

(1998) 04 KAR CK 0005
In the Karnataka High Court
Case No : S.T.A. No. 71 of 1995

Naveen Traders

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-04-1998

Acts Referred:

Income Tax Act, 1961 — Section 276 B
Karnataka Sales Tax Act, 1957 — Section 5 (1-A), 5 (3)

Citation : (1998) 111 STC 351

Hon'ble Judges : Y. Bhaskar Rao, J;S.R. Bannurmath, J

Bench : Division Bench

Advocate : E.S. Kiresur, for the Appellant; T.P. Nambiyar, High Court
Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Y. Bhaskar Rao, J.—This is an appeal filed assailing the order of the Additional Commissioner of Commercial Taxes, Belgaum zone, Belgaum, dated April 18, 1995.

2. The brief facts of the case are that the appellant is a dealer registered under the Karnataka Sales Tax Act, 1957 (hereinafter called as "the Act") dealing in wholesale of the Indian-made foreign liquors (IMFL). The appellant filed the return of turnover disclosing the total and the taxable turnover of Rs. 35,47,530.50 and Rs. 12,75,228.47 respectively for the year 1990-91. The assessment was determined fixing the total turnover at Rs. 35,79,588.13 and the taxable turnover at Rs. 14,25,173.86 and amongst other things held that beer purchased within the State from the breweries during the accounting year 1989-90 and held in closing stock on March 31, 1990 which is the pending stock for the year 1990-91 at Rs. 1,93,330 have to suffer KST u/s 5(3) and not Section 5(1-A) and so it is exigible to tax u/s 5(1-A) at 45 per cent without any set-off and accordingly assessed the sales turnover of beer of Rs. 1,19,613.11 to tax at 45 per cent which was claimed as exemption by the appellant. Against that order,

the appellant filed an appeal. The appellate authority confirmed the same.

3. The learned counsel for the appellant contended that the stocks worth Rs. 1,19,613.11 have been purchased earlier to April 1, 1990 during the assessment year 1989-90 and on which the tax at the rate of 36 per cent was paid by the appellant. Therefore, the appellant is exempted to pay the tax in view of the amended Section 5(1-A) incorporated in the Act which came into force on April 1, 1990 and the authorities erred in not giving the benefit available to the appellant.

4. On the other hand, the learned Government Advocate contended that the exemption provided u/s 5(1-A) is available only to those who have suffered tax after incorporation of Section 5(1-A) and not to those dealers who paid the tax earlier to April 1, 1990. Therefore, the contention of the appellant is not tenable.

5. In view of the above contentions, the important question of law that arises for consideration is whether the appellant is entitled for exemption from payment of tax under the K.S.T. Act on the sale turnover of the beer of value of Rs. 1,19,613.11 which was purchased earlier to April 1, 1990 by paying the required tax ?

6. The beer was exigible at single point at 36 per cent under the provisions of Section 5(3)(a) read with entry No. 6(ii)(a) of Part L of the Second Schedule to the KST Act. By Act No. 8 of 1990 with effect from April 1, 1990 beer has been made exigible to multi-point tax (value added tax) at 45 per cent under the provisions of Section 5(1-A). When Section 5(1-A) was incorporated in the KST Act by the Karnataka Sales Tax (Amendment) Act 15 of 1988 with effect from April 1, 1988 a provision was made not to subject the subsequent sales of alcoholic liquors which have suffered KST u/s 5(3)(a) up to July 31, 1988. In the amendment of Section 5(1-A) with effect from April 1, 1990 beer has been made exigible to multi-point (value added tax) at 45 per cent. Therefore, the question is whether Section 5(1-A) exempt the dealers from payment of tax on the sale of liquor who paid the tax at the time of purchase earlier to April 1, 1990.

7. To appreciate the above contention it is relevant to extract Section 5(1-A). The said provision reads as under :

"Notwithstanding anything contained in Sub-section (1), every dealer shall pay for each year tax on his taxable turnover of sales (other than the last sale in the State) relating to all kinds of alcoholic liquors for human consumption (other than toddy, arrack, fenny, whine and beer) at the rate of thirty five per cent of such turnover.

Provided that at any point of sale other than first point of sale and the last point of sale, the taxable turnover shall be arrived at by deducting the turnover of such goods on which tax has been levied under this sub-section at the immediately preceding point of sale.

Provided further that no tax under this sub-section shall be levied and collected up to the 31st day of July, 1988 on subsequent sales excepting the last sale of

alcoholic liquors for human consumption (other than toddy, arrack, fenny, wine and beer) which have already been subjected to tax at the rate of fifty per cent prior to 31st day of March, 1988 under Clause (a) of Sub-section (3) of Section 5 of the Act."

8. By reading the above section, it is manifest that every dealer has to pay tax for each year on his taxable turnover of sales (other than the last sale in the State) relating to all kinds of liquors for human consumption other than toddy, arrack, fenny, wine and beer at the rate of 35 per cent. But however it is provided in the first proviso that except for the first point of sale and the last point of sale, the taxable turnover shall be arrived at by deducting the turnover of such goods on which tax has been levied under this sub-section at the immediately preceding point of sale. The Legislature was very much conscious and provided exemption only on the turnover on which tax is paid under this sub-section, i.e., where tax is paid after Section 5(1-A) came into force, i.e., after April 1, 1990 and it cannot be inferred that the exemption for payment of tax on the turnover on which tax is paid earlier to April 1, 1990 is also provided by reading this proviso. By reading proviso (i) and (ii) together, it is evident that under proviso (i) exemption is granted to those dealers who paid the tax at the earlier point or preceding point of sale under this sub-section. Whereas under the second proviso, exemption is provided for a period of three months up to July 31, 1988. It is stated that the exemption is provided to dealers who have already been subjected to turnover tax for the sale of liquor prior to 1988. Thus the Legislature has used different words in proviso (i) and (ii) providing distinct meaning for each proviso. Thus by reading the above provisions together, it is evident that tax exemption is provided under proviso (i) on the turnover of sale other than first sale and last sale where tax is paid under this sub-section. Whereas under second proviso such restriction of tax is there under this section. On the other hand, it is specifically provided where tax is already subjected prior to 31st March, 1988 the turnover is exempted from tax. Therefore, we hold that the turnover of the sales of the beer of the appellant which suffered tax prior to April 1, 1990 are not exempted from tax under the proviso to Section 5(1-A).

9. The learned counsel for the appellant relied upon the judgment of this Court in S.T.A. No. 1 of 1969 dated February 11, 1970 wherein a Division Bench of this Court has considered Section 5(1-A) and 5(1-A) of the Act regarding the tax liability of the sale of timber. The facts of that case are quite different and the question arose there for consideration was what is the meaning of the expression "sale by the first or the earliest of successive dealers in the State who is liable to tax u/s 5(3-A) of the Act and even in that case, the Division Bench held that according to Section 5(1-A) of the Act, every sale, within the State, of the article in question would be exigible to tax from the date of the amending Act came into force, and negatived the contention of the appellant. Therefore, the same is not applicable to the facts of this case.

10. The learned counsel for the appellant contended that the proviso of Section

5(1-A) has to be harmoniously construed to give benefit to the appellant of the exemption of tax on the sales turnover and relied upon the judgment of the Supreme Court reported in C.W.S. (India) Limited Vs. Commissioner of Income Tax, . It is a case dealing with the provisions of the Income Tax Act. In that case the Supreme Court while dealing the above provision, held as follows :

"Literal construction may be the general rule in construing taxing enactments, but that does not mean that it should be adopted even if it leads to a discriminatory or incongruous result. When a literal interpretation leads to an absurd or unintended result, the language of the statute can be modified to accord with the intention of Parliament and to avoid absurdity."

The facts of that case are quite different from the facts of this case. In the present case, Section 5(1-A) and proviso (i) and (ii) of the above sub-section make it very clear that the exemption of tax is not available to those who have not paid tax after April 1, 1990, i.e., after the incorporation of Section 5(1-A). When by reading the statute, by applying the principle of literal interpretation and also the method of harmonious construction, if the correct conclusion is arrived, the said conclusion has to be followed generally. In the present case by applying the principle of literal construction for interpretation of Section 5(1-A) along with the proviso, it is manifest that the dealers who have paid tax after the incorporation of Section 5(1-A) of the Act are only entitled for exemption of tax paid by them on preceding sale and not others.

11. The learned counsel for the appellant also relied on the judgment of this Court Sri Vinayaka Agency and others Vs. State of Karnataka and others, wherein the learned single Judge of this Court has considered the scope of Section 5(1-A). The facts of that case are quite different. In that case, the exemption notification issued by the Commissioner was challenged. Therefore, it is not helpful to the appellant.

12. The learned counsel for the appellant also relied upon the judgment of the Supreme Court in the case of M.V. Javali Vs. Mahajan Borewell and Co. and Others, for the purpose of principle of interpretation of statutes. In that case the Supreme Court while considering the scope of ambit of construction of Section 276B of the Income Tax Act has held as follows :

"8. Keeping in view the recommendations of the Law Commission and the above principles of Interpretation of Statutes we are of the opinion that the only harmonious construction that can be given to Section 276B is that the mandatory sentence of imprisonment and fine is to be imposed where it can be imposed, namely, on persons coming under the categories (ii) and (iii) above, but where it cannot be imposed, namely, on a company, fine will be the only punishment. We hasten to add, two other alternative interpretations could also be given : (i) that a company cannot be prosecuted (as held in the impugned judgment) ; or (ii) that a company may be prosecuted and convicted but not punished, but these interpretations will be de hors Section 278B or wholly inconsistent with its plain

language."

The facts of that case are quite different from the facts of the present case and the principle has to be considered according to the facts of the case. Therefore, that judgment will not apply and it is relevant here to refer the judgment of the Supreme Court in *Union of India v. Filip Tiago De Gama of Vedem Vasco De Gama* AIR 1990 SC 981, The Supreme Court at para 16 has observed as follows :

"The paramount object in statutory interpretation is to discover what the Legislature intended. This intention is primarily to be ascertained from the text of enactment in question. That does not mean the text is to be construed merely as a piece of prose, without reference to its nature or purpose. A statute is neither a literary text nor a divine revelation. "Words are certainly not crystals, transparent and unchanged" as Mr. Justice Holmes has wisely and properly warned [*Towne v. Eisher* (1918) 245 US 418]. Learned Hand, J. was equally emphatic when he said : "Statutes should be construed, not as theorems of Euclid, but with some imagination of the purposes which lie behind them". (*Lenigh Valley Coal Co. v. Yensavage* 218 FR 547)."

It further observed as under (para 17) :

".....If there is obvious anomaly in the application of law the court could shape the law to remove the anomaly. If the strict grammatical interpretation gives rise to absurdity or inconsistency, the court could discard such interpretation and adopt an interpretation which will give effect to the purpose of the Legislature. That could be done, if necessary even by modification of the language use. (See *Mahadeolal Kanodia Vs. The Administrator-general of West Bengal*, . The Legislators do not always deal with specific controversies which the courts decide. They incorporate general purpose behind the statutory words and it is for the court to decide specific cases. If a given case is well within the general purpose of the Legislature but not within the literal meaning of the statute, then the court must strike the balance."

13. In view of the above principle laid down by the Supreme Court, it is evident that the courts had to construe the statute as per the intention of the Legislature which is emphasised by reading the statute unless it leads to some absurdity or inconsistency. In the present case, by reading Section 5(1-A) along with the two provisos, it is manifest that the exemption is not available for the turnover on which tax is paid before the incorporation of Section 5(1-A) of the Act. Therefore, we do not see any merit. Appeal is dismissed.