

Mysore Cements Ltd. Vs. State of Karnataka and Another

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Court : Karnataka

Decided On : Sep-17-1997

Reported in : [1998]110STC200(Kar)

Judge : Tirath S. Thakur, J.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 5(3D), 12 and 12(5) and (6)

Appeal No. : Writ Petition No. 5946 and 5947 of 1991

Appellant : Mysore Cements Ltd.

Respondent : State of Karnataka and Another

Advocate for Def. : K.M. Shivayogiswamy, High Court Government Pleader

Advocate for Pet/Ap. : Shankargowda, Adv.

Judgement :

ORDER

Tirath S. Thakur, J.

1. These petitions call in question the constitutional validity of section 5(3-D) of the [Karnataka Sales Tax Act, 1957](#). Also under challenge is the validity of two proposition notices both dated February 19, 1991 issued against the petitioner under the provisions of the [Karnataka Sales Tax Act, 1957](#) and the Central Sales

Tax Act, 1956 for the assessment year 1986-87.

2. The petitioner-company is engaged in the manufacture and sale of cement. For the assessment year 1986-87, it filed a return under the Act, on April 30, 1987. In terms of section 12(5) of the State Act, no assessment is permissible after a period of three years from the date on which a return under sub-section (1) of section 12 is submitted by the dealer. In the ordinary course therefore the period of limitation for completing the assessment would expire on April 20, 1990. Much before which date, the assessing authority issued to the petitioner a proposition notice dated January 19, 1990. The petitioner filed a reply in which it was, inter alia, pointed out that since it had filed Writ Petition No. 18988 of 1986 challenging the constitutional validity of section 5(3-D) and the operation of the said provision had been stayed by an interim order of this Court dated October 30, 1986, the proposed assessment proceedings could not be completed. The proceedings initiated by the assessing authority consequently remained inconclusive on account of the interim order of stay granted in the aforementioned writ petition. The writ petition was however disposed of by this Court by an order dated December 13, 1990, following a Division Bench decision in *Ranganatha Associates v. State of Karnataka* [1990] 78 STC 1 (Kar). This order of dismissal was subsequently recalled and the writ petition restored to its original number as it appeared that the view taken in *Ranganatha Associates* [1990] 78 STC 1 (Kar) did not have any direct application to the case of the petitioner. The writ petition was disposal of for, the second time by order dated March 28, 1996, following the decision of the Supreme Court in *Vasavadatta Cements'* case : [1996]1SCR749 where the apex Court has upheld the constitutional validity of section 5(3-D). In the meantime, the Commissioner of Commercial Taxes in Karnataka had by an order dated April 25, 1990, deferred the assessment proceedings, in the light of the interim order of stay granted by this Court in the aforementioned writ petition. It is noteworthy that while restoring the writ petition on March 27, 1991, this Court did not restore the interim order of stay earlier granted by it. The result was that the interim order of stay suspending the operation of section 5(3-D) remained operative only between October 30, 1986 and December 13, 1990. On account of the vacation of the order of interim state, the assessing authority issued a second proposition notice dated February 19, 1991 proposing to complete the assessment in the manner and to

the extent indicated therein. Aggrieved, the petitioner has filed the present writ petitions in which it has not only challenged the validity of the proposition notices issued to the petitioner but also assailed the constitutional validity of section 5(3-D) for a second time.

3. Mr. Shankargowda, learned counsel for the petitioner, fairly conceded that in the light of the decision of the Supreme Court in Vasavadatta Cement's case : [1996]1SCR749 , nothing further survives for consideration in so far as the challenge to the constitutional validity of section 5(3-D) of the Act, was concerned. He accordingly, gave up the said challenge and confined his submissions to the validity of the impugned proposition notices. In so far as that aspect was concerned, the learned counsel raised but a solitary plea in support of the petition. He contended that the impugned notices were beyond the period prescribed by section 12(5) of the Act, and were therefore incompetent hence could not serve as a sound basis for the proposed assessment. He urged that the period of limitation for completing the assessment reckoned from April 30, 1987 would expire on April 30, 1990 so that the impugned proposition notice issued in February, 1991, was ex facie illegal, being outside the period prescribed. He further contended that the respondents could not rely upon the Commissioner's order of deferment dated April 25, 1990, which was according to the learned counsel, illegal in that it had been passed without any notice to the petitioner and was at no stage communicated. Reliance in support was placed upon a decision of this Court in Union Home Products Ltd. v. Assistant Commissioner of Commercial Taxes (W.P. No. 22497 of 1991, dated September 15, 1993). It was also urged that the Commissioner of Commercial Taxes was not competent to pass an order of deferment under Section 12(6)(b) of the Act on the basis of an interim order of stay from any court or authority. That power could according to the learned counsel be exercised only by an assessing authority under section 12(a) of the Act so that an order of deferment issued by the Commissioner on the basis of any such order of stay would be a nullity.

4. The essential facts are not in dispute. It is not disputed that the petitioner had in W.P. No. 18988 of 1986, challenged the constitutional validity of section 5(3-D) and secured an interim order suspending the operation of the said provision. It is

also not disputed that the said order of interim stay remained in force till December 13, 1990, i.e., for a period of three years, seven months and 13 days, after the petitioner had filed its return. In terms of section 12(6) of the Act, the time during which the proceedings for assessment remain deferred on account of an order of stay granted by any court or authority shall stand excluded while computing the period for completing the assessment. Proceedings in the instant case remained in abeyance on the basis of the interim order of stay granted by this Court upon which the petitioner placed reliance in its reply to the proposition notice dated January 19, 1990. If the period during which the proceedings remained deferred is excluded from that period taken for issue of the second proposition notice dated February 19, 1991 the same would fall within the period of limitation. That is so because the period of three years, seven months and 13 days during which the interim order of this Court remained in force and proceedings stood deferred because of the same, shall have to be added to the period otherwise prescribed for the completion of the assessment proceedings. The assessing authority could have in that view initiated the process for completion of the proceedings and issued a fresh proposition notice any time up to December 13, 1993. A notice issued to the petitioner in February, 1991 would therefore fall within the extended period of limitation available to the assessing authority.

5. On behalf of the petitioner it was contended that the stay order issued by this Court was limited in its operation to the suspension of section 5(3-D) alone so that the assessing authority could and ought to have completed the assessment proceedings on other issues which were unaffected by the said order. In other words, the argument was that the assessing authority could have completed the assessment proceedings partially to save the same from becoming time barred under section 12(5) of the Act. I am not however impressed by this submission. The provision of section 12(5) refer to assessments under the section and forbid the making of any such assessment beyond a period of 3 years from the date the return is filed. The expression 'assessment' has not been defined by the Act, but in the context in which it appears in section 12 it simples a process by which the assessing authority quantifies the total tax liability of the dealer liable to pay such tax. The scheme of the Act, in general and the provisions of section 12 in particular do not in my opinion envisage assessments piecemeal. In the

circumstances therefore I see no reason why an order of stay against a provision which was admittedly relevant for completion of a proper assessment under section 12 of the Act, would not have had the effect of suspending the assessment proceedings in toto and even qua the issues that were not directly affected by section 5(3-D) of the Act. Seen thus, the challenge to the validity of the impugned notices on the ground of limitation must in my opinion fail.

6. I may all the same deal with the alternative submission made by the learned counsel for the petitioner. There are two facets of the alternative submission as already noticed earlier - one relating to the competence of the Commissioner to have made a deferment order under section 12(6)(b) and the other touching upon the validity of that order. The provisions of sub-section (6) of section 12 may be extracted at this stage :

'In computing the period of limitation for assessment under this section, -

(a) the time during which the proceedings for assessment in question have been deferred on account of any stay order granted by any court or any other authority shall be exclude;

(b) the time during which the assessment has been deferred in any case or class of cases by the Commissioner for reasons to be recorded in writing shall be excluded.'

7. A plain reading of the above would show that the power of the Commissioner to defer assessments for the reasons to be recorded is not limited only to the cases where the deferment is pursuant to reasons other than those relatable to a stay order issued by a court or any other authority. There is nothing in sub-section (6)(b) of section 12 of the Act, to suggest that the Commissioner could not have exercised the power of deferment in a case where such an order became necessary on account of an interim order of stay issued by the court, even though strictly speaking no such deferment order may be necessary where the assessment proceedings cannot be completed by reason of an order of stay from the court of other authority. That is because the efficacy of an order of stay issued by the court would not depend upon a consequential order made by the

Commissioner. If the order of stay has the effect of staying or suspending the assessment proceedings, such proceedings would stand stayed suspended or deferred, no matter that there is no specific order of deferment from the Commissioner. Suffice it to say that the Commissioner's authority to issue an order of deferment could have been exercised even in cases where the deferment became necessary on account of an order of interim stay granted by a court or authority. The deferment order in the instant case admittedly proceeded on the basis of the interim order of stay issued by this Court. The validity of such an order could not therefore be doubted or assailed on the ground of lack of jurisdiction or competence.

8. That leaves me with the other facet of the argument touching upon the validity of the order made by the Commissioner. It was urged that the deferment order was legally bad for the said order had been issued without notice to the petitioner-company and without any communication of the same to it. Now it cannot be disputed that the Commissioner could in exercises of his powers under section 12(6)(b) of the Act make a valid order only if the assessee concerned had been heard before doing so. That is the purport of the decision of this Court in W.P. No. 22497 of 1991 also. The matter is in fact no longer *res integra* in the light of the authoritative pronouncement of the Supreme Court in *Fag Precision Bearings v. Sales Tax Officer* : (1997)3SCC486 . The question however is whether the deferment order made in the instant case should be allowed to be assailed by the petitioner. It is true that the deferment order was not communicated to the petitioner soon after the same was made, yet the order was relied upon and produced by the respondents in these proceedings along with the statement of objections filed by them as early as in January, 1991. More than six years have expired ever since but the petitioner has made no effort to amend the writ petition so as to challenge the validity of the said order. Having failed to do so, I am not inclined to permit the petitioner to urge the ground of its alleged invalidity in the course of the oral submissions made at the Bar. That apart, while it is necessary that orders of deferment should be preceded by a notice to the assessee concerned, the absence of such a notice may not vitiate the order where the deferment proceeds only on the basis of an interim order of stay issued from the court. What is interesting is that the petitioner has itself obtained the interim order

from this Court and set up the same as a defence to the completion of the assessment proceedings by the assessing authority. Having secured an order, and having prevented the completion of the assessment proceedings on the basis thereof, it is not open to the petitioner to turn round and contend that a deferment order made on the basis of the very same order of stay is vitiated only because before making such an order the Commissioner had not issued a notice to it. The position would have been entirely different if the petitioner could possibly prevent the deferment even when there was an interim stay from this Court. Such a course was most unlikely in the present case nor was the learned counsel for the petitioner able to indicate the manner or the possible reason by which the petitioner could have prevented a deferment order even in the teeth of an interim stay from this Court. A hearing to the petitioner in such a situation would therefore have been ritualistic, particularly when, the petitioner itself wanted the assessment proceedings to be deferred in view of the stay order of this Court and had raised a plea to that effect in the objections filed by it, before the assessing authority. I say so being fully conscious of the fact that a deferment order from the Commissioner was in the peculiar facts and circumstances of the case wholly unnecessary. As pointed out earlier an order of stay suspending operation of a statutory provision essential for completion of the assessment proceedings takes effect *proprio vigore* and does not depend upon a consequential order of deferment that the Commissioner or the assessing authority may have chosen to make. Assessment proceedings would have remained deferred even in the absence of such an order by reason only of order of stay issued by this Court. No order of deferment was necessary but even when such an order has been made the same does not in any way worsen the position of the respondent. In the totality of the above circumstances therefore I see no reason to interfere. There is no merit in these petitions which fail and are accordingly dismissed.

9. No costs.

10. Writ petitions dismissed.