

(1989) 03 CAL CK 0084
In the Calcutta High Court

In re: M/s. S.P. Electronics and Another

Date of Decision : 21-03-1989

Acts Referred:

Constitution of India, 1950 — Article 14, 19, 19(1)(g), 301

Citation : (1989) 2 CALLT 214

Hon'ble Judges : Susanta Chatterji, J

Bench : Single Bench

Advocate : S.C. Bose and Mr. Gopal Ch. Mukherjee, for the Appellant; S.N. Bose and Miss Deepali Kanjilal, for the State, for the Respondent

Judgement

Susanta Chatterji, J.—The present writ petition has been filed by Messrs. S.P. Electrics, a partnership firm and its Managing Partner as petitioner No. 2 praying, inter alia, for issuance of a Writ of Mandamus, directing the respondents, particularly the respondent No. 3, the Assistant Commissioner of Commercial Taxes to issue eligibility certificate to the petitioners, forthwith, and also directing the respondents, particularly the respondent No. 4, Commercial Tax Officer to issue declaration forms and form "C" to the petitioners immediately, and further, for declaration that the West Bengal Taxation Laws (Amendment) Act, 1987 particularly Section 4B(b)(ii) thereof is illegal, and ultra vires to the Constitution and for consequential reliefs restraining the respondents from realising any sales turnover tax from the petitioners during the period from 2.6.1988 to 1.6.1989 and directing the respondents, particularly the respondent No. 4 to issue 220 number of declaration forms and form "C" to the petitioners forthwith, as indicated in the writ petition.

2. It is stated that the petitioners are running the business of manufacture and sale of Voltage Stabilizer, Television Sets, both coloured and Black and white as a small Scale Industrial Unit with total capital investment of Rs. 58,966 which is well within the ceiling limit of any unit to be treated as a Small Scale Industrial Unit.

3. The petitioners made an application before the Directorate of Cottage & Small Scale Industries, Government of West Bengal on 4.1.1986 for issuance of a

certificate as a Small Scale Industrial Unit and duly obtained a provisional registration certificate as a Small Scale Industrial Unit as issued by the said Directorate on 29.1.1986. Later on, the petitioner obtained a permanent registration certificate as a Small Scale Industrial Unit in order to run the business in accordance with law. The petitioners made an application before the Commercial Tax Officer, Manicktala Charge, respondent No. 4 for issuing Sales Tax Registration Certificate under the West Bengal Sales Tax Act, 1954 and also under Central Sales Tax Act, 1956, The petitioners are alleged to have started the business of manufacture on and from 18.1.1986 and made its first sale of manufactured products on 2.6.1986. The accounting year of the petitioners in from 1st of June to the 31st March of the following years as submitted.

4. The petitioners are also alleged to have come across with the provisions of Rule 3 (66)/3(66) /A of the Bengal Sales Tax Rules, 1941 and also with section 4AA of the West Bengal Sales Tax Act, 1954 and the notifications issued there under and could gather that not only a representation made for giving inducement to persons to set up small scale industry by departmental instructions but also statutory exemptions have been granted for offering inducement to persons to set up small scale industry in West Bengal during the initial stage which is a most difficult period for any newly set up industry to survive, by way of total exemption as granted from payment of Sales/Turnover tax. Acting on such representation the petitioners initially intended to start a business of manufacture and sale of tape-recorders but subsequently started business of manufacture and sale of other electrical appliances particularly Voltage Stabilizer, Television Sets both coloured and black and white in a competitive market. According to the petitioners, they are not liable to pay Sales tax and Turnover tax and are so legally entitled to, u/s 4 of the West Bengal Sales Tax Act, 1954 and u/s 4AAA(2) (d) of the West Bengal Sales Tax Act, 1954. It is strongly alleged that in the Amendment Act, 1987 of the West Bengal Sales Tax Act, 1964 and Bengal Finance (Sales Tax) Act, 1941 the rate of turnover tax has been raised and the ceiling limit of exemption from payment of turnover tax has also been lowered from 50 lacs to 25 lacs and further by the said Act, Clause (e) of Sub-Section (2) of Section 6B of the Bengal Finance (Sales Tax) Act, 1941 has been omitted with retrospective effect as if the said Section was never included in the Bengal Finance (Sales Tax) Act, 1941. By amending Clause (e) of sub-section (2) of Section 68 of the said Bengal Finance (Sales Tax) Act, 1941 the small scale industries who were given exemption from payment of turnover tax and sales tax during the tax holidays period have now been deprived of the said benefit of exemption during the said tax holidays period and in the present case, for the period of 3 years by the period of 3 years by the said Amendment Act, 1987.

5. Stating all the above facts in details, the writ petitioners have challenged the said Amendment Act, 1987 (West Bengal Act V of 1987) as ultra vires to the Constitution inasmuch as the deletion of exemption originally granted to small scale units by a Statute is unreasonable, ambiguous and beyond the principles of

taxing Statute.

6. Elaborating all those points in detail, the petitioners have moved this writ petition on the ground that since the petitioners are not liable to pay sales tax and particularly turnover tax as per provisions laid down in Section 4AAA(2) (d) of the West Bengal Sales Tax Act, the respondents cannot withhold declaration form for any alleged non-payment of turnover tax, on the further ground that so long as Section 6B(2) (e) of the Bengal Finance (Sales Tax) Act, 1941 was in force, that is, prior to enactment of West Bengal Taxation Laws (Amendment) Act, 1987 providing for relief to the petitioners from payment of turnover tax, the purported demand of turnover tax from the petitioners by the Commercial Tax Officer during the concerned period is illegal, arbitrary and against the provisions of Sales Tax Laws. A case is made out that refusal to issue declaration forms and cancellation of the same by the Commercial Tax Officer is illegal, arbitrary and against the provisions of Articles 14 and 19(1) (g) of the Constitution. It is argued with force that even if it may be contended that the amendment of Section 6B(2) (e) of the Bengal Finance (Sales Tax) Act, 1941 is valid and intra vires, the industries set up prior to the date of said amendment should have been given exemption and should be kept outside the purview of the said West Bengal Taxation Laws (Amendment) Act, 1987 and on the grounds as stated hereinbefore, the petitioners have prayed for the reliefs indicated above.

7. The writ petition is seriously contested by the State respondents and Tax Authorities by filing a comprehensive affidavit-in-opposition. It is disclosed therein that the application for eligibility certificate was filed by the writ petitioners on 3.1.1987. Hearing was fixed on 4.3.1987 when there was no response from the petitioners. The application was accordingly adjourned to 2.5.1987 and the petitioners were informed thereto. Thereafter, the matter was adjourned for 5 times and the petitioners did not pursue the matter seriously for obtaining the eligibility certificate for such a good length of time. It has further been stated that even if the eligibility certificate has been granted to the petitioners, the petitioners are not entitled to claim exemption from payment of turnover tax which is not at all covered by Section 4AA of the West Bengal Sales Tax Act, 1954 under which the said certificate is to be granted to newly set up small scale industries unit on the strength whereof a dealer could enjoy the benefit of tax exemption on sales of noticed commodities. It is further stated that turnover tax came to be levied u/s 4AAA of the Act with effect from 1.4.1979 and the manner of computation of liability of turnover tax has also been set out herein. The petitioners filed an affidavit in reply reiterating the same points and stand as taken in the writ petition.

8. The attention of this Court has been drawn to several reported decision. It is argued with force that with regard to the challenge as to the Amendment Act, 1987, it signifies that such an amendment as indicated is absolutely ultra vires, to the Constitution. The delegation of power does not warrant legislation in the manner as it has been done in the instant case. It is also submitted by the

learned Advocates for the petitioners by referring to the case reported in 1987 (64) S.T.C. 304 (Shri Bakul Oil industries vs. State of Gujarat) that in order to encourage development of industries in rural areas the Government of Gujarat issued a notification on April 29, 1970 exempting wholly or partly certain specified classes of sales and purchases from payment of sales/purchase tax, as the case may be, but there is no vested right to the tax and the doctrine of promissory estoppel does not apply with full force. There is reference to another decision reported in 1987 (20) S.T.C. 35 (Krishna Laminating Industries vs. The State of West Bengal & Ors.) wherein Suhas Chandra Sen, J. decided that Rule 3(66) may not grant a general exemption but Section 6B(2) (e) has exempted all sales that are prescribed by the Rules and this is the general position, but the proviso to Section 5 (2) (a) (vi) lays down certain conditions and those are special conditions that will have to be fulfilled to obtain exemption in the special cases mentioned in the proviso. It was further made clear that bearing in mind the special exemptions in the proviso to Section 5 (2) (a) (vi) it is quite clear that the general exemption spoken of in Section 6B(2)(e) can only be of those exemption which do not come within the ambit of the proviso. It was brought to the notice of this Court also that as to the principle propagated in 1984 (55) S.T.C. (B. P. Automobiles vs. State of Karnataka) wherein Legislative Powers-Sales Tax-Additional Tax-Exemption-Levy of Additional Tax by Section 6B(2), Karnataka Act were considered, it was concluded that the clear and unambiguous language of Section 6B(2) of the said Act and the unescapable effect of it could not be whittled down and made to yield to the doubtful and supposed intention of Section 6B(1). Further Section 5(1) of the Act was the charging provision and the exemption provided u/s 5(3) (a) and (b) to the levy u/s 5(1) and Section 6 of the Act, were, by virtue of Section 6B(2) of the Act also attracted to the levy u/s 69(1). Similarly, in the decision reported in 1985 (58) S.T.C. 13 (Mehamed Abdul Khader Firm vs. State of Tamil Nadu) dealing with Tamil Nadu Additional Sales Tax (Amendment) Act, 1976 and Section 2 thereto, it was found that the levy of additional sales tax is violative of Article 301 of the Constitution and the provisions of Section 2(2) containing a prohibition against collection of the additional tax are not confiscatory in nature and did not impose unreasonable restrictions on the dealer's right to carry on business and do not offend Article 19 of the Constitution. Attention of the Court has also been drawn to the decisions reported in 1988 (69) S.T.C. 44 (Das Agencies and Anr. vs. State of Kerala), 1987 (66) S.T.C. 51 (Kottagudem Beer Wines vs. Govt. of Andhra Pradesh), 1974 (34) S.T.C. 73. (S. Kodar vs. State of Kerala). All these cases have considered the legislative powers of surcharge, levy of charges under various State Acts and the principle have been discussed in their proper perspective.

9. Mr. Bose, learned Advocate appearing for the respondents has argued with force that in the case of Shree Laxmi Distributing Agency Pvt. Ltd. Vs. State of U.P. and Others, it was held by the Hon'ble Supreme Court that the power to impose a tax is undoubtedly a legislative power. That power can be exercised by

the Legislature directly or subject to certain conditions. The Legislature may delegate the power to some other authority but the exercise of that power whether of the Legislature or by its delegate is an exercise over a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no Court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact.

10. After hearing a very lengthy argument advanced by the learned Advocates for both the sides and particularly looking to the decision reported in *Atiabari Tea Co., Ltd. Vs. The State of Assam and Others*, as to the formation of various taxation laws and in particular looking through the decision reported in 1984 (56) S.T.C. 214 (*Khajan Chand and Vidyawanti Debi Jain vs. State of Jammu & Kashmir & Ors.*) this Court finds that the challenge to the amendment of 1987 as made out by the petitioners is fallacious. The powers delegated to the authorities are warranted in law and the amendment of Section 4AAA cannot be challenged in the manner as sought to be done in the instant case. The writ petitioners are not entitled to the declaration as to the amendment Act being ultra vires as asked for in the present case. This Court does not find any merit as to that contention and the relief by way of declaration as prayed for. With regard to the petitioners' prayer for eligibility certificate, it appears to the Court that the matter has not been finally decided and a proper order has not been by the respondent's in accordance with law. For the fitness of things, the prayer of the petitioners for eligibility certificate has to be considered by the respondents authorities by giving an opportunity of hearing to the petitioners and by passing a speaking and reasoned order.

11. Considering all these aspects of the matter, this Court finds that the petitioners cannot escape from the payment of sales and turnover tax in the manner as canvassed in the writ petition, but at the same time, it is found that in the fitness of things, the appropriate respondent authorities should be directed to consider the representation of the petitioners for granting the eligibility certificate within the months from the date of the communication of this order, and they should dispose of the matter, after giving an opportunity of personal hearing to the petitioners and by passing a reasoned and speaking order.

12. The writ petition is thus disposed of without costs, with the observations as made and directions as given above.