(1997) 02 SC CK 0204

In the Supreme Court Of India

Case No : Civil Appeal No. 5180 Of 1990

State of Bihar and Others APPELLANT

Vs

Krishna Kumar Kabra and Another RESPONDENT

Date of Decision : 12-02-1997

Acts Referred:

Citation : (1997) 9 SCC 475

Hon'ble Judges : S. P. Bharucha, J;S. B. Majmudar, J

Bench : Division Bench

Final Decision : Allowed

Judgement

S.P. BHARUCHA, J.-This is an appeal by the State of Bihar against the order of a Division Bench of the High Court at Patna allowing, at the admission stage, a writ petition filed by the respondents, basing itself upon earlier judgments of that Court

2. The respondents sold wheat bran and the question is whether they are liable to pay sales tax thereon during the period 26-12-1977 until June 1985

3. On 26-12-1977 the State Government issued a notification (No. 14545) in exercise of the powers conferred by Section 11(2) of the Bihar Sales Tax Fifth Ordinance, 1977, fixing the rate of sales tax on a variety of commodities which included, at Serial No. 11 "Atta, Maida and Sujji" at the rate of 3%. On the same day the State Government issued another Notification (No. 14547) in exercise of powers under Section 6(3)(a) of the said Ordinance exempting from the levy of sales tax various commodities including, at Serial No. 35, "Cattle feed and Poultry feed". On 9-3-1978 the State Government issued a Notification (No. 3320) in exercise of the power conferred by Section 11(1) of the said Ordinance amending the aforesaid Ordinance No. 14545 so that Serial No. 11 thereof now read "Atta, Maida, Sujji & bran ... 3 per cent"

4. It is not in dispute that bran is covered by the broad description "Atta, Maida and Sujji The question is whether, by reason of the Notification No. 3320 dated

9-3-1978, amending the entry relating to the rate of tax in the earlier notification in that behalf by including "bran" therein, has the effect of bringing to an end the exemption from the levy of sales tax that bran enjoyed under Notification No. 14547 dated 26-12-1977

5. Our attention has been drawn to two judgments of this Court that squarely cover the issue in favour of the appellant State. They are the judgments in CST v. Agra Belting Works and in STO v. Dealing Daily Products. In the earlier case it was held that Sections 3-A and 4 of the U.P. Sales Tax Act were parts of the taxing scheme incorporated in that Act and, therefore, where a notification was issued under Section 3-A prescribing the rate of tax on goods which had been exempted from tax by an earlier notification under Section 4, it had to be held that the intention was to withdraw the exemption and make the sale leviable to tax at the rate prescribed in the later notification. It was not necessary that a specific or separate notification withdrawing or revoking the notification should be issued. The latter judgment of this Court, on similar facts, followed the earlier judgment

6. The facts being similar, we must hold that the Notification No. 3320 imposing tax at the rate of 3% specifically on bran intended, by necessary implication, to bring to an end the exemption that bran had theretofore enjoyed

7. Notification No. 3320 has, however, been given retrospective effect from 26-12-1977. We find that difficult to uphold, having regard to the fact that this is delegated legislation

8. We, therefore, hold that the respondent would be liable to pay sales tax on its sales of bran at the rate of 3% from 9-3-1978 until June 1985 when the situation was radically altered

9. The appeal is allowed to the extent aforestated and the order under appeal, to the same extent, set aside

10. There shall be no order as to costs.

