(1999) 09 KAR CK 0044

In the Karnataka High Court

Case No : Writ Appeal No''s. 4831, 5496 and 6006 to 6014 of 1998 and 615 to 620 of 1999

Super Tex Labels Pvt. Ltd. APPELLANT

Vs

State of Karnataka and Others RESPONDENT

Date of Decision : 07-09-1999

Acts Referred:
Karnataka Sales Tax Act, 1957 — Section 12 A, 12 B, 29 (1) (e), 29 (2) (c), 31 A

Citation : (2001) 121 STC 465

Hon'ble Judges : R. Gururajan, J;Ashok Bhan, J

Bench : Division Bench

Advocate : Drip V. Jois, for S.N. Murthy and Somashekar, for the Appellant; Ashok Malya, for the Respondent

Final Decision : Allowed

Judgement

Ashok Bhan, J.—This order shall dispose of two sets of appeals numbering W.A. No. 4831 of 1998 and W.A. Nos. 6006-6014 of 1998 (one set) and W.A. No. 5496 of 1998 and 615-620 of 1999 (second set) arising from a batch of writ petitions numbering 11701-710 of 1997 and 10765-67 of 1998 respectively. Both the set of writ petitions were disposed of by the single Judge by one order as the questions involved in all these writ petitions were similar. We also propose to dispose of them by one order.

2. Some of the writ petitioners have not chosen to file the appeals. There were 33 writ petitioners, out of whom only 17 have filed the appeals.

3. The appellants are either the manufacturers or traders of "narrow woven fabrics". Their place of manufacture or business is situated in the State of Karnataka. As per averments made in the writ petition, the narrow woven fabrics are manufactured on looms known in textile parlance as shuttle or shuttle less looms. The cloth which comes out of such looms is in running length. The narrow woven fabrics are universally known, recognised and understood not only in the

textile industry and trade but in commercial parlance as well as "narrow woven fabrics" because the width of the fabric is narrow, generally not exceeding 30 cms. in width.

4. State of Karnataka passed the Karnataka Sales Tax Act, 1957 ("the KST Act", for short). Section 5 of the KST Act is the charging section providing for the levy and collection of sales tax at the rates specified in the Schedule to the Act. Section 8 of the KST Act lays down that no tax shall be payable under the KST Act on the sale of goods specified in the Schedule subject to the conditions and exceptions, if any, set out therein. Entry 8A of the Fifth Schedule to the KST Act giving exemption on the sale of all varieties of textiles reads as under :

"8A. All varieties of textiles, namely, cotton, wollen or artificial silk including rayon or nylon whether manufactured in mills, powerlooms or handlooms and hosiery cloth in lengths as described from time to time in column 2 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957."

In this entry, a condition has been put that variety of textile should be as defined in the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957. Item No. 22 till March 15, 1995 read as "narrow woven fabrics" (other than tulles, other net fabrics) and there was no dispute with regard to exemption of the tax on the narrow woven fabrics manufactured and sold by the petitioners till March 15, 1995. Additional Duties of Excise (Goods of Special Importance) Act, 1957 was amended by Finance Act, 1995 and entry 58.06 was worded as under :

"Narrow woven fabrics (other than tulles, other net fabrics and goods of heading Nos. 58.07, 58.08, 58,09 and 58.10)."

The expression narrow woven fabrics in entry 58.06 was explained as under :

"For the purposes of heading No. 58.06, the expression ''narrow woven fabrics'' means :

(a) Woven fabrics of a width not exceeding 30 cm., whether woven as such or cut from wider pieces, provided with selvedges (woven, gummed or otherwise made) on both edges ;

(b) Tubular woven fabrics of a flattened width not exceeding 30 cm.,; and

(c) Bias binding with folded edges, of a width when unfolded not exceeding 30 cm."

5. In the Notes under Fifth Schedule, it is mentioned that in the Additional Duties of Excise (Goods of Special Importance) Act, 1957, for the First Schedule, the following Schedule shall be substituted, viz., :

"In this Schedule, ''heading'', ''sub-heading'' and ''chapter'' means respectively a heading, sub-heading and chapter in the Schedule to the Central Excise Tariff

Act, 1985, the section and Chapter Notes and the General Explanatory Notes of the said Schedule shall, so far as may be, apply to the interpretation of the Schedule."

It is on the basis of the above amendment of the Additional Duties of Excise (Goods of Special Importance) Act, the provisions of the Central Excise Tariff Act, 1985 may sought to be made applicable. According to the respondents, entry 58.06 have to be read with entries 58.07, 58.08, 58.09 and 58.10, which have been excluded from the purview of narrow woven fabrics. The relevant entry is 58.07 which is as under :

"Labels, badges and similar articles of textile materials in the piece, in strips or cut to shape or size, not embroidered."

As the manufacturers and traders were exempt from payment of sales tax up to March 15, 1995, the manufacturers and traders were not paying sales tax on narrow woven fabrics falling under entry 58.06. The sales tax authorities of the State of Karnataka being of the opinion that after the amendment of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 with effect from March 16, 1995, the items manufactured by the appellants-writ petitioners would fall under entry No. 58.07 and therefore liable to pay the sales tax.

6. Intelligence Wing of the Department of Sales Tax of Karnataka visited number of premises. Some of the manufacturers-traders were required to produce their books of accounts. Manufacturers/traders being of opinion that items duly sold by them are exempt from sales tax, did not produce the books of accounts. The concerned officers who visited the premises of the appellants, issued notices u/s 29(1)(e) for levy of penalty on failure to keep true and complete accounts and 29(2)(c) for "fraudulent evasion" of tax under the KST Act by submitting untrue return or not being already an assessee under this Act. Sections 29(1)(e) and 29(2)(c) of the KST Act read as under :

"29(1) Any person who,

(e) fails to keep true and complete accounts ; or

(2)(c) fails to submit a statement as required by Sub-section (1) of Section 12-B ; or" (sic), Section 29(2)(c) at the relevant time reads as under :

"29(2)(c) fraudulently evades the payment of any tax or other amount payable by him under this Act ; or."--Ed.

7. Notices u/s 12-A of the KST Act for reassessment for the period March 16, 1995 to March 31, 1995 and for the assessment years 1995-96 and 1996-97 were issued to some of the manufacturers-dealers.

8. Aggrieved against the issuance of notices under Sections 29(1)(e) and 29(2)(c), the writ petitions were filed. At that time notice u/s 12-A had not been issued. They were issued later on, which were brought on record by filing an interim application.

9. Appellants/petitioners did not submit to the jurisdiction of the assessing officer u/s 12-A for framing reassessment. In some of the cases, in their absence, assessments were framed ex parte. No appeals have been filed against the orders passed on reassessment.

10. Notices of the writ petitions are issued to the respondents. Respondents did not file objections.

11. The questions which were agitated before the single judge was as to whether the narrow woven fabrics manufactured or sold by the appellants/petitioners would fall under the category of "similar articles of textile materials" mentioned in entry 58.07 or they would be woven fabrics of width not exceeding 30 cms ? Whether they were woven or cut from wider pieces provided with selvedges (woven, gummed or otherwise made) on both edges as given in entry 58.06 ?

12. Learned single judge proceeded to decide the controversy between the parties on the question of law without taking on record the factual aspects which could only be determined by the assessing authorities. In normal course, the appellants/petitioners should have submitted to the jurisdiction of assessing authorities to raise their objections. The assessing authorities, on the raising of the objections by the appellants/petitioners, would have framed assessment in accordance with law and the appellants/ petitioners thereafter would have had the remedy of filing appeal, etc. Factual aspect of the controversy between the parties has not been determined. Even statement of objections had not been filed by the respondents. Learned single Judge came to the conclusion that the items manufactured to be sold by the petitioners/appellants fell under entry 58.07 and not under entry 58.06, although at number of places the learned single Judge has recorded a finding that the strips of labels/badges manufactured by the appellants/ petitioners are narrow woven fabrics.

13. Arguments were addressed before us at length, but we are of the opinion that in the absence of factual determination of the facts, it is not possible to return the findings on the points raised before us. We would remit the appellants/ petitioners to their respective assessing authorities and direct them to submit to the jurisdiction of the assessing authorities and file their objections to notices u/s 12-A/31-A of the KST Act. Only then the factual aspects raised by the parties would come on record which would enable this Court to determine the controversy raised in this proceedings.

14. Notices issued under Sections 29(1)(e) and 29(2)(c) are quashed as in the given facts and circumstances of the present case, such notices could only be issued by the assessing authority. We say so because earlier the manufacturers-traders of the narrow woven fabrics were exempt from payment of" sales tax. They were brought within the purview of KST Act because of the amendment of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 by the amending Finance Act of 1995. According to the authorities, they were brought within the purview of KST Act with effect from March 16, 1995. The

manufacturers/traders under the circumstances, could legitimately think that their item fell under entry 58.06 and hot 58.07 and may not have produced their books of accounts before the intelligence authorities. Similarly, it cannot be said they had fraudulently avoided to pay the sales tax. Notices u/s 29(1)(e) and 29(2)(c) are therefore quashed at this stage.

15. The order of the learned single Judge is set aside. The appellants/ petitioners are directed to submit to the jurisdiction of the assessing authorities and file their objection to the notices issued to them u/s 12-A or Section 31-A of the KST Act. It shall be open to them to raise all available contentions before the authorities. The assessing authorities shall take a final decision on the notices issued by them u/s 12-A or u/s 31-A of the KST Act after taking into consideration the objections filed by the manufacturers/traders in accordance with law without influencing itself in any way by any of the observations made by the learned single Judge. The authorities shall take a final decision after affording due opportunity of hearing to the manufacturers-traders.

16. Any ex parte assessments which may have been framed against any of the appellants-petitioners are set aside. The parties to whom notices u/s 12-A/31-A would be at liberty to file their objections and the assessing authority shall proceed to reframe the assessment after deciding the objections filed by the manufacturers/traders in accordance with law without in any way influencing themselves by any of the observations made by the learned single Judge in his order. Mr. Kishore Mallya has no objection to the setting aside of the ex parte assessments which may have been framed against any of the manufacturers/ traders on their failure to submit to the jurisdiction of the assessing authorities. The assessing authority in these cases shall pass fresh orders after taking into consideration the fresh objections filed by the manufacturers-traders.

17. We have noted that there were 33 writ petitioners, out of whom only 17 have filed the appeals. This order is being passed in respect of these 17 writ petitioners. Since we are setting aside the order of the single Judge, the order passed in this case would be applicable mutatis mutandis to the writ petitioners who have not filed the appeals. This has been done in order to avoid filing of appeals later by those writ petitioners who have not preferred appeal, for getting similar relief. Manufacturers/traders shall be at liberty to file objections within six weeks. In case such objections are filed they be considered without objection to the limitation/time prescribed in the notice u/s 12-A of the KST Act. This order has been passed in the peculiar facts and circumstances of these appeals and shall not be taken as a precedent for any future reference.

18. Appeals are allowed in the above terms.

