(1990) 07 KAR CK 0031

In the Karnataka High Court

Case No : Writ Petition No. 9820 of 1986

National Fibres APPELLANT

Vs

State of Karnataka and another RESPONDENT

Date of Decision : 20-07-1990

Acts Referred:

Constitution of India, 1950 — Article 26
Karnataka Sales Tax Act, 1957 — Section 12 (3), 12 B (4), 6 C, 8 A, 8 A (3-A)

Citation : (1990) ILR (Kar) 2879

Hon'ble Judges : M. Rama Jois, J;G.P. Shivaprakash, J

Bench : Division Bench

Advocate : S.G. Shivaram for K. Srinivasan, for the Appellant; H.L. Dattu, High Court Government Advocate, for the Respondent

Judgement

M. Rama Jois, J.—In this petition under article 26 of the Constitution, the petitioner has questioned the legality of a notice issued u/s 12(3) read with section 12-B(4) of the Karnataka Sales Tax Act, 1957 ("the Act" for short) and rule 16 of the Karnataka Sales Tax Rules, 1957 proposing to tax the turnover, which according to the respondents had escaped assessment.

2. The brief facts of the case are these :

The petitioner is a manufacturer and dealer in high density polyethylene woven sacks. Under entry 118 of the Second Schedule to the Karnataka Sales Tax Act, 1957, the rate of tax prescribed on the said item of goods during the relevant period was 4 per cent. On December 29, 1975, a notification was issued u/s 8-A of the Act reducing the rate of tax from 4 per cent to 2 per cent with effect from January 15, 1976. Accordingly, tax was being levied on the turnover relating to high density polyethylene woven sacks at 2 per cent. With effect from March 31, 1979, section 6-C was introduced into the Act. Under the said provision a surcharge at the rate of 10 per cent on the tax payable under the Act by every assessee was made leviable. The impugned notice has been issued on the ground that the levy of surcharge u/s 6-C of the Act amounted to change in that rate of tax and consequently, the notification of reduction of tax issued on December 29, 1975, u/s 8-A of the Act ceased to have effect by the force of sub-section (3-A) of section 8-A of the Act.

3. There is no dispute, that according to sub-section (3-A) of section 8-A of the Act, any notification reducing the rate of tax or granting exemption from payment of tax on any goods issued u/s 8-A(1)(a) of the Act stands superseded, the moment a change is brought about in the rate of tax by an amendment to the Act. On the assumption that section 6-C brought about change in the rate of tax, and consequently the notification dated December 29, 1975, issued u/s 8-A ceased to have effect, but this aspect had gone unnoticed and thereby the turnover of high density polyethylene woven sacks had escaped assessment and the impugned notice was issued. Questioning the legality of the notice, the petitioner has presented this petition.

4. Sri Shivaram, learned counsel for the petitioner contends that for two reasons the impugned notice was without authority of law.

5. Firstly, the levy of surcharge u/s 6-C of the Act did not bring about any change in the rate tax and therefore, sub-section (3-A) of section 8-A was not at all attracted and therefore, it could not be said that the notification dated December 29, 1975, issued u/s 8-A reducing the rate of tax on high density polyethylene woven sacks from 4 per cent to 2 per cent ceased to have effect.

6. Secondly, the above position which was implicit had been made explicit by an amendment by the Act No. 36 of 1986, under which the explanation below section 8-A was amended according to which the levy of surcharge u/s 6-C shall not be regarded as bringing about any change in the rate of tax for the purpose of section 8-A(3-A) of the Act.

7. In our view, both the submissions made by the learned counsel are correct. Even without the clarificatory amendment, the position was that section 6-C only levied surcharge on the tax payable and, therefore, did not bring about any change in the rate of tax. Therefore notification dated December 29, 1975, reducing the tax on the goods in question from 4 per cent to 2 per cent remained unaffected. Obviously as some of the authorities under the Act understood section 6-C as having brought about change, in the rate of tax, the Legislature clarified the same by an amendment made to the Act by Act No. 36 of 1986, that it was not so.

8. In the result, we make the following order :

(i) Writ petition is allowed.

(ii) The impugned notice is set aside.

(iii) The respondents are directed not to take any further action pursuant to the impugned notice.

9. Writ petition allowed.