

(2004) 03 KAR CK 0021

In the Karnataka High Court

Case No : Writ Petition No"s. 7935 of 2002 and 27474 of 2003

Mysore Coffee Curing Works Ltd.

APPELLANT

Vs

State of Karnataka and Another

RESPONDENT

Date of Decision : 25-03-2004

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 8 A, 8 A (1)

Citation : (2004) 3 KCCR 240 SN : (2008) 11 VST 206

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : Murthy and Kumar, for the Appellant; Anand, High Court Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Gururajan, J.—These two petitions are disposed of by this common order since the facts and law involved in these cases are same or similar.

Facts in brief are as under:

Petitioner is a public limited company. It carries on the business of procuring coffee seeds. It cures them and thereafter sells the same both locally and internationally. It filed its return of turnover for the year ended March 31,1999. The State Government issued a policy dated July 12, 2003 providing for a package of incentives and concessions in terms of annexure A. Clause 5 of the said policy provides for sales tax concession to the industrial sector. Petitioner undertook expansion/modernization of its industrial establishment in the light of the policy. Petitioner applied for a certificate seeking for concession from the Department of Industries and Commerce, annexure B is the certificate. Petitioner was under a bona fide belief that the benefit of exemption from payment of tax would be available to it. According to the petitioner, the effect of Clause 5 of the Government order would be that the concession of exemption from payment of tax would not be limited only to sales tax but it would be applicable to all taxes

payable by the petitioner under the Act. Petitioner claims exemption under the return. The assessing authority ruled that the petitioner is entitled for concession from sales tax. He further ruled that the petitioner would be liable to pay purchase tax on all purchases of raw coffee seeds made by the petitioner. Assessment order is filed as annexure C. An unsuccessful appeal was filed by the petitioner. Petitioner has filed annexure C, a notification dated August 28, 1993 issued u/s 8A of the Act. Petitioner with these facts seeks a writ of declaration declaring that the petitioner is entitled to sales tax concession with respect to the tax paid by the petitioner at purchase point on purchase of coffee seeds by the dealers. Petitioner also seeks a declaration holding that the petitioner is entitled for sales tax concession in terms of the Government order annexure A with respect to all taxes payable under the Act and not restricted to tax payable in respect of goods manufactured and sold.

2. Respondents have filed their statement of objections. It is stated therein that a thorough reading of the policy would show that exemption is not available on purchase tax. They say that the certificate issued by the authority would also make it clear that it refers only to sale of finished goods. They justify their action.

3. Heard Dr. Krishna, learned Counsel for the petitioner and Mr. Anand, learned High Court Government Advocate for the respondents.

Dr. Krishna invites my attention to annexure A to contend that the Government in its wisdom has chosen to introduce the industrial policy for the years 1993-98. He refers to me Clause 5 of the notification to say that it provides for sales tax exemption or sales tax deferral KST/CST. He also says that in the light of annexure A, a declaration is necessary that the tax exemption is fully applicable to purchase tax. He invites my attention to the definition of tax u/s 2(u) of the Act to contend that there is no difference between sales tax and purchase tax. He refers to me Section 5 of the Act, the charging section. According to the petitioner purchase and sale are the two ways of looking at the same transaction. He says that a judgment of the Supreme Court in *State of Orissa v. Titaghur Paper Mills Co. Ltd.* [1985] 60 STC 213 Ori : [1985] SCC 280, and a judgment of the Supreme Court in *Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another etc. etc.*, would support his submissions. He strongly relies on the judgment of the Supreme Court in *State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others*, to say that no notification could run counter to the policy of the Government. Per contra, learned Government Advocate invites my attention to the notification to say that the notification is clear with regard to exemption/deferral available only in case of a sales tax. According to him nothing more can be read into the policy thereby providing for a relief which is otherwise not available in terms of the notification. He supports the action of the State.

4. After hearing the learned Counsel I have carefully perused the material on record.

5. Material facts would reveal that the policy provided for various concessions/exemptions for the economic growth of the State. Clause 5.3 of the policy reads as under:

5.3 Sales tax concession for units making new industrial investments under expansion/diversification/modernisation.

Industrial units in specified categories set up in developed areas and the units set up in developing areas including growth centres, undertaking new industrial investments, for expansion/diversification/modernisation shall be eligible for sales tax exemptions/sales tax deferment--mutatis mutandis as applicable to new industrial units....

Similarly, the preamble portion of the notification dated September 23, 1993 reads as under:

In exercise of the powers conferred by Sub-section (1) of Section 8A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts with immediate effect, the tax payable under the said Act, in respect of goods manufactured and sold....

6. In the light of these two notifications, what is contended before me is that purchase tax is includable for the purpose of concession in terms of the policy. This argument at the outset is very attractive. But if the policy of the notification is read carefully, it would show that the said argument is not available on the facts of this case. Clause 5 categorically mentions a sales tax exemption/deferral. Section 8A notification also speaks of sales tax only. Definition of "tax" provides for all taxes. Sales tax is provided in terms of the statute so also the purchase tax. Where sales tax is not payable, purchase tax is levied. That by itself does not mean that purchase tax has to be read into the sales tax. When the policy makers in their wisdom have chosen to use the words "sales tax" at every stage, as could be seen from various clauses, this Court cannot enlarge thereby providing exemption which is not available in terms of the policy of the State. This Court cannot read something more into the notification thereby enlarging the notification in the given circumstances. In policy decisions courts have very limited say. When the policy is clear about sales tax exemption no exemption could be granted on purchase tax. That would be violating the policy itself. Therefore, I am not able to accept the argument of Dr. Krishna in this regard.

7. It is fairly well-settled that the Government order cannot run counter to the intention of the policy of the Government. The Supreme Court is clear in this regard in terms of a judgment in State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, . In the case on hand, I do not find that the notification of September 23, 1993 would in any way override or contradict the policy decision in the matter of purchase tax as argued by the learned counsel.

8. Learned Counsel for the petitioner relies on two judgments of the Supreme Court, namely, State of Orissa and Others Vs. Titaghur Paper Mills Company

Limited and Another, and Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another etc. etc., in support of his submissions. In State of Orissa and Others Vs. Titaghur Paper Mills Company Limited and Another, , the Supreme Court was not considering the policy decision as in the present case. The court was concerned with regard to the validity of the Act as I see from the judgment. The Supreme Court in para 42 (page 235 of STC) has noticed that the sale and purchase are merely two ways of looking at the same transaction. This was in the context of consideration of validity of the provisions in the said case. Similarly in Satnam Overseas (Export) through its Partner Vs. State of Haryana and Another etc. etc., , the court was not considering industrial policy providing for exemption. Grant of exemption/deferral of tax by way of policy decision stands on a different footing than the consideration of a case in terms of statutory provisions. These two judgments are rendered in different circumstances and they do not assist the petitioner in the given circumstances.

9. On the other hand, I must notice a judgment of this Court in the case of Neelakanteshwar Oil Industries v. State of Karnataka [1995] 98 STC 303 kar. In the said case this Court was considering the notification u/s 8A in the matter of exemption to a new small-scale industrial unit. After noticing the notification and the provisions this Court has ruled as under:

...The description of the subject-matter of the exemption is "tax payable in respect of goods manufactured and sold by new industrial units". These words are clear, specific and unambiguous. In such a case having recourse to interpretative tools will not arise. Consequently, the question of considering or applying an interpretation beneficial or favourable to the assessee also does not arise. Only where two interpretations are possible, the question of adopting an interpretation favourable to the assessee would arise. Where the words are clear, the plain and straight meaning should be given to them and there is no question of adopting an interpretation favourable to the assessee....

10. The court further ruled in para 11 as under:

...The notification dated June 19, 1991 exempts the tax payable under the Act "in respect of goods manufactured and sold by new industrial units". The subject-matter of exemption is the goods that is manufactured and sold by the new industrial units. Hence, the exemption is only in regard to the taxes payable in respect of the subject of exemption, that is, "goods manufactured and sold". In the absence of any difficulty in ascertaining the meaning of the words and in the absence of ambiguity and in the absence of any indication that the exemption was intended to be extended, the subject-matter of exemption cannot be extended to raw materials purchased by the new industrial units. The stage of operation of exemption is the sale of manufactured goods and not the purchase of raw materials required for manufacturing goods. If the intention of the State Government was to exempt purchase tax on raw materials, the notification would have clearly stated so. It should be noted that the Government has issued several notifications exempting payment of tax on the raw materials purchased,

in given cases.

11. Similarly, in *Commercial Tax Officer v. Anitha Cashew Industries* [1996] 41 Kar LJ 499 the court ruled as under:

Exemption notification is a departure from regular rule and a person claiming benefit under such notification must establish that the claim falls within the four corners of the notification. It is not permissible for the court to read the notification in a manner which would require addition of certain words. A plain reading of the notification makes it clear that the exemption was available only in respect of sales turnover and not purchase turnover. It is not permissible to add words to the exemption notification to ensure that the respondent gets benefit of the exemption. The court must read the exemption notification as it stands and it is not open for the court to read the same in a manner to determine whether the assessee gets the benefit or not. The mere act that the respondent may not get benefit, is not sufficient to introduce additional word in the notification to make exemption available for purchase turnover.

12. These two judgments supports the view of the Revenue. In both these judgments this Court has categorically ruled that the court must read the exemption notification as it stands and it is not open for this Court to read the same in a manner so as to determine as to whether the assessee gets the benefit or not. In the given circumstances, and on the facts of this case, and in the light of the two decisions, it is not possible for this Court to accept the claim of the petitioner and provide relief. In these circumstances both these petitions stand rejected. Parties are to bear their respective cost's.