

(2002) 03 CAL CK 0015
In the Calcutta High Court
Case No : Writ Petition No. 2500 of 2001

Hanuman Trading Company and Another	APPELLANT
Vs	
State of West Bengal	RESPONDENT

Date of Decision : 07-03-2002

Acts Referred:

Constitution of India, 1950 — Article 14, 226, 246, 253, 323A
Customs Act, 1962 — Section 25

Citation : (2002) 2 CALLT 531

Hon'ble Judges : Amitava Lala, J

Bench : Single Bench

Advocate : Ramesh Chowdhury, for the Appellant; L.K. Gupta, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Lala, J.—This writ petition is made challenging imposition of luxury tax under the W.B. Luxury Tax Act, 1994 in respect of imported Vanaspati from Nepal.

2. The contention of the petitioners is that by virtue of the Treaty of Transit, Treaty of Trade and Agreement of co-operation to control unauthorised trade between His Majesty's Government of Nepal and the Government of India the internal taxation charges of the movement of the primary products of either contracting party to any market destinations in the territory of the other shall be accorded treatment no less favourable than that accorded to the movement of its own primary products within its territory. The Vanaspati is one of such product for which the petitioners are paying more revenue.

3. In exercise of power conferred by Sub-section 1 of Section 25 of the Customs Act, 1962 the Central Government has given a general exemption under certain goods and effective rate of duty for imports from Nepal under General Exemption No. 33. Petitioners product fall under such category.

4. Article 253 of the Constitution of India provided that notwithstanding anything in the foregoing provisions of this chapter. Parliament has power to make any law

for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. The exemption if any, in importing Vanaspati from Nepal to India is implementation of the treaty pursuant to Article 253 of the Constitution of India. Even 7th Schedule of the Union List under Article 246 of the Constitution of India made provisions for entering into treaties and agreement with foreign countries. Therefore, imposition of levy or tax bypassing the Constitutional mandate and treaty and by introducing ordinance so that luxury tax as would be applicable for the home product of the State will also be applicable therein is uncalled for.

5. Secondly, the Vanaspati is as good as edible oil which can not be treated as luxury tax to include into the Act made for the same.

6. Thirdly, the matter is of greater importance which ought to be dealt with by the writ Court under Article 226 of the Constitution of India unlike others which normally refer to the Taxation Tribunal made for the same in compliance with Article 323B of the Constitution of India. Levy, Assessment, collection and enforcement of any tax is definitely part and parcel of the Article 323B and any dispute in connection thereto as to be heard by the Tribunal but that is not necessarily mean that the power or judicial review of the High Court under Article 226 of the Constitution of India will not be applied whenever exigency arise. This is one of the matters of great importance which ought not to be sent to the Tribunal because the law under which levy of luxury tax imposed itself is bad in law.

7. Whenever such type of situation crop up a question of discussing of L. Chandra Kumar Vs. Union of India and others, is obvious. The High Court has no other alternative but to give an interpretation in respect of the penultimate paragraph of the judgment to come to a definite conclusion whether High Court will interfere or not. It is well-known by now that in view of the ratio of such judgment the power of the High Court which was likely to be curtailed previously under Article 323A or 323B was given back but with a rider that the judicial review is to be made by a Division Bench of such High Court. All the High Courts are not uniformly running in hearing the writ matters. In some of the Courts writ matter are being heard by a Division Bench. In some of the Courts only admissions of writ petitioners are being heard before a Division Bench but subsequently heard by a single bench. Similarly, in some High Courts writ matters are being proceeded and also be heard by a single bench. Therefore, unless and until the words "Division Bench" are being deleted upon reviewing the situation by the Supreme Court I am bound by the same with tremendous measure of hesitation. The hesitation is that the Court can look into it, consider into it but can not decide in view of the technicality.

8. From the penultimate paragraph, at least this Court understood that the Tribunal is the Court of first instance, whose jurisdiction has to be invoked in respect of disputes arising out of scheduled Act under the West Bengal Taxation

Tribunal Act in connection with the levy, assessment, collection and enforcement of any tax. In our Court a Division Bench has been formed giving the allocation of business to hear out the matters arising out of the different Tribunals either Article 323A or 323B of the Constitution of India. An application has to be made there under Article 226 of the Constitution of India but not in the form of an appeal. Therefore, the prevailing situation is that the Tribunal is the Court of first instance and if one is aggrieved by the judgment and order of the Tribunal will make an application under Article 226 of the Constitution of India in this Court but the same will be heard by the Division Bench. The Court is running in dual capacity. One type of applications under Article 226 of the Constitution of India are being made before a Division Bench and the other type of applications are being made before a single bench. I can well understand about the question of unless and until there is a view there cannot be any review, "Judicial review". Therefore, the view will come out from the Tribunal and the review will come out from the order of the Division Bench of the High Court. This will be applicable as per prevailing ratio of the Supreme Court judgments even in case of virus of the Act. This is not a case where the legislation which creates the particular Tribunal is challenged. Thus helplessness cannot overcome the prevailing situation.

9. Learned counsel, appearing in support of the petitioners, cited a judgment reported in AIR 1997 3127 (SC) By drawing my attention to the paragraph 83 of the same he said that two of the Judges of the three Judges Bench were members of the Bench delivered the judgment of the L. Chandra Kumar's case (supra). Even thereafter they held that the judicial review is the basic feature of the Constitution and is the function of the Constitutional Courts. Parliament is devoid of power, by operation of Articles 323A or 323B, to deprive this Court of power of judicial review under Article 32 and the High Court under Articles 226/227. The Constitutional Courts viz. this Court and the High Courts have fundamental duty and therefore, they exercise the power of judicial review and legislative Acts, administrative actions and quasi-legislative orders. It is true that principally, power of judicial review has not been curtailed under the judgment similarly with the earlier one delivered by seven judges bench in the case of L. Chandra Kumar (supra). But what will happen in hearing the matter by a single bench of the High Court sitting in writ jurisdiction in respect of the matter in connection with the scheduled act of the Tribunal is not clear as yet. The challenge is the applicability of the Act in respect of the factual matrix of the case. If it is bad it will be declared as ultra vires. If it is good it will be declared as intra vires. But if the seven judges bench in L. Chandrakumar's case (supra) says that the Tribunal is the Court of first instance in respect of the areas of law for which they have been constituted. It is not open for the litigants to approach directly to the single bench of the High Courts even in cases where they question of vires of statutory legislations is challenged by overlooking the jurisdiction of the concerned Tribunal. Therefore, I can not entertain the writ petition.

10. Under such circumstances the writ petition stands dismissed. Interim orders, if any, stands vacated. No order is passed as to costs.

11. However, this order will not prevent the petitioners to Invoke the appropriate jurisdiction of the Tribunal for their redressal of grievance, if any, and if it is done, the same will not be hit by principles of res judicata and will not be treated as barred by limitation.

Xerox certified copies of this judgment will be supplied to the parties within seven days from the date of putting requisites for drawing up and completion of the order and certified copy of this judgment.

All parties are to act on a signed copy minutes of the operative part of this judgment on the usual undertaking and subject to satisfaction of the officer of the Court in respect as above.