(1975) 06 KAR CK 0006

In the Karnataka High Court

Case No : S.T.R.P. No''s. 5, 7, 8, 9 and 18 of 1974

The State of Mysore APPELLANT

Vs

U.M. Gulam and Sons and Others RESPONDENT

Date of Decision : 03-06-1975

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 21, 23 (1), 5 (1)

Citation : (1975) 2 KarLJ 377 : (1975) 36 STC 254

Hon'ble Judges : G.K. Govinda Bhat, C.J;M.K. Srinivasa Iyengar, J

Bench : Division Bench

Advocate : M.P. Chandrakantaraj Urs, for the Appellant; P. Vasudeva Aithal, K. Radhesh Prabhu and B.V. Acharya, for the Respondent

Judgement

Govinda Bhat, C.J.—These are revision petitions preferred by the State u/s 23(1) of the Karnataka Sales Tax Act, 1957 (hereinafter called the "Act") against the orders of the Sales Tax Appellate Tribunal made in S.T.A. Nos. 5, 4, 3, 2 of 1972 and No. 325 of 1973.

2. The respondents are "dealers" in "lime" manufactured from sea-shell. Sea-shell are baked in md kilns and the baked product, which is lime, is sold by the dealers to coffee and other plantations - apparently for application to the soil and/ or use in the preparation of "bordeaux mixture" which is a fungicide composed of copper-sulphate, lime and water.

3. The assessing authority levied tax on the turnover of the dealers at 3 per cent. u/s 5(1) of the Act on the assumption that lime sold by the dealers does not fall within any of the items of the Second Schedule to the Act. The dealers did not prefer any appeal against the said orders of assessment. The Deputy Commissioner of Commercial Taxes, Mangalore (in assessments of the respondents in S.T.R.P. Nos. 5, 7, 8 and 9 of 1974), and the Assistant Commissioner of Commercial Taxes, Mangalore (in assessments of the respondent in S.T.R.P. No. 18 of 1974), initiated proceedings u/s 21 of the Act to revise the assessment orders by charging the turnover of the dealers relating to

sale of lime at the higher rate prescribed for "heavy chemicals" under item No. 79 of the Second Schedule to the Act. The dealers contended, inter alia, that lime prepared from sea-shell does not fall within item No. 79 and that the goods in question fall under item No. 48, viz., chemical fertilisers. In the alternative, they contended that lime does not fall within item No. 79. The revisional authorities rejected both the contentions of the dealers and passed orders by charging the respective turnover of the dealers at the higher rate of tax prescribed for the goods falling under item No. 79 of the Second Schedule to the Act, taking the view that lime is a "heavy chemical". Against the said orders, the dealers preferred appeals before the Sales Tax Appellate Tribunal, Bangalore. The Tribunal, after referring to the meaning of the term "heavy chemical" found in the dictionaries observed that there is no material placed to show that lime of the nature dealt with by the dealers possessed the characteristics of "heavy chemicals" and, on that view, reversed the order of the revisional authorities and restored the order of the assessing authorities. Aggrieved by the decision of the Tribunal, the State has preferred the above revision petitions.

4. It was urged by Sri Chandrakantaraj Urs, the learned counsel for the State, that it is undisputed that "lime" is a chemical and that it is also undisputed that it is produced in bulk at cheap rates and that being the case, "lime" falls within the meaning of "heavy chemicals" under item No. 79 of the Second Schedule to the Act. The question for decision in these revision petitions is whether "lime" manufactured from sea-shell in this country falls within the meaning of item No. 79 of the Second Schedule to the Act, which reads :

"SECOND SCHEDULE Goods on the sale of which a single point tax is leviable on the first or earliest of successive dealers in the State u/s 5(3)(a). --- Sl. No. Description of the goods Rate of tax --- 1 2 3 --- 79. Heavy chemicals (such as sulphuric acid, hydrochloric acid, caustic soda, etc.) Six per cent.'' ---

5. The Act has classified goods into several classes and has prescribed different rates of tax of different goods. The term "heavy chemicals" has not been defined in the Act. According to Webster''s New International Dictionary (II Edn., Vol. I), "heavy chemicals" are those produced and handled in large lots and often in more or less crude quality as sulphuric and nitric acids, caustic soda and aluminium sulphate. Acids and alkalies are generally accepted as "heavy chemicals"; but usage and opinion vary considerably as to the specific industries possessing the general economic characteristics of heavy chemical industries. The Encyclopaedia of Social Sciences edited by Edwin R. A. Saligman and published by Macmillan Company, New York (page 300 of Vol. VII-VIII), gives a clear idea of what is meant by "heave chemicals". It states :

"Heavy chemicals. - The heavy chemical industries in general include all those enterprises which turn out bulky chemicals cheap per unit of weight. The consumption of raw material and the output of finished product normally run into the thousands and mullions of tons and into the tens and hundred of millions of dollars. The manufacturing processes usually involve merely the moving, grinding, mixing and separating of large quantities of solid, liquid and gaseous masses. From beginning to end the reactions take place automatically and continuously within huge chambers, gigantic vats and mountainous reaction towers connected by labyrinthine network of pies, conduits and other conveyors. Requiring large groundspace and ample facilities for waste disposal, the plant is ordinarily established where acid fumes and other noxious substance do minimum harm to vegetation and man; that is, by preference in a desolate area not too far away from a harbour or other crossroads of economical transport.

Usage and opinion vary considerably as to the specific industries possessing these general economic characteristics, but in most countries at the present time the heavy chemical industries include the following manufactures : Sulphuric acid and other mineral acids; soda ash and other alkalies; fertilizers including phosphates, nitrates, potash salts and ammonium sulphate, bleaching compounds and other electro-chemical products; the alums and vitriols; salt; sulphur and pyrites. Frequently soaps, glasses, ceramic wares, lime, cement and industrious gases are also included ..."

6. According to the Encyclopaedia of Social Sciences, the heavy chemical industries in general include all those enterprises which turn out bulky chemicals cheap per unit of weight. Usage and opinion, however, very considerably as to the specific industries possessing these general economic characteristics. All over the industrial world acids and alkalies are accepted as heavy chemical industries. The general common economic characteristics, viz., enterprises which turn out bulk chemicals cheap per unit of weight are taken as a criteria for determining he industries which fall under the category of heavy chemical industries; chemical fertilisers, salt, cement and sulphur come within the meaning of the term "heavy chemicals".

7. But the Act has prescribed separate rates of tax for cement, chemical fertilisers, sulphur, etc., which would otherwise fall within item No. 79. Salt is altogether exempted from taxation under the Act. It is in this context that the court has to gather the intention of the legislature. It is quite apparent that the legislature did not intend to bring under item No. 79 all those chemicals which answer that general economic characteristic mentioned in the Encyclopaedia of Social Sciences and similar books. One important economic characteristic possessed by a heavy chemical industry in that the chemicals are produced in huge plants. Chemicals produced by cottage industries, though they may produce chemicals cheap per unit of weight, cannot be considered as heavy chemical industries. It all depends upon the nature of the industry in the particular country producing the chemical. In Western countries, textiles are produced in mills; but in India, textiles are produced not only in mills but also by

handlooms. It is undisputed that in India lime produced from sea-shell is not a product manufactured in huge plants. Lime is a product derived by baking sea-shell in country kilns as was done centuries ago.

8. Sri Urs, the learned counsel for the State, submitted that lime is also produced in huge quantities as a by-product of certain industries in huge plants. But we have no material before us to support that submission. The Tribunal has clearly stated that no material was placed before it other than the opinion obtained by the department from the Indian Institute of Science that lime is a heavy chemical. Lime may be a product of heavy chemical industry in the United States of America and other advanced countries of the West; but it may or may not be a heavy chemical in this country. It the bulk of lime produced in this country is by the age-old method of baking sea-shell or limestones in country kilns which is a cottage industry, production of lime cannot be regarded as a heavy chemical industry in this country. In the absence of sufficient material, we are not in a position to decide this question. That being the position and when there was no material before the revisional authorities on the basis of which they could have held in this country lime is a heavy chemical, the order of the assessing authorities could not have been revised in exercise of the power conferred u/s 21 of the Act. The revisional authorities were, therefore, in error in interfering with the assessment orders. On this short ground the Tribunal could have reversed the orders of the revisional authorities and restored the orders of the assessing authorities without expressing a final opinion as to whether lime is or is not a heavy chemical falling under item No. 79 of the Second Schedule to the Act. As stated earlier, since there is no adequate material for deciding that question, we leave it open.

9. Accordingly, these revision petitions fail and are dismissed, but without costs.

10. Petitions dismissed.

