

(2003) 04 KAR CK 0044

In the Karnataka High Court

Case No : Writ Petition No's. 46291-46292/02 etc.

Deepam Silk International and Others

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 11-04-2003

Acts Referred:

Karnataka Tax on Luxuries Act, 1979 — Section 12 A, 4 B

Citation : (2003) ILR (Kar) 4072 : (2003) 3 KCCR 159 SN : (2004) 134 STC 337

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : R.N. Narasimha Murthy, for Kamath and Kamath and ER Indra Kumar, for the Appellant; Anand, HCGA and H.M. Manjunath, HCGP, for the Respondent

Final Decision : Partly Allowed

Judgement

Gururajan, J.—Petitioners are before me challenging the constitutional validity of levy of tax on silk fabrics u/s 4B of the Karnataka Tax on Luxuries Act ("the Act" for short). They are also seeking for a declaration to declare that the notification dated 25.8.2001 issued by the first respondent u/s 12-A of the Act has the effect of exempting levy of tax on silk fabrics for the entire assessment year commencing from 1.4.2001. They are also seeking for various other prayers.

2. Petitioners state in these petitions that the Act was initially enacted to levy tax on commodities like Cigarettes and the luxuries provided in a hotel. The said Act was amended by Act No. 5 of 2001 and "silk fabrics" were inserted as item No. 4 in the Schedule to the act w.e.f. 1.4.2001. An association representing the petitioners approached the Government with regard to their difficulties in the matter. Government thereafter issued an exemption notification. However, the respondent are demanding tax for the period from 1.4.2001 to 24.8.2001 in the case on hand. In these circumstances, petitioners are before me.

3. In the body of the petition, petitioners have stated that silk fabric is not a

luxurious commodity and it is a necessary commodity in the ordinary course of life of an Indian. According to the petitioners the levy in terms of the amendment act is unconstitutional and arbitrary. Their further contention is that when silk clothing is not a luxury, the commodity used for clothing would not be a luxurious commodity. Therefore silk fabrics not being a luxury, the insertion of the same in to the schedule to the Act suffers from legislative competence of the Government under Entry 62 of List II of the Seventh Schedule to the Constitution of India.

4. The State Government has filed a detailed counter opposing the petitions. They say that the argument of unconstitutional levy has no foundation and silk fabric is a luxury as understood in law. Silk Fabrics are not essential for normal living of average citizens in the Indian social and cultural contexts. They justify their stand. They also say that exemption is not available for the financial year 2001-02. They refer to Section 5 of the Act in their counter. Their contention is that the exemption is prospective.

5. Sri R.N. Narasimha Murthy, learned Senior Counsel argues before me to contend that by no stretch of imagination silk fabrics can be termed as luxury in the given set of circumstances. He refers to me the constitutional entry governing this field and also the provisions of law to contend that the levy is unconstitutional. He says that if the Court is to accept the submission that exemption is available from 1.4.2001 in terms of the notification, the other issues need not be considered at this stage.

6. Per contra, Sri Anand, learned HCGA argues that the tax is constitutionally valid and is sustainable in law. In so far as Annexure-A is concerned, learned Counsel invites my attention to Section 5A to contend that the payment is to be made in advance and monthly statement is required to be shown by the parties. He also says that the notification cannot be given retrospective effect.

7. After hearing, the counsel I have carefully perused the material on record. Let me first consider the effect of Annexure-A in the given set of circumstances. If Annexure-A is available from 1.4.2001, there is no necessity to consider the constitutional validity as it would be only academic in nature in the light of the exemption from 25.8.2001.

8. The Act provides for tax on Luxuries in terms of the charging Section 4-B. The Act further provides for the power to the State Government in the matter of exemption of tax in terms of Section 12-A in the case on hand. Admittedly, Government has issued a notification dated 25.8.2000 in exercise of its powers u/s 12-A of the Act. The said notification reads as under:

"In exercise of the powers conferred by Section 12-A of the Karnataka Tax on Luxuries Act, 1979 (Karnataka Act 22 of 1979), the Government of Karnataka being of the opinion that it is necessary in the public interest so to do, hereby exempts with immediate effect the tax payable under the said Act by a stockist on his turnover of stock of silk fabrics".

9. A careful reading of the notification would show that the Government has chosen to exempt tax with immediate effect the tax payable under the said Act by a stockist on his turnover of stock of silk fabrics. The tax is payable in terms Section 4-B. Definition of Section 2(4-B) defines "luxuries" as under:

"Luxuries" means commodities or services specified in the schedule ministering to enjoyment, comfort or pleasure extraordinary to necessities of life."

Section 2(9) of the Act defines turnover of stock on luxuries as under:

"Turnover of stock of luxuries" in relation to a stockist, in respect of any year, means the aggregate of the value of stocks of luxuries."

Year has been defined as under:

"Year means the year commencing on the first day of April".

A combined reading of these definitions would show that tax is referable to the year in terms of the provisions. In fact in the notification the Government has exempted tax payable under the Act by the stockist on his turnover of stock of silk fabrics. As I mentioned earlier turnover stock in terms of the Act is in relation to a stockist in respect of any year and year means commencing from the first day of April. A combined reading of these definitions in the light of Annexure-A will make it clear that the exemption is to be from 1.4.2001. Any other interpretation would not be in consonance with the Act. A mere issue of notification on 24.8.2001 does not by itself deny any exemption from 1.4.2001 as pointed out by the respondents. The date of notification does not by itself determine applicability of the notification for the earlier period. The facts of this case on hand, provide for an interpretation of the applicability of the notification from 1.4.2001. In the light of the wordings and the definitions in terms of the Act, any other interpretation would be contrary to the provisions of the Act. Therefore I have no hesitation in holding that the exemption is available from 1.4.2001.

10. Learned HCGA however invites my attention to Section 5-A of the Act to contend that payment of tax is to be made in advance. Section 5-A is only a procedure for furnishing monthly statement in the prescribed form. A procedural provision cannot override the intention of a statutory notification in terms of Section 12-A of the Act. After all the exemption is granted in the light of the difficulties faced by the traders in the field. In the light of the object of the notification and provisions of the Act the intention cannot but to give exemption from 1.4.2001. If this interpretation is possible then it is unnecessary for me to consider the argument on constitutional validity raised by the petitioners.

11. In the result, these petitions are partly allowed. A declaration is granted that the notification u/s 12-A has the effect of exempting levy of tax from 1.4.2001. The other questions raised in these petitions are left open. Liberty is reserved to the parties to work out their remedies in accordance with law in the matter of refund of tax already made over by them for this period. No costs.