

(1984) 08 KAR CK 0040

In the Karnataka High Court

Case No : Writ Petition No. 1848 of 1976

The Printers (Mysore) Ltd. and Another

APPELLANT

Vs

Assistant Commercial Tax Officer, VII Circle, Bangalore-9 and
Others

RESPONDENT

Date of Decision : 10-08-1984

Acts Referred:

Central Sales Tax Act, 1956 — Section 7

Karnataka Sales Tax Act, 1957 — Section 2 (1) (m), 2 (d), 8 (1) (b)

Citation : (1984) ILR (Kar) 1217 : (1985) 59 STC 306

Hon'ble Judges : S.A. Hakeem, J; Jagannatha Shetty, J

Bench : Division Bench

**Advocate : S.G. Sundaraswamy, for the Appellant; S. Rajendra Babu,
Government Advocate, for the Respondent**

Judgement

Jagannatha Shetty, J.—The question raised in this writ petition under article 226 of the Constitution relates to the right of the petitioners to purchase newsprint and other goods under C forms issue under the Central Sales Tax Act, 1956 (the "Act") for use in the manufacture or processing of newspapers and periodicals.

2. Briefly stated, the facts are these :

The first petitioner is a company engaged in the manufacture of newspapers - one published in English by the name of "DECCAN HERALD" and the other in Kannada by the name of "PRAJAVANI". The second petitioner is the governing director of the said company. The company also produces two magazines in Kannada - one is a weekly called "SUDHA" and the other a monthly by the name of "MAYURA". The company was registered as a dealer u/s 7 of the Central Sales tax Act and also under the Karnataka Sales Tax Act. The company was permitted to purchase certain goods under C forms at a concessional rate of tax at 4 per cent. as prescribed u/s 8(1)(b). But for the C forms, the company has to pay 10 per cent. tax on the sale of those goods. The company has been making use of those goods in the manufacture of newspapers.

3. By a notice dated October 15, 1975 the Assistant Commercial Tax Officer, VII Circle, Bangalore, informed the company that the definition of "goods" under the "Act" excludes "newspapers". He asked the company not to use C forms for purchasing the articles used in the manufacture of newspapers. He directed the company to produce its registration certificate to delete the articles like ink, metal, maplitho paper, machinery parts, craft paper and jute twine which are used in the manufacture and packing of newspapers.

4. The company resisted the action proposed. It contended that the newspaper has always been regarded as goods. But it was removed from the definition of the word "goods" in the Act with the primary intention of avoiding tax on sale or purchase of newspapers. That does not necessarily mean that the newspaper cases to be goods for all purposes and even in the popular sense. With these and other please, the company requested the Commercial Tax Officer to permit the use of C forms for purchasing the articles used in the manufacture of newspapers.

5. The Commercial Tax Officer did not change his opinion and by order dated December 4, 1975 he deleted the articles "ink, metal, maplitho paper, machinery parts, craft paper" from the certificate of registration.

By an order dated February 18, 1980 the Commercial Tax Officer also directed the company not to purchase "newsprint" under C forms.

The company has moved this Court with an application under article 226 of the Constitution challenging the validity of the action taken by the Commercial Tax Officer.

The primary question for consideration is whether the company is entitled to purchase certain articles which are used in the manufacture of newspapers at the prescribed concessional rate of tax when newspapers are not goods as defined under the Act.

6. In a commercial sense, the newspapers may mean goods. It is generally understood as a publication containing news or articles. In the Press and Registration of Books Act, 1967 it means "any printed periodical work containing public news or comments on public news". Section 9 of the Indian Post Office Act, 1898 refers to it as every publication consisting wholly or in great part of political or other news, or of articles relating thereto, or to other current topics, with or without advertisements.

7. The Constitution of India has imposed some constraints on the power of the State to tax the sale or purchase of newspapers.

Under entry 54, List II of the Seventh Schedule, the State's power to tax sales or purchases extends to "goods" other than newspapers.

Under entry 92, List I of the Seventh Schedule, the Central retains such a power to tax on the sale or purchase of newspapers and advertisements.

By the Constitution (Sixth Amendment) Act, 1956 entry 92-A has been inserted

in List I with the corresponding amendment to entry 54 in List II. Entry 92-A of List I :

"Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

The amendment entry 54 in List II :

"Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92-A of List I."

8. All taxing statutes whether Central or State must conform to these constitutional parameters. So the necessary amendments were made to the provisions of the Act by excluding "newspapers" from the definition of "goods".

Section 2(d) of the provides :

""goods" includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities."

The definition of the word "goods" under the Karnataka sales tax Act, 1957 was also brought in line with the definition of that word u/s 2(d) of the Act. Section 2(1)(m) of the K.S.T. Act, 1957, reads :

""goods" means all kinds of movable property (other than newspapers, actionable claims, stocks and shares and securities) and includes livestock, all materials, commodities, and articles (including those to be used in the fitting out, improvement or repair of movable property) and all growing crops, grass or things attached to, or forming part of, the land which are agreed to be severed before sale or under the contract of sale."

9. It is now necessary to refer to some of the provisions of the Act which are relevant to the question raised in this case.

Section 6 so far as it is relevant provides :

"6. Liability to tax on inter-State sales. - (1) Subject to the other provisions contained in this Act, every dealer shall, with effect from such date as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales of goods other than electrical energy effected by him in the course of inter-State trade or commerce during any year on and from the date so notified :

....."

Section 7 provides for registration of dealers and for grant of certificate of registration.

Section 8 prescribed rates of tax on sales of goods in the course of inter-State

trade or commerce. It reads :

"(1) Every dealer, who in the course of inter-State trade or commerce -

(a) sells to the Government any goods; or

(b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3);

shall be liable to pay tax under this Act, which shall be four per cent. of his turnover.

(2) The tax payable by any dealer on his turnover in so far as the turnover or any part thereof relates to the sale of goods in the course of inter-State trade or commerce not falling within sub-section (1) -

(a) in the case of declared goods, shall be calculated at twice the rate applicable to the sale or purchase of such goods inside the appropriate State; and

(b) in the case of goods other than declared goods, shall be calculated at the rate of ten per cent., or at the rate applicable to the sale or purchase of such goods inside the appropriate State, whichever is higher;

.....

(3) The goods referred to in clause (b) of sub-section (1) -

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;

....."

After examining these provisions, a Bench of this Court in *Samyukta Karnataka v. Commercial Tax Officer* (W.P. No. 224 of 1964 disposed of on July 16, 1964) has held that newspapers are outside the reach of the Act and the goods used in the manufacture of newspapers therefore cannot be purchased under C forms at concessional rate of tax.

10. Mr. S. G. Sundaraswamy, learned counsel for the petitioners, urged that this Court in the above decision has not correctly laid down the law and the question, therefore, must go to a larger Bench. He contended that the word "goods" used in section 8(1)(b) must be understood in the commercial sense and not with narrow meaning assigned to it by the definition u/s 2(d) of the Act. According to him if the sale of materials which are used in the manufacture of newspapers is not given the benefit of concessional rate of tax, then the newspapers cannot be made available to the general public at a reasonable price and that would be detrimental to the public interest. The counsel placed some reliance on the decision of a single Judge of the Madras High Court in *Indian Express (Madurai)*

Ltd. v. Deputy Commercial Tax Officer, Mount Road Division II, Madras-2 Indian Express (Madurai) Ltd. Vs. Deputy Commercial Tax Officer, Mount Road Division II, and Others,

11. It is not doubt a proper suggestion that the newspapers should be within the reach of every person and it should be available at a cheap price. There should be dissemination of information from diverse and antagonistic sources. This is most essential to the welfare of the public because, the freedom of speech and press is a foundation of the Government of a free people.

But then, there is no immunity from the general laws which can be claimed by the press in regard to taxation. "While it would certainly not be legitimate to subject the press to laws which take away or abridge the freedom of speech and expression or which would curtail circulation and thereby narrow the scope of dissemination of information, or fetter its freedom to choose its means of exercising the right or would undermine its independence by driving it to seek Government aid. Laws which single out the press for laying upon it excessive and prohibitive burdens which would restrict the circulation, impose a penalty or its right to choose the instruments for its exercise or to seek an alternative media, prevent newspapers from being stated and ultimately drive the press to seek Government aid in order to survive, would therefore be struck down as unconstitutional." : See Express Newspapers (Private) Ltd. and Another Vs. The Union of India (UOI) and Others,

12. The petitioner in this case has no challenged the validity of taxation on the sale of materials used in the manufacture of newspapers on the ground that it is excessive or prohibitive burden which would restrict the circulation or narrow the scope of dissemination of information. The contention, however, urged was that the concessional rate of tax prescribed u/s 8(1)(b) must also be extended to the sale of goods intended for use in the manufacture of newspapers. This contention is solely based on the purpose of section 8(3)(b), viz., that the "goods" ultimately sold as a finished product after manufacture should not be expensive for the general public.

13. It is true that one of the purposes of section 8(1)(b) and section 8(3)(b) is to reduce the tax burden on the raw materials so as to prevent the increase in the cost of the manufactured articles.

The Supreme Court in Assessing Authority-cum-excise and Taxation Officer, Gurgaon and Another Vs. East India Cotton Mfg. Co. Ltd., Faridabad, observed :

"..... The object of providing a lower rate of tax u/s 8(1)(b) for sales of goods described in section 8(3)(b) clearly is that when goods are purchased by a registered dealer for being used by him in the manufacture or processing of goods which are intended for sale, the goods which are ultimately sold should not become unduly expensive to the consumer by addition of a high rate of sales tax on the purchase of goods which are used in manufacture or processing of the goods ultimately sold."

The Statement of Objects and Reasons appended to the Constitution (Tenth Amendment) Bill 1956 (Bill No. 35 of 1956), also lends support to this view :

"..... Broadly, therefore, inter-State sales should be the concern of the Union, but the responsibilities pertaining to the Union could be exercised through the State Governments, and in any case, the revenue should appropriately devolve on them. Intra-State sales, on the other hand, should be left to the States, but with one important exemption. Where, for instance, raw material produced in a State is important from the point of view of the consumer or the industry of another State, certain restrictions have to be placed on the taxing power of the State Government, as otherwise it can effect an increase in the cost of the manufacture article, whether such manufacture takes place in the State which produces the raw material, or in another State which imports the material from that State. In either case, to the extent that the finished goods are consumed in a State other than the one which taxes the raw material, the increase in cost on account of the tax is a matter of direct concern to the consumer of another State. Such cases of intra-State sales should appropriately be brought under the full control of the Union"

14. The Legislature has prescribed the concessional rate of tax only to four categories of goods which are set out in section 8(3)(b). They are : (i) the goods intended for resale by the dealer; (ii) the goods intended for use by the dealer in the manufacture or processing of goods for sale subject to the rules made by the Central Government; (iii) the goods used in mining; and (iv) the goods used in the generation or distribution of electricity or any other form of power.

The contention of Mr. Sundaraswamy relates only with regard to "goods" under category No. (ii). He wants us to give a liberal meaning to that word so as to include "newspapers" also. He, in other words, wants to deny that word the meaning assigned to it in the definition clause. The canon of construction governing such question is well-recognised. The Court in construing a statute is bound to give effect to the interpretation clause unless it can be shown that the context of the particular word where it is used shows clearly that that meaning should not be given effect to. In *Indian Immigration Trust Board of Natal v. Govindaswamy* AIR 1920 PC 114, the Privy Council observed at page 115 :

"Now, when the interpretation clause in a statute says that such and such an expression shall include so and so, a Court in construing a statute is bound to give effect to the direction unless it can be shown that the context of the particular passage where the expression is used shows clearly that the meaning is not in this place to be given effect to, or unless there can be alleged some general reasons of weight why the interpretation clause is to be denied its application."

In *The Vanguard Fire and General Insurance Co. Ltd., Madras Vs. Fraser and Ross and Another*, the Supreme Court observed :

"..... the meaning to be ordinarily given to it is that given in the definition

clause. But this is not inflexible and there may be sections in the Act where the meaning may have to be departed from on account of the subject or context in which the word has been used and that will be giving effect to the opening sentence in the definition section, namely, unless there is anything repugnant in the subject or context. In view of this qualification, the Court has not only to look at the words but also to look at the context, the collection and the object of such words relating to such matter and interpret the meaning intended to be conveyed by the use of the words under the circumstances"

15. We have examined carefully the provisions of section 8(1)(b) and section 8(3)(b). There is nothing in the context in which the word "goods" occurs in section 8(3)(b) which justifies the denial of the meaning given to it in the interpretation clause. Section 8(3)(b) appears to be exhaustive. It covers even the materials used in the manufacture of goods which are not chargeable to tax under the Act. For example, section 6 excludes levy of tax on electrical energy. However, the concessional rate of tax has been extended in respect of sale of goods which are used in the generation or distribution of electricity or any other form of power. Even the sale of goods used in mining is given similar benefit. It seems to us, therefore, if the intention of the Parliament was that the sale of goods used in the manufacture of newspapers should also attract the concessional rate of tax prescribed u/s 8(1)(b), it would have been expressly stated so in section 8(3)(b). We are, therefore, of the opinion that it is not for this Court to rewrite section 8(3)(b) however laudable the object may be.

16. In this context, it may also be stated that in view of entry 92-A of the Union List, the Parliament has been denied the power to tax the inter-State sale or purchase of newspapers. Even without the exclusion of newspapers from the definition of "goods" u/s 2(d), the charging section under the Act obviously could not have been invoked to tax the sale of newspapers effected in the course of inter-State trade or commerce. The Parliament being aware of this aspect, has kept the provisions of section 8(3)(b) in tune with the definition clause. The word "goods" must, therefore, in our opinion, receive the same meaning as defined u/s 2(d) and any attempt to give the commercial meaning to that word would be illogical and unwarranted. We must, therefore, reiterate the view taken by this Court in *Samyukta Karnataka v. Commercial Tax Officer* (W.P. No. 224 of 1964 disposed of on July 16, 1964) which has stood the test of time for two decades.

In the result, the rule is discharged and the writ petition is dismissed. In the circumstances of the case, we make no order as to costs.