

(1999) 11 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 28486-28488, 30623, 31668, 32285-32288, 32506-32508, 32730, 33345, 34297, 34461-34463, 34473-34474, 35415, 35703, 37709-37713, 37717-37719, 38328, 39092, 39987-39989, 40053-40058, 40311-40312, 40570-40571, 40632-40633, 40637, 40698, 4

Escorts Mahle Ltd.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 18-11-1999

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 2 (A) (5), 3, 5 (4), 7 (1), 7 (3)

Citation : (2001) 121 STC 434

Hon'ble Judges : R.V. Raveendran, J

Bench : Single Bench

Advocate : S.G. Shivaram, Kamath and Kamath, R.V. Prasad Vasan, Associates, S.V. Subramanyam, G.K.V. Murthy, T.P. Gandhi, M.N. Shankare Gowda, P.M. Vasudev and Co. Rajesh Chander Kumar, A. Satyanarayan and S.A. Nazeer, for the Appellant; K.M. Shivayogiswamy, Govt. Pleader, for the Respondent

Final Decision : Dismissed

Judgement

R.V. Raveendran, J.—The petitioners have manufacturing units/factories inside the industrial areas/industrial layouts formed by the Karnataka Industrial Areas Development Board (for short "KIADB").

2. The Karnataka Tax on Entry of Goods Act, 1979 ("the KTEG Act" for short) is an Act to provide for the levy of tax on entry of goods into local areas for consumption, use or sale therein. The KTEG Act has been enacted by the State Legislature deriving power under entry 52 of List II of the Seventh Schedule to the Constitution which reads "Taxes on the entry of goods into a local area for consumption, use or sale therein".

2.1. Section 3 of the Act is the charging section. Sub-section (1) which is relevant is extracted below :

"There shall be levied and collected a tax on entry of any goods specified in the First Schedule into a local area for consumption, use or sale therein, at such rates not exceeding five per cent of the value of the goods as may be specified retrospectively or prospectively by the State Government by notification, and different dates and different rates may be specified in respect of different goods or different classes of goods or different local areas."

2.2. Section 2(A)(5) of the Act defines local area as follows :

"Local area" means an area within the limits of a city under the Karnataka Municipal Corporations Act, 1976 (Karnataka Act 14 of 1977), a municipality under the Karnataka Municipalities Act, 1964 (Karnataka Act 22 of 1964), a Notified Area Committee, a Town Board, a Sanitary Board or a Cantonment Board constituted or continued under any law for the time being in force and a Mandal under the Karnataka Zilla Parishads, Taluk Panchayat Samithis, Mandal Panchayats and Nyaya Panchayats Act, 1983 (Karnataka Act 20 of 1985) and panchayat area under the Karnataka Panchayat Raj Act, 1993 (Karnataka Act 14 of 1993).

2.3. Section 7(1) of the KTEG Act requires every dealer to file monthly returns of turnover and pay in advance the full amount of entry tax on the basis of the goods brought into the local area during the preceding month. Section 7(3) provides that if the return filed u/s 7(1) appears to the assessing authority to be incorrect or incomplete, he may assess the dealer provisionally for that month to the best of his judgment, recording the reasons for such assessment and proceed to demand and collect the tax on the basis of such assessment.

3. According to the petitioners, the KTEG Act is inapplicable to them as their factories are situated in KIADB -industrial areas and this Court in *Samyuktha Karnataka Vs. State of Karnataka and others*, , has held that such industrial areas are not "local areas" under the Act. They therefore neither filed the monthly returns nor paid any entry tax as required u/s 7(1) of the KTEG Act. The jurisdictional assessing authorities under the KTEG Act have issued notices u/s 7(3) proposing to pass best judgment orders of provisional assessment, relying on the very same decision in *Samyuktha Karnataka Vs. State of Karnataka and others*, , on the ground that KIADB industrial areas are situated within the limits of municipal corporations/municipalities/panchayats/cantonment or sanitary boards which are local areas, and therefore the KTEG Act is applicable to them. Petitioners have filed objections. The assessing authorities have passed orders u/s 7(3) and served the orders with notices of demand. In some cases, final orders of assessment have been passed u/s 5(4) of the KTEG Act.

4. Feeling aggrieved, the petitioners have filed these petitions for a declaration that the industrial areas wherein their factories/units are situated are not "local areas" for the purposes of Section 3(1) of the KTEG Act read with entry 52 of List II of the Seventh Schedule to the Constitution of India and therefore the KTEG Act is not applicable to them. They have also consequentially sought quashing

the proposition notices/provisional assessment orders/final orders of assessment, issued or passed under the KTEG Act in their respective cases.

5. Both sides agree that the matter is covered by the decision of the division Bench in *Samyuktha Karnataka Vs. State of Karnataka and others*, . The only question that arises for consideration in these cases is whether the division Bench in *Samyuktha Karnataka Vs. State of Karnataka and others*, , held that the KTEG Act is inapplicable (as contended by petitioners) or applicable (as contended by respondents) to petitioners whose units are situated in KIADB industrial areas. To decide this question, the background in which the matter came up for consideration before the division Bench requires to be noticed.

6. Several persons having their industries within the KIADB industrial areas had earlier filed a batch of writ petitions, inter alia, seeking a declaration that KIADB industrial areas are not "local areas" as defined u/s 2(5) of the KTEG Act and therefore entry of scheduled goods into that area would not attract the charging provisions under the KTEG Act. They also challenged the notifications issued by the State Government u/s 3 of the Act providing for rate of tax on the goods brought by them as raw materials to their industrial units for consumption or use therein. Those petitions were disposed of by a learned single Judge of this Court reported in *Falma Laboratories Pvt. Ltd. Vs. State of Karnataka and others*, . The relevant contention urged by the petitioners therein, is noticed by the learned single Judge as follows :

".....The controversy between the parties to the lis is that since KIADB industrial area is not covered under the definition of "local area" u/s 2(5) of the Act, the petitioners are not exigible to tax under the charging provisions, alternatively they assert that since the petitioners' industrial unit is situate in KIADB land, which is not a notified local area and also since it has not been converted into panchayat area, the petitioners' industrial units are not exigible for payment of tax under the Act....."

The learned single Judge considered the said contention in detail after referring to the provisions of the Karnataka Industrial Areas Development Act and the decisions of the Supreme Court in *Diamond Sugar Mills Ltd. and Another Vs. The State of Uttar Pradesh and Another*, and *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, . The learned single Judge held that KIADB was not a local authority or a local body and the area administered by it would not fall within the meaning of the expression "local area". Thereafter, he proceeded to reject the contention of the petitioners, on the following reasoning :

"Section 2 of the Act defines the expression "local area". Immediately after the words "local area", the Legislature uses the expression "means" and says area within the limits of city under the Municipal Corporation Act, a municipality under the Municipalities Act so on and so forth. The expression "means" in a definition clause renders the definition exhaustive of the matter defined. As pointed out in *Craies on Statute law*, where an interpretation clause defines a word to mean a

particular thing, the definition is explanatory and prima facie restrictive. In that view of the matter, the words "local area" in the definition can take only what is defined therein, and it cannot take in its fold any other "local body" or local authority administering a particular area. In that view of the matter, it cannot be said KIADB is a local area but the area administered by the Board may come within the limits of a city, a municipality, a mandal or a local panchayat. It is the case of the respondents that KIADB layout in Hosakote is within local limits of Doddaballapur Grama Panchayat, which is a panchayat area under the Panchayat Raj Act. The entry of scheduled goods into panchayat area would definitely attract charging section under the Act. Therefore, the contention of learned counsel for the petitioner that causing entry of scheduled goods into "area" managed by Karnataka Industrial Areas Development Board would not attract levy under Entry Tax Act cannot be accepted". (Emphasis* supplied)

The petitions were rejected as a consequence of rejection of all contentions.

7. The above decision of the learned single Judge was the subject-matter of several appeals. The Division Bench allowed the appeals in part and the said decision is reported in *Samyuktha Karnataka Vs. State of Karnataka and others*, . Though several contentions were urged in those appeals, what is relevant for the purpose of these petitions, is ground (e) extracted from para 4 of the decision :

"The provisions of the Act do not apply to the industrial units situated within an "industrial area" declared u/s 3 of the Industrial Areas Act since such an area has not been included within the meaning of the "local area" as defined u/s 2(A) (5) of the Act."

After referring to the decisions of the Supreme Court referred to by the learned single Judge and the decision in *Housing Board of Haryana Vs. Haryana Housing Board Employees Union and others*, and the decision in *Union of India (UOI) and Others Vs. Shri R.C. Jain and Others*, and the provisions of the KIAD Act, the division Bench held that the KIADB cannot be held to be a local authority. The contention of the appellants therein that the provisions of the Act do not apply to industrial units situated in KIADB Industrial areas was rejected with the following observations :

"Therefore, it is held that "industrial area" declared under the Industrial Areas Act is not a "local area" and therefore, its non-inclusion in the definition of "local area" under Clause (5) of Section 2(A) of the Act is of no consequence. It is further held that the appellants are liable to be taxed on entry of goods in the local areas as defined under the said clause." (emphasis* supplied)

Thereafter, the division Bench proceeded to sum up its decision on several points and allowed the appeals in part. The same is extracted below :

(i) the impugned three notifications did not cease to be operative because of the expiry of the Karnataka Ordinance No. 10 of 1992 by efflux of time postulated under Article 213(2)(a) of the Constitution of India ;

(ii) the second notification cannot be held to be ab initio void or stillborn for having failed to specify the rate of tax ;

(iii) the issuance of the third notification being corrigendum to the second notification is justifiable under the delegation conferred on the State Government u/s 3 of the Act but only prospectively that is with effect from August 19, 1992 ;

(iv) no tax can be levied on the entry of raw materials in a local area which are meant for use in the manufacture of an intermediate or finished product which is specified in the Second Schedule to the Act ;

(v) the laying clause contained in Section 31 of the Act is directory in nature and its non-compliance does not touch upon the enforceability of the impugned notifications ;

(vi) an "industrial area" declared u/s 3 of the Karnataka Industrial Areas Development Act, 1966 is not a "local area" for the purpose of entry 52 of List II (State List) of the Seventh Schedule to the Constitution of India.

In the result, the appeals are allowed in part to the extent indicated above. The authorities under the Act are directed to act in accordance with the law laid down herein. The appellants are permitted to file their objections to the proposition notices, if any, issued against them within two weeks from today. In case the assessment has been completed, they can prefer appeal within the said period of two weeks with an application for condonation of delay which the appellate authority will dispose of by keeping in view the pendency of the writ petition and appeal filed before this Court. However, there will be no order as to costs."

8. The petitioners contend that the Act had been made by the State Legislature pursuant to entry 52 of the State List (List II of the Seventh Schedule to the Constitution), which reads, "Taxes on entry of goods into a local area for consumption, use or sale therein" and, therefore what could be taxed is what falls under entry 52 and unless the State is able to demonstrate that the tax under the Act fell within entry 52, it cannot be supported, and that as the division Bench has recorded a finding that the KIADB industrial areas wherein the petitioners' units are situated are not "local areas", and has allowed the appeals in part, there cannot be any levy of entry tax on goods brought by them to their industrial units. In other words, it is contended that entry of goods into a local area is the sine qua non for levy of entry tax and if the industrial area where the petitioners' premises are situated is not a "local area", as defined under the KTEG Act, there cannot be any levy of tax under the KTEG Act.

9. The contention of the appellants before the division Bench was that their premises were situated within KIADB industrial areas which were not included in the definition of "local area" u/s 2(A)(5) of the Act and therefore the entry of goods into the KIADB industrial areas wherein their premises are situated, cannot be subjected to entry tax. For this purpose, the division Bench first considered the question whether KIADB is a "local authority" and whether the

industrial areas established and administered by KIADB were "local areas"; If the KIADB was a local authority, then industrial areas under its administration would not have been "local areas" under the Act, on account of the non-inclusion of such area within the definition of "local area" u/s 2(A)(5) of the Act, and consequently it would have been possible to contend that entry of goods into KIADB industrial areas was not exigible to tax. But the division Bench specifically held that KIADB was not a local authority and KIADB industrial areas were not local areas. The division Bench then proceeded to hold that non-inclusion of "the industrial areas" within the definition of "local area" u/s 2(A)(5) of the Act is of no consequence. The reason for this is obvious. Even if the industrial area of KIADB is not & "local area" as defined under the Act, as the entire industrial areas (wherein the petitioners' units are situated) are within the limits of a municipal corporation or municipality or a panchayat, the entry of scheduled goods into such municipal corporation area, municipal area or a panchayat area would definitely attract the charging section. That is why the learned single Judge in *Falma Laboratories Pvt. Ltd. Vs. State of Karnataka and others*, , held that the entry of scheduled goods into such municipal corporation or municipal or panchayat area will attract liability to tax. It is in these circumstances, the division Bench held that the fact that the industrial area is not included within the definition of "local area" u/s 2(A)(5) of the Act is of no consequence. It is a non-issue in so far as the liability to tax is concerned, as irrespective of the fact whether an "industrial area" was by itself a local area or not, as such industrial area formed part of a municipal corporation area or a municipal area or a panchayat area or other local area as defined in Section 2(A) of the Act. Therefore, the division Bench clearly stated "it is further held that the appellants are liable to be taxed on entry of goods in the local areas as defined under the said clause", thereby affirming the finding of the learned single Judge. If as contended by the petitioners, the division Bench had held that the entry of goods into industrial areas was not exigible to entry tax, then the division Bench obviously would not have stated that appellants were liable to be taxed on entry of goods in a "local area", as defined under the KTEG Act.

10. The petitioners next contended that the fact that the appeals were allowed in part by the division Bench indicated that the division Bench had accepted their contention that the industrial area was not a local area and that if their contention had been rejected, then the appeals would have been rejected instead of being allowed in part. This contention has no merit. It is evident from the summing up by the division Bench (extracted above), that the division Bench had in fact accepted another contention of the appellants (in so far as it held that no tax could be levied on entry of raw materials in a local area which were meant for use in the manufacture of an intermediate or finished product which is specified in the Second Schedule to the Act) and that is why the appeals were allowed in part. In fact the decision on that point which was in favour of the appellants was challenged by the State before the Supreme Court and the special leave petitions were rejected.

11. It is thus clear from the decision in *Samyuktha Karnataka Vs. State of Karnataka and others*, that entry of goods in a KIADB industrial area is exigible to tax if the said industrial area falls within the limits of municipal corporation area or municipal area or a panchayat area or other area defined as local area u/s 2(A)(5) of the KTEG Act,

12. The learned Government Pleader submits that every part of the State of Karnataka falls within the jurisdiction of either a municipal corporation or a municipality or a panchayat or a notified area committee or a sanitary board or a cantonment board and therefore wherever the industrial area is situated, it will still be within a local area. Be that as it may. It is unnecessary to consider whether every part of Karnataka forms part of a "local area" as defined in the Act. What is relevant is wherever the industrial area (in which the factory or unit of petitioner is situated) is part of a "local area" as defined under the Act, the provisions of the Act will be attracted.

13. No other contention is urged by the learned counsel for the petitioners. It is seen from the petitions that some other contentions have been urged. It is agreed by the counsel that those are already covered by the decision of this Court either *Samyuktha Karnataka Vs. State of Karnataka and others*, , or the decision in *T.V. Sundaram Iyengar & Sons Ltd. v. State of Karnataka* [2000] 117 STC 121 KAR ; ILR 1999 Kar 1828.

14. In view of the above, these petitions are rejected.

Wherever the petitioners have consequentially challenged the orders of the assessing authority the petitioners may pursue their remedy by way of appeal and if the appeals are filed within one month from this day, they shall not be rejected on the ground of limitation.