
(1993) 10 KAR CK 0008
In the Karnataka High Court
Case No : Writ Petition No's. 10882 of 1989

Sathischandra and Co.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 19-10-1993

Acts Referred:

Karnataka Excise (Excise Duties) (Amendment) Rules, 1985 — Rule 4

Citation : (1994) ILR (Kar) 218 : (1994) 1 KarLJ 469

Hon'ble Judges : Shivashankar Bhat, J

Bench : Single Bench

Advocate : A.G. Holla, for Hegde Associates C. Ramakrishna and M.R. Naik, for the Appellant; Pradeep Rai, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Shivashankar Bhat, J.—The question raised by the petitioners pertains to the Excise Year 1985 to 1986 (1.7.1985 to 30.6.1986). The petitioners question the demand issued consequent upon the Amendment of Karnataka Excise (Excise Duties) Rules, 1968 (in short "the Rules"), under which, the duty was increased to Rs. 6/- from Rs. 4/- per bulk liter.

2. The petitioners are Excise Contractors, According to them, they offered their bids on the assumption that the duty would be Rs. 4/- per bulk liter. However, after the commencement of the Excise Year which was on 1st of June, 1985, Rules were amended increasing the duty to Rs. 6/- per bulk liter with effect from 1.8.1985. The demands were issued on various dates somewhere in the year 1987 claiming difference in the duties paid by the petitioners. Mr. A.G. Holla, learned Counsel for the petitioner raised the following contentions:

(i) The amended Rules, under which the duty was increased from Rs. 4/- to Rs. 6/- substituted the earlier Rule and therefore, the earlier Rule was not in statute book when the impugned demands were made; consequently, the demand could not have been made lawfully;

(ii) Principles of Natural Justice require an opportunity to the petitioner to contest the demand;

3. There is a short history to the litigation. When the amendment was proposed by the draft Rules, the same was challenged in several Writ Petitions. Those Writ Petitions were dismissed. Thereafter, the very Rules were challenged in Writ Petitions which were also dismissed in *R. Kempanna and Co. Vs. State of Karnataka*. The aforesaid second batch of Writ Petitions were filed in the year 1988. The present litigation seems to be the third stage when the demands were issued. The present petitioners were not parties in the earlier batch of Writ Petitions. In *Kempanna's* case, referred to above, the petitioner therein, challenged the demand notices issued to those petitioners, but their challenge was not successful.

4. The first question to be considered is, whether the substitution of the Rule resulted in wiping out in its entirety the operation of the prior Rule.

5. The Amendments were made by the Karnataka Excise (Excise Duties) (Amendment) Rules, 1985. Rule (2) of the said Amendment Rules states that the Rules shall be deemed to have come into force with effect from first day of August, 1985. We are concerned with Rule 4 of the Amendment Rules which reads thus:

"Amendment of Schedule-A: In the schedule-A of the said Rules, in the entries relating to serial No. 1 in Column 3, for the letters, figures and words "Rs.4-00 per bulk liter" the letters, figures and words" Rs. 6-00 per bulk liter" shall be substituted."

6. In the parent Rule, Rule-2 provides for the manner of levying Excise duties. It states that excise duty or liter fee or both shall be levied on the excisable articles specified in Column-2 of the Schedule A and B at the rates specified in the corresponding entries in Column-3 thereof, etc. SI.No. 1 of Schedule-A referred to arrack where the rate mentioned earlier was Rs. 4/- and after the amendment, it became Rs. 6/-. The learned Counsel for the petitioner contended that, when a law substitutes another law, the earlier one ceases to be in force for all purposes and no action can be taken under the earlier law. Section 6 of General Clauses Act, it was contended, was inapplicable when the law is substituted; Section 6 is attracted only in the case of repeal. The learned Counsel further contended that there is no saving clause in the instant case, saving the prior operation of the earlier levy.

7. The learned Counsel referred to the Decision of the Privy Council in *ABBOTT v. THE MINISTER FOR LANDS*, Law Report-Appeal Cases 1895, 42, in support of his main proposition. It was a case where the appellant had only a mere right to take advantage of the provision of the statute. It was not a case where a right was given or accrued by the operation of the statute in question. The Privy Council held that such a right or the provision which permitted a person to take advantage of the law cannot be considered as a right accrued which would be

saved, inspite of the repealing of the statute which created the advantage. The Privy Council observed thus :

"It has been very common in the case of repealing statutes to save all rights accrued. If it were held that the effect of this was to leave it open to any one who could have taken advantage of any of the repealed enactments still to take advantage of them, the result would be very far-reaching.

It may be, as Windeyer J. observes, that the power to take advantage of an enactment may without impropriety be termed a "right". But the question is whether it is a "right accrued" within the meaning of the enactment which has to be construed.

Their Lordships think not, and they are confirmed in this opinion by the fact that the words relied on are found in conjunction with the words "obligations incurred or imposed." They think that the mere right (assuming it to be properly so called) existing in the members of the community or any class of them to take advantage of an enactment, without any act done by an individual towards availing himself of that right, cannot properly be deemed a "right accrued" within the meaning of the enactment."

8. The principle, stated in the above Decision was accepted by the Supreme Court in *Zohrabi Vs. Arjuna and Others*, . This was also a case where the landlord was given an advantage under the provisions of the Act in question. The landlord did not avail of the advantage and therefore, no right accrued to him. While dismissing the claim of the landlord to evict the tenant, the Supreme Court accepted the statement of the principle in the aforesaid Decision of the Privy Council.

9. The Decision of a Division Bench of .this Court in *T.A.C.A. Association and Others Vs. State of Kerala and Another*, was strongly relied upon by the learned Counsel. The question before the Bench was, whether the provisions of Section 53 of the Karnataka Agricultural Income Tax Act, 1961 as substituted in the year 1966 took away the power of the Civil Court to call for documents, returns and other papers produced by an assessee in the proceedings pending before the authorities under the aforesaid Act. The plaintiffs in the suit, summoned certain documents filed by the defendants before the authorities under the aforesaid Act. The application of the plaintiffs was allowed by the Trial Court. The Division Bench held that, when the relevant provision is substituted in toto by the amending Act, the earlier provision ceases to have any force whatsoever and that Section 6 of the General Clauses Act was inapplicable in such a situation. Earlier, under the relevant provision, the documents in question were treated as confidential. This confidentiality was substituted by permitting the disclosure resulting in the removal of the bar against summoning the documents. From these facts, it is clear that the amended provision affected only the procedural matters and therefore, there was no difficulty for the Court in applying the amended provision which enabled the Court to summon the documents. The

observation of the Bench no doubt supports the proposition of the learned Counsel for the petitioners to some extent. The Bench relied on the observations of a learned Judge in an earlier Decision reported in *SHA CHUNILAL SOHANRAJ v. T.GURU-SHANTAPPA* 1972(1) Mys.LJ. 327, wherein, the following passage from the Crawford on Statutory Construction was quoted:

"An amending Act is not regarded as an independent statute. The statute in its old form is superseded by the statute in its amended form, the amended Section of the statute taking the place of the original Section, for all intents and purposes as if the amendment had always been there. The amendment should be considered as if embodied in the whole statute of which it has become a part. Unless a contrary intent is clearly indicated, the amended statute is regarded as if the original statute had been repealed and the whole statute re-enacted with the amendment."

10. I am of the view that the above passage in no way aid the contention of the learned Counsel for the petitioner in the instant case. The passage itself states that the effacement of the earlier law in its entirety depends upon the intention indicated, Unless the substituted law (provision) indicates a contrary intent, latter amendment repeals the earlier provision in its entirety for all purposes. Normally, when a tax is levied and it is to be in force from a particular day and is made not retrospective, it indicates it was not intended to replace the earlier levy during the previous period. The incorporation by amendment could be assumed to be all pervasive only if the incorporation is clearly made out to be part of the earlier law from the very beginning.

11. One more Decision cited by the learned Counsel in *Bhagat Ram Sharma Vs. Union of India (UOI) and Others*, requires to be referred. The Decision was cited in support of the proposition that there is no difference between an amendment and a repeal; that may be so. However, I find the following passage found at page 746 at para 19 clarifies the legal proposition :

"For the sake of completeness, we wish to add that the mere use of the word "substitution" does not imply that Regn. 8(3) must relate back to November 1, 1956, the appointed day. The problem usually arises in case of repeal by substitution. In the case of executive instructions, the bare issue of a fresh instrument on the same subject would replace a previous instrument. But in the case of a legislative enactment, there would be no repeal of an existing law unless the substituting act or provision has been validly enacted with all the required formalities. In *State of Maharashtra Vs. The Central Provinces Manganese Ore Co. Ltd.*, a three Judges Bench repelled the argument that since the word "substituted" was used in the Amending Act of 1949, it necessarily followed that the process embraces two distinct steps, one of repeal and another of a fresh enactment. In that case, the whole legislative process termed "substitution" proved to be abortive inasmuch as the Amending Act did not receive the assent of the Governor General u/s 107 of the Government of India Act, 1935 and was thus void and inoperative. Distinguishing the two earlier

decisions in *Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another*, and *Koteswar Vittal Kamath Vs. K. Rangappa Baliga and Co.*, the Court observed that the mere use of the word "substituted" does not ipso facto or automatically repeal a provision until the provision which is to take its place is constitutionally permissible and legally effective. It relied upon the following principle of construction stated in Halsbury's Laws of England, 3rd Edn., Vol.36, p.474;

"Where an Act passed after 1850 repeals wholly or partially any former enactment and substitutes provision for the enactment repealed, the repealed enactment remains in force until the substituted provisions come into operation."

And observed:

"We do not think that the word substitution necessarily or always connotes two severable steps, that is to say, one of repeal and another of a fresh enactment even if it implies two steps. Indeed, the natural meaning of the word "substitution" is to indicate that the process cannot be split up into two pieces like this. If the process described as substitution fails, it is totally ineffective so as to leave intact what was sought to be displaced. That seems to us to be the ordinary and natural meaning of the words "shall be substituted."

The first part of the passage quoted from Halsbury's Laws of England referred to above indicates that the repealed enactment remains in force until the substituted law comes into operation.

12, In the instant case, the amended Rule came into force only with effect from 1.8.1985 and therefore, it follows that the earlier Rule operated till 31.7.1985, In fact, the Decision in *Kempanna's* case touches this aspect. Para 9 of the said Decision refers to *Sha Chunilal's* case and the contention about the effect of substitution. The Court also referred to another Decision of this Court in *SARVOTHAMA CHOORYA v. G.M.GOPALA BHAT* 1983(1) KLJ 123. Thereafter, the learned Judge negated the contention of the petitioners thus:

"The distinction between the aforesaid two amendments effected by way of substitution and the rules in question amended by way of substitution is that the Karnataka Excise Duties (Amendment) Rules 1987 framed and published under a notification dated 26th October 1987 specifically provide that these rules must be deemed to have come into force from 1st day of July, 1987. If the rules had not provided as to from what date they must be deemed to have come into force probably there was some scope for applying the principles laid down in the aforesaid two decisions. Further, the aforesaid two decisions construed the amendments effected by way of substitution relating to procedural matters. The rules in question relate to fiscal matter and further they specifically provide as to from what date they must be deemed to have come into effect. In such a case there is no scope for placing the interpretation as to the retrospectivity of the Rules beyond what the Rules themselves state in that regard. Therefore, there is no scope to apply the principle that is applied in the aforesaid two decisions of this Court, when the rules themselves provide that substitution shall be given

effect to from a particular date- Therefore, it is not possible to hold and accept the contention of the petitioners that the amendment effected by way of substitution to Schedule A by the Karnataka Excise Duties (Amendment) Rules, 1987 in respect of the entry at serial No. 1 in column 3 by substituting the words "Rs.6-00 per bulk liter" with the words and figures "Rs.4-00 per bulk liter" must be deemed to have been in force during the period from 1.8.1985 on 30.6.1986."

13. It is laid down in the above Decision that the Rules provided that substitution shall be given effect to from a particular date and the substitution cannot be read as wiping out the operation of the earlier Rule.

14. In *DEPUTY COMMERCIAL TAX OFFICER, PARK TOWN DIVISION, MADRAS AND ANR. v. SHA SUKRAJ PEERAJEE* AIR 1968 SC 67, certain provisions of the Madras Sales Tax Act were enacted and new amendments were substituted. The question was the effect of this amendment. The Supreme Court held that the amendment came into force only from the date when it was published in the Gazette and not before and therefore, the amendment did not affect the operation of the earlier provision,

15. In *Katikara Chintamani Dora and Others Vs. Guntreddi Annamanaidu and Others*, , several provisions of the Madras Estates (Abolition and Conversion into Ryotwari) Act were amended and substituted, as could be seen from paras 23 and 25 of the Judgment. The contention was that amendment should be given retrospective effect. The Supreme Court rejected this contention vide paras 46 to 49 of the Judgment.

16. In *Excel Wear and Others Vs. Union of India (UOI) and Others*, , the question was whether the amendment made to the fundamental right taking away a certain right, wiped out the earlier operation of the right. The language of the amendment was, to "substitute the amended provision"; the Supreme Court pointed out that the amendment was prospective in operation and was not made retrospective, vide para 38. It was held by the Supreme Court that the amendment was prospective in operation, because, the amending provision did not read stating that those provisions "would always be deemed to have been substituted."

17. The levy of duty under the provision of Section 22 of the Karnataka Excise Act, is permitted to be made by making proper Rules. The Rules are considered as part of the Act. This provision has already been upheld by the Supreme Court in *M.K. Papiiah and Sons Vs. The Excise Commissioner and Another*, . Therefore, the levy under the Rules is nothing but a statutory levy authorised by law and is in accordance with the Constitution. Neither the Act nor the Rules provide for a separate machinery and a procedure to make a formal assessment. Licencees are bound to pay the duty as levied under the Rules and the failure to pay the duty would result in a formal demand. In other words, neither the Act nor the Rules contemplate a formal procedure of assessment. During the Excise year, the licensee shall have to pay the duty as provided under the Rules which are in

force during the relevant year. This is their "Statutory liability".

18. Therefore, with effect from 1.8.1985 till 31.7.1986, the amended Rules operated on the transactions and the petitioners were liable to pay the duties at the rate stated in the amended Rules. It was contended that these amended Rules were further amended by a subsequent Notification reducing the rate to Rs. 4/- with effect from 1.7.1986 and therefore, the petitioners should be burdened only with the said rate. This submission is also nothing but another shade of the earlier contention to the effect that the substituted rule alone should be applied to collect the arrears.

19. It was also contended that, in the absence of a proper machinery the alleged charge cannot be permitted and the petitioners relied upon a Decision in *NUTRINE CONFECTIONARY CO. P. LTD. v. STATE OF MYSORE AND ORS.* 1970(2) Mys. L.J. 214. The said case, arose out of the provisions of the Motor Vehicles Taxation Act. The petitioner was granted a licence on payment of the tax at a particular rate and therefore, it was held that in the absence of any provision under the Act for calling upon the licencees to make good the levy of the tax payable under the Act, it may not be recovered subsequently.

20. The said Decision is not applicable to the facts of this case having regard to the nature of the levy under Karnataka Excise Act and the Rules framed thereunder. The principle applicable is the one found in *Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd.*, . There were two provisions in the Central Excise Rules covering the recovery of excise duties (Rule 10 and Rule 10-A). Rule 10-A was the residuary provision; it actually refers to collection of the duty under the Act. There was no limitation for collecting the levy under Rule 10-A. There was also no machinery created to make a formal assessment, while resorting to Rule 10-A. The Supreme Court held at page 2573 at para 38:

"It is true that Rule 10-A seems to deal only with collection and not with the ascertainment of any deficiency in duty or its cause by a quasi-judicial procedure. If, however, it is read in conjunction with Section 4 of the Act, we think that a quasi-judicial proceeding, in the circumstances of such a case, could take place under an implied power. It is well established rule of construction that a power to do something essential for the proper and effectual performance of the work which the Statute has in contemplation may be implied. See Craies on Statute Law (Fifth Edition) p.105."

I may also refer to the following passage from the Principles of Statutory Interpretation by Justice G.P.Singh (4th Edition - at page 437} which reads:

"One important consideration in construing a machinery section is that it should be so construed as to effectuate the liability imposed by the charging Section and to make the machinery workable - *ut res magis valeat quam pereat*."

21. When there is a statutory charge and the alleged short levy is nothing but a

short fall in the payment of duty, it is a case of incomplete collection of duty. In other words, the demands involved in this case are nothing but the demands to enforce the collections due from the petitioners. The requisite procedure is to be, nothing but a procedure which is in consonance with principles of Natural Justice and nothing more. Power to collect the short fall in the payment of duties has to be read into the provisions of the Act and Rules. Such a power necessarily, is implied, in the authorities, as observed by the Supreme Court in the above National Tobacco Co's case. But, the collection, has to be done in consonance with the principles of Natural Justice. This is the second contention advanced by the learned Counsel for the petitioners.

22. When there is an allegation that the petitioners have failed to pay the duties and they are in arrears, it follows that the demand is based on certain computation. There is every likelihood of difference as to the computation. The petitioners may have several defences open such as non-delivery of goods in question or the quantity may be less than the quantity on which the duties were calculated or the payments made by the petitioners earlier have been ignored while calculating the duties. In these circumstances, the principles of Natural Justice is attracted, compelling the authorities to give an opportunity to the petitioners to explain away the demands and this explanation is possible if the basis of the claim is disclosed to the petitioners. Also see Union of India (UOI) and Others Vs. Madhumilan Syntex Pvt. Ltd. and Another, .

23. In the case before me, the petitioners were not informed of the basis of the claim and therefore, it is not possible for them to file any objections thereto. Consequently, these demands shall be treated as show cause notices and if petitioners seek further information, they shall be furnished with the same and thereafter, demands be finalised by the Deputy Commissioner.

The petitioners are directed to file their objections before the Deputy Commissioner within four weeks from the date of receipt of this order; thereafter, he shall proceed as observed above.

These Writ Petitions are allowed accordingly.