
(1993) 01 KAR CK 0007
In the Karnataka High Court
Case No : W. Ps. No. 3274 of 1990 etc.

Shabib Jan

APPELLANT

Vs

Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 22-01-1993

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 6

Citation : (1993) ILR (Kar) 587

Hon'ble Judges : R. Ramakrishna, J;K. Shivashankar Bhat, J

Bench : Division Bench

Advocate : B.V. Katageri, B.P. Gandhi, S. Nanjundaswamy, K.M. Shivayogiswamy and H.N. Kasala, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

Shivashankar Bhat, J.—In this batch of Writ Petitions the petitioners questioned the Constitutional validity of Section 6 of the Karnataka Sales Tax Act, 1957, ("the State Act" for short) Under this provision purchase tax is levied on the purchases made by the petitioners under circumstances in which no tax was levied on the sales resulting in the purchases by the petitioners. According to the petitioners the State Legislature has no competence to enact Section 6 of the State Act for the reasons stated by the Supreme Court in GOOD-YEAR INDIA LTD. v. STATE OF HARYANA AND ANR., ETC. ETC., 76 STC 71 According to the petitioners the charge u/s 6 is attracted when the purchased goods are either consumed in the manufacture of other goods for sale or otherwise or the purchased goods are disposed of in any manner other than by way of sale in the state or the said goods are despatched to a place outside the State except as a direct result of inter-state sale. Some of the petitioners purchased goods like jaggery from unregistered dealers These goods were despatched by the petitioners to their branch or to their head office in another State; in other words the petitioners despatched the goods by way of consignments. The substance of

the petitioners" case is that, the taxable event is not the sale of goods by the petitioners but the circumstances arising subsequent to their respective purchases: the so called purchase tax is levied not at the point of purchase by the petitioners but because of certain subsequent events referred in Clauses (i) and (ii) of Section 6. The relevant part of Section 6 reads thus:

"6. Levy of purchase tax under certain circumstances.-

Subject to the provisions of Sub-section (5) of Section 5, every dealer who in the course of his business purchases any taxable goods in circumstances in which no tax u/s 5 is leviable on the sale price of such goods, and

(i) either consumes such goods in the manufacture of other goods for sale or otherwise or consumes otherwise, or disposes of such goods in any manner other than by way of sale in the State, or

(ii) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce,

shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods u/s 5:"

2. It is unnecessary for us to consider the contention in detail in view of the Decision of the Supreme Court reported in *Hotel Balaji and others, Vs. State of Andhra Pradesh and others, etc. etc.*, Identical questions have been considered by the Supreme Court. The Supreme Court pointed out that the concept taxable event referred in the earlier Decision in *Goodyear's* case was not correctly applied to the fact situation involved. The Supreme Court also pointed out that purpose of a provision like Section 6 is to enable the State to levy atleast one tax on the sale or purchase transaction involving the goods, The charge under the charging Section is attracted because of the purchase made by the dealer though the sale under which the dealer purchases is not subjected to tax. The charge on the purchase is attracted on satisfaction of certain conditions and those conditions are not the "taxable events" at all. His Lordship Justice Ranganathan was a party to both the Decisions of the Supreme Court. The Decision in *Goodyear's* case was rendered by a Bench of two Judges including Justice Ranganathan. His Lordship, while rendering a concurring judgment in *Hotel Balaji's* case, pointed out that the ambit of power to levy a tax in respect of sale of goods is very wide and will cover any tax which has a nexus with the sale or purchase of goods including a last purchase in the State. At page 195, his Lordship observed thus:

"...The ambit of the power to levy a tax in respect of sale of goods is very wide and will cover any tax which has a nexus with the sale or purchase of goods including a last purchase in the State. This I think is a more appropriate test to be applied in, these cases rather than the test of "taxable event" which is somewhat ambiguous in the context. I am not inclined to agree that a tax on the sale or purchase of goods will cease to be so merely because the determination

of its character as a last purchase would depend upon certain subsequent events which may be spread over a subsequent period of time. In this view of the matter I am inclined to agree with my learned brother Jeevan Reddy, J. that the levy under the Andhra Pradesh Act is also within the legislative competence of the State,"

The Judgment on behalf of the Bench was rendered by his Lordship Justice Jeevan Reddy. The Supreme Court was considering almost a similar provision of Andhra Pradesh General Sales Tax Act, the Supreme Court was also considering a few other similar legislations. We find Section 6A of the Andhra Pradesh Act referred therein is substantially similar to Section 6 of the State Act, with which we are concerned here. The Supreme Court rejected similar contentions of the assesseees. The object behind such provision was stated at page 213 thus:"

"...The tax was directed towards ensuring levy of tax atleast on one transaction of sale of the goods and not towards taxing the consignment of goods purchased or the products manufactured out of them. The difficulty has really arisen because of the attempt to look to the provisions of Section 3-AAAA through the prism of Goodyear."

This observation was made in connection with Section 3-AAAA of Uttar Pradesh Act, but those observations would equally govern the present fact situation.

3. Section 6A of the Andhra Pradesh Act is quoted at page 216 (para 66) of the above Decision. The purport of the levy was held, to be, at page 218 (para 70):

"It would, therefore, be clear that the real object of the Clauses (i) to (iii) in the Section is not to levy a consumption tax, use tax or consignment tax but only to point out that thereby the purchasing dealer converts himself into the last purchaser in the state of such goods. The goods cease to exist or cease to be available in the State for sale or purchase attracting tax. In these circumstances, the purchasing dealer of such goods is taxed, if the seller is not or cannot be taxed."

4. Part-V of the said Decision considers question whether the decision in Goodyear required reconsideration. While discussion this aspect the Court posed the following question at para 90:

"The crucial question, therefore, is what is the basis of taxation in either of the above provisions? In other words, the question is whether levy of tax is on the purchase of goods or upon the consignment of the manufactured goods?"

It was held that the levy was on the purchase of goods and not upon the consignment of the goods. At page 226, in concluding part of para 91, the Court pointed out that:

"...The most that can perhaps be said is that it is plausible (as pointed out by Ranganathan, J. in his separate opinion) to characterise the said tax both as purchase tax as well as consignment tax. But where two interpretations are

possible, one which sustains the constitutionality and/or effectuates its purpose and intendment and the other which effectively nullifies the provision, the former must be preferred, according to all known canons of interpretation."

5. The above observation makes it clear that the Supreme Court rejected the contention that it was a tax on the consignment, to sustain the validity of the provision. At para 92 the Court pointed out again, that:

"...merely because the levy attaches on the happening or non-happening of a subsequent event, the nature and character of the levy does not change."

Again at page 228 para 97 the Court observed thus:

"In the light of the above scheme of Section 9, it would not be right, in our respectful opinion, to say that the tax is not upon the purchase of raw material but on the consignment of the manufactured goods. It is well settled that taxing power can be utilised to encourage commerce and industry. It can also be used to serve the interests of economy and promote social and economic planning. Section 9 of Haryana Act and Section 13AA of Bombay Act are intended to encourage the industry and at the same time derive revenue. It is also not right to concentrate only on one situation viz., consignment of goods to manufacturer's own depots (or to the depots of his agents) outside the State. Disposal of goods within the State without effecting a sale also stands on the same footing, an instance of which may be captive consumption of manufactured products in the manufacture of yet other productions. Once the scheme and policy of the provision is appreciated, there is no room, in our respectful opinion, for saying that the tax is on the consignment of manufactured goods."

6. In Para 101 the Court referred to an earlier Decision in Mukerian Papers Ltd. v. State of Punjab; that was a Decision by the Bench of three Judges. The contention was that the principle stated in Goodyear was accepted by a Bench of three Judges and therefore should not be reopened. This contention was specifically overruled on the ground that the earlier Bench which considered Mukerian Paper Ltd.'s case had no occasion to consider the correctness of the Decision rendered in Goodyear's case. Para 102 also refers to this aspect.

7. Thus it is clear that the Supreme Court while deciding Hotel Balaji's case had considered all the aspects of the contentions now advanced before us including the effect of the Decision rendered in Mukerian Papers Ltd.'s case.

8. We have referred to the above at length, to show that Mr. Gandhi, learned Counsel for a few of the petitioners, contended before us that the Decision rendered in Hotel Balaji's case cannot operate as a binding precedent. Mr. Gandhi contended that a Bench of three Judges of the Supreme Court is bound by an earlier Decision of the said Court though rendered by a Bench of two Judges or a Bench of three Judges. The learned Counsel cited a Decision reported in UNION OF INDIA AND ANR. v. RAGHUBIR SINGH (DEAD) BY LRS. ETC.

9. Mr. Gandhi also referred to Article 269(1)(h) and Entry 92-B in List-I of the

Seventh Schedule, of the Constitution. These refer to taxes on the consignment of goods and vests competence to levy such a tax exclusively with the Parliament. According to the learned Counsel these provisions were not considered in Hotel Balaji's case and therefore for this reason also, the said Decision in Hotel Balaji's case, was rendered per incurium.

10. It is impossible for us to accept this contention of the learned Counsel. The Supreme Court has specifically considered as to whether the impugned tax was a consignment tax and whether the State legislature had competence and clearly laid down that the tax was not a consignment tax. If so, very basis of the contention advanced by Mr. Gandhi does not survive for consideration.

11. In Union of India (UOI) and Another Vs. Raghubir Singh (Dead) by Lrs. Etc., it was laid down thus:

"We are of opinion that a pronouncement of law by a Division Bench of this Court is binding on a Division Bench of the same or a smaller number of Judges, and in order that such decision be binding, it is not necessary that it should be a decision rendered by the Full Court or a Constitution Bench of the Court. We would, however, like to think that for the purpose of imparting certainty and endowing due authority decisions of this Court in the future should be rendered by Division Benches of at least three Judges unless, for compelling reasons, that is not conveniently possible."

Mr. Gandhi laid great emphasis on this, apart from a few other passages in the above Decision to contend that the Bench which decided Hotel Balaji's case could not have nullified the principle laid down in Goodyear's case.

12. When a Bench of the Supreme Court has specifically considered an argument and dealt with the same the High Court will be overstepping its limits if it proceeds to ignore such a Decision of the Supreme Court. In fact the Bench which decided Hotel Balaji's case considered all aspects of the matter. We have only referred to Mr. Gandhi's contention as above since the learned Counsel insisted that we should consider his contention. We have no hesitation in rejecting the said contention.

13. As we are of the firm view that Hotel Balaji's case holds the field and Goodyear is no longer good law, we reject the contention against the validity of Section 6 of the State Act.

14. All these Writ Petitions are accordingly dismissed without any order as to costs. Rule discharged. Taxes due from the petitioners may be paid within eight weeks.