(1982) 02 KAR CK 0001

In the Karnataka High Court

Case No : Writ Petition No''s. 9010, 11100, 11101, 13369, 13729, 14061, 14071, 14171, 14530, 14787, 14909, 14910, 14924, 15678 to 15680, 16700, 17028, 17479, 17615, to 17618, 18656, 19128, 20858, 20910, 20911, 21042, 21110, 21114, 21139, 21252, 21253, 21292, 21644,

Krishna and Company APPELLANT

Vs

State of Karnataka and Another RESPONDENT

Date of Decision : 16-02-1982

Acts Referred:
Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 8 A (1), 8 A (1) (a), 8 A (1) (b), 8 A (3A)

Citation : (1983) 54 STC 263

Hon'ble Judges : M.N. Venkatachaliah, J;M. Rama Jois, J

Bench : Division Bench

Advocate : S.K. Srinivasan, W.K. Joshi, J. Jeshtmal, S. Gayathrinath, Vishwanatha, S. Shettar, S.C. Thrilokchand, S.K. Kulkarni, B.V. Katageri and J.C. Chandra, for the Appellant; M.R. Achar, Government Advocate, for the Respondent

Judgement

Venkatachaliah, J.—In this batch of petitions under article 226 of the Constitution, the petitioners, who are dealers under the Karnataka Sales tax Act, 1957 (hereinafter referred to as the "Act"), challenge the constitutional validity of section 8A(3A) of the "Act" [as inserted by the Karnataka Sales Tax (Amendment) Act, 1981 (Karnataka Act No. 7 of 1981)] and the proceedings for revision, rectification or reassessment, as the case may be, initiated against them and the notices issued in this behalf by the authorities under the "Act" for the assessment periods from 1st April, 1972, to 10th July, 1981. In the case of some of the petitioners where these proceedings have been completed, the orders which the proceedings have culminated in are challenged by the petitioners concerned.

2. Section 8A(1) of the "Act" empowers the State Government to make, by

notification, exemption or reduction in the rate respecting any tax payable under the "Act" on the sale or purchase of any specified goods or class of goods at all points, in the series of sales by successive dealers, or by specified class of persons in regard to the whole or any part of their turnover.

In exercise of this power the State Government issued Notification S.O. 2048 No. FD. 283 CSL 70 dated 10th September, 1970, exempting with effect from 1st October, 1970, the tax payable u/s 6 of the "Act" on the purchases of articles of gold an silver (whether set with precious stones or not) by a manufacturer of such articles subject to the conditions stipulated in the said notification.

3. However, sub-section (3A) inserted in section 8A of the Act by the said amending Act 7 of 1981 provides that if the rate of the tax payable under the "Act" in respect of any goods or class of goods gets modified, notification, if any, issued in respect of such goods or class of goods u/s 8A(1)(a), shall, with effect from the date on which the modification of the rate of tax became effective, be deemed to be cancelled. By section 4 of Act 7 of 1981 it is provided that the said sub-section (3A) shall be deemed to have always been inserted. The rate of tax respecting the goods or class of goods covered by the notification dated 10th September, 1970, came to be modified with effect from 1st April, 1971, raising the rate of tax from 3 per cent to 3 1/2 per cent. The proceedings for revision, reassessment or rectification of impugned in these writ petitions were commenced on the ground that in view of section 8A(3A) the said notification dated 10th September, 1970, stood retrospectively cancelled with effect from 1st April, 1972, when the rate of tax was modified and that accordingly the purchase turnover relating to the goods referred to in that notification lost the exemption from and became exigible to tax from 1st April, 1972.

4. In these writ petitions, the petitioners contended that section 8A(3A) itself is not constitutionally valid and secondly, that at all events, the notification dated 10th September, 1970, granting exemption is not a notification falling u/s 8A(1)(a) - to which alone sub-section (3A) of section 8A of the "Act" is attracted - and that accordingly the proceedings impugned in the petitions which proceed on the premise that that notification attracts section 8A(3A) are without the authority of law.

5. After the petitioner were heard fully and orders reserved, the learned Government Advocate made a motion that the authorities administering the "Act" initiated the proceedings challenged in these writ petitions on an erroneous impression that the concerned notification dated 10th September, 1970, was one issued u/s 8A(1)(a) of the "Act" to which section 8A(3A) was attracted; that on a correct understanding of the matter the said notification would not fall u/s 8A(1)(a) but would fall u/s 8A(1)(b) of the "Act", and that therefore the said notification would not attract the provisions of section 8A(3A) of the "Act". He also stated that a memo on these lines would be filed.

6. Upon the above motion, the matters were directed to be posted "for being

spoken to". The learned Government Advocate has filed a memo which reads :

"Memo on behalf of respondents. - It is submitted that the petitioners have challenged the constitutional validity of section 8A(3A) of the Karnataka Sales Tax Act and also the notices issued to them.

2. The respondents submit that Notification No. FD283CSL70 dated 10th September, 1970, was issued in the exercise of the power of the State Government u/s 8A(1)(b) of the Karnataka Sales Tax Act, 1957.

3. It is further submitted that section 8A(3A) of the Act is attracted to notifications issued u/s 8A(1)(a) of the Act.

4. A true copy of the letter addressed by the Commissioner of Commercial Taxes is herewith filed.

It is prayed that the above writ petitions may be disposed of in view of the above memo and appropriate orders may be passed."

7. In view of this memo, it is not necessary for us to pronounce on the question of the constitutional validity of section 8A(3A), as the memo, in effect, concedes the second contention urged for the petitioners that Notification S.O. 2048 dated 10th September, 1970, is not one made under the and traceable to section 8A(1)(a) of the "Act". In view of this memo, the proceedings initiated against the petitioners for revision, reassessment or rectification, as the case may be, and orders, if any, already made in such proceedings cannot be allowed to stand but require to be quashed.

8. Accordingly, recording the memo filed by the learned Government Advocate, we allow these writ petitions in part and quash the impugned notices, proceedings or orders, as the case may be, impugned in these writ petitions.

9. The parties are left to bear their own costs in these petitions.

10. Sri M. R. Achar, the learned Government Advocate, is permitted to file his memo of appearance within three weeks from today.