

(1993) 04 KAR CK 0004

In the Karnataka High Court

Case No : S.T.R.P. No's. 80 of 1988 and 54 of 1989

Vignyan Industries Limited

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-04-1993

Acts Referred:

Income Tax Act, 1961 — Section 154

Karnataka Sales Tax Act, 1957 — Section 25 A, 8 A

Citation : (1994) 92 STC 270

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

Bench : Division Bench

Advocate : S.G. Sundaraswamy, for the Appellant; H.L. Dattu, Government Advocate, for the Respondent

Judgement

S.A. Hakeem, J.—The common petitioner in these petitions is a registered dealer under the Karnataka Sales Tax Act, 1957 ("the Act"). The petitioner purchases iron scrap from dealers for the purpose of manufacturing iron and steel castings which are sold by it. For the assessment years 1973 and 1974 ending December 31, 1973 and December 31, 1974 respectively, the petitioner filed its annual returns declaring certain turnover and claiming exemption of sales turnover of the manufactured goods. Accepting the contention of the assessee that the goods sold were manufactured out of tax-suffered iron scrap, the Assistant Commissioner of Commercial Taxes (Assessment), Mysore, exempted the said sales turnover of manufactured goods. Later, the assessing authority, in exercise of his power conferred u/s 25A of the Act, issued notice to the petitioner proposing to rectify the alleged mistake apparent on the record on the ground that the deduction allowed on the sale of castings and ingots manufactured out of iron scrap ought not to have been allowed. The petitioner took the contention that the sale of castings and ingots had been duly exempted under the Government order dated May 25, 1976 and the Commissioner's Circular No. 369 dated June 28, 1976. The circular was to the effect that the decision of the Supreme Court in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and

Others, , declaring the law to treat each of the sub-items under the Schedule head "iron and steel" goods separately for the purpose of levy of sales tax on the sale thereof has to be enforced prospectively, and the assessments for the prior periods should be made subject to the exemptions granted by the Government under the aforesaid order/circular. However, the assessing authority confirmed the proposal in the notice and made an order reviewing the assessment, thereby including the said exempted turnover to tax. The petitioner having unsuccessfully challenged the said order before the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore, and later before the Karnataka Appellate Tribunal, has now sought for quashing the said orders as being unjust, illegal and without jurisdiction.

2. Sri Naganand, learned counsel for the petitioner, submitted that the State Government took a conscious decision to drop all rectification/revision proceedings consequent upon the decision of the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, and to enforce the decision only with effect from the date of judgment, i.e., January 19, 1976. That, the power of the State to exempt a class of goods from taxation under the circulars being traceable only to section 8A of the Act, the assessing authority, who had before him both the circulars on the date of the assessment orders, had taken a valid decision to exempt the turnover in accordance with the legal position prevailing at that time. The same legal position was in existence on October 16, 1980, when the notice u/s 25A was issued. As such, there is no error or mistake apparent from the record which could be rectified. Alternatively, even assuming that two views were possible on the exemption or otherwise of the turnover, one possible view was taken by the assessing authority, in which event invoking the power of rectification is impermissible.

3. On the other hand, Sri H. L. Dattu, learned Government Advocate, urged that once a mistake is discovered on the basis of a judgment of the superior court, the error would be apparent on the face of the record and the same could be rectified by invoking the provisions of section 25A of the Act. It is further submitted that the circular exemptions, even if traced to the power of the, State to exempt certain turnover u/s 8A of the Act, lost its efficacy by virtue of the incorporation of explanation II to the Fourth Schedule in the Act by Act 13 of 1982, whereby the said circulars were substituted. By virtue of the said incorporation of the exemption scheme, the Government orders/circulars got merged with the explanation with retrospective effect, viz., from October 1, 1957 to March 31, 1978. Later, the said explanation having been challenged as violative of articles 14 and 304(a) of the Constitution was ultimately struck down by the Supreme Court in the case of *M/s. Andhra Steel Corporation Vs. Commissioner of Commercial Taxes in Karnataka*, (rendered on March 30, 1990). As such the circular orders are deemed to be non est and the exemption granted in the assessment is an error apparent on the record requiring rectification by section 25A of the Act.

The questions that arise for consideration are as follows :

(1) Whether, on the facts and in the circumstances of the case, the assessing authority was justified in invoking his jurisdiction u/s 25A of the Act ?

(2) Whether the circular instructions of the Government dated June 28, 1976 and July 5, 1976, exempting the turnover comprising of steel ingots and castings became null and void by virtue of the introduction of explanation II to the Fourth Schedule to the Act by the Karnataka Act 13 of 1982 ?

4. It is urged that the two circulars referred to above had not been withdrawn or cancelled by the State Government, and even assuming that there was an implied substitution of the said circulars by law in explanation II to the Fourth Schedule to the Act, the said circulars would cease to exist only on the date of the enactment. This appears to be the view held by this Court also in the case of Shaw Wallace and Co. Ltd. Vs. State of Karnataka, , where the question referred to the Full Bench was whether a notification issued by the State Government in exercise of the power conferred by section 8A of the Act is impliedly repealed or rendered ineffective when the Legislature amends the Act and introduces an entry in the Schedule to the Act, which relates to the class of goods to which exemption is given by the notification. It is held that the legislative will being superior to that of the State Government, former would always override the latter. If the Legislature enacts on a particular date that specified goods shall be taxed in a particular manner, it is clear that at least on the said date, the Legislature had a clear intention to levy the tax on the goods in question at that particular rate. While exercising the power u/s 8A of the Act, the State Government functions as delegate of the State Legislature. Hence, the exercise of the power by the delegate cannot be in conflict with the mandate prescribed by the State Legislature.

The factual position in the instant case is that the circulars exempting levy of tax on the goods manufactured out of the iron scrap were issued after the judgment of the Supreme Court in the case of State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, obviously in order to relieve the manufacturers and dealers of the hardship that would be caused to them by unforeseen heavier tax burden in respect of the period prior to the date of the judgment, i.e., January 19, 1976, in State of Tamil Nadu Vs. Pyare Lal Malhotra and Others, The object of introducing the explanation under Act 13 of 1982 was also to grant exemption in respect of the said products prior to 1978. In the instant case, the assessment orders were passed on May 10, 1978 and November 23, 1978, for the years 1973 and 1974 respectively. If the contention urged on behalf of the State is accepted, the original exemption granted under the circulars would amount to an error calling for rectification. In this connection, reliance is placed upon the case of Firm A.T.B. Mehtab Majid and Co. Vs. State of Madras and Another, In that case, it is held that a rule made by the Governor in exercise of the power conferred on him u/s 19 of the Madras General Sales Tax Act having been substituted by a new rule, the old rule ceases to exist and it does not automatically get revived when

the new rule is held to be invalid. The question involved in the instant case is entirely different and, as such, the ratio of the said decision has no application to the facts and circumstances of the instant case. In the circumstances, it appears to us that the question whether the said circulars which are undoubtedly traceable to the power of the State u/s 8A should be considered de hors the explanation which came to be introduced subsequently in the year 1982 under Act 13 of 1982.

5. It seems to us that the schemes under the circulars issued by virtue of the power u/s 8A of the Act, and the explanation introduced by Act 13 of 1982 are entirely distinct. The scheme under the circular prevailing before the amendment introducing explanation II in the Fourth Schedule was one of total exemption of all sub-items coming under the head "iron and steel", which by virtue of the law declared by the Supreme Court in *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, were to be treated as separate taxable items. The amendment by way of introducing explanation II to the Fourth Schedule under Act 13 of 1982 is to levy tax on such sub-items subject to reduction of tax already paid on the inputs. In other words, only the difference of the amount of tax levied on the sale of the scrap iron and the tax leviable on items manufactured out of such scrap was exempted (?). As such, it cannot be said that the introduction of explanation II of the Fourth Schedule under Act 13 of 1982 is a substitution of the total exemption granted under the Government circulars, whereby relief was sought to be given to the manufacturers/dealers in respect of the transactions prior to the declaration of law by the Supreme Court in the case of *State of Tamil Nadu Vs. Pyare Lal Malhotra and Others*, . In that view of the matter, the instant exemption circulars issued by virtue of the power of the State u/s 8A of the Act should be considered de hors the explanation which came to be incorporated subsequently under the Act 13 of 1982.

6. In so far as the second contention of the petitioner, the question is no more registration. In *T.S. Balaram, Income Tax Officer, Company Circle IV, Bombay Vs. Volkart Brothers, Bombay*, the Supreme Court has stated the principle thus :

"A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivably be two opinions."

Although the said decision is rendered in respect of section 154 of the Income Tax Act, the principle is clearly attracted to the sales tax proceedings [vide *Govindaraju Chetty v. Commercial Tax Officer* [1968] 22 STC 46 (Mys)].

7. A feeble attempt was made on behalf of the State to contend that in any event the petitioner would not be entitled to the benefit of the circulars since the steel castings and ingots were not produced out of tax-paid iron scrap. There is no merit in this contention either in view of the finding of fact by the Commissioner to the following effect :

"The assessing authority finding that the steel scraps so purchased by the

appellant in the manufacture of steel castings and steel ingots have suffered tax as the appellant has purchased them from the registered dealers, proceeded on the premises that the steel castings and steel ingots manufactured by the appellant were also not exigible for any levy of tax and thus passed the orders of assessment."''

This is a finding of fact which has become final. As such, the observation by the Appellate Tribunal in para 7 is to the effect that no material is placed by the assessee to establish the nexus between the tax-suffered scrap iron and the steel castings, etc., subsequently manufactured out of it. We have, therefore, proceeded on the basis that the scrap iron used for the subsequent manufacture by the assessee had in fact suffered tax as found by the assessing authority as well as by the first appellate authority. This finding cannot be called in question at this stage.

8. In view of the above discussion, we answer the questions arising in the case as follows :

(1) That, on the facts and in the circumstances of the case, the assessing authority was not Justified in invoking his jurisdiction u/s 25A of the Act;

(2) That the circular instructions dated June 28, 1976 and July 5, 1976, exempting part of the turnover in respect of goods manufactured out of tax-paid iron scrap cannot be said to have become null and void by virtue of explanation II in the Fourth Schedule under the Act 13 of 1982.

9. In the result, these petitions have to succeed and they are accordingly allowed. Consequently, the rectification orders as well as the appellate orders affirming the same are hereby set aside. Consequently, the original assessment orders stand restored.

10. Petitions allowed.