

(1998) 08 SC CK 0088

In the Supreme Court Of India

Case No : Review Petition No's. of 1998 in Writ Petition (C) No's. 676, 1052 and 1112 of 1988 and 770 of 1989

Texmaco Ltd. and Another

APPELLANT

Vs

State of A.P. and Another

RESPONDENT

Date of Decision : 18-08-1998

Acts Referred:

Constitution of India, 1950 — Article 142, 32

Citation : (2005) 1 JCR 31 : (2000) 1 SCC 763 : (2000) 118 STC 290

Hon'ble Judges : S. P. Bharucha, J;G. T. Nanavati, J;B. N. Kirpal, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

1. In the case of Indian Cement and Others Vs. State of Andhra Pradesh and Others, concessions were given to manufacturers of cement within the State of Andhra Pradesh. The rate of sales tax in respect of sales made by cement manufacturers in the State to manufacturers of cement products also in the State was reduced. The validity of the notifications concerned was challenged by cement-manufacturing units that were not entitled to the concessions. The notifications issued under the Central Sales Tax Act, 1956 and the Andhra Pradesh General Sales Tax Act, 1957, were quashed on the basis that they impeded the free flow of trade between States. The order that this Court passed read:

"16. In view of what we have indicated above, the writ petition has to succeed and the two impugned notifications of the Andhra Pradesh Government and the impugned notification of the Karnataka Government are quashed. The writ petition is accordingly allowed with costs. Hearing fee is assessed at Rs 5000 and this shall be shared equally by the States of Andhra Pradesh and Karnataka."

2. Pursuant to the said order, proceedings were commenced in the State to recover the amounts of the sales tax which would have been paid but for the two notifications (now referred to as "the concessional amounts") and assessment

orders were made. Writ petitions under Article 32 were filed by those so affected seeking a declaration that the said order was prospective in nature and directions to quash recovery proceedings.

3. Emphasis was laid by Mr Salve, learned counsel for the petitioners on the fact that the said order, while it was not prospective in operation, also did not give to the State permission to collect the concessional amounts. Attention was drawn by him to the provisions of Sections 30-B and 30-C of the Andhra Pradesh General Sales Tax Act, by reason of which the petitioners could not collect the concessional amount from their customers and would have been liable to penalties if they had done so. Mr Salve's submission was that it was, therefore, unjust and inequitable that the State should now seek to collect the concessional amounts from the petitioners. The provisions of Articles 32 and 142 enabled this Court to do the just thing by the petitioners.

4. Mr Raghuvir, learned counsel for the State responding to the discussion at the Bar, submitted that he would have no answer if these petitions were treated as review petitions.

5. It seems to us that the attention of the learned Judges who delivered the judgment and passed the said order was not drawn to the fact that the assesseees would have to pay by way of sales tax amounts which they had not, and could not, under the provisions of the Andhra Pradesh General Sales Tax Act, have collected from their customers. The notifications were intended to protect the local cement industry. The quashing of the notifications should have the effect of putting the local cement industry and the cement industry outside the State on a par; it could not place the former in a disadvantageous position qua the latter. The assesseees were not parties to the proceedings so that there was no default on their part. They approached this Court soon after assessment orders to recover the concessional amounts were passed against them, a year or so after the date of the said order. Having regard to the provisions referred to above, it is, in our view, not just or equitable to permit the State to collect the concessional amounts. Having regard to the fair statement of learned counsel for the State, this result can best be achieved by treating these petitions as review petitions. We direct thereon that the said order shall stand reviewed so that the following sentence is added to it:

"In the circumstances, the State of Andhra Pradesh shall not collect the amounts of sales tax that has become payable only by reason of this order quashing its two impugned notifications."

6. Assessment orders and proceedings to recover the concessional amounts must be reviewed in the light of this order.

7. Order accordingly. No order as to costs.