
(1995) 11 KAR CK 0014
In the Karnataka High Court
Case No : Writ Appeal No. 548 of 1992

Gopal Industries	Vs	APPELLANT
Commercial Tax Officer, V. Circle, Hubli and another		RESPONDENT

Date of Decision : 22-11-1995

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 12 A, 8 A

Citation : (1995) ILR (Kar) 3502

Hon'ble Judges : M.L. Pendse, C.J.;B. Padmaraj, J

Bench : Division Bench

Judgement

M.L. Pendse, C.J.—The appellant is registered dealer under the Karnataka Sales Tax Act and inter alia, manufactures handmade washing soap. The appellant filed return for the assessment year 1984-85 and assessment order was completed on October 20, 1986. The appellant was assessed at the rate of 4 per cent on the basis of notification dated March 31, 1984. The notification was issued by the Governor of Karnataka in exercise of powers conferred u/s 8A of the Karnataka Sales Tax Act, 1957 (for short, "the Act"). The notification provides for reduction of tax payable by a dealer u/s 5 of the Act on the sale of handmade washing soap manufactured by it to 4 per cent provided the total turnover of any such dealer in a year does not exceed rupees ten lakhs. The total turnover of the appellant for the relevant assessment year was Rs. 13,21,182.11.

2. On January 21, 1988, the Commercial Tax Officer, V Circle, Hubli, served notice on the appellant u/s 12A of the Act informing that the assessment order dated October 20, 1986 is not correct as the total turnover of the appellant exceeded rupees ten lakhs. The appellant was called upon to show cause why the assessment order should not be revised. The appellant approached this Court by filing Writ Petition No. 3823 of 1992 to challenge the issuance of show cause notice. The petition was summarily dismissed by the learned single Judge by order dated March 3, 1992, on the ground that the dispute raised by the appellant stands concluded by decision of the Division Bench of this Court is

State of Karnataka v. Prabha Soaps and Synthetics [1992] 87 STC 401 KAR : (1992) 36 Kar LJ 382. The appellant has preferred appeal to challenge the correctness of the order passed by the learned single Judge.

Pending disposal of the appeal, the Deputy Commissioner of Commercial Taxes by order dated July 7, 1993 overruled the order of assessment dated October 20, 1986 and passed a fresh order of assessment on the basis that the appellant is not entitled to take benefit of the exemption notification dated March 31, 1984. The appellant then filed Interim Application No. 3 and sought to challenge the correctness of that order. That application was allowed and now what remains for consideration in appeal is the validity of order dated July 7, 1993.

3. Learned counsel appearing on behalf of the appellant, submitted that the exemption notification came up for consideration before the Division Bench of this Court in the case of Prabha Soaps and Synthetics [1992] 87 STC 401 KAR; (1992) 36 Kar LJ 382, but there was one aspect of the matter which was left unconsidered and that requires determination in the present appeal. The Division Bench held that in view of the notification it is clear that the expression "total turnover" is meant to include the turnover in respect to handmade washing soaps and of goods other than handmade washing soaps. It was further held that to construe the notification in any other manner would be to render the word "total" in the expression "total turnover" otiose and that is not permissible. The learned counsel, with reference to paragraph 18 of the judgment (at page 407 of STC), submitted that the Division Bench was not dealing with the case where the assessee has sought the relief of quashing the expression "total" in the notification and that is the prayer now made by the appellant in the present proceedings. Learned counsel submitted that the expression "total" used in the notification would defeat the object of issuance of the notification. It was urged that the object of issuing notification was to confer benefit on poor people who are users of handmade washing soaps. Learned counsel submitted that the expression "total" used in the notification should be struck down. It is impossible to accede to the submission. It is not for the writ court to determine as to what was the object of grant of exemption and it is not permissible to strike down the condition imposed or to add conditions to the notification. The court cannot undertake such exercise because that would amount to legislating and which is not permissible. The powers to grant exemption exercised u/s 8A of the Act are statutory in nature and it is for the authority issuing notification to determine what condition should be imposed for the purpose of making a departure from the normal rule. The exemption notification by its nature is a departure from the normal rule and, therefore, the benefit of such notification can be provided if the beneficiary falls squarely within four corners of the notification.

4. Learned counsel relied upon decision of the Madhya Pradesh High Court in M.P. Shoe House Vs. State of M.P. and Others, In the case before the Madhya Pradesh High Court, notification dated April 7, 1981, was issued in exercise of powers conferred by clause (i) of sub-section (1) of section 12 of the Madhya Pradesh

General Sales Tax Act, 1958. The State Government exempted payment of tax on the sale of goods set out in the Schedule. The exemption was available provided the dealer deals exclusively in footwear made of rubber and/or plastic and the sale price of such footwear does not exceed rupees ten per pair. The dealer filed petition claiming that there is no nexus with the purpose sought to be achieved in the use of the word "exclusively". The Revenue on the other hand submitted that the grant of exemption is a matter of policy decision to be taken by the State Government and can be availed of only in the manner specified in the notification. The Division Bench proceeded to grant relief sought by the dealer by observing that the purpose of granting exemption was for the benefit of the consumers who could not afford to purchase footwear of price exceeding rupees ten per pair. The Division Bench felt that the use of the word "exclusively" in column (4) of the notification containing restrictions and conditions subject to which, exemption is granted, has the effect of defeating the purpose of granting exemption to a large measure. On the strength of this finding, the Division bench proceeded to strike down the word "exclusively" used in the notification. We are afraid, we cannot share the view expressed by the Division Bench of the Madhya Pradesh High Court. It is not the function of the court, exercising writ jurisdiction, to strike down the words in the notification by construing what must have been the object of the authority issuing the exemption notification. It is for the authority issuing exemption notification to determine what condition should be specified for availing the benefit and the courts cannot substitute the decision of the authority in exercise of writ jurisdiction. In our judgment, the order passed by the Commissioner of Commercial Taxes, (Assessments)-II, Hubli, on July 7, 1993 does not suffer from any infirmity and is not required to be disturbed. The Commissioner has taken the correct view by following the decision of the Division Bench of this Court. The appeal, therefore, must fail.

Accordingly, appeal is dismissed with costs.

5. Appeal dismissed.