(2004) 11 AP CK 0043

In the Andhra Pradesh High Court

Case No : Writ Petition No''s. 21878 of 1999, 19637, 20787 and 24601 of 2001 and Batch

Chatla Narasaiah Ramaiah APPELLANT

Vs

State of A.P. and Others RESPONDENT

Date of Decision : 05-11-2004

Acts Referred:
Andhra Pradesh General Sales Tax Act, 1957 — Section 5, 5B(1)

Citation : (2005) 1 ALD 189 : (2005) 1 ALT 801 : (2006) 146 STC 407

Hon'ble Judges : P.S. Narayana, J;Bilal Nazki, J

Bench : Division Bench

Advocate : P. Srinivas Reddy, in WP No. 21878 of 1999, for the Appellant; Government Pleader, for Commercial Tax for Respondent Nos. 2 and 3 in WP No. 21878 of 1999 P. Sree Ramulu Naidu, for Respondent Nos. 2 and 3 in WP Nos. 19637, 23056 and 23149 of 2000 and Special Government Pleader, for Taxes for Respondent No. 2 in WP Nos. 22937 of 2000, for the Respondent

Final Decision : Dismissed

Judgement

Bilal Nazki, J.—W.P. No. 21878 of 1999: In this writ petition G.O. Ms. No. 183, Revenue (CT-II), dated 6.3.1999 has been challenged on the ground that it is unreasonable, discriminatory and arbitrary.

2. The petitioner was a registered dealer and was engaged in the business of manufacture and sale of beedies at Kamareddy. He acquired rights of successful bidder in the auction conducted by 2nd respondent for the year 1999 and entered into fresh agreement with the 2nd respondent for procurement of beedi leaves from forest areas in Andhra Pradesh. Prior to 1.8.1996 the beedi leaves were taxable at last purchase point under Entry No. 18 of the II schedule. By Act 27/96 the beedi leaves were shifted to Entry No. 196 of the I Schedule with effect from 1.8.1996. According to the petitioner, in terms of the Entry No. 196 of the I Schedule, on procurement of beedi leaves by him, they would be at first sale point in the assessment of the 2nd respondent and in terms of Section 5-B

of the Andhra Pradesh General Sales Tax Act (for short "the Act"), levy of concessional rate of tax of 4% would be attracted when the goods were sold for use in manufacture or processing of goods. The petitioner contends that Rules 30-A and 30-B of the Andhra Pradesh General Sales Tax Rules govern the procedure for registration of manufacturers, issuance of ''G'' forms and other incidental matters. According to the petitioner, in terms of Section 5-B of the Act, he being a manufacturer of beedies can buy beedi leaves, a raw material and use them in manufacture of beedies and u/s 5-B(l)(a) of the Act he can issue ''G'' forms to the 2nd respondent to enable them to charge sales tax at 4%. There were some earlier litigation also when the 2nd respondent was directed by the Commissioner of Commercial Taxes not to accept ''G'' forms for beedi leaves and the beedi leaves be charged at 9%. The High Court had allowed the writ petitions upholding the beedi manufacturers'' rights to issue ''G'' forms issued by buyers. This judgment was reported in Sable Weghire and Company Ltd. v. A.P. Forest Development Corporation Ltd. and another (109 STC 656). After this judgment, the Government passed G.O. Ms. No. 183, Revenue (CT-II), dated 6.3.1999 which reads as under:

"In exercise of the powers conferred by clause (b) of sub-section (1) of Section 5-B of the Andhra Pradesh General Sales Tax Act, 1957 (A.P. Act VI of 1957) and in supercession of the orders Issued I Notification XXV to G.O. Ms. No. 625, Revenue (CT.II) Department, dated 31st July, 1996, the Governor of Andhra Pradesh hereby directs that the following goods are not eligible for concessional rate of tax:

(a) Petrol;

(b) Diesel oil;

(c) All kinds of gases whether in compressed, liquefied or solidified or in any other form; and

(d) Beedi leaves."

3. This G.O. has been challenged in this writ petition. Earlier to this G.O., G.O.Ms. No. 625 was issued on 31.7.1996 and by this G.O. it was contemplated that the tax shall be levied and collected at a concessional rate of four paise in the rupee on the turnover of sales by any dealer of any goods, other than the goods i.e., (a) Petrol, (b) Diesel and (c) All types of Gases mentioned in Entry 118 of First Schedule. So what was in effect done by G.O. Ms. No. 183 was that it added beedi leaves to the negative list which could not avail the concessional rate.

4. The argument made at the bar for striking down the G.O. Ms. No. 183 was that the Government had no power to issue a notification making the goods of raw material ineligible for getting the benefit of concessional rate of tax because of the mandate u/s 5-B(l)(b) of the Act. It is submitted that Section 5-B(l)(b) of the Act is meant only to notify such other goods apart from those falling under

clause (a) as eligible for concessional rate u/s 5-B of the Act. It is contended by the learned Counsel for the petitioner that Section 5-B(l)(b) of the Act cannot be understood to give any power to the Government to notify the goods which are otherwise eligible for concessional rate of tax under clause (a) as ineligible for the benefit of concessional tax. It is contended that the transaction in raw material gives the benefit to the dealer in terms of Section 5-B(l)(a) of the Act itself and therefore it could not be taken away by exercise of purported power u/s 5-B(l)(b) of the Act. Section 5-B of the Act lays down:

"5-B. Levy of concessional tax in respect of certain goods :-(1) Notwithstanding anything contained in this Act, every dealer shall pay tax at the rate of 4 paise in the rupee or at the rates specified in Section 5 in respect of goods other than declared goods, or u/s 6 in respect of declared goods, whichever is lower on the turnover relating to such sale in the following circumstances, namely,-

(a) When a dealer sells any goods to another dealer for use by the latter as raw material, component part, sub- assembly part, intermediate part and packing material in the manufacture of goods inside the State;

(b) When a dealer sells to another dealer any goods (other than those falling under clause (a) which are notified by the Government from time to time for use by the latter in the manufacture or processing of the goods inside the State. The Government may also notify the goods which are not eligible for concessional rate of tax under this section:

Provided that the provisions of this section shall not apply to any sale unless the dealer selling the goods furnished to the assessing authority in the prescribed manner a declaration duly filled in and signed by the dealer to whom the goods are sold containing the prescribed particulars in the prescribed form obtained from the prescribed authority on payment of prescribed fee."

5. The learned Counsel for the petitioner submits that Section 5-B of the Act makes it clear that whatever goods which are eligible for concessional rate of tax u/s 5-B(l)(a) of the Act can never be brought in a negative list under the purported powers given u/s 5-B(l)(b) of the Act. Secondly, it is contended that all those dealers who avail the benefit u/s 5-B(l)(a) of the Act other than the beedi leave dealers continued to have the benefit of concessional rate of tax and therefore the impugned G.O. is discriminatory.

6. Coming to the first argument. Section 5-B(l) of the Act only lays down that notwithstanding anything contained in the Act, every dealer shall pay tax at the rate of 4 paise in the rupee or at the rates specified in Section 5 in respect of goods other than declared goods, or u/s 6 in respect of declared goods, whichever is lower on the turnover relating to such sale in only two circumstances. Those two circumstances are under clauses (a) and (b). The first category is when a dealer sells any goods to another dealer for use by the latter as raw material........... and the second category is when a dealer sells to another dealer any goods which do not fall under clause (a), but which are

notified by the Government from time to time for use by the latter in the manufacture or processing of the goods inside the State. The Government is also empowered to notify the goods which are not eligible for concessional rate of tax under this section. So in a way the clause (b) controls clause (a) because if the meaning suggested by the learned Counsel for the petitioner is assigned to clause (a), then the words, "The Government may also notify the goods which are not eligible for concessional rate of tax under this section", would become redundant and it is cardinal principle of interpretation that each sentence and each word of a statute should be given a meaning. Section 5-B(l), if read as a whole, would only mean that the concessional rates would be available when a dealer sells any goods to another dealer for use by the latter as raw material, component part, sub-assembly part, intermediate part and packing material in the manufacture of goods inside the State. It also means that the concessional rates would apply to goods which are notified by the Government other than those falling under clause (a). It further would mean that the concessional rate would not be available to the goods notified by the Government as not eligible for concessional rates. Whether the goods are used as raw material or component part becomes irrelevant. For these reasons, we do not find any merit in this writ petition.

7. The learned Counsel for the respondents has relied on judgments reported in Vrajlal Manilal and Co. and Another Vs. State of M.P. and Another, and Roxy. Roller Flour Pvt. Limited and others v. Government of Andhra Pradesh and others 18 STJ 139. The judgment in Vrajlal Manilal and Co., and another v. State of Madhya Pradesh and another (supra) is not relevant for the purpose of the present controversy because in the case before the Supreme Court the proviso itself was amended which had been challenged and the amendment was upheld by the Supreme Court. However, this judgment would be relevant for meeting the argument of the learned Counsel for the petitioner with regard to the discrimination. The controversy was same before the Supreme Court which is before us, but what is sought to be achieved by the Government in the present case by issuing the impugned G.O. was sought to be achieved by the Government of Madhya Pradesh by amending the relevant section of the Sales Tax Act. The Supreme Court held that it was not discriminatory.

8. In Roxy Roller Flour Pvt. Limited and others v. Government of Andhra Pradesh and others (supra) it was held that the power to grant exemption includes the power to rescind. It was also held that in matters involving exercise of legislative functions the question of principles of natural justice would not arise.

9. For the reasons given hereinabove, the writ petition is devoid of merit and is accordingly dismissed. No costs.

WP Nos. l9637/2000, 22937/2000, 23056/ 2000, 23149/2000, 19879/2002, 20787/ 2001 and 24601/2001.

10. It is submitted that these writ petitions are similar to WP No. 21878 of 1999.

Therefore, we direct that the judgment in WP No. 21878 of 1999 shall also govern these writ petitions which are accordingly dismissed. No costs.

