(1998) 04 KAR CK 0023

In the Karnataka High Court

Case No : Writ Appeal Nos. 1460 to 1474, 1894 to 1914, 1937 to 1946, 5922, 5923, 5924 to 5933, 5957, 5958, 5959 and 5983 to 5992 of 1997

State of Karnataka and Others — APPELLANT

Vs

J.S. Ramesh and Others — RESPONDENT

Date of Decision : 02-04-1998

Acts Referred:
Constitution of India, 1950 — Article 255, 301, 304(B)
Karnataka Tax on Entry of Goods Act, 1979 — Section 2(4)

Citation : (1998) 45 KarLJ 99

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

Judgement

Y. Bhaskar Rao, J.-This batch of writ appeals are filed by the State assailing the judgment of the learned Single Judge allowing the writ petitions.

2. The facts of the case are that the writ petitioners filed writ petitions assailing the amendment made to the Karnataka Tax on Entry of Goods Act, 1979 which resulted in deletion of Section 28 of the main Act with retrospective effect from the date of interpretation of Chapter II-A of the Act. By virtue of Chapter II-A, the State imposed entry tax on the goods which were brought to the local areas by importers. The contention was raised that every importer is not a dealer. Section 28 provides for levying of tax only on dealers. Therefore, levying of tax on non dealers or importers is contrary to the provisions of the Act. This Court in Arun Manikchand Shah, Jamkhandi and Others v State of Karnataka and Others, 1996(41) Kar. L.J. 137, has held that if the petitioners are not dealers under Section 2(4) of the Act, they are not liable for payment of entry tax. Thereafterwards the State brought the impugned amended Act by virtue of which Section 28 of the Act is deleted with retrospective effect from the date of interpretation of Chapter II-A of the Act. That is challenged in the present petitions.

3. The learned Single Judge allowed the writ petitions holding that the amendment Act without obtaining the assent of the President is violative of the

Constitution and further held that-

"Since in the present case admittedly, the said constitutional requirement was not complied with, therefore, it is declared that the deletion of Section 28 of the Act by Karnataka Act 1 of 1996 is not enforceable".

4. Aggrieved by the said judgment, the present appeals are filed. After delivering the judgment by the learned Single Judge, a Division Bench of this Court in Avinyl Polymers Private Limited v State of Karnataka and Others, 1997(43) Kar. L.J. 88, held that the entry tax is compensatory in nature. For making amendment to the entry tax, the President''s assent is not required. In view of the above said judgment, the point involved in the present appeals is directly covered. Therefore, the writ appeals are allowed and the orders of the learned Single Judge are quashed. It is stated that against the judgment of the Division Bench in Avinyl Polymers case, supra, the appeals are pending before the Supreme Court. We make it clear that in case the Supreme Court holds in favour of the tax payers, it is open to the writ petitioners to approach this Court on renewing the request.

5. We make it clear that this judgment will apply to all the tax payers without further approaching this Court, and the judgment in the case of Arun Manikchand Shah, supra, is no more good law in view of this judgment.

6. The writ petitioners are permitted to pay the tax if not paid already in two instalments, first instalment within three months from today and remaining within three months thereafter.

7. Writ appeals are allowed accordingly. No orders as to costs.