

(1998) 06 KAR CK 0007

In the Karnataka High Court

Case No : Writ Petition No. 16447-16450/98, Etc.

Brindavan Roller Mills Ltd. and Others

APPELLANT

Vs

The Assistant Commissioner of Commercial Taxes and
Another

RESPONDENT

Date of Decision : 22-06-1998

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 5, 8 A, 8 A (1), 8 A (2A), 8 A (6)

Citation : (1998) ILR (Kar) 4161

Hon'ble Judges : V.K. Singhal, J

Bench : Single Bench

Advocate : Sundaraswamy and Vasan Associates, for the Appellant; Sujatha, HCGP, for the Respondent

Final Decision : Dismissed

Judgement

V.K. Singhal, J.—The controversy in all these petitions being common, all these petitions are disposed by this common order. The commodity in question is wheat bran, on which the liability of tax or the question of exemption is to be examined.

2. Learned Counsel for the petitioners restricted their arguments on two points; 1) Whether the notification dated 19.10.1991 issued u/s 8A of the Karnataka Sales Tax Act (hereinafter referred to as "the Act") is still in existence or stand repealed. 2) Whether the State Government could have exercised the power on 30.3.1996 for re transposing an entry from fifth schedule to the second schedule, in contravention of the provisions of Section 8A(2A) of the Act. In order to appreciate the contentions of the learned Counsel for the petitioner the relevant notification which are issued from time to time are reproduced hereunder :

GOVERNMENT ORDER

(1) No. FD 172 CSL 91, dated the 19th Oct, 1991 Karnataka Gazette, dated 16th January, 1992

After careful consideration of all aspects examined in the preamble and pending issue of suitable amendment to the Karnataka Sales Tax Act, 1957, Government are pleased to hereby abolish with immediate effect the existing sales tax levy under the Karnataka Sales Tax Act, 1957 on wheat and wheat products.

2. The arrears of taxes due by the dealers on this score till the date of abolition of the tax, shall be imposed and recovered.

3. This order issued with the concurrence of the D.P.A.R. conveyed in its U.O. Note No. DPAR 3547:Per-1/91, dated 19th October, 1991 read with G.O.No.FD 2 TFP 88, dated 11th May, 1988."

(2) By Act No.4/1992, Entry 64 was inserted in the fifth schedule.

"Wheat and atta, maida and soji of wheat" This schedule refers to the exempted items but while the entry was inserted wheat bran was not specifically mentioned in the amendment. By this very Act, the second schedule was also amended by inserting the entry as under :

"(iii) Flour and husks of pulses; flour and soji of maize; grits and flakes of maize; parched rice; rice soji and beaten rice; bran of rice wheat and maize."

3. The corrigendum dated 3.11.1992 was issued by the State Government in relation to the entry 64 in the fifth schedule and the word "bran" was inserted and was deemed as always been inserted with effect from 19.10.1992. The effect of this insertion of the entry with retrospective effect was that the bran was exempted from 19.10.1991.

4. By notification dated 31.3.1993 exercising the power u/s 8(A) levy of tax u/s 5 of the Act was exempted on wheat bran.

5. This notification dated 31.3.1993 was cancelled w.e.f 1.4.1996 by exercising the power u/s 8A(3) of the act vide notification dated 30.3.1996.

6. The State Government on the same day i.e. on 30.3.1996 issued another notification u/s 8A of the KST Act, 1957 whereby the sale of wheat bran was exempted from 1.4.1996 in respect of any tax payable under the Act.

7. The notification dated 30.3.1996 exempting wheat bran was cancelled vide notification dated 31.3.1997.

8. By way of Amendment to the second schedule 8 by Act No. 4/1992, bran of rice, wheat and maize were made taxable. The word bran of rice, wheat, and jowhar was substituted by Act No. 7/1997 with effect from 1.4.1997.

In the light of the notifications and amendments to the schedule, first it must be examined as to whether the notification dated 19.10.1991 is still in existence.

3. In this regard the contention of the learned Counsel for the petitioner is that Section 8A(6) of the Act has contemplated that any notification issued under Sub-section (1) or (2-A) is valid until it is cancelled under Sub-section (3), therefore

the notification dated 19.10.1991 is still in existence as the notification issued u/s 8A(3) has not been cancelled. This position would continue notwithstanding any amendment in the schedule by the State Government in exercise of its power of transposition of entry from one schedule to the other.

4. So far as this contention is concerned, it may be observed that the notification dated 19.10.1991 clearly mentions that the Government has taken stop gap arrangement by issuing the notification dated 19.10.1991 by which the tax on wheat and wheat products was sought to be abolished till necessary amendment is made in the Act itself. Wheat product would include wheat bran as well as has been held by the Apex Court in the case of RAJASTHAN ROLLER FLOUR MILLS ASSOCIATION v. STATE OF RAJASTHAN (1993) 91 STC 409. The provisions of Section 8A(6) are not applicable to the nature of the notification issued. This notification has not been issued in a normal manner as other notification are issued and the life of the notification itself was given in the notification, that is, till the suitable amendment is made under the Act. There is an automatic withdrawal of the exemption in respect, of sales tax on wheat and wheat products till the suitable amendment is made in the KST Act. That amendment had already been made by Act No. 4/1992 with effect from 19.10.1991 by inserting entry 64 in the fifth schedule. It appears to be a drafting mistake that wheat bran was not included and therefore a corrigendum was issued amending the said entry vide notification dated 3.11.1992 published in gazette on 26.11.1992. At this stage, the subsequent history of various notification is not to be taken into consideration as it is evident from the notification dated 19.10.1991 published on 16.1.1992 that the abolition of sales tax was only till the suitable amendment is made in the Act. The notification by its express language has come to an end the moment the Entry 64 in the fifth schedule was added.

5. The contention was also raised by the learned Counsel for the petitioner that the life of the notification dated 19.10.1991 was considered by this Court in the case of Manjunatha Roller Flour Mills Private Ltd. Vs. Assistant Commissioner of Commercial Taxes, . The corrigendum notification dated 3.11.1992 which was given retrospective effect with effect from 19.10.1991 was held valid so as to effect the transposition of entry of wheat bran from second schedule to the fifth schedule as a result of which the exemption was available with retrospective effect from 19.10.1991. It was held that no tax under the Act can be levied on transactions of wheat bran with effect from 19.10.1991 in view of the subsequent exercise of power by the State Government exempting wheat bran retrospectively vide notification dated 3.11.1992. This Court has held that it amounts to transposition. I need not go into that question because the notification has referred to the word "insertion" and not "transposition". Since that is not in controversy before me, the only result of this judgment could be that is wheat bran will be exempt from sales tax with retrospective effect from 19.10.1991 as per the corrigendum notification dated 3.11.1992. This does not revive the notification dated 19.11.1991 which was a government order taking a

temporary measure of abolishing the tax till the amendment under the Act is made. The first question which has been raised has no substance and is accordingly rejected.

6. The second question which has been raised is with regard to the power which has been exercised by the State Government in levying tax with effect from 1.4.1997. According to the learned Counsel for the petitioner since there was already a transposition of an entry vide notification dated 3.10.1992, the State Government was prohibited in exercising the power of second transposition in terms of Section 8A(2A). Section 8A(2A) refers to the power of the State Government to transpose any entry or part thereof from one schedule to other or alter the point of levy on sale or purchase so as not to enhance the rate of tax. The proviso provides that the point of levy if altered in respect of any goods then such goods shall not be subject to tax under the original entry. The proviso is in the nature of clarification so that the tax may not be levied on two points, The question of levy of tax on any point is not disputed. Section 8A(2A) refers to the power of the State Government to reduce the rate of tax or exempt a commodity from tax. It does not refer to the power of the Government to enhance the rate of tax.

7. In the light of the submissions made above, it may be observed that the entry in the second schedule had always been by Act No. 4/ 1992 with effect from 19.10.1991 so far as the wheat bran is concerned. The notification dated 30.3.1996 was issued by the State Government cancelling the corrigendum dated 3.11.1992 and thus the exemption which was given by the corrigendum notification came to an end. The State Government simultaneously issued another notification dated 30.3.1996 u/s 8A, by which the power u/s 8A was exercised exempting the wheat bran with effect from 1.4.1996. The exercise of the power u/s 8A was independent of the earlier notifications which were not in existence. This notification exempting the wheat bran was cancelled by the notification dated 31.3. 1997. The notification dated 31.3.1997 have been issued u/s 8A(3) under which the State Government may cancel the notification issued under Sub-section (1) or Sub-section 2(a). The notification dated 30.3.1996 which has been cancelled by the notification dtd. 31.3.1997 specifically refers to the power exercised under Sub-section 3 of Section 8A. The notification date 30.3.1996 cannot be traced to the earlier notifications or the entries in the schedule or power of so alleged transposition. The said notification is an independent notification exempting the wheat bran from 1.4.1996 and this power exercised u/s 8A(1) by issuing fresh notification can certainly be again exercised by cancelling the said notification u/s 8A(3). The contention that the power which cannot directly be exercised cannot also be exercised indirectly, relying upon the decision in the case of LACHMI MARAIN v. UNION OF INDIA AIR 1996 SC 714 has no application as the power in the present case has been exercised in terms of the specific powers conferred by the statute itself. Even the question of implied supersession could have been considered if after the exemption notification without with drawing the same another notification levying the tax was issued, as

has been done in the case of COMMISSIONER OF SALES TAX v. AGRA BELTING WORKS (1987) 66 STC 1. It is not necessary to go into that question because the entry regarding levy of tax under the second schedule remained in existence. The power for exemption by issuing the notification u/s 8A(1) or transposing the entry to the fifth schedule has only put the levy of tax in hybernation. The entry in the second schedule prescribing the rate of tax on the taxable commodity comes into operation the moment the notification u/s 8A(1) is issued or power of transposition of entry by the State Government is exercised. In the present matter, since the notification exempting the wheat bran u/s 8A(1) dated 30.3.1996 have been cancelled u/s 8A(3), it cannot be considered that there is any violation of the provisions of Section 8A(2A).

These writ petitions therefore having no force are accordingly dismissed.