

M/s. Mangalore Ganesh Bedi Works

Vs

The State of Mysore & Another

Civil Appeal No. 194 of 1962

(S. K. Das, M. Hidayatullah, J. L. Kapur, Raghuvar Dayal, A. K. Sarkar JJ)

25.09.1962

JUDGMENT

KAPUR, J. -

This is an appeal by special leave against the judgment and order of the High Court of Mysore dismissing the assessee's petition under Art. 226 of the Constitution for quashing the order of assessment relating to two quarters i.e. from April 1, 1957 to September 30, 1957, under the Mysore Sales Tax Act, Act VI of 1948.

The appellant is a firm registered under the Mysore Sales Tax Act and was assessed to sales tax on a return of over Rs. 58,36,422.26 Nps and the tax imposed on that sum at .02 Nps per rupee was Rs. 1,16,728.44 Nps. The grievance of the appellant was that according to the Mysore Sales Tax Act he was liable to sales tax at the rate of 3 pies for every rupee on the turnover and calculated on that basis the amount of tax would be Rs. 91,690/- but after the amendment of the Indian Coinage Act (Act 3 of 1906) by the Amending Act 31 of 1955 the rate of sales tax which was levied on the appellant's Beedis was .02 Nps per rupee and thus the appellant was called upon to pay Rs. 25,038/- more than he would have paid if he had been charged at the rate of 3 pies per rupee. It was contended on behalf of the appellant in the High Court and before us that this amounted to enhancement of tax which was illegal because the tax had not been increased in the manner provided under the Constitution and thus it was a breach of Art. 265 of the Constitution and was therefore void and illegal.

Under the amended Indian Coinage Act provision was made in s. 14 for the substitution of value expressed in annas, pice and pies by value expressed in naya paisa, which was the new coinage introduced under the amended Act. Section 14 reads as under :-

"S. 14(1) The rupee shall be divided into one hundred units and the new coin representing such unit may be designated by the Central Government, by notification in the Official Gazette, under such name as it thinks fit, and the rupee, half rupee and quarter-rupee shall be respectively equivalent to one hundred, fifty and twenty five such new coins and shall, subject to the provisions of sub-section (1) and sub-section (2) of section 13 and to the extent specified therein, be a legal tender in payment or on account accordingly.

(2) All coins issued under the authority of this Act in any denomination of annas, pice and pies shall, to the extent specified in section 13, be a legal tender in payment or on account at the rate of sixteen annas, sixty four pice or one hundred and ninety

two pies to one hundred new coins referred to in sub-section (1), calculated in respect of any such single coin or number of such coins tendered at one transaction, to the nearest new coin, or where the new coin above and the new coin below are equally near, to the new coin below.

(3) All references in any enactment or in any notification, rule or order under any enactment or in any contract, deed or other instrument to any value expressed in annas, pice and pies shall be construed as references to that value expressed in new coins referred to in sub-section (1) converted thereto at the rate specified in sub-section (2)."

By sub-ss. (1) & (2) of s. 14 therefore one rupee is divided into a hundred naya paisas, the old legal tender of sixteen annas or sixty four pice or one hundred any ninety two pies to a rupee remains legal tender which will be equivalent to one hundred naya paisas and for purposes of calculation and conversion of old coins into new coins, one old coin or a number of such coins have to be calculated to the nearest new coin or coins and where the new coin above and the new coin below are equally near then the calculation is to the new coin below. Sub-s. (3) provides that all references under any enactment to annas, pice or pies have to be construed as reference to the new coin referred to in sub-section (1). In other words wherever the old legal tender i.e. annas, pice and pies is mentioned in an enactment it is to be converted into naya paisas and the naya paisas are to be substituted in place of the old legal tender calculated in the manner laid down in sub-s. (2). On March 1, 1957, the Mysore Legislature enacted the Mysore existing Laws (Construction of References to Values Act, 1957) Act 12 of 1957. By s. 2 of that Act "existing law" was defined as an Act, Order, or regulation having the force of law in Mysore State relating to any matter other than any enactment, notification, rule or order to which the provisions of sub-s. (3) of s. 14 of the Indian Coinage Act are applicable. By s. 3 of that Act in every such existing law reference to any value expressed in annas, pice or pies shall be construed as reference to that value expressed in new coins referred to in sub-section (1) of s. 14 of the Indian Coinage Act converted thereto at the rate specified in sub-s. (2) of s. 14 of that Act.

Two objections were taken to the validity of the tax : Firstly it was argued that by the substitution of 2 naya paisas in place of 3 pies there was a change in the tax exigible by the Mysore Sales Tax Act and this could only be done if that enactment had been passed according to the procedure for Money Bills in the manner provided by Arts. 198, 199 and 207 of the Constitution and as no such Money Bill was introduced or passed for the enhancement of the tax, the tax was illegal and invalid. In our opinion by substitution of new coinage i.e. naya paisas in place of annas, pice and pies no enhancement of tax was enacted but it was merely a substitution of one coinage by another of equivalent value. Even assuming that it is a taxing measure its validity cannot be challenged on the ground that it offends Arts. 197 to 199 and the procedure laid down in Art. 202 of the Constitution. Article 212 prohibits the validity of any proceedings in a legislature of a State from being called in question on the ground of any alleged irregularity of procedure and Art. 255 lays down that requirements as to recommendation and previous sanction are to be regarded as matters of procedure only. It provides :

Art. 255 "No Act of Parliament or of the Legislature of a State, and no provision in any such Act, shall be invalid by reason only that some recommendation or previous sanction required by this Constitution was not given, if assent to that Act was given -

(a) where the recommendation required was that the Government either by the Governor or by the President;

#(b).....(c).....
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Consequently the tax cannot be challenged on the ground that it is contrary to the provisions of the Constitution.

Secondly, it was submitted that the Indian Coinage Act, being a Central Act dealing with "coinage and legal tender" under item 36 of List I, could not change the rate of tax under the Mysore Sales Tax Act. It is unnecessary to decide this question because if the Central Act i.e. the Indian Coinage Act, has not the effect of changing 3 pies into .02 Nps in the rate of tax leviable under the Mysore Sales Tax Act, the Mysore Existing Laws (Constitution of References to Values) Act, 1957, which has been set out above has made a provision for charging the tax in terms of naya paisas instead of pies. Therefore the levy of tax in terms of naya paisas is not unconstitutional not is it a taxing measure but it deals merely with the conversion of the old coinage into new coinage.

It was then argued that because of the order of the High Court in a previous petition under Art. 226 whereby the provisional assessment was set aside the principle of res judicata applied and a different decision could not be given in the present petition which was subsequently filed after the final assessment. In our opinion there is no merit in that submission. The previous petition upon which the appellant relies was to set aside the provisional assessment and it was set aside in the following language :

"Read Memo dated 7-6-1958 by the Advocate General and Advocate for respondents, stating that the respondents do not oppose the writ petition being allowed and that the provisional assessment may be set aside".

The previous decision setting aside the provisional assessment does not indicate what issues were raised and decided and there is no indication that the question now raised before us was before the Court. That decision cannot therefore operate as res judicata.

In our opinion this appeal is without merit and is dismissed with costs.

Appeal dismissed.

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