(1995) 07 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No. 28367 of 1994

Biological E. Ltd.	APPELLANT
Vs	
State of Karnataka and another	RESPONDENT

Date of Decision : 25-07-1995

Acts Referred:

Constitution of India, 1950 — Article 14
Karnataka Sales Tax Act, 1957 — Section 6 B, 8 A

Citation : (1997) 104 STC 234

Hon'ble Judges : S. Rajendra Babu, J

Bench : Single Bench

Judgement

S. Rajendra Babu, J.—This petition is filed by a manufacturer of pharmaceutical preparations. A notification was issued by the first respondent as under :

"In exercise of the powers conferred by section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with effect from the first day of April, 1994 the tax payable by a dealer (other than a manufacturer or his agent) u/s 6B of the said Act on the turnover relating to sale of medicinal and pharmaceutical preparations."

2. This notification is attacked by the petitioner on the ground that it makes an invidious discrimination between the dealer and manufacturer or his agent who is also dealer for the purpose of levy of tax arising u/s 6B of the Karnataka Sales Tax Act (hereinafter referred to as "the Act"). The petitioner contended that, on a somewhat similar question on an earlier occasion this Court examined the matter in Writ Petition Nos. 5361 to 5363 of 1992 and connected matters [Dey''s Medical Stores (Manufacturing) Limited v. Assistant Commissioner of Commercial Taxes]. In that case, a distinction was sought to be made between the manufactures or wholesale dealers. That distinction was found to be artificial and this Court struck down the Explanation by which such distinction was sought to be made to take out the exemption granted in the notification in question therein. On behalf of the petitioners it is contended that some sophistication is added by the

Government in the matter of grant of exemption once again to bring the manufactures who are also otherwise dealers into the net of taxation arising u/s 6B of the Act. The learned counsel for the petitioner urged that, any notification issued under the Act granting exemption must pass the muster of article 14 of the Constitution. It is certainly open to the State to make classification of commodities, persons who have to pay the taxes in the matter of taxation for grant of exemption accordingly. But, in such cases where a distinction is sought to be made between two classes of dealers, unless the object sought to be achieved is relatable thereto, the notification becomes bad. It is submitted that, in the present case, there cannot be any distinction between the dealers and manufacturers who are also dealers and the distinction sought to be maintained by the Government is artificial and not real and therefore, notification is liable to be quashed.

3. The learned Government Pleader who appears for the respondents submitted that, u/s 8A of the Act, it is open to the Government to grant exemption either in relation to the persons who are liable to pay tax or in relation to commodities or the stage at which the tax could be collected or the rates at which the tax could be collected. If we bear this aspect in mind and as long as that provision is valid, it would not be open to this Court to question the wisdom of the State in making a classification between dealers ordinarily and dealers who are manufacturers. The learned Government Pleader further submitted that, the object is to see that turnover tax is recovered at the stage of sale by the manufacturer (or his agent) and to see that such burdens are reduced at further stages.

4. It is no doubt true that it is certainly permissible for the Legislature or the authorities concerned to grant exemption to reduce the burden of tax at each stage and not necessarily at all stages and so far as the argument advanced on behalf of the State by the learned Government Pleader to that extent stands to reason. But, when the notification in question is closely examined, it becomes clear, that is not the manner in which the transaction in question is sought to be dealt with or the exemption is sought to be granted. What is done is, the tax payable by a dealer is exempted u/s 6B of the Act on the turnover relating to medicinal and pharmaceutical preparations, except in case of manufacturer or his agent. The notification does not refer to the commodity in question at all nor the stage at which tax is collected.

5. In the first place, I find it difficult to notice any discernible distinction between a dealer who is a manufacturer and an ordinary dealer with reference to payment of tax u/s 6B of the Act. If there is no distinction between these two classes of dealers, I find no reason to exempt only in case of the latter and not in case of former. Secondly, in case of dealers who are not liable to pay tax u/s 6B since their turnover falls below the minimum turnover to attract the tax, there will be no burden of taxation u/s 6B of the Act at all. Moreover, other dealers also may fall in that category. If really the intention was to collect tax at one stage only it would be made clear that, it tax had been paid at one stage it need not be paid

at next stage. That is not what is stated in the Government order. In the case of a manufacturer or his agent who may not be liable to pay the turnover tax at all question of reducing burden of tax u/s 6B of the Act will not arise at all. Further, tax u/s 6B is multi-point. In this view, the contention sought to be put forth before this Court that, it is with the object to recover turnover tax at least at one stage baffles all logic.

6. There being no distinction between the dealer and manufacturer (or his agent) who is also a dealer the impugned notification is liable to be quashed to the extent it excludes manufacturer or his agent. In other aspects, he notification shall remain undisturbed.

7. Petition is therefore, allowed. Rule made absolute, accordingly.

8. Writ petition allowed.