

(1995) 04 KAR CK 0026

In the Karnataka High Court

Case No : Sales Tax Revision Petitions No's. 95 and 96 of 1990

Gokak Mills

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-04-1995

Acts Referred:

Constitution of India, 1950 — Article 286
Karnataka Sales Tax Act, 1957 — Section 22, 5 (12)

Citation : (1995) ILR (Kar) 1489

Hon'ble Judges : S. Rajendra Babu, J;R.V. Vasanthakumar, J

Bench : Division Bench

Judgement

S. Rajendra Babu, J.—In these two matters the questions raised for consideration are :

(1) Whether the cotton tyreCORD warp sheet manufactured and sold by the petitioner during the periods in question, that is 1973-74 and 1974-75 falls under entry No. 7A of the Fourth Schedule to the Karnataka Sales Tax Act.

(2) Whether the expression "subjected to" contained in entry No. 7A of the Fourth Schedule to the Act is attracted only in cases where additional excise duty has been collected from the dealer on the goods in question ?

2. The petitioner is a dealer under the Karnataka Sales Tax Act, 1957 (for short, "the Act") having a mill in Gokak taluk of Belgaum district. One of its activities is manufacture of cotton tyreCORD, which is also known as tyreCORD warp sheet. TyreCORD was used to be assessed to sales tax under entry No. 7 of the Fourth Schedule to the Act. TyreCORD was also assessed to Central excise duty under the provisions of the Central Excises and Salt Act, 1944.

3. In Delhi Cloth and General Mills Co. Ltd. Vs. State of Rajasthan and Others, the Supreme Court held that TyreCORD was a fabric and not a yarn. Therefore, the question that arises for consideration is, whether the action of the sales tax authorities under the Central Sales Tax Act and under the Act should continue to

treat it as clothes or should assess as yarn ?

4. For the period between January 1, 1970 to December 31, 1973, the respondent initiated proceedings u/s 22 of the Act and made an order on February 20, 1978, treating the Tyrecord as falling u/s 5(1) of the Act. When the matter was carried in appeal to this Court in S.T.A. Nos. 1 to 8 of 1979, this Court by an order made on February 16, 1981, held that the cotton Tyrecord has to be classified as "fabric" and not as "yarn". It was also made clear that the "fabric" would fall within the scope of entry No. 18A of the Fifth Schedule to the Act and thus the Tyrecord was exempted from the levy of Karnataka sales tax and consequently the inter-State turnover of Tyrecord was also exempted under the provisions of the Central Sales Tax Act.

5. For the periods January 1, 1974 to March 31, 1975, the petitioner had paid Central sales tax on inter-State turnover of Tyrecord warp sheet in a sum of Rs. 10,39,618.26. The assessing authority while concluding the assessment for the said two periods assessed the turnover relating to cotton Tyrecord under entry No. 7 of the Fourth Schedule and imposed tax at the rate 1 1/2 per cent. The matter was carried in appeals to the Deputy Commissioner of Commercial Taxes. During pendency of appeals, the Act came to be amended as follows :

"(a) Fourth Schedule was amended by Karnataka Act No. 13 of 1982 - the following entry was inserted with effect from January 1, 1970 :

7A. Tyrecord fabrics which have not been subjected to additional duty of excise under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957);

(b) Entry 7A was omitted by Karnataka Ordinance No. 6 of 1982 with effect from April 1, 1979. The Ordinance was replaced by Karnataka Act.

(c) In Fifth Schedule the following entry was added :

8A. All varieties of textiles namely, cotton, woollen, silk or artificial silk including rayon or nylon, whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths which have been subjected to additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (Central Act 58 of 1957);

(d) In the Fifth Schedule the following was substituted by Karnataka Ordinance 6 of 1982 with effect from January 1, 1979 in place of the original entry.

8A. All varieties of textile, namely, cotton, woollen, silk or artificial silk including rayon or nylon, whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths but excluding tyrecord fabrics specified in serial number 7A of the Fourth Schedule;

(e) In entry 8A of the Fifth Schedule the following words were deleted by Karnataka Ordinance 6 of 1982 with effect from April 1, 1979;

"but excluding tyre cord fabrics, specified in serial number 7A of the Fourth Schedule".

6. A reading of the provisions as in force between January 1, 1974 and March 31, 1975, would make it clear that only Tyre cord fabrics which had been subject to additional excise duty under the Additional Duties of Excise (Goods of Special Importance) Act, 1957 would alone be exempted from sales tax as "fabric" under the Fourth Schedule.

7. In the case of the petitioner the additional excise duty had not been collected by the Central excise department, but proceedings were initiated against the petitioner for recovery of the additional excise duty and the same could not be pursued as it was barred by time for both the periods in question. In this background, it was contended before the authorities, as is done before us that during the period in question the "tyre cord fabric" was subjected to additional excise duty. Though the amount could not be recovered from the petitioner on the ground that it was barred by limitation, the view of the department is that since additional excise duty has not been paid, the question of exemption would not arise in the case. It is submitted that there are retrospective amendments to the Fourth and Fifth Schedules to the Act and use of the expression "subjected to" would not amount to actual payment of tax, which would only mean that the goods in question were made liable to duty. It is submitted that irrespective of the fact whether the excise duty has been recovered from the petitioner or not, the goods were subjected to additional excise duty and therefore the provisions of entry No. 7A of the Fourth Schedule to the Act would not be attracted.

8. The expression "subjected to" can be understood in various forms depending upon the context. In the present context the expression will have to be understood as having been made to suffer the excise duty. The whole intention of the enactment is to grant the benefit of exemption under the Act in cases where duty had been paid under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. A reading of the entry at 7A of the Fourth Schedule and the relevant entry in the Fifth Schedule would make this position clear. Unless the goods had suffered duty the same would not be entitled to the benefit of exemption. In this context, we have to bear in mind the provisions of the Constitution under article 286 of the Constitution, which states that restrictions are imposed as to imposition of tax on sale or purchase of goods when the same takes place outside the State and any law of a State so far as it imposes or authorises the imposition of a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce and would be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of tax as Parliament may specify by law. Indeed all the States have agreed not to levy sales tax in respect of those goods which are covered by the Additional Duties of Excise (Goods of Special Importance) Act, 1957 and such tax had been collected by those authorities which accrue to the benefit of the State fund. If this aspect is borne in mind the object of granting

exemption would become clear. When interpretation of an expression arises and such expression is not defined in the Act, the meaning most suitable to the situation will have to be attributed to the expression used. In the context of this case, the meaning of the expression "subjected to" will have to be understood as made to suffer. Understood thus, the view taken by the authorities below appear to us to be correct.

9. However, the learned counsel for the petitioner sought to rely upon the decisions in :

(1) Sha Pannalal Pemraj and Co. and Others Vs. Commercial Tax Officer, Hassan Circle, Hassan and Others, .

(2) Ahmed Ibrahim Sahigra Dhoraji Vs. Commissioner of Wealth Tax, Gujarat,

(3) Associated Cement Company Limited Vs. Commercial Tax Officer, Kota and Others,

(4) Innamuri Gopalan and Others Vs. State of Andhra Pradesh and Another,

(5) S.C. Prashar, Income Tax Officer, Market Ward, Bombay and Another Vs. Vasantsen Dwarkadas and Others,

(6) [1967] 20 STC 89 (Mys) (Munshi Abdul Rahiman and Bros. v. Commercial Tax Officer).

(7) Nathia Agarwalla and Another Vs. Musst. Jahanara Begum and Others,

(8) P.K.P. Abdul Hakeem and Co. Vs. The State of Karnataka and Another,

(9) The State of Karnataka and Another Vs. P.K.P. Abdul Hakeem and Co.,

(10) [1949] 1 All ER 865 (Inland Revenue Commissioners v. Wolfson).

But, none of these decisions explain the meaning to be attributed to the expression "subjected to". All that they would explain is that in the context of taxation law question of intention would not normally enter into a charging provision for what is charged or subject to tax must be clear, nothing can be added to it or detracted from it. The ratio in none of these cases will improve the position of the petitioner for each of those cases turned on the peculiar expression used in those cases. The link between the sales tax enactments and the Additional Duties of Excise (Goods of Special Importance) Act, 1957 cannot be ignored and they form one system of taxation as envisaged under article 286 of the Constitution. Therefore, under the scheme of taxation, if the goods had suffered tax under one enactment, the same goods should not be subjected to suffer tax under another enactment. When the goods in question in the present case had not suffered tax at all, it must be held that they had not been subjected to tax under the Additional Duties of Excise (Goods of Special Importance) Act, 1957. In that view of the matter, we find the reliance placed by the learned counsel is futile.

10. In the result, we dismiss these petitions.

11. Petitions dismissed.