

(1998) 03 KAR CK 0023
In the Karnataka High Court
Case No : Writ Petition No. 5351 of 1987

Deccan Alloys (P) Ltd.

APPELLANT

Vs

Additional Commercial Tax Officer and Another

RESPONDENT

Date of Decision : 19-03-1998

Acts Referred:

Constitution of India, 1950 — Article 401, 404, 404 (a)
Karnataka Sales Tax Act, 1957 — Section 5 (4)

Citation : (1998) 111 STC 230

Hon'ble Judges : Y. Bhaskar Rao, J;S.R. Bannurmath, J

Bench : Division Bench

Advocate : T.G. Surendran, for Vasan Associates, for the Appellant; T.P. Nambiyar, Government Advocate, for the Respondent

Final Decision : Allowed

Judgement

Y. Bhaskar Rao, J.

1.The petitioner is a private limited company and owns a re-rolling mill at Hosur in the State of Tamil Nadu. During the year ended December 31, 1984 the petitioner purchased from registered dealers iron scrap for Rs. 20,33,885.45, within the State of Karnataka, took the iron scrap to Hosur in the State of Tamil Nadu, got the iron scrap re-rolled into bars and rounds, brought them back and sold them in the State of Karnataka. The first respondent completed the assessment and taxed the petitioner at the rate of 4 per cent. The case of the petitioner is that the assessing authority has not given exemption of the tax paid by the petitioner on the raw material purchased by it in the State of Karnataka on the ground that the exemption of tax paid on the raw material is available only when the raw material was purchased and the finished goods are manufactured in the State of Karnataka only. Therefore, the petitioner filed this writ petition assailing the constitutional validity of Explanation II to Schedule IV to the Karnataka Sales Tax Act, 1957 (hereinafter referred to as "the Act") and also Section 5(4) of the Act and further praying that the assessment order may

be quashed.

2. Learned counsel for the petitioner contended that Explanation II to Schedule IV to the Act is discriminatory, discriminating particularly the goods which are manufactured outside the State of Karnataka, though the raw material was purchased within the State of Karnataka and therefore it is violative of Article 404(a) of the Constitution of India.

3. Learned Government Advocate submitted that the said Explanation is incorporated in the Act only with a view to establish manufacturing units are established in the State of Karnataka so that the industrial potentiality of the State of Karnataka would be increased. Therefore, the said explanation has to be interpreted having this background in view.

4. To appreciate the contentions of both sides it is relevant to extract Explanation II to Schedule IV to the Act. It reads thus :

"Explanation II.--Where tax has been levied in respect of any item of goods of iron and steel referred to in serial Number 2, and out of the said goods any other item of goods of iron and steel referred to under the said serial number is manufactured in Karnataka and sold, the tax on the, sale of such manufactured goods shall be reduced by the amount of tax already paid under this Act on the relative items of goods of iron and steel used in its manufacture :

Provided that the burden of proving that the tax under this Act has already been paid and of establishing the exact quantum of tax so paid on such items of goods of iron and steel shall be on the dealer claiming the reduction."

By reading the above explanation it is manifest that the exemption of tax paid on the raw material is available only to those who manufacture the goods with the raw material within the State of Karnataka and not otherwise. Article 404 of the Constitution of India enables the State to impose tax on goods manufactured within the State as also goods imported from other States into the State. But, in doing so the State cannot discriminate between goods so imported and goods manufactured or produced locally. The scope of Article 404 of the Constitution was considered by the Honourable Supreme Court in *Firm A.T.B. Mehtab Majid & Co. v. State of Madras* [1963] 14 STC 355 Mad. The honourable Supreme Court held therein that the sales tax which has the effect of discriminating between goods of one State and goods of another, may affect the free-flow of trade and it will then offend against Article 401 and will be valid only if it comes within the terms of Article 404(a). In that case Rule 16 which had been framed under the Madras General Sales Tax (Turnover and Assessment) Rules, 1939, providing higher rate of tax to the tanned hides and skins imported from outside the State than to the hides or skins tanned and sold within the State was struck down by the honourable Supreme Court as violative of Article 404(a) of the Constitution of India.

5. The honourable Supreme Court considered the scope of Section 5(4) of the

Act also which provides exemption to the sales of finished goods manufactured out of the locally purchased raw material while denying it to the sale of finished goods manufactured out of the imported raw material. The honourable Supreme Court considering the scope of that section held that the same is unconstitutional and contrary to Article 404(a) of the Constitution in *Andhra Steel Corporation v. Commissioner of Commercial Taxes in Karnataka* [1990] 78 STC 243. In the recent judgment in *Loharn Steel Industries Ltd. v. State of Andhra Pradesh* [1997] 105 STC 30 AP the honourable Supreme Court was considering the notification issued by the Andhra Pradesh Government providing exemption of tax paid on raw material provided the raw material are purchased and the finished goods are sold within the State and, if the finished goods are manufactured outside Andhra Pradesh, the appellant/company therein is not entitled for exemption of the tax paid on the raw material. The honourable Supreme Court held therein that the said notification is violative of Article 404(a) of the Constitution of India.

6. The principle laid down by the honourable Supreme Court squarely applies to the present case.

7. Then, the question is whether the entire explanation or a part thereof has to be held unconstitutional. The honourable Supreme Court has held that where it is unconstitutional only in part only that part of the notification be declared as unconstitutional and it is not necessary to declare the entire notification as ultra vires. Keeping in view the above dictum of the honourable Supreme Court, we hold that the words "in Karnataka" in Explanation II to Schedule IV to the Act are to be struck down and deleted from the explanation and the remaining explanation is held to be valid.

Accordingly, we allow this petition.