(1997) 11 KAR CK 0050

In the Karnataka High Court

Case No : Writ Appeal No''s. 274 to 278 of 1994

Lipton India Limited and another — APPELLANT

Vs

State of Karnataka and others — RESPONDENT

Date of Decision : 21-11-1997

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 (3), 12 B (2), 8 A

Citation : (1997) 11 KAR CK 0050

Hon'ble Judges : V. Gopala Gowda, J;G.C. Bharuka, J

Bench : Division Bench

Advocate : Harish N. Salve and K.G. Raghavan, for the Appellant; S. Vijaya Shankar, Advocate-General and R.I.D''Sa, Government Advocate, for the Respondent

Judgement

G.C. Bharuka, J.—The present appellant-company had preferred writ petitions challenging the proposition notices pertaining to the months of April, May and June, 1993 (annexures H, J and K) issued u/s 12-B(2) of the Karnataka Sales Tax Act, 1957 (in short "the Act") and the proposition notice for making a regular assessment u/s 12(3) of the Act for the year 1992-93 (annexure P). The writ jurisdiction of this Court was invoked because of the reason that the petitioner had an apprehension that its claim for exemption from sales tax on the finished products, namely, "packaged blended tea" produced at its Dharwad unit may be disallowed pursuant to Commissioner''s circular dated November 27, 1993.

2. The said writ petitions were dismissed by the learned single Judge on the ground of availability of alternative remedies. But the present writ appeals were heard on merits and were dismissed by an order dated June 13, 1994 which is reported in Lipton India Limited and another Vs. State of Karnataka and others, .

3. According to the plea raised by the appellant-company before the Division Bench, it was entitled to claim exemption keeping in view the Government Order No. CI-138/SPC/90(P), dated September 27, 1990. One of the grounds which prevailed with the said Bench for dismissing the appeals was the stand taken on

behalf of the State Government that the said Government Order was not published in the official Gazette and therefore cannot partake the colour of a statutory notification u/s 8A of the Act. The said judgment of this Court was challenged in appeal before the Supreme Court in C.A. Nos. 5425 - 5429 of 1994. The Supreme Court on hearing the parties found that the said Government Order had in fact been published in the Karnataka Gazette on March 7, 1991 and the statement made to the contrary on affidavit by R. Krishna Murthy, Deputy Commissioner of Commercial Taxes (Assessment-VI), Bangalore, was false. Accordingly, the judgment of this Court was set aside with a further direction to decide the issue de novo without being in any way influenced by the above judgment. The said order of the Supreme Court is reported in M/s. Lipton India Ltd. and another Vs. State of Karnataka and others, .

4. Accordingly, the present appeals were heard de novo along with the revision petition filed by Brooke Bond Lipton India Limited v. State of Karnataka (S.T.R.P. 55 of 1995); [1998] 109 STC 265 (Kar) wherein on the identical factual settings as involved herein, we have answered the same very questions as posed before us in these writ appeal holding that the products of industrial units like the present one are entitled to exemption from sales tax under the Act.

5. Accordingly, the present writ appeals are also allowed. The clarification of the Commissioner dated November 27, 1993 (annexure R) is quashed. The appellant-company is permitted to file its objections to the proposition notices within four weeks from today whereupon the assessing authority will complete the assessments in accordance with the provisions of the Act and the law laid down by us regarding grant of exemption. No costs.

6. Writ appeals allowed.