M/s. Bharat General and Textile Industries Ltd. and Others

Vs

State of Maharashtra and Others

Writ Petition No. 1521 of 1987

(A. P. Sen, S. Natarajan JJ)

19.09.1988

JUDGMENT

NATARAJAN, J. –

1. Writ Petition No. 1521 of 1987 has been filed under Article 32 of the Constitution of India to challenge the constitutional validity of Section 41 of the Bombay Sales Tax Act (hereinafter referred to as 'the Act') on the ground it confers arbitrary powers of exemption on the State Government so as to exempt all types of new units from the payment of purchase tax, sales tax and central sales tax under the Package Scheme of Incentives, 1979. On notice being issued in the writ petition, the respondent-State of Maharashtra has filed affidavit in reply and the petitioner has filed a rejoinder.

2. In order to exempt in public interest any specified class of sales or purchases from payment of the whole or any part of the tax payable under the Act, the State Government gave to itself powers of exemption under Section 41 of the Act. In exercise of its powers under Section 41 the government from payment of sales tax or purchase tax or both, as the case may be. One of such notifications issued by the government under entry 136 was for granting full tax exemption for the purchases of the inputs and the sales of finished goods of new units set up in the backward areas of the State. The government also issued notification under Section 85 of the Central Sales Tax Act to the sales of finished goods of such units from payment of central sales tax. These tax exemption benefits were accorded to the new industries by way of (1) incentives for development of industries in backward areas, (2) promotion of the dispersion of industries all over the State, (3) the industrialisation of backward areas and (4) for creating employment opportunities in the backward areas.

3. By virtue of the exemption notifications issued by the government in exercise of its powers under Section 41, the industries engaged in the production of edible as well as non-edible oils set up in back ward areas came to enjoy the benefit of exemption from paying purchase tax/sales tax.

4. Subsequently, the government came to realise that the sales tax exemption given under the Package Scheme of Incentives, 1979 for a period ranging from 5 to 9 years without any limit had conferred far more benefits on some of the industries concerned than what the government had in mind when the notifications granting tax exemptions were made and that the exemption facility was not only adversely affecting the government's finances but was also placing the existing small scale units on a comparative disadvantage. The government, therefore, passed a Resolution on July 5, 1982 (No. IDL-7082/ (3559) /IND-B) to modify the Package Incentives Scheme and the benefits flowing therefrom in order to limit the benefit to 100 percent of the fixed capital investment of the small scale units. Since the Package Scheme of Incentives, 1979 provide for giving notice of six months for any change or modification in the scheme, the modified scheme dated July 5, 1982 was

proposed to be brought into force in respect of small scale units with effect from January 10, 1983. The government, however, noticed that during the intervening period of notice, a number of small scale units, particularly the oil units, tried to take advantage of the unlimited incentives to the disadvantage of the existing units sales tax. The small scale units also sought to take advantage of the decision of the Bombay High Court in Tapti Oil Industries v. State of Maharashtra by claiming benefit of tax exemption without any limit, thereby causing a continuing loss to the revenue.

5. The government, therefore, considered it would not be expedient in the public interest to continue the concession and, that suitable provision must immediately be made in the Act so as to limit the benefit of the exemption from payment of sales tax under the Package Incentive Schemes to the extent of 100 percent of the gross fixed capital investments of the eligible units as approved at the time of the grant of eligibility certificate or to such other lower ceiling of percentage that may have been provided for under the eligibility certificate issued to the small scale unit. Since both the Houses of the State legislature were not in session, the government passed Ordinance 5 of 1985 and inter alia introduced Section 41-A which read as under :

> 41-A. (1) Notwithstanding anything contained in this Act or in any judgment, decree or order of any court of tribunal to the contrary, on and after the date of commencement of the Bombay Sales Tax (Amendment) Ordinance, 1985 (hereinafter in this section referred to as "the commencement date") the cumulative quantum of benefit drawn or availed of by any registered dealer of an eligible unit in respect of payment of any tax by virtue of the exemption granted under the provisions of Section 41 shall not exceed 100 percent of the gross fixed capital investment of the eligible unit as approved at the time of grant of Eligibility Certificate, or such other lower ceilings of percentage, if any, as may be provided under the Eligibility Certificate issued in accordance with the provisions of any Package Scheme of Incentives.
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> (2) Where, in the case of any registered dealer of an eligible unit the cumulative quantum of benefit availed of by him, has exceeded the limit laid down in sub-section (1) on the commencement date, or exceeds such limit on any day after the commencement date, then the Eligibility Certificate shall cease to have any effect in relation to the exemption from payment of tax under this Act or under the Central Sales Tax Act, 1956, and the Certificate of Entitlement shall stand automatically cancelled on the commencement date or any such day, as the case may be, and such registered dealer shall not be entitled to claim any further benefit of exemption from payment of such tax under the Eligibility Certificate or the Certificate of Entitlement on or after the commencement date or any such day, as the case may be, and the dealer shall surrender the Certificate of Entitlement together with all the unused Form BC which have been attested by the sales tax authorities to the Commissioner forthwith and in any case within 15 days from the commencement date or any such day.
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> (3) Notwithstanding anything contained in sub-sections (1) and (2), no registered dealer of an eligible unit shall be entitled to claim any benefit of exemption from payment of any tax beyond the period covered by the Eligibility Certificate and the provisions of sub-section (2) regarding surrender of the Certificate of Entitlement together with the unused Form BC shall mutatis mutandis apply to such registered dealer.

6. The Ordinance came to be replaced by the Amendment Act, 1985. Under the Amending Act the government made certain modifications and directed that the withdrawal of the tax exemption benefit will stand confined to the edible oil units only. Section 41-A, as introduced in the main Act by the Amending Act 15 of 1985 reads as follows :

> 41-A. Notwithstanding anything contained in this Act or in any judgment, decree or order of any court or tribunal to the contrary, on and after the date of commencement of the Bombay Sales Tax (Amendment) Act, 1985 (hereinafter in this section referred to as "the commencement date"), the Eligibility Certificate granted to any registered dealer of an edible oil unit in accordance with the provisions of any Package Scheme of Incentives shall cease to have any effect in relation to the exemption from payment of tax under this Act or under the Central Sales Tax Act, 1956, and the Certificate of Entitlement issued in favour of such registered dealer by the Commissioner under entry 136 of the Schedule to the notification issued under Section 41 shall stand automatically cancelled to claim any further benefit of exemption from payment of such tax under the Eligibility Certificate or the Certificate of Entitlement on and after the commencement date, and he shall surrender the Certificate of Entitlement with all the unused Form BC which have been attested by the sales tax authorities to the Commissioner forthwith and in any case on or before the 31st day of August, 1985, unless he has already surrendered the same earlier.

Section 8 of the Amendment Act which repealed Ordinance 5 of 1985 further provided as follows:

> 8. (2) It is hereby declared that notwithstanding anything contained in Section 7 of the Bombay General Clauses Act, 1904, on such repeal, the following consequences shall ensue :
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> (a) The Eligibility Certificate and the Certificate of Entitlement issued to any registered dealer of the eligible unit other than the registered dealer of edible oil unit shall be deemed to have been cancelled; and
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> (b) Where the Certificate of entitlement and the unused Form BC are surrendered by any registered dealer of the eligible unit other than registered dealer of edible oil unit, the same shall be restored to the registered dealer, who has surrendered the same;
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> (c) The registered dealer of the eligible unit other than the registered dealer of edible oil unit shall be deemed to have been entitled to claim the same benefits of exemption of sales tax to which he was entitled before the commencement of the said Ordinance;
>
> (d) Any sales tax on sale of finished goods recovered by any registered dealer of the eligible unit other than the registered dealer of edible oil units during the period from the commencement of the said Ordinance till the publication of this Act in the Official Gazette, shall be paid into Government Treasury along with the return and the tax so paid shall stand forfeited to the State Government and thereupon the provisions of sub-section (6) of Section 38 shall mutatis mutandis apply to the tax so forfeited.

7. Thus it may be seen that by reason of Act 15 of 1985, the sales tax exemption facility originally granted under the Package Scheme of Incentives, 1979 to all small scale units newly started stood withdrawn only insofar as edible oil units are concerned, and not to small scale units engaged in producing non-edible oils.

8. By a trade circular No. DAD 1485/259/ADD-3, dated October 15, 1986, it was clarified that an edible oil unit under the Act 15 of 1985 would mean a unit engaged in -

(i) delinting, decorticating or processing of ground-nuts or other oil-seeds;

(ii) crushing of ground-nuts or other oil-seeds and manufacture of edible oil;

(iii) refining of edible oil; or

(iv) hydrogenation of edible oil.

9. It was also clarified that the Act would not be applicable to "units producing and selling non-edible oils" and that units manufacturing and selling "washed cotton seed oil", "soyabean raw oil (Grade I)" and "unrefined sunflower cake oil" would not fall under the category of units manufacturing edible oil and as such those units will be entitled to avail of the tax benefits even after August 1, 1985, provided that the eligibility certificate specifically made mention of the particular oil as the finished product produced and sole by the concerned eligible unit. The trade circular stated that the clarification was being given "after obtaining the opinion of the concerned department of the Government of India about what constitute edible oil and non-edible oils".

10. Notwithstanding the amended sections and the trade circular the petitioners who are engaged in producing washed cotton seed oil tried to contend before the authorities that washed cotton seed oil would also fall in the category of edible oil and that several technical authorities have given their opinion to that effect and as such the extension of sales tax exemption facility to units engaged in the production of non-edible oils was against law and was not only depriving the government of its legitimate revenue but was also detrimentally affecting the interests of the old units which were engaged in producing washed cotton seed oil, etc. These contentions were not accepted by the State Government with the result that the withdrawal of the tax exemption provision remained confined only to the units engaged in producing edible oils and not to units engaged in producing non-edible oils.

11. Aggrieved by this position the petitioners have come forward with this petition under Article 32 of the Constitution. Two contentions were advanced by the learned counsel for the petitioner to assail Section 41 of the Act. It is apposite to mention here that in his petition the petitioner has not impugned the validity of Section 41-A which disentitles only the units producing edible oil from having the continued benefit of tax exemption. This factor of Section 41. Leaving aside this aspect of the matter, we will now consider the specific grounds on which Section 41 is assailed.

12. In the first place it is stated that while the government realised, at the time of passing the Ordinance that the tax exemption scheme granted in favour of all the newly started eligible units had conferred tax benefits transcending by far the limits of assistance contemplated by the government and that the tax exemption benefits were adversely affecting the public exchequer as well as the old units and had, therefore, made Section 41-A introduced by the Ordinance applicable to all eligible units which had been given the benefit of tax exemption, the revised Section 41-A introduced by Act 15 of 1985 had restricted the withdrawal provision only to the units engaged in producing

edible oils and has allowed the other eligible units to continue to have the unfair advantage of tax exemption benefit. The second argument was that washed cotton-seed oil is also an item of edible oil although it required some processing for making it fit for human consumption and, therefore, the new units which were engaged in producing washed cotton-seed oil should also be classified as units producing edible oils so that those new units, should also pay purchase tax and sales tax in the same manner the petitioner was paying. By way of extension to the second contention it was pointed out that while the old units had to pay purchase tax, sales tax, turnover tax, etc. totalling Rs. 1650 per metric ton, the new units producing the same washed cotton-seed oil got away scot-free without paying any tax and they stood placed in a very advantageous position.

13. On an examination of the contentions we find that neither of them has any merit. Section 41 has been in the statute book ever since the Act was enacted. It has been provided in order to enable the State Government to grant exemption from payment of purchase tax and sales tax of any specified class of sales or purchases if such grant of exemption was felt justified. It is open to the government to give the benefit of tax exemption either to the full extent or to a partial extent. The section itself states that the power of exemption is being conferred on the government in order to enable it to act in public interest. It is not, therefore, as if power has been given to the government to act in an arbitrary manner or for conferring largess on any section of manufacturers or traders. In exercise of its powers under Section 41 the government has been granting exemption by means of several notifications in favour of various trades and industries as and when the circumstances warranted the granting of exemption in public interest. It can, therefore, be safely taken that Section 41 has withstood the test of time and has enabled the government to promote public interest, by granting tax exemption benefit, whenever needed.

14. One of the contentions advanced by the petitioner's counsel was that while the power of exemption can be granted on any specified class of sales or purchases from payment of tax, the government was not entitled to grant exemption only in favour of new units set up in backward areas from the payment of purchase tax, sales tax and central sales tax. In other words the argument was that if the government wanted to grant exemption in favour of such units, then the government should have granted the benefit of tax exemption to all the units in backward areas which were engaged in the production of the same type of goods as the new units were engaged in. We are unable to accept this contention because the exemption granted in favour of the new units has a sound economic and public policy underlying it. The policy has been set out by the government in the counter-affidavit filed by it in W. P. No. 1527 of 1987 in the following manner:

> I submit that these benefits are in accordance with the policy of the government to give sales tax incentives to the new units in backward areas in order to achieve dispersion of industries, industrialisation of backward areas as also for the purposes of creating employment opportunities in the backward areas and as such exemption is granted in the larger public interest in order to enable the new units to successfully compete with the older units in the initial years of production in order to occasion sufficient foothold in an established industry. I further submit that this classification is reasonable in all respects and is not at all arbitrary as established unit have several advantages over new units inasmuch as the overhead assets are less and hence no fundamental right is infringed in any manner of the old units.

It cannot, therefore, be contended that the old units should also have been granted the same benefit as new units since both the units are engaged in the manufacture of the same type of products. In fact such a policy, if followed by the government, would not only fail to provide incentive to the

new industries but would also place the new units at a comparative disadvantage in being made to face stiff competition with older units which have been established at lesser cost and which have stabilised themselves in the field by successfully running the units for a number of years. The words in Section 41 "exempt any specified class of sales or purchases" could well be construed as applying to the grant of exemption to the new units because the sales and purchases effected by new entrants would constitute a specified class by themselves in contra distinction with the class of sales and purchases effected by the older and seasoned units.

15. Insofar as the second contention is concerned, viz. that washed cotton-seed oil would also fall in the category of edible oils in spite of the fact that it has to be processed still further for being made fit for human consumption, we find that the contention is not a tenable one. The petitioners had contended before the government that washed cotton-seed oil is also one type of edible oil but the government have rejected this contention stating that since washed cottonseed oil cannot be made use of without further processing for direct human consumption, it would not fall in the category of edible oil. This position is not controverted by the petitioners and, therefore, as long as the washed cottonseed oil that is produced is sold without further processing it will not constitute edible oil. The government therefore, are well within their powers in refusing to accept the petitioner's contention that washed cottonseed oil is also edible oil and, therefore all the new units which are engaged in the manufacture of washed cottonseed oil should also be rendered ineligible from enjoying the benefit of tax exemption as has been done in the case of units producing edible oil.

16. Yet another contention of the petitioner's counsel was that the term 'oil' would include edible as well as non-edible oil and therefore, there was no reason or justification for the government to have removed the benefit of tax exemption to units manufacturing edible oil alone and allow the continuance of the benefit of tax exemption to new units producing non-edible oil. Even this contention is devoid of substance because even though edible and non-edible oils may fall under the general heading of 'oils' they undoubtedly constitute two separate groups which are capable of distinct classification on intelligible basis.

17. Lastly, coming to the argument that new units engaged in producing non-edible oil derive a huge benefit by way of tax exemption while the older units stand penalised and are getting crushed out of existence, the government have examined the matter fully and found that the new units engaged in the production of edible oil alone have derived undue advantage by reason of the tax exemption, and that the other eligible units engaged in the manufacture of other products including non-edible oils have not derived benefit to such an extent as to justify revocation of the tax exemption benefit. This assessment exercise falls purely within the domain of the executive and it is not for the court to see whether other edible oil units also derive huge benefits and as such government ought to have revoked the tax exemption benefit in their cases as well. As already stated the classification between units engaged in producing edible oils and non-edible oils is on an intelligible and sustainable basis and units alike and direct the withdrawal of the tax exemption benefit in the case of non-edible oil producing units also.

18. For all these reasons we hold that Section 41 of the Bombay Sales Tax Act is not violative of Articles 14, 19 and 21 of the Constitution as alleged by the petitioner in W. P. No. 1521 of 1987.

19. In the result W. P. No. 1521 of 1987 will stand dismissed. There will be no order as to costs.

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