

(2019) 03 UK CK 0085

In the Uttarakhand High Court

Case No : Special Appeal No. 156, 157 Of 2019 With Delay Condonation
Application No. 2685, 2701 Of 2019

State Of Uttarakhand And Others

APPELLANT

Vs

M/s Badesha Stone Crusher And Others

RESPONDENT

Date of Decision : 15-03-2019

Acts Referred:

Constitution Of India, 1950 — Article 14, 226

Citation : (2019) 03 UK CK 0085

Hon'ble Judges : Ramesh Ranganathan, CJ;N.S. Dhanik, J

Bench : Division Bench

Advocate : C.S. Rawat, Piyush Garg

Judgement

Ramesh Ranganathan, CJ

1. Application to condone the delay of 91 days in preferring the appeal is not opposed and the delay is, therefore, condoned. Delay Condonation Application stands disposed of.

2. The amendment of Entry 94 of Schedule II(B) of the Uttarakhand VAT Act, 2005, by notification dated 02.05.2013, was subjected to challenge in Writ Petition (M/S) No. 727 of 2015, and against the order passed therein on 30.10.2018, the State Government is now in appeal before us.

3. Entry 94 of Schedule II(B), prior to its substitution by notification dated 21.01.2006, read as under:

"River sand and grit excluding (a) boulders and (b) grit and sand manufactured by stone crushers".

4. The said entry was substituted by notification dated 21.01.2006, pursuant to which Entry 94 of Schedule II (B) read as under:

"River sand, grit and boulders".

5. This entry was again substituted by notification dated 02.05.2013 and, after its substitution, the said Entry 94 of Schedule II

(B) read as under:

"River sand and river bazri".

6. The petitioner invoked the jurisdiction of this Court, by way of Writ Petition (M/S) No. 727 of 2015, questioning the validity of the notification dated 02.05.2013, on the ground that classification of "river sand and river bazri", excluding "bazri from stone crushers" from the ambit of Entry 94 of Schedule II (B), was unreasonable. By way of an amendment to the prayer in the Writ Petition, they sought a mandamus to declare the notification dated 02.05.2013 as discriminatory, ultra-vires, unconstitutional and illegal.

7. In the order under appeal, the learned Single Judge has not declared the said notification, dated 02.05.2013, unconstitutional. He has examined the respondent-writ petitioner's contentions on facts, and has held that "river bazri" remains the same even after they are crushed by stone crushers. PRIMA FACIE the exercise undertaken by the learned Single Judge, of determining whether or not bazri, crushed by stone crushers, also fall within the ambit of Entry 94 of the Schedule II (B), even before these questions of fact were examined, in the first instance, by the assessing authority, is impermissible, as such determination of questions of fact falls outside the scope of judicial review under Article 226 of the Constitution of India.

8. Ordinarily this Court, while examining the validity of the amendment to the Schedule of a Tax enactment, (which is a legislative exercise), would not take upon itself the task of determining whether the goods sold by the respondent-writ petitioner fall within the ambit of a particular entry or not, for these are all questions of fact which are required to be examined, in the first instance, by the assessing authority. It is also relevant to note that, despite a challenge to the validity of the notification, whereby said Entry was introduced, the learned Single Judge has not declared the notification dated 02.05.2013 ultra-vires Part III of the Constitution, and has confined his examination to the question whether bazri, crushed in the stone crushers of the respondent-writ petitioner, also fall within the ambit of Entry 94 of Schedule II(B) on par with "river bazri".

9. While Shri Piyush Garg, learned counsel for the respondent-writ petitioner, would place reliance on the observation of the learned Single Judge that no reasonable classification can be made between the same goods/commodity, the scope of judicial review under Article 226 of the Constitution of India is confined to an examination of the question whether the impugned legislation, (in the present case substitution of Entry 94 of Schedule-II (B) of the Uttarakhand VAT Act, 2005 by notification dated 02.05.2013) fell foul of Article 14 of the Constitution of India and, if it did, to then strike it down as ultra-vires the said Article. As the impugned legislative exercise has not been held to be ultra-vires, and as the learned Single Judge has taken upon himself the task of determining

questions of fact as to whether the goods, sold by the respondent-writ petitioner herein, are similar to the goods which fell within the ambit of Entry 94 (as substituted by notification dated 02.05.2013) we are satisfied that the operation of the order under appeal should be stayed.

10. Shri Piyush Garg, learned counsel for the respondent-writ petitioner, would submit that, since the respondent-writ petitioner had the benefit of an interim order throughout the pendency of the writ petition, granting stay of operation of the order under appeal would cause them substantial injury.

11. We must express our inability to agree. The Supreme Court in *Siliguri Municipality & others vs. Amalendu Das & others*: (1984)2 SCC 436 observed:-

"..... We are constrained to make the observations which follows as we do feel dismayed at the tendency on the part of some of the High Court to grant interlocutory orders for the mere asking. Normally, the High Courts should not, as a rule, in proceedings under Art. 226 of the Constitution grant any stay of recovery of tax save under very exceptional circumstances. The grant of stay in such matters, should be an exception and not a rule.

It is needless to stress that a levy or impost does not become bad as soon as a writ petition is instituted in order to assail the validity of the levy. So also there is no warrant for presuming the levy to be bad at the very threshold of the proceedings. The only consideration at that juncture is to ensure that no prejudice is occasioned to the rate payers in case they ultimately succeed at the conclusion of the proceedings. This object can be attained by requiring the body or authority levying the impost to give an undertaking to refund or adjust against future dues, the levy of tax or rate or a part thereof, as the case may be, in the event of the entire levy or a part thereof being ultimately held to be invalid by the Court without obliging the tax-payers to institute a civil suit in order to claim the amount already recovered from them. On the other hand, the Court cannot be unmindful of the need to protect the authority levying the tax, for, at that stage the Court has to proceed on the hypothesis that the challenge may or may not succeed. The Court has to show awareness of the fact that in a case like the present a municipality cannot function or meet its financial obligations if its source of revenue is blocked by an interim order restraining the municipality from recovering the taxes as per the impugned provision. And that the municipality has to maintain essential civic services like water supply, street lighting and public streets etc., apart from running public institutions like schools, dispensaries, libraries etc. What is more, supplies have to be purchased and salaries have to be paid. The grant of an interlocutory order of this nature would paralyze the administration and dislocate the entire working of the municipality. It seems that these serious ramifications of the matter were lost sight of while making the impugned order....." (emphasis supplied)

12. It is represented that, during the pendency of these Writ Petitions, assessment orders were passed, but the amounts assessed to VAT were,

however, not recovered from the respondent-writ petitioner in view of the earlier interim order passed by the learned Single Judge in the Writ Petition. A blanket unconditional interim order, restraining the Government from recovering the tax due in terms of the assessment order, would, ordinarily, not be granted by the High Court in the exercise of its extra-ordinary jurisdiction under Article 226 of the Constitution of India, as the assessed tax paid by the respondent-writ petitioner would, undoubtedly, be subject to the result of the Writ Petition/ Special Appeal, and, in case the appeals were to be dismissed later, it would always be open to the Division Bench to then direct the tax recovered, from the assesseees to be refunded to them.

13. We consider it appropriate, in such circumstances, to direct that, pending further orders in this Appeal, the respondent-writ petitioner shall deposit 50 percent of the assessed tax with the assessing authority within six weeks from today. The respondent-writ petitioner shall also furnish an unconditional bank guarantee from a nationalized bank, for the balance 50 percent, within six weeks from today which shall be kept alive, and shall be renewed periodically, during the pendency of the special appeal.