
(1997) 04 KAR CK 0011
In the Karnataka High Court
Case No : W.A. No. 1164 of 1995

Can Bank Financial Services Ltd.

APPELLANT

Vs

Regional Provident Fund Commissioner

RESPONDENT

Date of Decision : 01-04-1997

Acts Referred:

Employees Provident Fund and Miscellaneous Provisions Act, 1952 — Section 1 (3) (b),
7 A

Citation : (1997) 3 KarLJ 361 : (1998) 1 LLJ 92

Hon'ble Judges : S. Rajendra Babu, J;B.S. Sreenivasa Rao, J

Bench : Division Bench

Advocate : Urval N. Ramanand, for the Appellant; Harikrishna S. Holla, for the Respondent

Final Decision : Dismissed

Judgement

1. The appellant before us is engaged in the business of equipment leasing and merchant banking besides other objectives as provided in the Memorandum and Articles of Association. It is claimed that they have provided a separate provident fund scheme which is duly approved by the Commissioner of Income Tax for the purposes of Income Tax Act. In that event, they submitted that, the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 will not be attracted for, the appellant is not a trading and commercial establishment within the meaning of the notification issued under the relevant Act making it applicable to certain establishments. u/s 1(3)(b) of the Act, a notification was issued on March 7, 1962 to the effect that the said Act applies to every trading and commercial establishment employing twenty or more persons each and engaged in the purchase, sale or storage of any goods including the establishment of importers, exporters, advertisers, commission agents and brokers and commodity and stock exchange but not including banks or warehouses or establishments of any Central or State Government. When the respondent initiated proceedings u/s 7A of the Act, the appellant objected to the same. However, when the objections were overruled and an order was passed by

the respondent stating that the appellant is a trading or a commercial establishment within the meaning of the said notification, the appellant filed a writ petition before this Court challenging the correctness of the same in 41286 of 1993. The learned Single Judge of this Court, by an order made on February 1, 1995 dismissed the said writ petition. He was of the view that though it may be doubtful as to whether the appellant is engaged in sale or purchase of goods as such, still the appellant is engaged in the activity of merchant banking and is also engaged in the acts of a Commission agent and therefore, the "term commission agent" could not be given a restricted meaning bearing in mind the objectives of the Act. The activities of the appellant should be considered as falling within the scope of the notification. Aggrieved by that order, this appeal is preferred.

2. Sri Urval submitted, relying upon a decision of this Court in Chottalal Morarji Dhami and Ors. v. Regional Provident Fund Commissioner and Ors. AIR 1969 Mys. 355, that the appellant is not engaged in any purchase, sale or storage of any goods or any activities relating to goods. He further submitted that the appellant would not fall even in the enlarged scope of exporters, importers, advertisers or commission agents, brokers of commodity and stock exchange. He submitted that as has been clearly held by this Court that the notification is applicable only to those engaged in the trading, commercial establishment engaged in purchase or sale or storage of any goods or activities connected thereto, the view taken by the learned Single Judge cannot be supported. He therefore stated that the writ petition was liable to be allowed .

Sri Holla, learned Counsel for the respondent submitted that, admittedly the appellant is engaged in merchant banking which definitely involves an activity of buying and selling shares and therefore necessarily it would involve the activity relating to sale or purchase of goods for, the definition of goods should be understood as set out in the sale of goods Act. The expression "goods" would include any movable property of all kinds other than actionable claims and money. In that view of the matter, he submitted that the view taken by the learned Single Judge is in order and calls for no interference at our hands.

3. In order to understand the scope of the notification, it is necessary to set out the same. The notification was first issued on March 7, 1962 wherein it was stated that the Central Government applies the Act to every Trading and Commercial establishment employing twenty or more persons each and engaged in purchase, sale or storage of any goods including establishments of exporters, importers, advertisers, commission agents and brokers of commodity and stock exchange but not including banks or warehouses established under any Central or State Act. This Court in Chhotalal's case (supra) explained the meaning attributable to these expressions as follows: That the notification would not apply to all types of trading and commercial establishments but is limited to trading and commercial establishments engaged in the purchase, sale or storage of any goods. However, it is further noticed that there are certain establishments like

exporters, importers, advertisers, commission agents, brokers of commodity and stock exchanges all or any of whom may or may not under all circumstances purchase or store or sell goods. But, it was noticed that they do engage themselves in trading and commerce under all circumstances. There is thus some slight widening of the definition apparently to bring within its scope several other institutions which may not just be engaged in sale or purchase of goods like advertisers. However, it was noticed therein that the specific exclusion of banks and warehouses would be brought within the definition of such establishments like banks and warehouses. If really those establishments were to be covered by the notification, the said establishments need not have been specifically excluded at all. Ultimately the decision rested on the reasoning put forth in that manner. This Court did not accept that the notification purports to deal with different varieties of establishments as belonging to one class but there is a clear statement of the principal characteristic which distinguishes the class selected for action and keep out of it the establishments not sought to be covered by it. The addition of several enumerated categories of establishments is also dearly understandable on the footing of the intimate relationship that exist between them and the first named establishment. This statement of law was made by this Court in view of the decision of Supreme Court in *Mohmedalli and Others Vs. Union of India (UOI) and Another*, wherein an argument was advanced before the Supreme Court that the power given to Central Government u/s 1(3)(b) was unguided and uncanalised and therefore, the same was bad. Repelling such a contention, the Supreme Court explained the scope of the same. Thus, examining in the light of the decision of a Division Bench of this Court and of the Supreme Court in *Mohmedallis case (supra)*, we cannot say that the activities carried on by the appellant would fall outside the scope of the notification for, the appellant carries on the activities of equipment leasing and merchant banking. These aspects have been in detail dealt with by the learned Single Judge. Therefore, the activities carried on by the appellant is intimately connected with the goods as noticed by this Court in *Chottalal's case (supra)* thus constituting a commercial establishment if not a trading establishment. In that view of the matter, we do not think there is any infirmity in the reasoning adopted by the learned Single Judge to call for interference at our hands. The appeal is therefore, liable to be dismissed.

4. At this stage, learned Counsel for the appellant brings to our notice that the appellant has already established a fund which has been approved by the Commissioner of Income Tax and therefore, there is no intention on the part of the appellant to defeat the objectives of the Act but, on the other hand complies with the same and in fact, he says that the provisions made by them are more beneficial than what was provided under the Act. If that is so, the appropriate course for the appellant is to seek exemption as provided u/s 17 of the Act from the appropriate authority and if on the other hand the appellant chooses to comply with the directions issued by the respondent and file appropriate returns before the Provident Fund Commissioner as provided under the Act, he may do

so. Time is therefore, granted to the appellant to comply with the direction of the Provident Fund Commissioner or to seek exemption within a period of three months from today.

5. Appeal shall stand dismissed subject to what is stated above.