

Sailesh and Co. and Others Vs. State of Karnataka

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Court : Karnataka

Decided On : Jan-30-1991

Reported in : [1992]84STC342(Kar)

Judge : S.R. Rajasekhara Murthy, J.

Acts : Gujarat Sales Tax Act, 1969 - Sections 49(2); [Karnataka Sales Tax Act, 1957](#) - Sections 5 and 8A

Appeal No. : Writ Petitions Nos. 9520, 10852, 9402 to 9407, 3449, 3450, 2702, 5603 to 5605 of 1989, 17490 and 174

Appellant : Sailesh and Co. and Others

Respondent : State of Karnataka

Advocate for Def. : H.L. Dattu, High Court Government Pleader

Advocate for Pet/Ap. : D.S. Hosamath, ;Ananth Mandagi and ;H.S. Dwarakanath, Advs.

Judgement :

S.R. Rajasekhara Murthy, J.

1. In these writ petitions, the Notification of the Government dated February 14, 1989, issued under section 8A of the [Karnataka Sales Tax Act, 1957](#) (in short 'the

Act') is challenged. In the said notification, the Government of Karnataka exempted the tax payable by a dealer under section 5 of the Act, on the sale of ceramic tiles manufactured in his unit located in notified industrially backward areas of Karnataka, for a period of two years from the date of the publication of the notification. All the petitioners are dealers in ceramic tiles manufactured outside the State. The contention of the petitioners is that by virtue of the notification issued by the Government giving total exemption to the tiles manufactured in the notified industrially backward areas in the State of Karnataka, a discrimination is brought about in the matter of levy of sales tax on the same class of dealers.

2. The effect of the notification is that the petitioners have to pay the tax on their turnover, whereas the manufacturers within the State have the benefit of exemption, if they satisfy the conditions of the notification. The contention is that discrimination is brought about in the matter of levy between the same class of dealers and it is violation of article 14 of the Constitution. But, the question that really arises on these facts is, whether the Government is competent to issue the impugned notification by virtue of the power conferred on it under section 8A of the Act. The Supreme Court had occasion to deal with similar notification issued by the State of Gujarat under section 49(2) of the Gujarat Sales Tax Act, 1969, reducing the rate of tax on the locally manufactured electronic goods. That notification was challenged by the dealers importing similar goods from outside the State who had to pay higher tax. The petitioners challenged the notification under article 32 of the Constitution and the decision of the Supreme Court is reported in [1988] 70 STC 52; AIR 1988 SC 2038 as *Weston Electronics v. State of Gujarat*. In that case, the contention of the dealers was that they were adversely affected by the notification issued by the State of Gujarat, in that, different rates of sales tax were levied on electronic goods imported into the State of Gujarat and goods manufactured within that State. The Supreme Court held, upholding the notification on the ground that reduction of tax rate in the case of goods manufactured locally was extended in order to provide an incentive for encouraging local manufacturing units. The contentions of the petitioners were rejected taking the view that no discrimination could be spelled out from the impugned notification (sic) [Their Lordships of the Supreme Court have, on the contrary, struck down the notification reserving a lower rate for local

manufacturers].

3. In another case *Bharat General and Textile Industries Ltd. v. State of Maharashtra* : 1988(2)SCALE944 the notification of Government of Maharashtra granting full tax exemption under the Bombay Sales Tax Act, 1959, to new units started in backward areas, was challenged. In the said case, the State of Maharashtra had granted total exemption to new units producing edible as well as non-edible oil. The said notification was upheld by the Supreme Court on the ground that the concession was extended by the State Government by exercise of the power vested under the provisions of the State Act, and such exercise fell purely within the domain of the executive and it is not for the court to see that other edible units also derived huge benefits on account of the exemption. The reason for upholding the notification, in the Supreme Court's view, was that the said exemption to new units was felt necessary since new entrants to the industry would constitute a specified class by themselves in contra-distinction with the class of sales and purchases effected by the older and seasoned units.

4. The last of the cases (latest) is, the decision in *Video Electronics Pvt. Ltd. v. State of Punjab* : AIR 1990 SC820 . It was held that notification issued by the Uttar Pradesh Government under the U.P. Sales Tax Act, 1948, extending concessional rate in payment of sales tax on electronic goods produced in units within the State, was valid and permissible and did not violate any of the articles of the Constitution. The Supreme Court referred to its earlier decisions in *Weston Electronics* [1988] 70 STC 52 and *West Bengal Hosiery Association v. State of Bihar* [1988] 71 STC 298 in paragraph 35 (page 108 of 77 STC), and held that the notification did not bring about any discrimination against the goods manufactured outside the State.

5. Applying the ratio of the said decisions to the facts of these cases, it is not open to the petitioners to contend that the exemption granted by the State Government as per annexure C, exempting the sale of tiles manufactured in units located in industrially backward areas in the State, brings about any discrimination in the matter of levy of sales tax.

6. Applying the ratio of the three (sic) decisions of the Supreme Court referred to supra, the writ petitions are dismissed.

7. An application is made by Murudeshwar Ceramics Ltd. in W.P. No. 17499 of 1988 seeking to implead themselves as respondents in the case. In view of the order dismissing the writ petitions, it is unnecessary to make any order on the I.A. Hence, it is dismissed.

8. An application is made in W.P. Nos. 5603 to 5605 of 1989 by the petitioners raising additional ground alleging that M/s. Murudeshwar Ceramics Industry, is not established in an industrially backward area, and still it has got benefit of the notification, annexure C. It would be unnecessary to consider this additional ground since the writ petitions are dismissed.

9. This Court had granted stay of recovery of tax payable by the petitioners on their turnovers during the pendency of the writ petitions. In some cases an interim prayer was made directing the State not to collect excess of 4 per cent. In some cases the prayer was not to collect the entire tax payable on the turnover.

10. In view of the dismissal of the writ petitions, the petitioners are directed to pay the difference of tax in the light of the interim order made in the respective writ petition.

11. Writ petitions dismissed.