(1995) 04 KAR CK 0022

In the Karnataka High Court

Case No : Writ Appeal Nos. 997 and 998 of 1995

Brooke Bond Lipton India Limited, Bangalore and Another — APPELLANT

Vs

State of Karnataka and Others — RESPONDENT

Date of Decision : 07-04-1995

Acts Referred:
Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 22(3A)

Citation : (2000) 48 KarLJ 384

Hon'ble Judges : S. A. Hakeem, Acting C.J.;Tirath Singh Thakur, J

Judgement

Tirath Singh Thakur, J.-Admit.

2. This writ appeal is directed against an order passed by the learned Single Judge of this Court dismissing in limine Writ Petition Nos. 7478 and 7479 of 1995, filed by the petitioners/appellants herein. The facts are few and may be briefly stated first.

3. The appellant-company claims to have set-up an Industrial Unit for the manufacture of blended packet tea at Dharwad. In the course of the assessment proceedings under the Karnataka Sales Tax Act, 1957, hereinafter referred to as the ''Act'', the appellant claimed the benefit of exemption from the payment of sales tax on the strength of certain notifications granting incentives to entrepreneurs who set up new Industrial Units in the backward areas of the State. The appellants'' contention did not find favour with the Assessing Authority concerned, who passed orders of assessment holding it to be liable to pay sales tax, inter alia on the ground that the Company''s Dharwad unit was not engaged in any manufacturing process so as to qualify for the grant of the exemption under the scheme of incentives relied upon by it.

4. Aggrieved by the orders of assessment aforesaid, the Company filed Appeal Nos. 332, 333, 334, 335 and 336 of 1994-95 before the Joint Commissioner of Commercial Taxes (Appeals), Bangalore. These appeals failed and were dismissed by the Joint Commissioner by his common order dated 24th February,

1995. Based on the orders of assessment Recovery Proceedings appear to have been initiated and a Notice dated 4th of March, 1995 issued, calling upon the Company to pay the arrears of sales tax determined, failing which, the authorities proposed to take action under law. On receipt of this notice a written request was made by the appellant-company for grant of 30 days'' time to secure suitable stay orders from the appropriate authority or Court. This request was partially granted in terms of the Deputy Commissioner of Commercial Taxes'' endorsement dated 8th of March, 1995 permitting the company to make the payment of balance amount upto 18th March, 1995.

5. Aggrieved by the Notice of Demand and the endorsement mentioned above the company filed Writ Petition Nos. 7478 and 7479 of 1995 for a writ of certiorari quashing the same and also for a declaration to the effect that Section 22(3-A) of the Karnataka Sales Tax Act, 1957 insofar as the same prohibited the grant of any stay pending disposal of an appeal before the Karnataka Sales Tax Appellate Tribunal, was ultra vires of the Constitution.

6. By a brief order dated 16th of March, 1995 a learned Single Judge of this Court before whom these petitions came up for admission, dismissed the same in limine, holding that the Constitutional validity of Section 22(3-A) of the Act had already been upheld by a Division Bench of this Court in the light whereof the prayer made by the appellant-company for quashing the Demand Notice did not survive for consideration. The present appeals have been filed against the aforesaid order of the learned Single Judge.

7. Mr. Sorabji, learned Senior Counsel, appearing for the appellants urged that even though the Constitutional validity of Section 22(3-A) of the Karnataka Sales Tax Act, had been upheld by this Court yet the power of this Court to interfere and pass appropriate orders with a view to prevent manifest injustice in given situations under Article 226 of the Constitution remained unaffected. In support of his submission he relied upon a Division Bench judgment of this Court in Karnataka Handloom Development Corporation Limited, Bangalore v Additional Deputy Commissioner of Commercial Taxes (Assessment-VIII), C.D.-I, Bangalore and Others, 1995(39) Kar. L.J. 1 (HC), to which one of us (Thakur, J.) was a party. He submitted that the present was one of those exceptional cases where the extraordinary jurisdiction of this Court ought to be exercised with a view to prevent miscarriage of justice. He urged that the orders passed by the Assessing as well as the Appellate Authority, relied heavily upon yet another Division Bench judgment of this Court in the case of M/s. Lipton India Limited and Another v State of Karnataka and Others, 1994(38) Kar. L.J. 320 (HC), while holding that blending and packaging of Tea did not amount to carrying on a manufacturing activity so as to entitle the unit concerned to the benefit of the tax exemption under the package of incentives in question. The judgment in Lipton India''s case, supra, contended, the learned Counsel, had been questioned before the Supreme Court who had granted special leave to appeal and passed an order on 30th of August, 1994, staying the payment of the tax to the extent of 50% of the

amount assessed. It was urged that if the sales tax authorities had relied upon the judgment of this Court in M/s. Lipton India''s case, supra, there was no reason why the appellants should be denied the benefit of an interim order of stay on lines identical to those adopted by the Apex Court, in the said case.

8. Mr. Chandrashekaraiah, learned Government Advocate, on the other hand argued that even though the judgment in M/s. Lipton India''s case, supra, was under challenge before the Apex Court, yet the Supreme Court had not, while granting stay in the said case, stayed the findings returned by this Court. He urged that the reasoning adopted by this Court remained effective and was binding upon this Court till such time the judgment was upset in appeal. He further submitted that the interim order of stay had been granted by the Apex Court upon consideration of the peculiar facts and circumstances of the said case which had no application whatsoever to the present case.

9. We have given our thoughtful consideration to the submissions made at the Bar.

10. It is not in dispute that the orders passed by the Joint Commissioner/ respondent 4, have been challenged in appeals filed before the Karnataka Sales Tax Appellate Tribunal. The fact that in terms of Section 22(3-A) of the Act, the Tribunal has no powers to grant an interim stay against the recovery of the amount of tax assessed is also not in dispute, nor can it be disputed that according to the view taken by this Court in Karnataka Handloom Development Corporation''s case, supra, the non-availability of a power to grant an interim stay with the Tribunal does not ipso facto deprive this Court of its power under Article 226 of the Constitution to issue appropriate directions in appropriate situations. While considering a similar question, this Court has observed thus, in the aforesaid case:

"However, this is not the end of matter. When the Tribunal has no power to grant stay in the pending appeals, if the petitioners make out appropriate case for grant of interim relief, this Court under Article 226 of the Constitution can certainly consider such a request and pass appropriate orders. Therefore, even while disposing of the writ petitions the learned Single Judge could have also considered granting of appropriate interim relief pending appeals before the Tribunal, while exercising jurisdiction under Article 226 of the Constitution. This would not be on the basis of filling up the lacuna about interim relief which otherwise could have been granted by the Tribunal, but on the ground that it would be unjust for the revenue to recover the tax pending adjudication by the final Court of facts, namely the Tribunal, if at all is prima facie shown to be unjust and illegal on the part of the revenue to do so".

11. The question then is whether the present is one of those cases where this Court should interpose so as to provide a temporary protection against the recovery being made from the appellant-company. The answer to this question would necessarily take us to the orders of assessment as also the order passed

in appeal. A perusal of these orders leaves no manner of doubt that the Assessing Authority as also the Appellate Authority, has while repelling the appellant-company''s claim for exemption from payment of tax relied heavily upon the judgment of this Court in M/s. Lipton India''s case, supra, where this Court has taken the view that blending and packaging of tea, did not amount to undertaking a manufacturing activity. This view which appears to be the heart and soul of the orders passed by the Sales Tax Authorities has not so far attained finality. On the contrary, the Supreme Court has granted a Special Leave to appeal against the said judgment and pending disposal of the appeal, directed that recovery of 50% of the amount of tax assessed shall remain stayed. In that view of the matter, therefore, it appears to us to be difficult to refuse to the appellants a similar order particularly when according to the Assessing and the Appellate Authority the facts and the circumstances of both the cases are identical. Even though, according to Mr. Sorabji, the appellants'' case was on a better footing in the sense that it had produced material and evidence to substantiate its claim, which material was not available before the Assessing Authority in the case of M/s. Lipton India Limited, supra, yet assuming that there is no such distinguishing feature favouring the appellants, we see hardly any reason to decline the grant of an order similar to the one passed by their Lordships of the Supreme Court.

12. In D.K. Trivedi and Sons and Others v State of Gujarat and Others, AIR 1986 SC 1323, the Supreme Court has frowned upon the practice of directing litigants to approach the Supreme Court in cases where similar matters are pending before it instead of itself granting the relief to the aggrieved party. The Court has in this connection observed thus:

"Civil Appeal Nos. 1525 and 1526 of 1982 are directed against the order of the Gujarat High Court dismissing the writ petitions filed by the appellants challenging the constitutionality of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, and the validity of Notification No. GU-81/75/MCR-2181/(168)-4536-CHH dated June 18, 1981, and directing the appellants to approach the Supreme Court as similar matters were pending there. In our opinion, the course adopted by the High Court was not correct. If the High Court thought that the point raised by the appellants was the same as was pending in this Court, it ought to have stayed the hearing of the writ petitions until this Court disposed of the other matters. As we have, however, held Section 15 and the amendments made by the said notification dated June 18, 1981, to be valid and constitutional, both these appeals are, therefore, dismissed".

13. Taking into consideration the totality of the circumstances therefore we consider the present to be one of those exceptional situations in which this Court would be justified in interfering under Article 226 of the Constitution and granting relief on terms considered appropriate by it.

14. In the result, we make the following:

ORDER (a) There shall be an order of stay against recovery of the sales tax payable by the appellant-company under the assessment orders impugned before the Joint Commissioner of Commercial Tax (Appeals) in Appeal Nos. 332, 333, 334, 335 and 336 of 1994-95 in respect of its Dharwad unit, subject to the condition that 50% of the amount of tax determined in respect of the said unit is paid by it; within 2 weeks from today if not already paid;

(b) This order of stay shall remain operative for a period of 3 months only within which time the appeals preferred by the appellant-Company before the Karnataka Sales Tax Appellate Tribunal, shall be finally heard and disposed of;

(c) The present appeals are accordingly allowed but only to the extent indicated above.

(d) The parties shall bear their own costs.

A copy of this order shall be forwarded to the Karnataka Sales Tax Appellate Tribunal, Bangalore for information and compliance.

