

Karnataka Seeds Vs. State of Karnataka and Another

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Court : Karnataka

Decided On : Jul-02-1991

Reported in : ILR1991KAR2611

Judge : S. Mohan, C.J. and ;N.Y. Hanumanthappa, J.

Acts : [Karnataka Sales Tax Act, 1957](#) - Sections 5 and 5(1)

Appeal No. : Writ Appeals Nos. 1101 to 1103 of 1991

Appellant : Karnataka Seeds

Respondent : State of Karnataka and Another

Advocate for Pet/Ap. : Mr. K. Channabas

Judgement :

S. Mohan, C.J.

1. These three appeals arise out of a common judgment dated January 4, 1991, rendered in W.Ps. Nos. 11813 of 1987 and 6022 and 6380 of 1988 by our learned brother Shivashankar Bhat, J.

2. The short facts are as follows :

The appellant-firm is a dealer in hybrid and improved seeds. They are sold by the appellant on production in the market. Originally, seeds were taxed under entry 9

('cereals') of Schedule IV of the Karnataka Sales Tax Act, 1967 (for short 'the Act'). The goods falling under Schedule IV are declared goods. Therefore they are protected by the Central Sales Tax Act, 1956. The rate of tax was 4 per cent. The taxation in relation to seeds as cereals prevailed up to 1980. In some cases, the taxing authorities took the view that seeds will not fall under the entry 'cereals'. Therefore, sales tax was levied under section 5(1) of the Act, the charging section. As a result the levy was at multiple points. Those levies were also subject to surcharge and additional tax. It may be mentioned here that this surcharge and additional tax are inapplicable to declared goods. Having regard to the differing methods of taxation, in December, 1981, the Commissioner of Commercial Taxes issued a circular and clarified the position as under :

'Different assessing officers also appear to be holding different views in this behalf. The matter has therefore been examined and the following clarification is issued :

Up to September 7, 1976, foodgrains, viz., rice, ragi, jola, maize, bajra, navana and samey were specified under the provision to sub-section (1) of section 5 of the [Karnataka Sales Tax Act, 1957](#). The said provision did not contemplate any distinction as between rice, ragi, joia, etc., as edible grains meant for human consumption and as non-edible seeds of grains meant for sowing purposes. With effect from September 8, 1976, and by a subsequent amendment with effect from September 1, 1978, the grains in question were taken out of the provision to sub-section (1) of section 5 and were specified under entry No. 9 of the Fourth Schedule which reads :

'Entry No. 9 : Cereals, that is to say paddy, rice, wheat, jowar or milo, bajra, maize, ragi, kodon, kutti and barley'. The above entry, by virtue of the qualifying words 'cereals' which means edible grains - a grain used as food, restricts its applicability only to such of the grains which are edible and are fit for human consumption.

The 'certified seeds' of the grains in question are coated with poisonous preservatives and are meant for sowing purposes. They are not fit for human consumption and neither the sellers nor the buyers regard them as edible foodgrains. In this view of the matter, 'seeds' of grains which are non-edible, being coated with poisonous preservatives and meant for sowing, would be taxable

under the [Karnataka Sales Tax Act, 1957](#), during the different periods as under :

(i) at 1 1/2 per cent multi-point under the provision to sub-section (1) of section 5 during the period up to September 7, 1976;

(ii) at 4 per cent multi-point under sub-section (1) of section 5 from September 8, 1976 to November 14, 1981;

(iii) at 2 per cent multi-point under sub-section (1) of section 5 from November 15, 1981 onwards by virtue of Government Notification No. FD 165 CSL 80 dated November 10, 1981.'

As a result of this clarification and the direction, assessment of seeds had to be made under section 5(1) of the Act. A large number of dealers came to be affected thereby. Therefore, the State of Karnataka passed Karnataka Act 27 of 1985 under which the seeds came to be included under Schedule II and entry No. 140A was introduced to the following effect :

'140A. Certified seeds marked as poison. Four per cent.'

It was also made clear that this entry shall have retrospective effect from September 8, 1976 and shall continue to be in force till August 4, 1986. The net result is, between these two dates (September 8, 1976 to August 4, 1986) tax was levied at 4 per cent single point with surcharge and additional tax; the point of levy was either on the first or on the earliest successive sales in the State. Consequent to this, for the said period the appellant-firm was assessed to sales tax not only at 4 per cent but was also subjected to surcharge of 10 per cent and additional tax of 12 1/2 per cent. Aggrieved by these assessments, the appellant preferred appeals, but was unsuccessful. Thereafter, it preferred the writ petitions challenging the validity of Karnataka Act 27 of 1985.

3. Three principal contentions were raised before the learned single Judge :

(i) There was no legislative competence to enact the impugned law;

(ii) This is a case to which the principle of promissory estoppel would apply because it was understood by all concerned by reason of the clarification issued

by the Commissioner of Commercial Taxes in December, 1981, that seeds would be treated as cereals and taxed accordingly; and

(iii) Inasmuch as the tax had not been collected from the purchasers at the rates to which the appellant is subjected to but only at 4 per cent, the levy now demanded is arbitrary and unreasonable.

The learned single Judge negatived all these contentions and held that the levy is one under entry 54 of List II of Schedule VII of the Constitution. The clarification issued by the Commissioner of Commercial Taxes had been upheld by a Division Bench of this Court in *S. V. Halavapalli and Sons v. Commissioner of Commercial Taxes* [1984] 57 STC 343. Whatever might have been the position earlier, in so far as the period from April 1, 1980 to December 8, 1981 is concerned the direction issued by the Commissioner will govern. There can be no estoppel against a statute. The power to enact a legislation could be exercised to give effect both prospectively and retrospectively. The mere fact that the assessee did not collect sales tax at the enhanced rate is no ground to hold that the levy is invalid. Accordingly, the learned single Judge dismissed the writ petitions. Hence these appeals.

4. Mr. K. Channabasappa, learned counsel for the appellant, would submit only two points for our consideration :

(i) This is a case to which promissory estoppel would squarely apply as laid down in *Express Newspapers Pvt. Ltd v. Union of India* : AIR 1986 SC872 ; and

(ii) On the basis of the clarification issued by the Commissioner of Commercial Taxes it was understood that seeds would be treated as cereals and on that basis sales tax was collected. Retrospectivity affects the appellant harshly because the surcharge and additional tax demanded now have not been passed on to the purchasers. In support of this contention, reliance is placed on *Krishnamurthi and Company v. State of Madras* [1969] 23 STC 1 (Mad.), *Binoy Kumar Mohanty v. State of Orissa* : AIR1981 Ori13 and *Himansu Majumdar v. State of Orissa* [1982] 51 STC 33 (Orissa).

5. The law relating to promissory estoppel has come to be laid down both in *Express Newspapers Pvt. Ltd. v. Union of India* : AIR 1986 SC872 and in *Union of India v. Godfrey Philips India Ltd.* : [1986]158ITR574(SC) . But both these authorities clearly point out that the principle of promissory estoppel is wholly inapplicable to a case where Legislature chooses to exercise its legislative function. At pages 815 and 816 of : [1986]158ITR574(SC) it has been observed in paragraph 14 thus :

'14. Of course we must make it clear, and that is also laid down in *Motilal Sugar Mills case* : [1979]118ITR326(SC) that there can be no promissory estoppel against the Legislature in the exercise of its legislative functions nor can the Government or public authority be debarred by promissory estoppel from enforcing a statutory prohibition. It is equally true that promissory estoppel cannot be used to compel the Government or a public authority to carry out a representation or promise which is contrary to law or which was outside the authority or power of the officer of the Government or of the public authority to make.'

So long as it is not denied - and it cannot be denied - that the amending legislation, viz., Karnataka Act 27 of 1985 is within the legislative competence of entry 54 of List II of Schedule VII of the Constitution, there can be no plea of estoppel against the statute. It is well-settled in law that the Legislature has power to enact prospectively as well as retrospectively. In *Binoy Kumar Mohanty's case* : AIR1981 Ori13 what arose for consideration was whether a subordinate legislation would be retrospective In paragraph 5 at page 15 it was observed thus :

'5. The legal position is well-settled that a Legislature can give retrospective effect to the legislation passed by it but an executive Government exercising subordinate and delegated legislative powers cannot make rules retrospective in effect unless that power is expressly conferred. In the case of *Income-tax Officer v. M. C. Ponnose* : [1970]75ITR174(SC) , the Court observed :

'The Parliament can delegate its legislative power within the recognized limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the Legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the

language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative function cannot make a rule, regulation or bye-law which can operate with retrospective effect.' The aforesaid principle was reiterated in a later decision in the case of *Hukam Chand v. Union of India* : [1973]1SCR896 .'

But later on, concerning the retrospective nature of the rule, it was held in paragraphs 6 and 7 as under :

'6. It is urged on behalf of the petitioner that rule 4(i) as amended by the Orissa State Road Transport Corporation (Amendment) Rules, 1980, is retrospective in operation and it is also urged, on the authority of the aforesaid decisions, that the State Government is not competent to make the rule retrospective in operation.

7. The question for consideration is whether the amended rule has retrospective operation. 'Retrospective' means looking backwards : having reference to a state of things before the act in question. A retrospective statute contemplates the past and gives to a previous transaction some different legal effect from that which it had under the law when it occurred or transpired. Every legislation is *prima facie* prospective unless it is expressly or by necessary implication made to have retrospective operation. Unless there are words in the statute sufficient to show that the intention of the Legislature is to give the rule retrospective effect, it is deemed to be prospective only.'

But, here we are concerned with the legislation. In *Krishnamurthy and Company's case* [1969] 23 STC 1 (Mad.) it was observed at page 4 as follows :

'Now, it is well-settled that the power of the Legislature in a taxation entry is plenary and it includes the power to legislate prospectively and retrospectively : *Jaora Sugar Mills v. State of Madhya Pradesh* : [1966]1SCR523 . No question of legislative competency of an enactment can arise nearly on the ground of its retrospective effect in taxation. *J. K. Jute Mills Co. Ltd. v. State of Uttar Pradesh* : [1962]2SCR1 held that it would be competent to a Legislature to impose a tax on

sales which had taken place prior to the enactment of the legislation.'

Again at page 5 it was held as under :

'But learned counsel presses upon us that, in the present case in view of the practical difficulties and inequalities produced by the impugned retrospective legislation which was referred to earlier, we should hold it to be unreasonable and arbitrary. We do not think that these inequalities and practical difficulties, assuming they exist which may be but peripheral and procedural result, would be sufficient by themselves to render the retrospective effect unreasonable and to enable us to strike down the legislation as unconstitutional on that ground. A system of licensing and registration is not a sine qua non or a necessary condition to the validity of a single point scheme of taxation, prospective or retrospective. As a matter of fact, there are provisions in the Madras General Sales Tax Act, 1959, which require every dealer to get himself registered and to maintain correct and proper accounts of dealings. If the petitioners have complied with these provisions, as they should have, they would be able to show that their sales are subsequent sales of furnace oil not liable to charge.'

This is an authority which affords complete answer both with regard to the power of the Legislature to enact retrospectively and also about the difficulty pleaded by the appellant in not collecting the tax. We may add that tax on sale is attracted the moment sale takes place because it is a tax on the incidence of sale. The assessment is nothing more than quantification. Therefore, irrespective of the fact whether the appellant had collected it or not, the appellant will be liable.

Himansu Majumdar's case [1982] 51 STC 33 (Orissa) has no application to the facts of this case because that merely stated that in the case of an ambiguity in the matter of taxation it must be resolved in favour of the assessee. Here, there is no ambiguity whatever because the Legislature has stepped in and made the position unambiguous by enacting a law, though retrospectively.

6. For the reasons stated above, we hold that there are no merits in these appeals. They are accordingly dismissed.

7. Writ appeals dismissed.

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