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(1998) 09 SC CK 0076

In the Supreme Court Of India

Case No : Civil Appeal No''s. 11515-11517 of 1996

British Physical Lab India Ltd. APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 24-09-1998

Acts Referred:

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

Citation : (1998) 9 JT 313 : (1999) 1 SCC 170 : (2000) 119 STC 6

Hon'ble Judges : V. N. Khare, J;S. P. Bharucha, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.P. Bharucha, J.—The appellants are manufacturers of television sets and the like in the State of Karnataka.

2. On June 20, 1986, a notification was issued by the respondent-State u/s 8A of the Karnataka Sales Tax Act, 1957. Thereby the tax payable by a dealer u/s 5 of the Act on television sets and components manufactured in Karnataka was reduced to 2 per cent. At that point of time the tax payable by dealers in television sets under the Act was 4 per cent. On March 28, 1987, the respondent-State issued another notification whereby the reduced tax payable by dealers in television sets and components manufactured in Karnataka was enhanced from 2 to 3 per cent. On the same date the rate of tax payable by dealers in television sets and components was enhanced from 4 to 6 per cent.

3. The notifications by which the rate of tax payable by dealers in television sets and components manufactured in Karnataka had been reduced were challenged by Solidaire India Limited, a company manufacturing television sets outside the State of Karnataka. On October 8, 1990 Reported as Solidaire India Ltd. Vs. State of Karnataka and another, the writ petition was allowed and these notifications were quashed.

4. In January, 1991, the appellants received notices from the sales tax authorities in the respondent-State calling upon them to show cause why they should not pay sales tax at the normal rate instead of the reduced rate, pursuant to the quashing of the said two notifications. A provisional assessment order in this regard was then passed and a demand notice was issued. On February 8, 1991, the appellants filed the writ petitions out of which these appeals arise. They challenged the aforesaid demand notices. They also prayed that the judgment of the learned single Judge in the case of Solidaire India Ltd. Vs. State of Karnataka and another, should not be held to be enforceable as against them. These writ petitions were heard by a division Bench along with the appeal filed by the State Government against the single Judge's judgment in Solidaire India Ltd. Vs. State of Karnataka and another, as also the appeal filed by Solidaire itself. The appeals of the State Government and Solidaire were dismissed. In so far as the appellants' writ petitions were concerned, it was held that the doctrine of prospective invalidation could not be employed in exercise of powers under Article 226. Accordingly these writ petitions were also dismissed.

5. It has been fairly pointed out by learned Counsel for the appellants that the learned Government Pleader had, in relation to the Solidaire appeal, stated to the division Bench, on instructions, that the sales tax authorities proposed to recover the difference in duty from manufacturers within the State having regard to the fact that the notifications giving them the benefit of a lower rate of tax had been struck down.

6. Learned Counsel for the appellants drew our attention to the judgment of this Court in West Bengal Hosiery Association and Others Vs. State of Bihar and Another, . In that case a notification granting a concessional rate of tax to local manufacturers was struck down and this Court said :

We find that the said Notification No. S.O. 934 dated August 1, 1984 is void for the reasons set out earlier and we quash the same. We realise that quashing of this notification on the ground that it was void ab initio might lead to undue hardship for the dealers in the State of Bihar who might have sold locally manufactured hosiery goods without taking into consideration any amount on account of the liability to sales tax in view of the exemption granted by the said notification dated August 1, 1984. In order to obviate this hardship, we direct that the arrears of sales tax which would become payable by the dealers in the State of Bihar in respect of sales of local hosiery goods made during the period when the said notification was in operation should not be collected.

7. Attention was also drawn to the order of this Court in review petitions arising out of Writ Petition (C) No. 770 of 1989 Reported as Texmaco Ltd. v. State of Andhra Pradesh [2000] 118 STC 290 . and connected matters, passed on 18th August, 1998. In the case of Indian Cement and Others Vs. State of Andhra Pradesh and Others, notifications providing for a concessional rate of tax to cement manufacturers within the States of Andhra Pradesh and Karnataka were quashed. Writ petitions were filed in this Court by local manufacturers

challenging proceedings commenced in the State of Andhra Pradesh to recover the amounts of the sales tax which would have been paid but for these notifications. Counsel for the local manufacturers pointed out that, having regard to these notifications, the local manufacturers were disentitled by reason of the provisions of the Andhra Pradesh General Sales Tax Act to recover the difference in the amounts from their customers and would have been liable to penalties if they had done so. This Court, treating the writ petitions as review petitions, noted that the attention of the learned Judges who delivered the judgment in Indian Cement and Others Vs. State of Andhra Pradesh and Others, had, apparently, not been drawn to the fact that the local manufacturers would have to pay by way of sales tax amounts which they had not and could not under the provisions of the Andhra Pradesh General Sales Tax Act have collected from their customers. The notifications had been intended to protect the local cement industry. The quashing of the notifications should have the effect of putting the local cement industry and the same industry outside the State on par ; it could not place the former in a disadvantageous position qua the latter. It was, therefore, just and equitable not to permit the State to collect the differential amounts. Accordingly, it was ordered that the State "shall not collect the amounts of sales tax that has become payable only by reason of this order quashing its two impugned notifications".

8. Learned Counsel for the respondent-State has, fairly, not contested this position but has expressed apprehension in regard to the possible outcome of any order that we might pass on television manufacturers in the same situation as Solidaire, particularly having regard to the statement made by the learned Government Pleader before the division Bench of the High Court. Such television manufacturers are not before us and they appear to have taken no proceedings subsequent to the order on the appeal before the division Bench. We see no reason why, in the circumstances, we should be deterred from passing the appropriate order on their account.

9. In the result, following the judgments aforementioned, and in the interests of justice and equity the appeals are allowed and the judgment and order under appeal is set aside in so far as it deals with the writ petitions preferred by the appellants, that is, Writ Petition Nos. 4040-4042 of 1991, before the High Court (paragraph 6 of the impugned judgment). These writ petitions are allowed and the respondent-State is directed not to collect the amounts of sales tax that have become payable only by reason of the order quashing the notifications u/s 8A of the Karnataka Sales Tax Act, 1957 issued on June 20, 1986 and March 28, 1987 fixing reduced rates of sales tax payable by dealers in television sets and components manufactured in Karnataka. No order as to costs.