

(2003) 07 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 11851-11859 of 2001

The Unique Creations (Bangalore) Limited

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 24-07-2003

Acts Referred:

Karnataka Tax on Entry of Goods Act, 1979 — Section 11 A, 5 (1), 5 (3)

Citation : (2003) ILR (Kar) 3695 : (2004) 135 STC 213

Hon'ble Judges : R. Gururajan, J

Bench : Single Bench

Advocate : M. Thirumalesh and G. Rabinathan, for the Appellant; Anand, HCGP, for the Respondent

Final Decision : Allowed

Judgement

Gururajan, J.—The petitioner, Unique Creations (B'lore) Ltd., is seeking for various prayers. The petitioner is a dealer registered under the Sales Tax Act. It is a manufacture of readymade garments and it is 100% Export Oriented Unit. The State Government announced its Industrial Policy for a period of five years in terms of the Policy bearing G.O. No. CI 30 SPC 96 dated 15.3.1996. The G.O. in Annexure II, paragraph 10, offered Special Concessions for Exports applicable to 100% Export Oriented Units with export effort of a minimum of 25% of the value of total turnover. Entry tax exemption was offered in the case of 100% EOUs. It was implemented in terms of a notification dated 15.11.1996. The Industrial Policy is dated 15.3.1996. The same was implemented by way of a Notification dated 15.11.1996 in terms of Section 11-A of KTEG Act. As equivalent of entry tax exemption offered to 100% EOUs in the Industrial Policy G.O. dated 15.3.1996, the Notification dated 15.11.1996 stipulates "Nil" entry tax on raw materials, components, packing materials etc., brought into a local area from any place outside the State for use in the manufacture of goods, subject to the conditions prescribed therein. Export has been defined in the said notification reading as under:

"Export means, export as defined under Sub-section (1) of Section (1) of Section 5 of Central Sales Tax Act, 1956 (Central Act 74 of 1956)".

2. Export means export as defined in Sub-section 1 of Section 5 of Central Sales Tax Act, 1956. According to the petitioner, the petitioner claimed exemption from entry tax on the basis of the Industrial Policy on the value of raw material, components etc., brought into the local area of Industrial Suburb, Yeshwanthpur, and used in the manufacture of readymade garments, which the petitioner disposed of by sales in the course of export to foreign buyers and by sales to exporters who in turn sold the readymade garments in the course of export of foreign buyers. The exemption from entry tax was claimed for the year 1999-2000 and also in the monthly statements submitted for the months of April to November, 2000. The assessing authority held that Industrial Policy dated 15.3.1996 applied only to new industries set up on or after 1.4.1996 and that the petitioner is not a new Industrial Unit established under the 1996-2001 Industrial Policy and that therefore, the petitioner was not eligible for exemption from entry tax granted in the Notification No. FD 32 CSL 96 dated 15.11.1996. The assessing authority issued proposition notice and assessed to entry tax at 1%. The petitioner filed objections. In the objections, the petitioner stated that penultimate sales within Section 5(3) of Central Sales Tax Act, 1956 are also exports. The petitioner contended that exemption cannot be denied on raw materials and components in the matter of entry tax. The assessing authority, however held that the objections filed by the petitioner were untenable in view of the definition of the Export Notification dated 15.11.1996, Annexure "B". Assessment orders are produced at Annexures "C" to "C8". The petitioner with these facts is before me with various prayers.

3. Notice was issued and the respondents have entered appearance. They filed a detailed objection and they contend in the objection that Annexure "B" is only an explanatory to the Industrial Policy in terms of Annexure "A". They say that the Government of Karnataka has prescribed that only export as defined u/s 5(1) of the CST Act is export for the purpose of notification. They justify their action. They also justify the assessment orders.

4. Sri Rabinathan, learned Counsel appearing for the petitioner invites my attention to the Industrial Policy Resolution to contend that the Notification Annexure "B" runs counter to Annexure "A". According to the learned Counsel, the restricted export definition in terms of the Notification requires my interference. He relies on two judgments of two Courts and the Supreme Court in 90 STC 537 and State of Bihar and Others Vs. M/s. Suprabhat Steel Limited and Others, .

5. Per contra, Sri Anand, learned Government Advocate, while supporting, invites my attention to the policy to contend that no case is made out.

6. After hearing, I have perused the matter. This Court, at the time of admission has restricted the petitioner to only prayers 1 and 2. The petitioner filed a writ

appeal against the said order ordering consideration of prayers 1 and 2 by this Court. The Division Bench in appeal confirmed the order of the learned Judge. However, the Division Bench directed the petitioner to file statutory appeals and the appeals are to be kept pending till the disposal of these Writ Petitions. The Industrial Policy is placed at Annexure "A". The Industrial Policy provides for active participation of Industry in development of infrastructure. Annexure "A" states that after liberalization of economic policies, Private Sectors have shown interest in investigating the infrastructure areas. Several projects are under implementation of the State and these projects have shown the potential in these areas. With a view to have further flow of investment of infrastructure area the Government has taken several measures in terms of the Policy. The Government in terms of its policy has granted special concession for export. Clause 10 of the Industrial Policy provides for exemption from payment of entry tax. The said Clause read as under:

"Exemption from payment of Entry Tax and Sales Tax payable on purchase of raw materials, components, packing materials, consumables, Capital goods, spare, material handling equipment, intermediates, semi-finished goods and sub-assemblies from a registered dealer. While the Entry Tax exemption will be available for these items procured from within the State or outside, the Sales Tax exemption on purchase of various items as detailed above would be available provided the procurement is from dealers located within the State.

It further provides the incentives in terms of Clause 10(b)(iii):

Both the cases, the Entry Tax and Sales Tax on purchases would be payable on raw materials, components, packing materials, intermediates, semi-finished goods and sub-assemblies used for production for sale within the country."

7. After the policy was introduced, the State Government has issued a notification in the light of the policy. While so doing, the State Government has issued certain restrictions and conditions.

Condition No. 1 reads as under:

(i) Such goods are put to use by the 100% Export Oriented Unit in the manufacture of goods for export.

Condition No. 3 reads as under:

(ii) the 100% Export Oriented Unit shall export its entire production of goods subject to relaxation permitted by Government of India from time to time.

8. However, while providing explanation for the purpose of notification, export has been defined in the notification. The explanatory "export" meaning is as defined in Sub-section 1 of Section 5 of the Central Sales Tax Act. A restricted meaning is given to "export". At this stage, it is relevant to notice Section 5 of the Central Sales Tax Act, which provides for Import-Export sale or purchase. The said Section reads as under;

"5. When is a sale or purchase of goods said to take place in the course of import or export (1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

(3) Notwithstanding anything contained in Sub-section (1), the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export."

9. This Section 5 was noticed by a Division Bench of this Court in the case of MADHUR TRADING CO. AND ORS. 90 STC 537. The Division Bench of this Court in an elaborate Judgment noticed the penultimate sale. This Court ruled in paras 27, 28 and 29 as under:

"Since Section 5(3) is part of the principles formulated by the Parliament to determine the "sale in the course of export", it is inevitable to infer that, such a penultimate sale is now considered as part of the "course of export" and is one of the activities integrated with other activities leading to export. The Parliament has linked this penultimate sale with the export sale and it has become an integral part of the "Course of export". The earlier decisions to the extent they held that such a penultimate sale is not part of the integrated activities of export and that it is not in the "course of export" is now no longer operative. The penultimate sale falling within Section 5(3) of the Central Act stands merged with the export sale and constitutes an essential ingredient of the "Course of export sale".

If such a "penultimate sale" is treated as a "sale in the course of inter-State trade or commerce". Because, such a penultimate sale also incidentally satisfies the requirements of Section 3(a) of the Central Act, the real identity of the said penultimate sale, in law, would be missed . May be, the two courses - one referred in Section 3 and the other in Section 5 of the Central Act - may overlap factually; but such overlapping should not blur the identity of the real "course". The "course" commences with the penultimate sale and continues till goods are actually exported (sometimes, it may continue further). The entire course from the commencement till the end is reached, is one and indivisible; to identify a part of the course separately and distinctly u/s 3(a) of the Central Act, would break the link established by Section 5(3) and the continuity required in the concept of "course of export".

We are of the view that, by Section 5(3) of the Central Act, an unbreakable merger of the penultimate sale with the course of export, has taken place and it will be constitutionally impermissible to separate the penultimate sale for certain purposes."

10. This Court categorically ruled that the penultimate sale is an unbreakable merger with the course of export. Therefore, penultimate sale is held to be export by this Court, while interpreting Section 5(3) of the Central Sales Tax Act. At this juncture, I must also notice the dictum of the Supreme Court in the case of STATE OF BIHAR AND ORS. v. SUPRABHAT STEEL LTD AND ORS. 112 STC 258 SC. The Supreme Court has ruled in para 7 that any notification issued by the Government contrary to the Policy is a nullity in the eye of law. In the case on hand, what is clear to this Court is that the penultimate sale in the light of the Judgment of this Court is an unbreakable merger in the course of export. The Policy provides for concessions for export. That export as defined under the Policy cannot be restricted by way of explanation while issuing the notification. Therefore, the petitioner is correct in his submission that the restricted explanatory meaning to export require my interference. In these circumstances, I quash the words Sub-section 1 in Clause 2 explanation to the notification dated 15.1.1996. I further deem it proper to declare that the explanatory meaning to the export is as defined u/s 5 in its entirety.

11. This Court, at the time of admission has confined the Writ Petition to prayers 1 and 2. The Division Bench has directed the petitioner to file an appeal against the assessment order ("C" series) and the appeals are filed by the petitioner. The Division Bench however, directed the appellate authority not to dispose of the appeal pending decision in this Writ Petition. Now that I have ruled that export has to be understood as export in terms of Section 5 of the Central Sales Tax Act, I deem it proper to direct the appellate authority to dispose of the appeals in the light of this order and in accordance with law.

12. Writ Petitions are allowed in the above manner. Parties are to bear their respective costs.