

(1994) 08 KAR CK 0016

In the Karnataka High Court

Case No : W.A. No"s. 1628 to 1630 and 1712 of 1994

Karnataka Handloom Development Corporation Ltd.

APPELLANT

Vs

Addl. Deputy Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 12-08-1994

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22 (3A)

Citation : (1994) ILR (Kar) 2697

Hon'ble Judges : S.B. Majmudar, C.J.; Tirath S. Thakur, J

Bench : Division Bench

Advocate : K.S. Ramabhadran, for the Appellant; H.G. Ramesh, Government Advocate, for the Respondent

Judgement

S.B. Majmudar, C.J.—As common Question arises in these Writ Appeals they are disposed of by this Common Order.

2. The Writ petitioners had filed Writ Petitions in this Court under Article 226 of the Constitution of India making a grievance that when their second appeals are pending before the Karnataka Sales Tax Appellate Tribunal, the Tribunal having no powers to grant stay, their appeals have almost become infructuous. In the Writ Petitions it was contended that the provision of Section 22(3-A) of the Karnataka Sales Tax Act, are arbitrary and violative of Article 15 of the Constitution. The said provision lays down that notwithstanding that an appeal has been preferred under Sub-section (1), the payment of tax or penalty or any other amount, payable in accordance with any other order passed by the Deputy Commissioner or Joint Commissioner u/s 20 shall not, pending disposal of the appeal, be stayed by the Appellate Tribunal.

3. The petitioners have filed second appeals before the Tribunal being aggrieved by the orders passed by the first appellate authority u/s 20. Therefore as per the aforesaid provisions the Tribunal will have no jurisdiction to grant any stay of the recovery of the amount in dispute. They therefore contend that this provision should be declared as ultra vires of Article 14 of the Constitution. Now there is no

dispute between the parties that the vires of the provisions were examined by a Division Bench of this Court and the Division Bench has upheld the said provision by its Judgment in Commercial Tax Officer, XII Circle, Bangalore and others Vs. Swathi Traders, The learned single Judge therefore following the said Decision has dismissed the Writ Petitions and that is how these Writ Appeals are filed.

4. We have heard the learned Counsel for the appellants as well as the learned Standing Counsel for respondent authorities. Now it is no doubt true that the Division Bench of this Court has upheld the provision aforesaid by which Tribunal's power to grant stay has been taken away in appeals against the orders passed u/s 20 by the lower authorities. However, a SLP has been filed against the said Decision of this Court, in SLP No. 3344 of 1992 and the SLP is pending consideration of the Supreme Court. It is also true that in SLP No. 3344/92 an interim order has been passed by the Supreme Court on certain terms. Under these circumstances, it is submitted by learned Counsel for the appellants that this Court on earlier occasion under such circumstances had granted appropriate interim relief to the concerned petitioners pending the disposal of their appeals before the Tribunal, as the Tribunal has no jurisdiction to grant such relief. In that connection our attention is invited to a Decision of a Division Bench of this Court in which one of us (the Chief Justice) was a party, being Writ Appeal No. 3169/1993 decided on 10-11-1993 Super Construction v. ACCT. Reliance is also placed on the Decision of D.K. TRIVEDI & SONS AND ORS. ETC. v. STATE OF GUJARAT AND ORS. ETC AIR 1986 SC 1323 wherein the Supreme Court has held that when the Constitutional validity of Mines and Minerals (Regulation & Development) Act, was upheld by the High Court but as the Appeal against that Decision was pending before the Supreme Court, the High Court should not have dismissed subsequent Writ Petitions filed in the High Court challenging the very same provisions. At page 1362 the following observations are found in this connection at para-83 of the Report:-

"83. Civil Appeals Nos. 1525 and 1526 of 1982 are directed against the order of the Gujarat High Court dismissing the writ petitions filed by the Appellants challenging the constitutionality of Section 15 of the Mines and Minerals (Regulation and Development) Act, 1957, and the validity of Notification No. GU-81/75/MCR-2181/(168)-4536-CHH dated June 18, 1981, and directing the Appellants to approach the Supreme Court as similar matters were pending there. In our opinion, the course adopted by the High Court was not correct. If the High Court thought that the point raised by the Appellants was the same as was pending in the Court, it ought to have stayed the hearing of the writ petitions until this Court disposed of the other matters. As we have, however, held Section 15 and the amendments made by the said Notification dated June 18, 1981, to be valid and constitutional, both these appeals are, therefore, dismissed."

Learned Counsel for the revenue submitted that no fault can be found with the Decision of the learned Judge dismissing the Writ Petitions as the only challenge

to the aforesaid provisions of the Act, was already repelled by the Decision of the Division Bench of this Court and only because SLP is pending against the said Decision it could not be said that the High Court Judgment was rendered inoperative and therefore the learned single Judge cannot be said to have committed any error in dismissing the Writ Petitions. He also submitted that in such a case even assuming that Special Leave is granted and ultimately the Appeal is allowed by the Supreme Court all that would happen is that the concerned appellants before the Tribunal would get an opportunity to file stay applications if the appeals are pending. Therefore, it is not necessary to keep these Writ Petitions pending awaiting the Decision of the Supreme Court on the Constitutional validity of the impugned provision. He also submitted that the appellants will not put to great hardship if stay is not granted pending their appeals and this itself is not a valid consideration for treating their appeals to have become infructuous.

5. Having given our anxious consideration to these rival contentions, we find that as the provision about interim relief in such appeals pending before the Tribunal is not available, it could not be said that the petitioners cannot invoke jurisdiction of this High Court under Article 226 of the Constitution in appropriate cases. If the Revenue is alleged to be recovering the tax which according to the petitioners amounts to palpably wrong action or action without jurisdiction in appropriate cases this Court can certainly interpose and can pass appropriate interim orders against the recovery of the tax from the concerned petitioners by putting the petitioners to appropriate terms, of course pending the decision of their appeals before the Tribunal. That exercise of power under Article 226 of the Constitution naturally will have nothing to do with the absence of such power with the Tribunal because of the impugned provision. It is true that the vires of the impugned provisions have been upheld by the Decision of the Division Bench, but as the SLP against the Decision is pending before the Supreme Court and there can be no doubt that in appropriate cases even the Writ Petition could be kept pending as held by the Supreme Court in the aforesaid case AIR 1986 S.C. 1323 But on the peculiar circumstances of this case, in our view, no useful purpose would be served by setting aside the order of the learned single Judge dismissing the Writ Petition and keeping it pending on the file of this Court awaiting the Decision of the Supreme Court in the Special Leave Petition. The reason is obvious. If the SLP ultimately succeeds and the Supreme Court holds that the Tribunal had power to grant interim relief it is always open to the concerned parties - appellants on the basis of the said Decision of the Supreme Court to apply to the Tribunal in pending appeals, if any, for appropriate interim reliefs. If on the other hand the SLP fails and the Decision of the High Court is upheld then there would be no occasion for the concerned petitioners to make any grievance on this aspect and to claim any such relief in such pending Petition. Therefore, in either case no useful purpose could be served by keeping these Petitions pending only because SLP is pending against the Decision of the Division Bench.

6. However, this is not the end of matter. When the Tribunal has no power to grant stay in the pending appeals, if the petitioners make out appropriate case for grant of interim relief, this Court under Article 226 of the Constitution can certainly consider such a request and pass appropriate orders. Therefore, even while disposing of the Writ Petitions the learned single Judge could have also considered granting of appropriate interim relief pending appeals before the Tribunal, while exercising jurisdiction under Article 226 of the Constitution. This would not be on the basis of filling up the lacuna about interim relief which otherwise could have been granted by the Tribunal, but on the ground that it would be unjust for the revenue to recover the tax pending adjudication by the final Court of facts, namely the Tribunal, if at all it is prima facie shown to be unjust and illegal on the part of the revenue to do so. As this has not been done we deem it to fit to consider that aspect of the matter in the present Appeals. So far as W.A.Nos. 1628 to 1630/1994 are concerned the appellant is a Government concern which has felt aggrieved by the order of the appellate Court u/s 20 of the Act, by which its turnover has been according to the appellant arbitrarily enlarged by treating the Government subsidy available to the concerned appellant as part of the sale consideration charged by it. We are not concerned with the merits of this controversy. We are informed that pending the appeal before the first appellate authority 40% of the disputed tax was paid in cash and Bank guarantee for 60% has already been furnished by the appellant concerned and which is available to the respondents for being encashed. On the peculiar facts and circumstances of this case, without expressing anything on the merits of the controversy between the parties, in our view, no case is made out for our interference under Article 226 of the Constitution by way of granting any further interim relief to the appellant pending its appeal before the Tribunal. The Bank guarantee for 60% is already furnished by them; all that would happen is if it is encashed by the respondent pending the appeal and if the appeal ultimately succeeds before the Tribunal the appellants will be refunded the amount with interest as permissible according to law and if the appellants feel that the refunded amount with interest, if any, does not meet his claim it will be open to him to agitate the claim in appropriate proceedings. We keep that question open.

7. Accordingly, Writ Appeals 1628 to 1630 of 1994 stand disposed of.

8. In view of the facts and circumstances of the case, we direct the Tribunal to decide the pending appeals of the appellant-Corporation at the earliest and preferably within a period of three months from today. This order is passed because the appellant-Corporation is a State owned Corporation and the relief which it claims will ultimately go to a limb of the State as against the other Department of the State.

9. So far as Writ Appeal No. 1712/1994 is concerned, the order of penalty has been imposed u/s 28A of the Sales Tax Act against the appellant on the ground that he had brought the machinery within the limits of the State and there were no documents to support the said consignment. These are questions of facts

which the Tribunal is going to examine in the appeals. As the appellant's appeal is pending before the first appellate authority, on the facts and circumstances of this case, we find no case is made out for granting any interim relief pending the hearing of the appeal before the Tribunal. It is needless to say that if appeal is ultimately allowed and if the appellant is held entitled to refund of the amount or any part thereof, respondent will have to refund the amount with interest, if any, payable to him in accordance with law.

10. These Appeals are accordingly disposed of in the light of the aforesaid observations made herein.