(1996) 08 KAR CK 0051

In the Karnataka High Court

Case No : Writ Petition No. 7598-7612 of 1996

J.S. Ramesh and Others — APPELLANT

Vs

State of Karnataka — RESPONDENT

Date of Decision : 23-08-1996

Acts Referred:

Constitution of India, 1950 — Article 255, 304 (b)
Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sales Therein Act, 1979 — Section 2 (5)
Motor Vehicles Act, 1988 — Section 4 E

Citation : (1997) ILR (Kar) 13

Hon'ble Judges : G.C. Bharuka, J

Bench : Single Bench

Advocate : C.V. Kumar, for the Appellant; R.I.D.''sa, Additional G.A., for the Respondent

Final Decision : Allowed

Judgement

G.C. Baruka, J.

1.The writ petitioners in these cases are all individuals. They claimed to have purchased motor vehicles from outside the State of Karnataka for their personal use and have accordingly caused entry of such vehicles into various ''local areas'' as defined under Clause (5) of Section 2 of the Karnataka Tax on Entry of Goods Act, 1979 (in short ''Act'' only). They are aggrieved by the action of the respondents refusing to register their vehicles under the provisions of Motor Vehicles Act, 1988 on the ground that the same is not permissible in view of Section 4E of the Act till taxes on entry of the said vehicles are paid.

2. According to the averments made in the Writ Petitions the petitioners do not fall in the category of ''dealer'' as defined under Clause (4) of Section 2 of the Act and therefore keeping in view the law laid down by this Court in the case of Arun Manikchand Shah and others Vs. State of Karnataka and others, , they are not liable to pay any tax on the entry of their vehicles and as such refusal to

register their vehicles is arbitrary and illegal.

3. In the case of Arun Manikchand Shah (supra), keeping in view the exemption clause contained u/s 28 of the Act, I held that (para 15 & 16):-

"15. Coming to the present case, neither the scheme under the Act nor the phraseology of Section 28 suggests any casus omissus. The suggestion of digging out a casus omissus and remedying the same by construction seems to be an ingenuity conceived by the respondents to widen their net of taxation under the executive fiat to cover the cases of entry of motor vehicles even where the same has been caused by non-dealers in goods. In my opinion, such a course is not only impermissible but also unwarranted. It is well settled that a subject cannot be burdened with tax unless the Legislature has unambiguously expressed itself to that effect.

16. Section 28 of the Act imperatively declares that "nothing in this Act shall apply to persons who are not dealers in goods". This exemption strikes at the very application of the Act to persons who are not dealers in goods as explained above. The language employed in the Section admits of no ambiguity. The Legislature has declared its intention in plain, and simple language and its intention must prevail. That being so, the exemption envisaged u/s 28 will apply to the provisions contained in Chapter II-A as well which are very much part of the Act."

4. Further, so far as the concept of ''dealer'' for the purposes of the Act is concerned, in Para 11 of the Judgment it was held that-

"In the present Act, the dealer as defined under Clause (4) of the Section 2 inter alia signifies a person who in the course of business brings any goods in any local area. Therefore, for being a dealer under the provisions of the Act, a person need not be necessarily dealing in the goods which has been caused to be brought into the local area. For being a dealer under the Act, it will suffice if he brings the said goods in the course of any business conducted by him, because the expression ''business'' includes any transaction in connection with or incidental or ancillary to trade, commerce, etc., For example, if a person carrying on transport business, though in common parlance may not be a dealer in motor vehicles in the sense of selling and purchasing motor vehicles, imports a vehicle into the State for the purpose of using the same for carrying on his business of transportation of goods or passengers, he can well be said to be a dealer in goods, namely motor vehicles, for the purpose of the present Act. Similarly, if a company for concern dealing in immovable properties or civil contracts imports any motor vehicle of any nature in any local are, in connection with its business or adventure, namely for use of its officer/personnel or for carrying any material or goods, will also fall within the four corners of the word ''dealer'' as used in the Act.-The instances may be many but need not be elaborated any further."

5. The correctness of the law laid down in the case of ARUN MANIKCHAND SHAH (supra) was not impugned by the State in appeal or otherwise and thus it

attained finality. But subsequently its effect was sought to be nullified by deleting the exempting Section 28 of the Act itself retrospectively with effect from 1.4.1995 by Section 4 of the Karnataka Taxation (Amendment) Act, 1996, (Act 1 of 1996) which reads as under-

" Section 28 of the Karnataka Tax on Entry of Goods Act, 1979 (Karnataka Act 27 of 1979), shall be deemed to have been omitted with effect from the first day of April 1995."

6. Admittedly, neither previous sanction of the President was obtained before introducing the Amendment Bill to the above effect in the Legislature of the State as required under proviso to Article 304(b) of the Constitution of India nor the Act has been assented to by the President even subsequently, if any, as provided under Article 255 of the Constitution of India.

7. In the case of State of Karnataka and Another Vs. Hansa Corporation, , the Supreme Court while considering the Constitutional validity of the Act, has inter alia held that "to the extent the impugned tax is levied on the entry of goods in a local area it cannot be gainsaid that its immediate impact would be on movement of goods and the measure would fall within the inhibition of the Article 301." But since it was found as a matter of fact that the President had accorded his sanction to the Act impugned therein, therefore it was held that the requirement of proviso to Article 304(b)/ 255 of the Constitution of India had been satisfied.

8. A similar challenge was made before this Court to certain amendments affected by Karnataka Act 10 and 12/81, in the case of JYOTHI HOME INDUSTRIES AND ORS. v. STATE OF KARNATAKA AND ORS 1984 (1) KLJ 394., inter alia on the ground that the said provisions were void for want of Presidential sanction in terms of proviso to Article 304(b) of the Constitution of India. The Division Bench of this Court speaking through M.N. Venkatachalaiah, J., (as he then was), on thorough examination of the constitutional requirements in this regard had to hold that some of the amendments have resulted in imposition of tax in an area other than those not originally defined and on a number of new and different items and therefore it would constitute additional restrictions within the special meaning of Article 301 of the Constitution of India, necessitating fulfillment of requirement of prior sanction or subsequent assent as provided under Article 304(b)/255 of the Constitution of India.

9. After reaching the said conclusion, in Para 79 of the judgment it was declared that :-

"(a) that the amendment to Section 2(5) of the Principal Act brought about by Section 7(1)(a) of the Amendment Act 13 of 1982 and the introduction of 13 new items to the schedule to the Principal Act by Section 7 (15) of the Amending Act 13 of 1982 imposing additional restriction on the freedom conferred by Article 301 of the Constitution.

(b) that those additional restrictions are reasonable and in public interest;

(c) that the legislature measure imposing the additional restrictions viz. Section 7 (1) (A) of the Amending Act 13 of the 1982 required compliance with proviso to Article 304(b) or Article 255 of the Constitution; and

(d) that there having been no such compliance with Article 304 (b) of the Constitution and the provisions of Section 7(1)(A) and 7(15) of the Amending Act 13 of 1982 are enforceable until such compliance is shown."

10. In the present case as well, it cannot be disputed that the impugned deletion of Section 28 of the Act results in subjecting the whole class of persons, namely those falling in the category of non-dealers within the meaning of the Act to tax on import of motor vehicles into local areas with effect from 1.4.1995. Therefore it has to be held that this amounts to additional restriction within the special meaning of Article 301 of the Constitution of India and as such the impugned provision cannot be enforced except on being shown that President''s previous sanction to the amendment bill or assent to the Act had been obtained. Since in the present case admittedly, the said constitutional requirement was not complied with, therefore, it is declared that the deletion of Section 28 of the Act by Karnataka Act 1 of 1996 is not enforceable. Consequently, it follows that the rights and obligations of the petitioners will still be governed by the law as declared by this Court in the case of ARUN MANIKCHAND SHAH (supra), wherein in penultimate paragraph 26 thereof it has been held that :-

"26. Writ petitions are accordingly disposed of with a declaration that only such petitioners will be liable to pay entry tax on motor vehicles brought by them into the respective local areas who are dealers within the meaning of Clause (4) of Section 2 of the present Act. Consequently persons not falling in that category will be exempt from payment of entry tax in terms of Section 28 of the Act."

11. These Writ Petitions are accordingly allowed to the said extent. Anyhow there will be no order as to costs.

