(1990) 11 KAR CK 0052

In the Karnataka High Court

Case No : W.P. No. 4174/1988

M/s. Gopal Industries APPELLANT

Vs

Commercial Tax Officer, V Circle, Hubli and Another RESPONDENT

Date of Decision : 27-11-1990

Acts Referred:

Constitution of India, 1950 — Article 226
Karnataka Sales Tax Act, 1957 — Section 12A

Citation : (1991) 35 KarLJ 297

Hon'ble Judges : K. Shivashankar Bhat, J

Judgement

1. The petitioner is an assessee under the provisions of the Karnataka Sales Tax Act; inter alia, he deals in handmade washing soaps. By an order of assessment dated 20th October, 1986, for the assessment period 1-4-1984 to 31-3-1985 the turnover relating to handmade soaps were assessed at 4% as per the notification dated 31st March, 1984 and this notification is found at An- nexure-B to the writ petition. The turnover of handmade soaps was Rs. 9,13,793.77 paise. He had also other turnover from soap stone-powder, rice bran oil and caustic soada. If the turnover of all these goods are taken into consideration, certainly his turnover would exceed Rs. 10 lakhs. After some time, the petitioner was notified under Section 12-A of the Act by a notice dated 21st January, 1988. In the notice it was pointed out that the exemption notification was inapplicable to the petitioner because his total turn over exceeded Rs. 10 lakhs and the benefit of the notification for reduced rate of tax was attracted only to a dealer whose turnover in respect of all goods is less than 10 lakhs. Against this, the present writ petition is filed.

2. Before considering the merits of the matter, the preliminary objection raised by the Government Pleader will have to be taken note of learned Government Pleader contends that this writ petition is only against a notice issued under Section 12-A of the Act and it is open to the petitioner to show cause and persuade the authorities to drop the proceedings. Since an effective alternative remedy is available to the petitioner, it was contended by Sri Subbanna that I

should not exercise my writ jurisdiction.

3. No doubt, existence of an alternative remedy is one of the major factor while considering whether the writ jurisdiction should be exercised or not. If an effective alternative remedy is available, this Court would not interfere with the proceedings and the petitioner will be relegated to approach the said effective forum. But, in the instant case, there are two circumstances which persuaded me to reject the contention of Mr. Subbanna: (1) The Commissioner of Commercial Taxes has already expressed his view that in such a situation the turnover has to be computed with reference to the turnover of all goods and not with reference to the specified goods only. The Commissioner is the head of the department and naturally no authority will go against his view as expressed by him vide Annexure-D, dated 20-11-1985; and (2) On 23rd March, 1988, notice regarding rule was issued and the Government Pleader was directed to take notice of this writ petition. It is only after hearing the learned Government Pleader, rule was issued on 18-4-1988.

4. The question whether there is an effective remedy available is for the Court to consider at that stage and not 2 years and 10 months after the issuance of rule nisi. The very purpose of issuing notice regarding rule is to consider such matters, as this, as to whether the petitioner has alternative remedy, whether prima facie the petition has to be rejected for any other reason or whether the respondent on consideration of the matter would withdraw the notice issued to the petitioner. All preliminary issues are normally to be decided at this stage of preliminary hearing.

5. The rate of tax in respect of the turnover is reduced under Section 8-A as per the notification in question. The relevant portion of the notification states that:

"The rate of tax payable by a dealer under Section 5 of the said Act on the sale of handmade washing soaps manufactured by him to four per cent provided that the total turnover of any such dealer in a year does not exceed rupees ten lakhs."

This portion read with the previous part of the notification reduces the rate of tax to four per cent. The issue involved here is what is the concept of total turnover referred. According to the Revenue, the total turnover referred here has to be understood with reference to the entire turnover of the dealer including the turnovers of other goods and the concept is not confined to the turnover regarding handmade washing soaps. The Revenue contended that the turnover is defined under the Act on concept of entire sale and purchase transaction and it cannot be confined to a particular goods alone.

6. The definition found in the enactment is applied subject to the context and it is not rigidly applied throughout. Here the Court is concerned with a notification reducing the rate of tax. The words used in this notification will have to be understood in the background of this notification alone and the purpose sought to be achieved from this notification. The subject matter of the notification is handmade washing, soaps. The idea is to grant certain benefit to the dealers in

handmade washing soaps. The rate of tax is reduced provided the turnover is less than Rs. 10 lakhs. It is obviously a beneficial notification and will have to be liberally construed. As Mr. Indrakumar, learned counsel for the petitioner, pointed out that by virtue of the sale of a van or a vehicle, turnover exceeds Rs. 10 lakhs, the construction placed by the Revenue would deprive the dealer of the benefit of this notification. In other words, eventhough a dealer is an exclusive dealer in handmade washing soaps, by application of the interpretation read with deeming provision of the Act, his turnover will exceed Rs. 10 lakhs and the benefit of the notification will be lost to the dealer.

7. This apart, the concept of the total turnover referred in the notification will have to be necessarily understood with reference to the subject of the notification. The subject of the notification is the handmade washing soap. If so, the turnover referred in the notification also should be referable to the said handmade washing soaps. A similar contention of the Revenue was considered by a Bench of Bombay High Court in the case of Commissioner of Sales Tax v Punjab National Hotel, reported in 58 STC p. 68. The exemption notification issued under the Bombay Sales Tax Act also referred to a dealer whose turnover of sales during the year under assessment was less than Rs. 30,000/-. This was the condition imposed for the exemption and the subject of exemption pertained to sweets and sweetmeats. The Revenue contended before the Bombay High Court that the condition, confined the benefit of the exemption only to a dealer whose net total turnover of sales from all goods was less than Rs. 30,000/-. This was negatived by the Bombay High Court. The Division Bench held that the subject of the notification itself conclude the meaning of the turnover and turnover is relatable to the sales of the subject of the exemption. The principle applied by the Bench is found at page 73. "The question, however, really is whether the context in which the said expression is used in the said entry requires that a more limited meaning should be given to the said expression........"

8. By the application of this test and referring to the context in which the phrase was used the concept of turnover of sales was confined to the turnover of sales in the particular goods. Mr. Indrakumar also cited M.P. Shoe House v State of Madhya Pradesh and Others, 67 STC 427. In the said case certain exemption was granted regarding sales of footwear made of rubber or plastic. However, the notification confined the exemption to sales by a dealer "who deals exclusively in footwear made of rubber and/or plastic". Therefore, as per the language of the notification exemption was not available to a dealer who was dealing in another goods also apart from footwear made of rubber or plastic. This restriction was challenged. A Bench of the Madhya Pradesh High Court allowed the writ petition and the word "exclusively" in the notification was struck down. It was observed by the High Court that once the Government, in its discretion, decides to grant exemption to a class of dealers, even-though the dealers not falling within that class may not be able to claim exemption on the ground that it is discriminatory, the persons falling in the same class, for the benefit of whom exemption has

been granted, can certainly challenge the conditions or restrictions which may work out discrimination between dealers of the same class, and therefore deprivation of the benefit to some of the dealers who fall within that class was held to be discriminatory. Mr. Indrakumar draws support from the said decision to point out that any denial of benefit to the petitioner only, on the ground that he is also a dealer in other goods and therefore his total turnover of all goods exceeds Rs. 10 lakhs, even-though his turnover regarding handmade washing soaps manufactured by him does not exceed Rs. 10 lakhs, will be discriminatory. The purpose of the notification is obvious that the State intended to grant certain benefits to those who manufacture the handmade washing soaps and sell them; therefore such a benefit will have to be extended to all concerned, the outer-limit being the total turnover in that goods being Rs. 10 lakhs.

9. In these circumstances, I am of the view that the action initiated against the petitioner by issuing the notice under Section 12-A of the Act will have to be set at naught. Consequently, the impugned notice is set aside. Writ petition is allowed.

