scheme of the Act and the manner in which goods are described in the Second Schedule and other Schedules. Goods are mentioned either by their broad names, or with reference to their particular uses or with reference to their prices. Whenever, a corresponding exemption from the levy of tax under any provision of the Act has to be granted, the Legislature granted the exemption u/s 8 by specifying those goods under the Fifth Schedule. Section 8-A vests a similar power in the State Government to grant exemption by issuing appropriate notification. For example : the phrase "footwear costing more than Rs. 30 per pair" was found in entry 123 of the Second Schedule (as on April 1, 1982). Therefore footwear priced lower than Rs. 30 per pair would be taxed u/s 5(1), as these goods are not covered by section 5(3)(a). The Legislature, however, desired not to burden low priced footwear with the tax and consequently, we find, a corresponding entry No. 46 in the Fifth Schedule specifying "footwear costing less than Rs. 30 per pair", resulting in an exemption of sales tax on those goods (as on April 1, 1982). Similarly, entry 51 of the Second Schedule specified "ready-made garments costing more than Rs. 25 per piece" (with effect from April 1, 1983). To exempt low priced garments, the

Legislature specified them as entry 49 in the Fifth Schedule, as "ready-made garments costing not more than Rs. 25 a piece" (with effect from April 1, 1983). If the mere name of the goods only is relevant, even though the goods mentioned is described not only by name but also with its price, then, in those cases of footwear and garments, it was unnecessary for the Legislature to specify the low priced articles in the Schedule. Mr. Narayan explained this by urging that, these insertions in the Fifth Schedule of footwear and garments, were by abundant caution, to remove doubts if any about their liability to the levy. Courts should not impute redundancy and superfluity to the Legislature. Mr. Narayan's explanation, if accepted, would result in treating those legislative measures as futile exercises.

13. The petitioner laid great emphasis on the fact that pens costing less than Rs. 10 were mostly used by poorer sections of the society and therefore, we should infer an intention in the Legislature not to tax this sales. It may be, that low priced pens are mostly purchased by the poorer sections of the society. But, whether the Legislature intended them not to be burdened with the tax, has to be clearly brought out from the legislative provisions; at least there should be a clear manifestation of such an intention by necessary implication. We cannot assume that these low priced pens would be subjected to a series of sales before reaching the ultimate consumer. So far, the rate of tax prescribed u/s 5(1) has been always lower than the rate of tax prescribed under the Second Schedule in respect of most of the goods. If actually, real hardship results from the levy of tax, it is for the Legislature or the State Government to consider the same. Function of the court is to interpret the law; a meaning which cannot reasonably be attributed be given to the language employed by the Legislature. In these circumstances, it is not possible to accept the petitioner's contention.

14. The revision petition is accordingly dismissed without any order as to costs.

15. Petition dismissed.