Mangalore Chemicals and Fertilisers Limited

Vs

Deputy Commissioner of Commercial Taxes and Others

Civil Appeal No. 3235 of 1991

(M. N. Venkatachaliah, S. C. Agarwal JJ)

02.08.1991

ORDER

1. By this petition, Messrs Mangalore Chemicals and Fertilisers Limited, a registered dealer under the Karnataka Sales Tax Act, 1957, ("Act") seeks special leave to appeal to this Court from the judgment and order dated August 14, 1990 of the High Court of Karnataka in W.P. No. 3436 of 1980.

2. We have heard Shri Harish Salve, learned counsel for the petitioner and Shri R. N. Narasimhamurthy, learned Senior Counsel for the respondent-Revenue. Special leave granted.

3. On June 30, 1969, State Government issued a notification in exercise of powers referable to Section 8-A of the Act providing certain incentives to entrepreneurs starting new industries in the State, pursuant to State's policy for "rapid industrialisation". The notification contains a package of reliefs and incentives including one concerning relief from payment of sales tax with which this appeal is concerned.

4. The clause in the said Notification of 1969 relevant for the present purpose reads : (SCC p. 571, para 1)

> (1) Sales Tax. - A cash refund will be allowed on all sales tax paid by a new industry on raw material purchased by it for the first 5 (five) years from the date of the industry goes into production, eligibility to the concessions being determined on the basis of a certificate to be issued by the Department of Industries and Commerce."

5. This was followed by a further Notification dated August 11, 1975 envisaging certain modified procedures for effectuating the reliefs contemplated by the earlier exemption Notification of June 30, 1969. The relevant portions of the Preamble and the body of the notification say :

Preamble : "... The Commissioner of Commercial Taxes has suggested that New Industries covered by the above scheme might be permitted to adjust the refunds to which they would be eligible against the sales tax payable by them.

Order

In partial modification of the government order cited (2) above, government are pleased to prescribe the following procedure for claiming refund of sales tax by new industries.

2. The new industries intending to take advantage of the system of adjustment shall apply to the Deputy Commissioner of Commercial Taxes (Administration) of the Division concerned through the assessing authority. The application must contain the following particulars :

(i) Name and address of the new industry;

(ii) Date of commencement of the industry;

(iii) Reference number of the certificate issued by the Director of Industries and Commerce, Bangalore;

(iv) Year for which the permission to withhold tax amount is related;

(v) The description of finished products in which the materials are used.

3. The Deputy Commissioner of Commercial Taxes (Administration) of the concerned Division, after scrutinising the application filed by the new industry and after satisfying himself that the industry is covered by the scheme sanctioned in G.O. No. OI 58 FMI 69 dated June 30, 1969 will permit the industry to withhold the amount of tax payable on raw materials purchased and used in the manufacture of goods.

4. (Omitted as unnecessary)

5. The new industry may apply for permission at any time during the year subject to its renewal every subsequent year. Until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds. At the end of the assessment year, particulars should be formulated in the annual return of the total amount adjusted during the entire year. Along with the return, details prescribed in Government Order No. FD 428 CSL 70 dated February 1, 1971 should be furnished.

6. (Omitted as unnecessary).

7. (Omitted as unnecessary).

8. (Omitted as unnecessary)."

6. Appellant, it is not in dispute, had the necessary eligibility under the original exemption Notification of 1969. The controversy is confined only to the question of the manner of effectuating the refund of sales tax that appellant, admittedly, was entitled to.

7. Some particulars as to the application made by the appellant for grant of permission might, perhaps, be necessary here. For the assessment year 1976-77, the appellant made such an application to the Deputy Commissioner of Sales Tax (Administration) on November 10, 1976 for adjustment of the refunds against sales tax due. This permission was granted with retrospective effect from May 1, 1976, validating the adjustments which the appellant had made during the interregnum.

8. However, for the three subsequent years viz., 1977-78, 1978-79 and 1979-80, similar applications which were made on March 29, 1977, March 20, 1978 and March 8, 1979, respectively, remained undisposed of. In the meanwhile, in anticipation of the permission appellant adjusted the refund against tax payable for these years and filed its monthly returns setting out adjustments so effected.

9. There is, as set out earlier, no dispute that the appellant was entitled to the benefit of the Notification dated June 30, 1969. There is also no dispute that the refunds were eligible to be adjusted against sale tax payable for respective years. The only controversy is whether the appellant, not having actually secured the "prior permission" would be entitled to adjustment having regard to the words of the Notification of August 11, 1975, that "until permission of renewal is granted by the Deputy Commissioner of Commercial Taxes, the new industry should not be allowed to adjust the refunds". The contention virtually means this : "No doubt you were eligible and entitled to make the adjustments. There was also no impediment in law to grant you such permission. But see language of clause 5. Since we did not give you the permission you cannot be permitted to adjust." Is this the effect of the law ?

10. The sales tax already paid by the appellant on the raw materials procured by it is the subject-matter of the refunds. The sales tax against which the refund is sought to be adjusted is the sales tax payable by appellant on the sales of goods manufactured by it. If the contention of the Revenue is correct, the position is that while the appellant is entitled to the refund it cannot, however, adjust the same against current dues of the particular year but should pay the tax working out its refunds separately. The situation may well have been such but the snag comes here. If the adjustments made by the appellant in its monthly statements are disallowed, the sales tax payable would be deemed to be in default and would attract a penalty ranging from 1 1/2 per cent to 2 1/2 per cent per month from the date it fell due. That penalty, in the facts of this case would be very much more than the amounts of refund.

11. What emerges from the undisputed facts is that appellant was entitled to the benefit of these adjustments in the respective years. It had done and carried out all that was necessary for it to do and carry out in that behalf. The grant of permission remained pending on account of certain outstanding inter-departmental issues as to which of the departments - the Department of Sales Tax or the Department of Industries - should absorb the financial impact of these concessions. Correspondence indicates that on account of these questions, internal to administration, the request for permission to adjust was not processed. On March 27, 1979, the Deputy Commissioner of Commercial Taxes wrote to the appellant to say that the orders on appellant's application for permission would be passed only on receipt of the clarification from the government on these matters.

12. While the matter stood thus, on January 9, 1980, the Commercial Tax Officer of the concerned jurisdiction issued three demand notices demanding payment of the sales tax. He said prior permission to adjust "had not been considered by the Deputy Commissioner of Mangalore Division, Mangalore, and, therefore, the Commercial Tax Officer was obliged to proceed to recover the taxes." Steps for recovery of the penalties were also initiated. Thereafter, in February 1980, the appellant moved the High Court for issue of writ of mandamus to quash the demand notices and the proceedings initiated for recovery of penalty under Section 13 of the Act.

13. The contentions in the High Court was somewhat different from those urged before us. Before the High Court the Revenue asserted that the very conditions of eligibility for entitlement to these concessions stood modified under a subsequent Notification of January 12, 1977 and that appellant did not satisfy the altered conditions of eligibility. The question, therefore, was whether entrepreneurs who had commenced their ventures prior to January 12, 1977, could be held to be governed by the terms of the later Notification of January 12, 1977. This question, in principle, had been settled by a decision of this Court in Assistant Commissioner of Commercial Taxes (Asst.), Dharwar v. Dharmendra Trading Co. [(1988) 3 SCC 570 : 1988 SCC (Tax) 432]. The question that

arose there pertained to another condition stipulated in the same Notification of January 12, 1977. This Court held that industries established prior to that date were not governed by those altered conditions. Though in the present case the altered condition set up against appellant was a different one, on the principle decided in Dharmendra Trading Company case [(1988) 3 SCC 570 : 1988 SCC (Tax) 432] the altered condition would not be attracted. But the High Court took a different view of the matter. It held, in our opinion quite erroneously, that the principle of the earlier decision of this Court was not applicable because it was rendered in the context of another condition in the 1977 notification. What fell for decision was not whether a particular condition was or was not applicable; but the very basic question was whether a subsequent notification could undo the eligibility for the concession stipulated and conferred under the 1969 notification.

14. Shri Narasimhamurthy with his usual fairness said that he found it difficult to support the approach of the High Court to the question. The main point on which the case turned is thus settled in favour of the appellant.

15. But a subsidiary question arose whether the grant of permission for adjustment could at all be made after the period to which such adjustment related had itself expired. On this, the High Court said :

> "... But under Ex. B, the 1975 notification, a clear procedure was provided in order to claim the benefit of refund on the sales tax paid on raw materials purchased by the industrialists. The industrialists claiming the benefit had to secure the prior permission of the assessing authority to withhold the tax subject to the government's permission. In other words, prior permission was a condition precedent. In the instant case, Mr. Kumar was not able to satisfy us, permission had indeed been granted. On the other hand, he fairly conceded that though an application was made, no permission was actually granted to withhold the payment. Therefore, in view of the 1975 notification prescribing the procedure for claiming the benefit under 1969 notification as at Ex. A, there has been no compliance and as such, the petitioner will not be entitled to withhold the tax. With the result, the demand at Annexure R, S and T would be justifiable and legal."

This is the only ground on which the appellant's right to adjustment is contested by the Revenue.

16. Shri Harish Salve urged that indisputably the permission for the three years had been sought well before the commencement of the respective years but had been withheld for reasons which were demonstrably extraneous. Learned counsel emphasised that the basic eligibility was conditioned by the Notification of June 30, 1969, which required a certificate from the Department of Industries and Commerce. Both the eligibility and the fact that there was such certification from the Department of Industries were not disputed. Indeed, the requirement of the annual permission for adjustment envisaged by the Notification of August 11, 1975 was, says counsel, merely procedural as clause 3 of the notification stipulated that if the conditions were satisfied - there was no dispute they were - the Deputy Commissioner "will permit" the adjustment. Counsel says that if, in these circumstances, the Deputy Commissioner withheld the permission law treats that as done which ought to have been done.

17. Shri Narasimhamurthy, however, sought to contend that the requirement of the prior permission was held - and rightly - by the High Court to be a 'condition precedent' and that non-satisfaction of that condition precedent, whatever be the reason for the non-satisfaction, automatically entailed the

logical consequences. Learned counsel further submitted that it was not as if the right to the refund was denied or defeated by the inaction of the Deputy Commissioner but only one made of the refund - by adjustment - became unavailable Learned counsel urged that the benefit envisaged by the Notification of August 11, 1975 was in the nature of a concession and that the appellant in order to avail itself of its benefit had to show strict compliance with conditions subject to which it was available. Learned counsel placed reliance on Kedarnath Jute Manufacturing Co. v. CTO [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] and Collector of Central Excise v. Parle Exports (P) Ltd. [(1989) 1 SCC 345 : 1989 SCC (Tax) 84] to support his contention that where exemptions were concerned, the conditions thereof ought to be strictly construed and strict compliance with them exacted before a person can lay claim to the benefit of the exemptions.

18. Learned counsel submitted that the point was not whether there was any justification for delaying the permission; but, more importantly, whether appellant at the relevant point of time had such prior permission or not and that if, in the meanwhile, the period itself expired, no relief was possible as, quite obviously, the requirements of 'prior permission' became impossible of compliance.

19. Shri Narasimhamurthy relied on the following observations of this Court in Kedarnath Jute Manufacturing Co. case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] to support this contention : (SCR pp. 628-30)

> "... But the said exemption is made subject to proviso. Under that proviso, in the case of such sales a declaration form duly filled up and signed by the registered dealer to whom the goods are sold and containing the prescribed particulars on a prescribed form obtainable from the prescribed authority has to be furnished in the prescribed by the dealer who sells the goods....
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> ... The provision prescribing the exemption shall, therefore, be strictly construed... To accept the argument of the learned counsel for the appellant is to ignore the proviso altogether, for if his contention be correct it will lead to the position that if the declaration form is furnished, well and good; but, if not furnished, other evidence can be produced. That is to rewrite the clause and to omit the proviso. That will defeat the express intention of the legislature."

20. We have given our careful consideration to these submissions. We are afraid the stand of the Revenue suffers from certain basic fallacies, besides being wholly technical. In Kedarnath case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607], the question for consideration was whether the requirement of the declaration under the proviso to Section 5(2)(a)(ii) of the Bengal Finance (Sales Tax) Act, 1941, could be established by evidence aliened. The Court said that the intention of the legislature was to grant exemption only upon the satisfaction of the substantive condition of the provision and the condition in the proviso was held to be of substance embodying considerations of policy. Shri Narasimhamurthy would say the position in the present case was no different. He says that the Notification of August 11, 1975 was statutory in character and the condition as to 'prior permission' for adjustment stipulated therein must also be held to be statutory. Such a condition must, says counsel, be equated with the requirement of production of the declaration form in Kedarnath case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] and thus understood the same consequences should ensue for the non-compliance. Shri Narasimhamurthy says that there was no way out of this situation and no adjustment was permissible, whatever be the other remedies of the appellant. There is a fallacy in the emphasis of

this argument. The consequence which Shri Narasimhamurthy suggests should flow from the non-compliance would, indeed, be the result if the condition was a substantive one and one fundamental to the policy underlying the exemption. Its stringency and mandatory nature must be justified by the purpose intended to be served. The mere fact that it is statutory does not matter one way or the other. There are conditions and conditions. Some may be substantive, mandatory and based on considerations of policy and some others may merely belong to the area of procedure. It will be erroneous to attach equal importance to the non-observance of all conditions irrespective of the purposes they were intended to serve.

21. In Kedarnath case [(1965) 3 SCR 626, 628-30 : AIR 1966 SC 12 : (1965) 16 STC 607] itself this Court pointed out that the stringency of the provisions and the mandatory character imparted to them were matters of important policy. The Court observed : (SCR p. 630)

> "... The object of Section 5(2)(a)(ii) of the Act and the rules made thereunder is self-evident. While they are obviously intended to give exemption to a dealer in respect of sales to registered dealers of specified classes of goods, it seeks also to prevent fraud and collusion in an attempt to evade tax. In the nature of things, in view of innumerable transactions that may be entered into between dealers, it will well nigh be impossible for the taxing authorities to ascertain in each case whether a dealer has sold the specified goods to another for the purposes mentioned in the section. Therefore, presumably to achieve the twofold object, namely, prevention of fraud and facilitating administrative efficiency, the exemption given is made subject to a condition that the person claiming the exemption shall furnish a declaration form in the manner prescribed under the section. The liberal construction suggested will facilitate the commission of fraud and introduce administrative inconveniences, both of which the provisions of the said clause seek to avoid."

22. Such is not the scope or intendment of the provisions concerned here. The main exemption is under the 1969 notification. The subsequent notification which contains condition of prior permission clearly envisages a procedure to give effect to the exemption. A distinction between the provisions of statute which are of substantive character and were built in with certain specific objectives of policy on the one hand and those which are merely procedural and technical in their nature on the other must be kept clearly distinguished. What we have here is a pure technicality. Clause 3 of the notification leaves no discretion to the Deputy Commissioner to refuse the permission if the conditions are satisfied. The words are that he "will grant". There is no dispute that appellant had satisfied these conditions. Yet the permission was withheld - not for any valid and substantial reason but owing to certain extraneous things concerning some inter-departmental issues. Appellant had nothing to do with those issues. Appellant is now told, "We are sorry. We should have given you the permission. But now that the period is over, nothing can be done". The answer to this is in the words of Lord Denying [See Wells v. Minister of Housing and Local Government, (1967) 1 WLR 1000, 1007 : (1967) 2 All ER 1041] : "Now I know that a public authority cannot be estopped from doing its public duty, but I do think it can be estopped from relying on a technicality and this is a technicality".

23. Francis Bennion in his Statutory Interpretation, (1984 edn.) says at page 683 :

> "Unnecessary technicality : Modern courts seek to cut down technicalities attendant upon a statutory procedure where these cannot be shown to be necessary to the fulfilment of the purposes of the legislation."

24. Shri Narasimhamurthy again relied on certain observations in CCE v. Parle Exports (P) Ltd. [(1989) 1 SCC 345 : 1989 SCC (Tax) 84], in support of strict construction of a provision concerning exemptions. There is support of judicial opinion to the view that exemptions from taxation have a tendency to increase the burden on the other unexempted class of tax prayers and should be construed against the subject in case of ambiguity. It is an equally well known principle that a person who claims an exemption has to establish his case. Indeed, in the very case of Parle Exports (P) Ltd. [(1989) 1 SCC 345 : 1989 SCC (Tax) 84] relied upon by Sri Narasimhamurthy, it was observed : (SCC p. 357, para 17)

> "While interpreting an exemption clause, liberal interpretation should be imparted to the language thereof, provided no violence is done to the language employed. It must, however, be borne in mind that absurd results of construction should be avoided."

The choice between a strict and a liberal construction arises only in case of doubt in regard to the intention of the legislature manifest on the statutory language. Indeed, the need to resort to any interpretative process arises only where the meaning is not manifest on the plain words of the statute. If the words are plain and clear and directly convey the meaning, there is no need for any interpretation. It appears to us the true rule of construction of a provision as to exemption is the one stated by this Court in Union of India v. Wood Papers Ltd. [(1990) 4 SCC 256 : 1990 SCC (Tax) 422 : JT (1991) 1 SC 151] :

> "... Truly speaking liberal and strict construction of an exemption provision are to be invoked at different stages of interpreting it. When the question is whether a subject falls in the notification or in the exemption clause then it being in nature of exception is to be construed strictly and against the subject but once ambiguity or doubt about applicability is lifted and the subject falls in the notification then full play should be given to it and it calls for a wider and liberal construction..."

25. It appears to us that the view taken of the matter by the High Court does not acknowledge the essential distinction between what was a matter of form and what was one of substance. There was no other disentitling circumstance which would justify the refusal of the permission. Appellant did not have prior permission because it was withheld by the Revenue without any justification. The High Court took the view that after the period to which the adjustment related had expired no permission could at all be granted. A permission of this nature was a technical requirement and could be issued making it operative from the time it was applied for.

26. We, therefore, allow the appeal set aside the judgment of the High Court under appeal and direct the Deputy Commissioner of Sales Tax (Admn.) to grant the permission for the said three years operative from the dates of the application. The permission shall entitle the appellant to the adjustment of the refunds against the taxes due for the respective years. We issue these directions in view of the admitted position that, apart from the technical objection that periods to which the applications related had since expired, there was no other impediment for the grant of permission. It also follows that the demand notices which proceed on the premise that adjustment of refunds against taxes due was unavailable cannot also stand. They are quashed.

27. There will be no order as to costs.

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