
(1975) 02 KAR CK 0008

In the Karnataka High Court

Case No : Writ Petition No's. 1681, 2870, 2871, 2904, 3479, 3690, 3691 of 1973 and 32, 129, 581, 1562, 2264, 2265, 3003, 3186 to 3188 and 6035 of 1974

Sha Kanji Devji and Others

APPELLANT

Vs

The Additional Commercial Tax Officer, II Circle and Others

RESPONDENT

Date of Decision : 21-02-1975

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 15
Constitution of India, 1950 — Article 269 (1) (g), 286 (3)
Karnataka Sales Tax Act, 1957 — Section 25 A, 5 (4)

Citation : (1976) 5 CTR 10 : (1976) 1 KarLJ 56

Hon'ble Judges : E.S. Venkataramaiah, J

Bench : Single Bench

Judgement

Venkataramiah, J.—Because common questions of law arise for consideration in these petitions, they are disposed by this common judgment.

2. Petitioners in all these petitions, were dealers in goods which had been declared by the Parliament as of special importance in inter-state trade or commerce under the provisions of the Central Sales Tax Act (hereinafter referred to as the Central Act). Their purchase turnovers of the goods in question were liable to payment of purchase tax u/s 5(4) read with Schedule IV of the Karnataka Sales Tax Act, 1957 (hereinafter to as the State Act). The period of assessment in all these cases is prior to 1967. According to the pronouncement of the Supreme Court in the State of Mysore vs. Yaddalam Lakshminarsimhiah Setty 1965 16 STC 231 the petitioners were not liable to pay Central Sales Tax even though the goods in question had been sold in the course of inter-State trade or commerce in view of section 9 of Central Act as it stood then read with the relevant provisions of the State Act. In all these cases the petitioner had also been allowed refund of the purchase tax paid by them by reason of the interpretation placed by this Court in Munshi Abdul Rahman & Bros. vs. Commercial Tax Officer 1967 20 STC 89 Mys. In the year 1969 the Parliament

amended the Central Act by introducing Section 6 (1-A) and substituting Section 9 with retrospective effect. By reason of the said amendment the turnover relating to inter-State sales of the goods in question became liable to tax. In the year 1972 Section 15(b) of the Central Act was amended by Parliament with retrospective effect by Central Sales Tax (Amendment) Act, 1972. Thereafter Section 5(4) of the State Act was also amended with retrospective effect by Karnataka Sales Tax (Amendment) Act, 1973. After the Karnataka Sale Tax (Amendment) Act, 1973 was passed the concerned Assessing Authorities under the State Act issued notices to the petitioner to show cause as to why the orders of assessment passed against them in respect of the periods prior to 1967 should not be rectified, as according to them, the refund of sales tax allowed under the State Act was erroneous. The petitioners contended before the Sales Tax Authorities that they (the authorities) had no jurisdiction to rectify the orders of assessment and that the petitioners were not liable to pay purchase tax under the provisions of the State Act notwithstanding the amendment made in the year 1973. The contentions of the petitioners were overruled by the Sales Tax Authorities and orders rectifying the assessment orders were passed by them. As a result of the rectification, the petitioner became liable to pay to the State Government the amount equivalent to the purchase tax payable under the State Act. In some cases they became liable to refund to the State Government the amount equivalent to the purchase tax paid by them under the State Act, which had been refunded to them by the Assessing Authorities. The petitioners, have questioned in these writ petitions, the order passed by the several Assessing Authorities, rectifying the orders of assessment passed by them earlier and calling upon them to pay the amounts equivalent to tax payable by them under the provision of the State Act.

3. In order to appreciate the contentions urged by the parties in these cases, it is necessary to set out the history of legislation governing the cases on hand. After the decision of the Supreme Court in *The Bengal Immunity Company Limited Vs. The State of Bihar and Others*, , the Parliament amended the Constitution by the Constitution (Sixth) Amendment Act, 1956 in certain respects. The effect of the amendment of the Constitution may be summarised thus :

4. By Article 92-A of List I of the Seventh Schedule of the Constitution, the Parliament was empowered to levy taxes on the sale or purchase of goods other than newspapers, where such sale or purchase of goods other than newspapers, under Entry 54 of List II was made subject to the provisions of Entry 92-A of List I. Although by virtue of Entry 92-A in List I the Parliament was authorised to levy taxes on the sale or purchase of goods other than newspapers, where such sale or purchase took place in the course of inter-State trade or commerce, the taxes so collected were assigned to the State under Article 269(1)(g) of the Constitution. Clause (3) of the Article 286 directed that any law of a State was, in so far as it imposed or authorised the imposition of tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter-State trade or commerce, subject to such restrictions and conditions in regard to the

system of levy, rates and other incidence of tax as Parliament might by law specify. Pursuant to Entry 92A of List I and clause (3) of Article 286, the Parliament enacted the Central Act in the year 1956. The Central Act (except Section 15 of that Act) came into force on 5th January 1957 and Section 15 of that Act came into force on 1-10-1958. Section 6(1) of the Central Act authorised the levy of tax on all sales effected in the course of inter-State trade or commerce subject to the other provisions of the Act. Section 8 of the Central Act determined the rate at which the sales tax was payable Section 9 prescribed the procedure regarding levy and collection of tax and penalties. Section 14 declared that the goods mentioned therein were of special importance in inter-state trade or commerce. One of the restrictions and conditions imposed by the Parliament u/s 15 of the Central Act on the power of the State Legislature to levy tax on sale or purchase of declared goods, was as follows :-

"15. Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. -

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of tax on the sale or purchase of declared goods, be subject to the following restrictions and conditions, namely :-

(a)

(b) Where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, the tax so levied shall be refunded to such person in such manner and subject to such conditions as may be provided in any law in force in that State."

5. The State Act came into force on 1st October, 1957. During the relevant period sub-section (4) of Section 5 of that Act which imposed tax on the sale or purchase of any of the declared goods, read as follows :-

"(4) Notwithstanding anything contained in sub-section (1) a tax under this Act shall be levied in respect of the sale or purchase of any of the declared goods mentioned in column (2) of the Fourth Schedule at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said Schedule on the dealer liable to tax under this Act on his taxable turnover of sales or purchases in each year relating to such goods :

Provided that where tax has been paid in respect of the sale or purchase of any of the declared goods under this sub-section and such goods are subsequently sold in the course of inter-State trade or commerce, the tax paid under this Act, shall be refunded to such person in such manner and subject to such condition as may be prescribed.

"Explanation :- The expression "declared goods" means goods declared u/s 14 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) to be of special importance in inter-State trade or commerce."

6. In the State of Mysore vs. Yaddalam Lakshminarsimhiah Setty (1965) 16 STC 231 Supreme Court, held on the basis of Section 6 and 9 of the Central Act that no tax was payable under it in respect of the goods in question, when they were sold in the course of inter-State trade or commerce. In Munshi Abdul Rahim and Bros vs. Commercial Tax Officer I Circle, Hubli 1967 20 STC 89 Mys this Court held that tax paid u/s 5(4) of the State Act was liable to be refunded to the assesseees on their establishing that the goods in question had been sold in the course of inter-State trade or commerce, notwithstanding the fact that no tax had been actually paid by them under the Central Act. The resultant position was that the dealers in declared goods who were liable to payment of tax under Fourth Schedule of the State Act where such goods were sold in the course of inter-State trade or commerce were not liable to pay tax under the Central Act, but were entitled to claim the refund of the tax paid by them under the State Act. In view of the pronouncement of this Court in Munshi Abdul Rahiman and Brothers" case the sales tax authorities either directed the refund of the tax already paid by the dealers u/s 5(4) or did not levy any tax at all u/s 5(4) in respect of the turnover relating to the declared goods sold in the course of inter-State trade or commerce. This position continued till 1969 when the Parliament by the Central Sales Tax (Amendment) Act, 28 of 1969 amended the Central Act with retrospective effect, by introducing section 6(1-A) and substituting section 9 by a new section. The result of the said amendment was, as admitted on all hands, the decision of the Supreme Court in the State of Mysore vs. Yaddalam Lakshminarsimhiah Setty and Sons (1965) 16 STC 231 stood superseded and the turnover of declared goods which had been sold in the course of inter-State trade or commerce became liable to payment of tax under the Central Act with retrospective effect from 1-10-1958 notwithstanding that no tax had been levied by the law of the State. But u/s 10 of the amending Act, in the case of sales effected between 10-11-1964 and 9-6-1969, the dealer was exempted from the liability to pay tax if he had not collected any tax from purchasers.

7. As it was found that the said amendment was inadequate, the Parliament amended Section 15 of the Central Act again by Central Act 61 of 1972 with retrospective effect from 1-10-1958. After the Amendment, the relevant part of Section 15, reads as follows :-

"Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State :-

Every sales tax law of a State shall, in so far as it imposes or authorises the imposition of a tax on a sale or purchase of declared goods, be subject to the following restrictions and conditions. Namely :-

(a) xx xx xx xx

(b) where a tax has been levied under that law in respect of the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce and tax has been paid under this Act in respect of

such goods in the course of inter-State trade or commerce, the tax levied under such law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner as may be provided in any law in force of that State."

8. Immediately after Central Act 61 of 1973 came into force, the State Legislature amended the proviso to Section 5(4) of the State Act by Karnataka Sales Tax (Amendment) Act, 1973, with retrospective effect from the date of commencement of the State Act after the said amendment the proviso to Section 5(4) of the State Act, reads as follows :-

"Provided that where the tax has been paid in respect of the sale or purchase of any of the declared goods under this sub-section and such goods are subsequently sold in the course of inter-State trade or commerce the tax has been paid under the Central Sales Tax Act, 1956 (Central Act 74 of 1956) in respect of the sale of such good in the course of inter-State trade or commerce the tax paid under this Act shall be reimbursed to the person making such sale in the course of Act shall be reimbursed to the person making such sale in the course of inter-State trade or commerce in such manner and subject to such condition as may be prescribed."

9. After the proviso was so amended the Sales Tax Authorities issued notices to the petitioners who were dealers in declared goods and who had also been exempted from payment u/s 5(4) of the State Act or to whom tax paid by them had been refunded, calling upon them to show cause as to why the orders of assessment made previously should not be rectified and that they should not be called upon to pay the tax payable u/s 5(4) of the State Act which had been subsequently refunded to them. As already mentioned, after overruling the contentions of the petitioners, the Sales Tax Authorities passed orders u/s 25A of the State Act rectifying the orders of assessment and issued notices of demand to the petitioners either to pay the tax u/s 5(4) of the State Act or refund the amount which had been refunded to them.

10. The case of the Assessing Authorities is that after Section 15 was amended by Central Act 61 of 1972 and Section 5(4) was amended by the State Legislature in the year 1973, the petitioners who had not paid the tax under the Central Act were liable to pay tax on the turnover in respect of the declared goods dealt with by them in accordance with the provisions of Section 5(4) read with Schedule IV of the State Act and that the refund of the tax already paid by them under that provision was impermissible. It is urged on behalf of the Authorities that the petitioners on whom tax has not been levied u/s 5 (4) of the State Act in respect of the turnover relating to declared goods sold in the course of inter-State trade or commerce, assessment had to be made in accordance with law and that dealers to whom such tax had been refunded were liable to refund the amount to the State trade or commerce, assessment had to be made in accordance with law and that dealers to whom such tax had been refunded were liable to refund the amount to the State Government because in order to

claim refund of tax paid u/s 5(4), a dealer has to establish that the goods in question had been sold in the course of inter-State trade or commerce and that tax had been paid on such sales under the Central Act. As can be seen by a comparison of Section 5(4) as it stood prior to the amendment in the year 1973, with Section 5 (4) as it stands after the amendment, merely by establishing that the goods had been sold in the course of inter-State trade or commerce, a dealer would not be entitled to reimbursement of the tax paid by him u/s 5(4). He has to prove further that the tax had been paid on such sales under the Central Act. Admittedly, in all these cases the petitioners have not paid tax under the Central Act. It follows that they are liable to pay tax u/s 5(4) on the inter-State sales of the goods in question under the State Act and that any refund allowed on the basis of law as it stood prior to the amendment has to be repaid by them.

11. That appears to be the true intention of the Parliament and the State Legislature, as can be seen from the Central Act 61 of 1972 and Karnataka Sales Tax (Amendment) Act 1973. The object of the amendment made to the respective Acts is that a dealer in declared goods should pay tax either under the State Act or under the Central Act, but he should not escape liability under both of them.

12. In support of these writ petitions, several contentions were urged by Sri K. Srinivasan and Sri K. R. Indra Kumar, learned counsels for the petitioners. I shall deal with them seriatim. It was argued by Sri Srinivasan, that the expression "has been paid" appearing in Section 15(b) of the Central Act and in the proviso to Section 5(4) of the State Act should be understood as "payable" and so understood it was argued by him, if tax is imposed under the Central Act, the tax paid u/s 5(4) was refundable under the proviso to section 5(4). According to him it was not necessary for a dealer to establish that tax had actually been paid. It was enough if it is shown by him that the tax has been imposed by Parliament on the inter-State turnover. In support of his contention, he relied upon the decision of the Supreme Court in *Commissioner of Income Tax, Bombay City II Vs. Associated Commercial Corporation*, in which the expression "paid" had been interpreted by the Supreme Court as "payable". In that case, the Supreme Court was interpreting Section 18-A (6) of the Income Tax Act, 1922 which provided that interest was payable under that Act when the assessee was in arrears from the first day of January in the financial year in which the tax was paid. In that case, it was argued on behalf of the assessee that the interest was payable only if he had paid a part of the tax and if no part of the tax was paid, no interest was payable. Acceptance of that argument would have meant that an assessee who had paid a part of the tax would be liable to pay interest but if no part of the tax had been paid, he would not be liable to pay interest. The Supreme Court rejected the above contention and held that the expression "paid" should be understood "ought to have been paid". They did not lay down as a general rule that wherever the expression "paid" occurred, it should be read as "ought to have been paid." It is no doubt true that expressions like "levied" are interpreted differently in different contexts. The expression "levy of tax" in a narrow sense means imposition of tax by the Legislature. In another context it may mean

imposition as well as quantification. Sometimes it also means imposition, and collection. The Court while interpreting a provision of a Statute, ordinarily should interpret it literally unless there is any ambiguity involved. In the instant case. I find no ambiguity at all. Reimbursement of tax paid as contemplated under the amended proviso to Section 5(4) arises only when the tax has already been paid. As mentioned earlier the intention of the Parliament and the State Legislature is that a person dealing in declared goods should pay one of the two taxes and should not escape the levy under both the State Act and the Central Act. It is not possible to accept the submission that the expression "has been paid" should be read as either "is payable" or "is imposed". Similarly no reliance can be placed on the decision of this Court in *Bhandari Rajmal Kushalraj vs. State of Mysore* (1967) 2 Mys LJ 404 and also in *Munshi Abdul Rahiman and Bros. vs. Commercial Tax Officer, I Circle, Hubli* (1967) 20 STC 89 (Mys.). These decisions were rendered on the basis of the law as it stood prior to amendment of Central Act in 1972 and of Section 5(4) of the State Act, 1973. Therefore the above contention is rejected.

13. It was next argued by Sri K. Srinivasan that the rectification proceedings commenced u/s 25A of the State Act were unauthorised, because in the notices issued to the petitioners it had not been stated that there was any mistake in the orders of assessment made earlier. It is also contended that there being no error apparent on the face of the record relating to the assessment under the State Act, it was not permissible to the assessing Authorities to act u/s 25A. I have gone through the notices issued to the parties and the orders of assessment which were sought to be rectified by the Assessing Authorities. It is seen from the orders of assessment that the Assessing Authorities have granted the refund of the taxes payable u/s 5(4) of the State Act without recording a finding the tax had been paid under the Central Act it would be pen to the Assessing Authorities to refund the tax u/s 5(4) of the State Act. When the orders of assessment are read in the light of the amendments made to Section 15 of the Central Act to Section 5(4) of the State Act with retrospective effect, that there were errors in the orders of assessment would be plain. It was contended that because it was possible in some cases to read the words "has been paid" as "payable" and two interpretations were possible in the instant case, the error committed by the Sales Tax Authorities could not be considered as errors apparent on the face of the record. Reliance was placed on some decisions in which it had been laid down that when it was possible to bring home an error only after an elaborate and detailed argument, the Court should not hold such an error as an error apparent on the face of the record. I do not think that those decisions are of any assistance. In the instant case no such lengthy arguments are necessary to find out that there are errors in the orders of assessment. Incidentally it was argued that because it would not have been possible to come to the conclusion whether the assessee has paid tax under the Central Act or not without looking into the records, under the Central Act, the error was not apparent from the record under the State Act. I am of the view that it is necessary to look into the records of

Central Act because it is apparent from the record under the State Act that no finding has been recorded that the assessee had paid under the Central Act. The burden of establishing that tax had been paid under the Central Act, in order to claim reimbursement u/s 5(4) of the State Act, is on the assessee. If the assessee has not placed any material in proof of the fact that tax had been paid by him under the Central Act and the Assessing Authority under the State Act has not recorded a finding to that effect, the refund made under the State Act was untenable. It cannot, therefore be argued that the action taken by the Assessing Authorities in issuing show cause notices u/s 25A and rectifying the orders of assessment section is without jurisdiction.

14. Sri Indra Kumar, learned counsel for some of the petitioners, argued that by reason of the fact that only those assesseees whose orders of assessment had been passed within five years from the date on which action was taken u/s 25A could be proceeded against, Section 5(4) as it stands today was violative of Article 14 of the Constitution. He argued that because dealers whose orders of assessment were completed more than five years from the date of issue of notice would escape the liability to pay the tax u/s 5(4) of the State Act notwithstanding the amendment of that Section in the year 1973, on account of the period of limitation prescribed therein, the petitioners in whose cases orders of assessment were completed within five years from the date on which the notices were issued were discriminated against. The Constitutional validity of a provision of a statute cannot be decided on the ground that in its application there is a chance of certain person escaping the liability created by it. What has got to be decided is whether there is an intelligible classification of persons or things and, whether the classification bears a reasonable relationship to the object to be achieved. The question, in the instant case, relates to a period of limitation prescribed u/s 25A. Whenever, a period of limitation is fixed, it always happens that certain persons will escape the liability and certain others do not. That by itself, cannot make a law, which fixes a period of limitation, discriminatory. It is well settled that in the case of taxing statutes, the Legislature has a larger discretion in the matter of classification as long as persons included in a class are not singled out for special treatment. It has to be observed here, that a similar contention was rejected by the Supreme Court in *Jain Bros. and Others Vs. The Union of India (UOI) and Others*, Hence, there is no substance in this contention.

15. It was next contended by Sri Indra Kumar that it was not open to the Parliament to amend Section 15 of the Central Act with retrospective effect in view of the provisions of Article 286(3). It was contended by him that any restriction or condition imposed by the Parliament on the sale or purchase of the declared goods in the course of inter-State trade or commerce should always precede the sale tax law of the State Legislature and therefore any law made pursuant to Article 286(3) of the Constitution can only be prospective and not retrospective. In the instant case, it is only after Section 15 was amended in the year 1972 by Central Act 61 of 1972, the State Legislature amended Section 5(4)

of the said Act. Because Section 15 was amended with retrospective effect, it was possible for the State Legislature also to amend Section 5(4) of the State Act with retrospective effect. Clause (3) of Article 286 requires the Parliament to impose the restrictions and conditions on the sale or purchase of the declared goods in the course of inter-State trade or commerce, by a law. Parliament is a sovereign Legislature, it is well known that a sovereign Legislature can pass laws both retrospectively and prospectively, unless there is any specific restriction in the Constitution. Hence it cannot be said that the retrospective effect given to the amendment of Section 15 of the Central Act and of Section (5) of the State Act, is contrary to Article 286(3) of the Constitution.

16. No other contention is urged.

17. In the result, all these petitions fail and are dismissed with costs. Advocate's fee Rs. 100/- in each case.