
(1990) 08 KAR CK 0067
In the Karnataka High Court
Case No : Writ Petition No. 15495 of 1981

Kamat and Co. and others

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 27-08-1990

Acts Referred:

Andhra Pradesh General Sales Tax Act, 1957 — Section 9 (1)
Central Sales Tax Act, 1956 — Section 8, 8 (5)
Constitution of India, 1950 — Article 14, 301

Citation : (1991) 80 STC 226

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K.B. Navadgi, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; H.L. Dattu, High Court Government Pleader, for the Respondent

Judgement

M.P. Chandrakantharaj Urs, J.—In this petition, several petitioners numbering eighteen, have questioned the legality and correctness of the notification issued by the first respondent-State of Karnataka, in exercise of its power u/s 8(5) of the Central Sales Tax Act, 1956 (hereinafter referred to as "the Act").

2. The petitioners have averred that they are all registered dealers under the Karnataka Sales Tax Act, 1957; that they purchase arecanut from local registered dealers by paying the sales tax on the first sale in the State and thereafter sell the same outside the State in the course of inter-State trade and commerce. Therefore, their sales in the course of inter-State trade and commerce is subject to tax under the Central Sales Tax Act at a specified rate. But, by virtue of the notification impugned as at annexure A to the petition, the Central Arecanut Marketing and Processing Co-operative Limited, Mangalore, are totally exempted from payment of Central sales tax subject to the only condition that their purchases or sales made by them within the State, have already been subjected to sales tax under the State's Sales Tax Act. Therefore, the petitioners contend that it not only impedes the inter-State sales effected by the petitioners, but also the notification is violative of article 14, inasmuch as it discriminates the

petitioners who are also registered dealers in arecanut as against the second respondent, Central Arecanut Marketing and Processing Co-operative Limited (hereinafter referred to as "CAMPCOL").

3. The petition was filed in the year 1981. Unfortunately, even at this point of time, no statement of objections has been filed by the first respondent-State. However, the second respondent has filed its statement of objections on 11th October, 1981. After emergent notice regarding rule was issued on 3rd August, 1981, the matter again came up the following month for statement of objections. There after wards case was adjourned at the request of the Government Pleader several times. Despite several opportunities given, no statement of objections was filed by the first respondent as already noticed.

4. On 15th February, 1982, one of us who heard this, referred the matter for decision by Division Bench having regard to important question of law raised. Now the matter has come up for disposal before the Division Bench nearly seven years after it was referred.

5. Before us, Mr. K. Srinivasan, learned counsel, contended that the State Government lacked competence to issue a notification under sub-section (5) of section 8 of the Act, inter alia, on the ground that unless public interest was to be subserved, the State Government did not derive power to issue the notification and in any event, it lacked competence to issue the notification for the benefit of a dealer. Thrust of the argument was that the power exercised should be so exercised as to include any particular item of goods, but cannot be exercised in order to pick and choose a dealer. He also urged that the notification was discriminatory and violative of article 14 as well as article 301.

6. We do not think that we should go into the question as to whether sub-section (5) of section 8 of the Act has to be so read as to confine the limit of power of the State Government to exclude dealer from the purview of exemption or reduction in the rate of tax, as the petition may be disposed of on the other grounds urged in support of the illegality and unconstitutionality of the notification. Therefore, we do not propose to refer to the argument and the citations made in support of construction of sub-section (5) having regard to the words occurring therein such as "any dealer" in contrast with any such class of goods occurring later in the same sub-section. We may do that in another appropriate case or cases.

7. Mr. Srinivasan, learned counsel, relied upon two decisions of the Supreme Court to drive home the point that the notification was violative of article 14 and impeded inter-State trade and commerce, inasmuch as the notification was in violation of article 301 read with article 304(a) of the Constitution.

8. In the case of Kalyani Stores Vs. The State of Orissa and Others, , notification issued u/s 27 of the Bihar and Orissa Excise Act, 1915, fell for consideration. One of the questions which arose for consideration was whether restriction imposed under article 304 was in public interest. It was observed therein that without

entering upon exhaustive categorisation of what might be deemed "required in the public interest", it might be said that restrictions which might validly be imposed under article 304(b) were those which sought to protect public health, safety, morals and property within the territory. Exercise of the power under article 304(a) could only be effective if the tax or duty imposed on goods imported from other States and the tax or duty imposed on similar goods manufactured or produced in that State were such that there was no discrimination against imported goods. As no foreign liquor was produced or manufactured in the State of Orissa, the power to legislate given by article 304 was not available and the restriction which was declared on the freedom of trade, commerce and intercourse by article 304 of the Constitution remained unfettered.

9. He, therefore, submitted that restriction imposed on the trade by the petitioners in the case of inter-State trade and commerce by providing exemption for the transactions of the second respondent in identical situation was an impediment which could not be said to be in public interest because it only enabled the buyer outside the State to buy it from a single outlet within the State shutting out the other outlets available like that of the petitioners. He further submitted that it only served outside buyer. Volume of trade was reduced and, therefore, accrual of revenue which was exempt from tax also got reduced thereby causing loss of public revenue which could not be considered to be public interest.

10. There is some force in this submission inasmuch as when a single outlet is favoured for channelising inter-State trade in a particular commodity as in this case, arecanut, the other outlets automatically get discouraged or one may say, even shut out to the extent the demand of the traders outside the State is met by the single outlet which has been favoured by the exemption granted. Therefore, if the demand is met wholly from out of the supplies effected by the second respondent in the course of inter-State trade and commerce, then the State derived no income at all on those inter-State sales. Thus, there was loss of public revenue is not in doubt. It is also not in doubt that the petitioners are allowed to compete with an unequal though they are equally placed as traders and registered dealers under the Act. With the result, their trade must be deemed to have suffered and therefore, the petitioners are discriminated in violation of article 14.

11. Mr. Dattu, learned Government Pleader for the State, has placed reliance on the counter-affidavit or objection statement of second respondent in regard to constitution and functions as a unit in the co-operative sector supported by two State Governments and substantially financed by the State Governments having nearly 12,000 members from all the four classes which, according to him, included all the arecanut growers in the two States. Therefore, thrust of the argument was that the second respondent was a class by itself and as such, if exemption is granted to it, it could not amount to discrimination.

12. But no material has been placed before us to substantiate that the majority

of growers of the two States are members of the second respondent. On the other hand, certain averments made in the statement of objections of second respondent are indicative that it deals not only with its own members for purchase of arecanut in the State paying tax under the State Act, but also buys from the other growers of the State. In other words in order to fulfil the demand on it as trader intra-State or inter-State, it makes purchaser from both its members as well as others. It is, therefore, implicit in that admission that all growers in the State are not members, but only some growers are members, though we have no material to emphatically ascertain as to whether some such growers were members constituting majority of the growers. Therefore, we must reject the argument advanced by the first respondent that the co-operative unit falls into a class by itself on account of the Government investments or on the ground that majority of the growers are members of that unit. Like anyone else, it is also a trader in the arecanut carrying on trade and therefore, it cannot fall into a separate class as arecanut trader.

13. In regard to public interest served, Mr. Dattu contended that it benefited the majority of the growers and, therefore, public interest to that extent was served. We have also pointed out that public interest is not served. On the other hand, public interest is affected by loss of revenue. If it is a question of promoting sales of arecanut by eliminating Central sales tax on it, then the promotion must be uniform whether it represented majority of the growers or not. Therefore, we must reject that argument that it serves public interest by conferring the benefit on the second respondent only by the impugned notification.

14. In support of discrimination, Mr. Srinivasan, learned counsel for the petitioner, placed reliance on the decision of the Supreme Court in the case of *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, . In the said case, two notifications issued by the State of Andhra Pradesh and one notification issued by the State of Karnataka, in exercise of powers conferred by section 9(1) of the Andhra Pradesh General Sales Tax Act, 1957 and section 8(5) of the Central Sales Tax Act fell for consideration. In so far as the notification of Karnataka was concerned, it was directly u/s 8(5) of the Act. We may extract the same :

"In exercise of the powers conferred by sub-section (5) of section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956), the Government of Karnataka, being satisfied that it is necessary so to do in the public interest, hereby reduces with immediate effect the rate of tax payable under the said Act on the sale of cement made in the course of inter-State trade or commerce from 15 per cent to 2 per cent."

It is obvious, by the notification issued by the Karnataka State Government, that the benefit of reduction in tax enured to the benefit of the public. But, the Supreme Court, considering the same notification, held that it affected freedom of trade and commerce ensured under article 301 of the Constitution and as such, could not be sustained. It further ruled that if prevention of evasion of tax

was a measure in the public interest then the Parliament may make a provision for that purpose under article 302 even if the provision would impose restrictions on the inter-State trade or commerce. Variation of the rate of inter-State sales tax did affect free trade and commerce and created a local preference which was contrary to the scheme of Part XIII of the Constitution. The notification extended the benefit even to unregistered dealers and the earlier observations on that aspect of the matter were relevant Both the notifications of the Andhra Pradesh Government and also that of the State of Karnataka were, therefore, not sustained in law.

15. Mr. Dattu, learned Government Pleader, however, pointed out that the observations of the Supreme Court in *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, was ruled in a subsequent decision to have been confined to the facts of that case and was directly in opposition to the ruling of the Supreme Court in *Video Electronics Pvt. Ltd. v. State of Punjab*. Our attention was drawn to [1990] 77 STC 160(SC) (paragraphs 31 and 32 as reported in the All India Reporter). Indeed in the later decision of the Supreme Court, the Supreme Court has recognised the right of the States to promote the regional economic growth by offering incentives under various economic policies including exemptions or incentives under the Sales Tax Act as not impeding or offending the guarantee of free inter-State trade and commerce under article 301 of the Constitution. One cannot have any quarrel with that decision. It is in that context that any observation to the contrary in *Indian Cement and Others Vs. State of Andhra Pradesh and Others*, , should be construed as observations made on the facts of that case. But we are not, in this case, concerned with the incentives offered for the economic growth of any particular region. We are concerned with the choosing of a particular outlet in arecanut as a preferred outlet as against the rival outlets which exist in the State at the same time. Therefore, on facts of this case, the ruling of the Supreme Court in *Video Electronics Pvt. Ltd.* , is distinguishable. We, therefore, reject the contentions advanced on behalf of the State and hold that the notification impugned is violative of article 14 and certainly not in public interest.

16. Mr. Dattu, the learned Government Pleader, pointed out that 1977 notification had since been superseded by 1984 notification which extended the benefit to all and therefore, striking down 1977 notification would be academic. It may appear to be so. But it is our duty to point out the defects in the impugned notification so that in future when power is exercised by the State it is in conformity with the judicial decision as such power is exercised recurrently as section 8(5) of the Act is operative.

In the result, writ petition is allowed. The impugned notification is quashed.

Rule issued is made absolute.

No order as to costs.

17. Writ petition allowed.