
(1988) 02 AP CK 0012

In the Andhra Pradesh High Court

Case No : Writ Petition No. 3533 of 1984

Food Specialities Ltd.

APPELLANT

Vs

The state of Andhra Pradesh

RESPONDENT

Date of Decision : 17-02-1988

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 9, 9(1)
Constitution of India, 1950 — Article 133, 14, 304

Citation : (1989) 73 STC 95

Hon'ble Judges : M. Jagannadha Rao, J;B.P. Jeevan Reddy, J

Bench : Division Bench

Advocate : Y. Ratnakar, for the Appellant; The Government Pleader, Commercial Taxes and Public Relations, for the Respondent

Judgement

Jeevan Reddy, J.—Andhra Pradesh Dairy Development Co-operative Federation Ltd., is the only manufacturer of baby milk foods in the State of Andhra Pradesh. It marketed baby milk food manufactured by it under the trade name "Vijaya Spray". Under G.O.Ms. No. 1240, Revenue, dated 12th October, 1979 the Government of Andhra Pradesh exempted from sales tax "the sales of baby milk food known as "Vijaya Spray" manufactured and/or marketed by the A.P. Dairy Development Corporation Ltd.". Prior to 1983 the 4th respondent was registered as a company under the Companies Act. After it was converted into a Co-operative Federation, G.O.Ms. No. 1240 was amended by G.O.Ms. No. 1200 dated 2nd September, 1983 substituting the name of the Co-operative Federation in the place of the Corporation. Baby food is exigible to sales tax at 5 per cent at the point of first sale in the State, as per entry 44 of the First Schedule to the A.P. General Sales Tax Act.

2. The petitioner. Food Specialities Ltd., is engaged, inter alia, in the manufacture and marketing of baby milk foods under two brand names, "LACTOGEN Infant Formula", and "LACTOGEN Full Protein Follow-up Formula". The petitioner complains that granting of exemption to the the 4th respondent's product alone

is discriminatory, since it amounts to conferring an undue preference upon the products of a particular manufacturer. It is also submitted that G.O.Ms. 1240 is inconsistent with section 9 of the Act and, accordingly, invalid.

3. For succeeding on the ground of discrimination, the petitioner has to establish in the first instance that it is similarly situated to the 4th respondent. We are, however, not satisfied that they are. While the petitioner is a company in the private sector, the 4th respondent is a Co-operative Federation run on "no-profit no-loss" basis. It is registered as a co-operative society under the A.P. Co-operative Societies Act. Practically, it is a society owned and controlled by the Government. It has been brought into existence with a view to ensure a proper price to producers of milk, and also to ensure supplies of milk to consumers at reasonable price, and of good quality. It is also stated by the respondents' counsel that the Federation has been trying at all points of time to supply its products to consumers at the lowest possible price, and for that reason it has indeed been suffering losses. With a view to enable its products, particularly baby foods, to compete in the market, the learned Government Pleader states, it was given the impugned concession - also because it had taken up the manufacture of baby milk foods just about the time of the impugned notification. The petitioner, on the other hand, is one of the established and well-known companies in the country, and its milk food products have been in the market over a long number of years, and quite well-known. It would thus be seen that the exemption granted under the impugned G.O. in favour of the 4th respondent is really in the nature of a concession, or a form of subsidy, as it may be called. Extending such concessions, subsidies, and several other benefits in various forms to new industries, industries in a particular sector, and industries established in particular areas, is a well-accepted feature of Indian economy. The Income Tax Act contains several such benefits/concessions. There are several G.Os. of the Central and the State Governments granting several types of subsidies to various industries. In the circumstances, therefore, it is too simplistic to say that just because a concession is granted to one manufacturer of baby foods, it amounts to discrimination against others. Inasmuch as the petitioner and the 4th respondent are not similarly situated, there is no basis for complaining of discrimination.

4. In this connection, we may refer to a Bench decision of this Court in *Mahindra and Mahindra Ltd. v. State of Andhra Pradesh* [1986] 63 STC 274. In that case, Mahindra and Mahindra Ltd., engaged in the manufacture of light commercial vehicles, challenged the notification issued by the Andhra Pradesh Government exempting the light commercial vehicles manufactured by M/s. Allwyn Nissan Ltd., a Government company, from the sales tax leviable on such vehicles. The grounds of attack therein were also identical, viz., (i) the exemption granted to Allwyn Nissan constituted an invidious discrimination in favour of an individual manufacturer, and (ii) that the said exemption was illegal and ultra vires the powers of the State Government u/s 9 of the Act. It was also contended therein that the exemption so granted violates article 304(a) of the Constitution. All the

three contentions were negated. It was held that the exemption is indeed in the nature of a, rebate granted to Allwyn Nissan, and that having regard to the different circumstances and situation in which Allwyn Nissan was placed, there was no basis for complaint of discrimination. The said decision exhaustively refers to the several decisions rendered with respect to article 14 of the Constitution, and we do not think it necessary to repeat the same. It is sufficient to mention that according to the said decision. Corporations owned and controlled by a State constitute a class distinct from individual traders and manufacturers in the same field. It may also be mentioned that in this case the 4th respondent is a co-operative society registered under the Co-operative Societies Act, besides being, in truth and in effect, a Government-owned organisation. It needed encouragement in this line of products. And also because it is run on a "no-profit no-loss" basis, the exemption granted in its favour cannot be held to be discriminatory or bad.

5. The second contention is that the notification is inconsistent with section 9 and is, accordingly, invalid. Section 9(1) reads as follows :

"9. Power of State Government to notify exemptions and reductions of tax (or interest). - (1) The State Government may, by notification in the Andhra Pradesh Gazette, make an exemption, or reduction in rate, in respect of any tax or interest payable under this Act -

(i) on the sale or purchase of any specified class of goods, at all points or at any specified point or points in series of sales or purchases by successive dealers; or

(ii) by any specified class of persons, in regard to the whole or any part of their turnover."

6. The contention of the learned counsel is this :

Under clause (i) of sub-section (1) of section 9, the Government can exempt "any specified class of goods", while under clause (ii) it can exempt "any specified class of persons", but it is not competent for the Government to issue a notification mixing both the clauses. A notification issued exempting a particular person and the goods manufactured by him alone, is not contemplated by section 9(1). Moreover, the exemption must be with respect to a specified class of goods, and not with respect to a particular brand name, or with reference to goods manufactured by a particular manufacture/dealer. It was permissible to exempt baby foods as such, but it is not permissible to exempt the baby foods manufactured by a particular manufacturer/dealer. It is also contended that the impugned notification issued in favour of only one person is not warranted by clause (ii) of sub-section (1) of section 9. We are unable to see any substance in the above reasoning. The power of exemption is in the nature of conditional legislation. It is not treated as delegated legislation (vide *Hamdard Dawakhana and Another, Kalipada Deb and Another, Lakshman Shripati Itpure @ Lakshman Shripati Impore and A.B. Choudhri and Another Vs. The Union of India (UOI) and Others, , and Jalan Trading Co. (Private Ltd.) Vs. Mill Mazdoor Union, .* It is a

power conferred upon the Governments by various taxing enactments to provide for, and meet various types of situations not contemplated by the Act. Under clause (i) of sub-section (1) of section 9, it is open to the State Government to exempt, either partly or wholly, any specified class of goods from sales tax. In such a notification, there shall be no reference to the manufacturer. The notification would be only with reference to the particular class of goods, irrespective of who manufactures them.

On the other hand, a notification under clause (ii) is with reference to a specified class of persons. But, it must be remembered that persons as such cannot be exempted, because the sales tax is levied on the sale of goods, and not upon persons. It is not possible to conceive of a situation where certain class of persons, without reference to the goods sold by them, are exempted from paying sales tax. Indeed, such a notification cannot be thought of. Even a notification under clause (ii) of sub-section (1), issued with reference to specified class of persons, must necessarily say in respect of which goods sold by them, or purchased by them, as the case may be, is the exemption operative. It is, therefore, incorrect to say that a notification issued under clause (ii) of sub-section (1) must refer only to persons exempted, but not to the goods exempted. Indeed, clause (ii) contemplates exempting specified class of persons not absolutely but "in regard to the whole or any part of their turnover". It is for this reason that it is necessary to specify which part of their turnover, or whether the whole of their turnover, is exempted, and this is done by saying that the turnover relating to particular goods is exempt. We are also not impressed by the argument that there cannot be a notification falling under both the said clauses. There is no such prohibition. In any event, so far as the notification in question is concerned, it is clearly one falling under clause (ii) of sub-section (1), and not under both the clauses. It should also be remembered that even a single person may constitute a class, having regard to the circumstances in which he is placed (vide *Ram Krishna Dalmia Vs. Shri Justice S.R. Tendolkar and Others*, .

7. In view of our conclusion that the notification in question falls under clause (ii) of sub-section (1) of section 9, and not under clause (i) of sub-section (1), it is unnecessary to deal with the argument of Sri Ratnakar, the learned counsel for the petitioner, based upon the language of clause (i). He brings to our notice that section 8-A of the Karnataka Act, section 10 of the Kerala Act, and section 17 of the Tamil Nadu Act - all of which confer a similar power of exemption upon the respective Government - are worded differently. It is pointed out that all these enactments empower the Government to exempt "any specified goods or class of goods", whereas the Andhra Pradesh Act is more restrictive, inasmuch as it empowers the Government merely to exempt "any specified class of goods" only. All this was referred to in support of the argument that a notification issued u/s 9(1)(i) can only be with reference to a specified class of goods, and cannot be issued with reference to goods manufactured by a particular manufacturer. But, inasmuch as, in our opinion, the notification in question falls under clause (ii) of sub-section (1) and not under clause (i), it is unnecessary to deal with the said

argument further. In fact, in the Bench decision of this Court referred to above, i.e., *Mahindra and, Mahindra Ltd. v. State of A.P.* [1986] 63 STC 274, it has been held that the words "specified class" occurring in section 9(1)(i) before the expression "goods", do not operate as words of limitation on the power of the Government. It was held that it is open to the Government to exempt goods generally, or exempt a class of goods, or exempt a specified class of goods. It was also held that mere mention of the manufacturer does not introduce any infirmity into the notification. In other words, according to the said judgment, the absence of the words "specified goods" in section 9(1)(i) does not in any manner curtail the power of exemption inhering in the Government, as is sought to be made out by the learned counsel for the petitioner with reference to the language employed in other sales tax enactments.

8. For the above reasons, the writ petition fails and is, accordingly, dismissed; but, in the circumstances, without costs.

9. The learned counsel for the petitioner makes an oral request for grant of leave to appeal to the Supreme Court under article 133 of the Constitution. We do not, however, think that this case involves a substantial question of law of general importance, which in our opinion, needs to be considered by the Supreme Court. Oral request is accordingly rejected.

Writ petition dismissed.