Printers (Mysore) Ltd. and Another

Vs

Asstt. Commercial Tax Officer and Others

Civil Appeal No. 1550 of 1985

(B. P. Jeevan Reddy, B. L. Hansaria JJ)

07.02.1994

JUDGMENT

B. P. JEEVAN REDDY, J. -

1. The question in this batch of appeals is whether the publishers of newspapers are entitled to the benefit of Section 8(3)(b) read with Section 8(1)(b) of the Central Sales Tax Act, 1956, hereinafter referred to as 'the Act'. If they are so entitled, they can purchase the raw material required by them at the concessional rate of 4%. If not, they will be liable to pay tax @ 10%. The Madras and Kerala High Courts have taken the view that they are entitled to the said benefit while the Karnataka High Court has held to the contrary. We may briefly indicate how the question arises.

2. The publishers of newspapers require various goods, hereinafter referred to as the raw material, for producing, i.e., for printing and publishing their newspapers. These publishers are registered as dealers under the Tax Act. They purchase their raw material from other registered dealers. Most of these purchases are inter-State purchases; in the hands of the selling dealers they are inter-State sales exigible to tax.

3. Section 8 prescribes the rate of tax on inter-State sales. Sub-section (1) says that "every dealer who in the course of inter-State trade or commerce ... (b) sells to a registered dealer other than the Government goods of the description referred to in sub-section (3), shall be liable to pay tax under this Act which shall be 4% of his turnover". According to this sub-section, a dealer selling goods of the description referred to in sub-section (3) to a registered dealer is entitled to pay a concessional rate of tax, viz., 4% subject to compliance with sub-section (4), as will be explained presently. Sub-section (2) says that where the inter-State sale pertains to goods not falling under sub-section (1), the selling dealer shall pay tax at a higher rate, i.e., if they are declared goods, he shall pay at twice the rate applicable to the sale or purchase of such goods inside the appropriate State and in the case of other goods, @ 10% or at the rate applicable to the sale inside the appropriate State, whichever is higher. Sub-section (3) specifies the goods for the purposes of clause (b) of sub-section (1) of Section 8. We are concerned herein only with clause (b) in sub-section (3). Having regard to its crucial relevance, it would be appropriate to set out clause (b) of sub-section (3) :

> "(3) The goods referred to in clause (b) of sub-section (1) -
>
> (a) [omitted]

(b) are goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing of goods for sale or in mining or in the generation or distribution of electricity or any other form of power;"

4. Clause (b) thus refers to three categories of goods, viz., (i) goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for resale by him; (ii) goods specified in the certificate of registration of the registered dealer purchasing the goods for use by him in the manufacture or processing of goods for sale, subject to any rules made by the Central Government in that behalf; (iii) goods of the class or classes specified in the certificate of registration of registered dealer purchasing goods for use by him in mining or in the generation or distribution of electricity or any other form of power. We are concerned herein with the second category among the said three. Sub-section (4) of Section 8 says that provisions of sub-section (1) shall not apply to any sale unless the selling dealer furnishes to the prescribed authority in the prescribed manner "a declaration duly filled and signed by the registered dealer to whom the goods are sold containing the prescribed particulars in a prescribed form obtained from the prescribed authority". The rules framed under the Act prescribe the authority and other particulars contemplated by sub-section (4)(a). The rules prescribe the form of certificate of registration of the registered dealer purchasing the goods (Form 'B') as well as the form in which the declaration has to be issued by such purchaser (Form 'C'). (A perusal of Form 'B' shows that is contains all the particulars, namely, the business of the dealer, the class/classes of goods specified for the purposes of sub-sections (1) and (3) of Section 8 and in particular whether the goods being purchased are meant for resale or for being used in the manufacture or processing of goods for sale or for other purposes mentioned in Section 8(3)(b). It also mentions inter alia the goods manufactured by that dealer. Form 'C' similarly contains all the relevant particulars. This has to be issued by the purchasing dealer. In this certificate, the purchasing dealer mentions his registration certificate number and all other particulars including the statement that the goods being purchased by him are meant for being used inter alia in the manufacture or processing of goods for sale.)

5. Section 8, read as a whole, says inter alia : where a dealer purchases goods (being non-declared goods) required by him for use in the manufacture or processing of goods for sale and issues Form 'C' to the selling dealer, the selling dealer shall be liable to pay tax only @ 4% as per Section 8(1) and not 10% as provided in Section 8(2), provided that the certificate of registration of the purchasing dealer specifies the class of goods purchased by him. (In case of declared goods, the selling dealer has to pay tax at the rate applicable to sale of such goods within the appropriate State.) It necessarily means that the selling dealer will collect (pass on) tax from the purchasing dealer only at the said concessional rate. The idea behind this provision is self-evident. It is to ensure that the price of the product manufactured by such purchasing dealers does not go up to the detriment of the consumers of those goods. The Parliament does not want to tax both the raw material and the finished goods at the full rate. Where the finished goods are meant for sale, the raw material utilised or consumed for the manufacture of said finished goods is taxed at the concessional rate, for the reason that the State derives revenue again by taxing the sale of the finished goods. However, it is not necessary that the finished goods are actually subjected to tax on their sale - for they may be exempted either by the Act or by a notification issued thereunder. It is enough that the finished goods are meant for sale. Ordinarily, of course, their sale is taxed.

6. The expression "goods" is defined in clause (d) in Section 2. As originally enacted, the definition read : "(d) 'goods' includes all materials, articles, commodities and all other kinds of movable

property but does not include actionable claims, stocks, shares and securities;". (The Central Sales Tax Act, 1956 came into force on January 5, 1957.) By amending Act 31 of 1958, the word "newspapers" was inserted in the said definition after the words "but does not include" and before the words "actionable claims, stocks, shares and securities". After the amendment, the definition reads as follows :

> "'goods' includes all materials, articles, commodities and all other kinds of movable property, but does not include newspapers, actionable claims, stocks, shares and securities;"

7. Now the situation is this : before the amendment of the definition of the expression "goods" by the 1958 Amendment Act, the publishers of the newspapers [who held the certificate of registration contemplated by Section 8(3)(b)] were issuing Form 'C' [declarations contemplated by Section 8(4)(a)] and on that basis the selling dealer was collecting from them Central Sales Tax at the concessional rate of 4% (in the case of non-declared goods). They were like any other manufacturer in this respect. But after the newspapers were excluded from the purview of the "goods" by the 1958 (Amendment) Act, the Central Sales Tax authorities took the stand that by virtue of the said amended definition, the printers/publishers of newspapers were not entitled to the benefit of Section 8(3)(b) read with Section 8(1)(b) and are, therefore, not entitled to issue Form 'C'. Their reasoning was this : Since the expression "goods" does not take in newspapers, it cannot be said that publishers of newspapers are purchasing the goods (raw material) for use by them "in the manufacture or processing of goods for sale"; what they purchase may be goods but goods manufactured out of them (newspapers) are not goods; hence, they do not satisfy the requirement of Section 8(3)(b). The result was that the publishers of newspapers were disabled from issuing Form 'C' and hence became liable to pay tax at the higher rate of 10% on goods (non-declared goods) purchased by them as raw material for producing (manufacturing) their newspapers, while all other manufacturers continued to enjoy the said benefit. The publishers of the newspapers, therefore, questioned the action of the Central Sales Tax authorities in various High Courts. The earliest decision is of the Madras High Court in Indian Express, (Madurai) Ltd. v. Dy. CTO ((1972) 29 STC 88 (Mad)) which held in favour of the newspapers. That decision is said to have become final. The Kerala High Court took a similar view in Malayala Manorama Co. v. Assistant Commissioner (O.P. No. 143 of 1989, decided on Aug. 18, 1990) which is the subject-matter of appeal arising from SLP (C) No. 2 of 1991 in this batch. Leave granted. The Karnataka High Court, however, took a contrary view in Printers (Mysore) Ltd. v. Asstt. CTO ((1985) 59 STC 306 (Kant)) which decision too is the subject-matter of an appeal [C.A. No. 1550 (NT) of 1985] in this batch. The decision in Printers (Mysore) Ltd. ((1985) 59 STC 306 (Kant)) was followed by the Karnataka High Court in the case of other newspapers as well against which SLP (C) No. 3439 of 1992 [preferred by Indian Express (Madurai) Ltd.] and CA No. 2494 of 1993 (preferred by M/s Kasturi & Sons Ltd.) have been preferred. They too are included in this batch. Leave granted in SLP (C) No. 3439 of 1992.

8. If a literal construction is adopted, it is conceded on all hands that the view taken by the Karnataka High Court is the correct one. But what the Madras and Kerala High Courts have done is to take the spirit behind the amendment of the definition of the expression "goods" as well as the scheme underlying Entry 54 of List I read with Entries 92 and 92-A of List I of the VII Schedule to the Constitution and hold on that basis that the expression "goods" occurring in the latter half of clause (b) of Section 8(3) does not exclude newspapers from its purview. Accordingly, they held, the publishers of newspapers are entitled to the benefit of Section 8(3)(b) read with Section 8(1)(b). In this batch of appeals, we are called upon to decide which of the two views is the correct one.

9. For a proper appreciation of the question at issue, it would be appropriate to notice certain provisions of the Constitution as well as the basic importance and relevance of the freedom of press.

10. Article 19(1)(a) of the Constitution declares that all citizens shall have the right to freedom of speech and expression. Though freedom of press is not explicitly guaranteed as a fundamental right, it is no longer in doubt that it is implicit in the freedom of speech and expression. This was so stated by Dr. Ambedkar in the Constituent Assembly during the deliberations on Article 19(1)(a) (vide Constituent Assembly Debates Vol. 7, page 780) and it has been so held by this Court as far back as 1958 in Express Newspapers v. Union of India (AIR 1958 SC 578 : 1959 SCR 12: (1961) 1 LLJ 339) - nay even in Romesh Thappar v. State of Madras (AIR 1950 SC 124 : 1950 SCR 594 : 51 Cri LJ 1514).

11. Entry 54 of List II of the Constitution, which empowers the State legislatures to levy tax on the sale of goods expressly excludes newspapers. The result is, the State legislatures are not competent to levy tax on the sale or purchase of newspapers. Entry 92 of List I empowered the Parliament to levy taxes on the sale or purchase of newspapers and on advertisements published therein but the Parliament has not chosen to do so until now. By the Constitution Sixth (Amendment) Act, 1956, Entry 92-A was introduced in List I and Entry 54 in List II was amended to make it subject to the provisions of Entry 92-A of List I. After the Sixth Amendment, the three entries read as follows :

> "Entry 54 List II. - Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of Entry 92-A of List I.
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> Entry 92 List I. - Taxes on the sale or purchase of newspapers and on advertisements published therein.
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> Entry 92-A List I. - Taxes on the sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of inter-State trade or commerce."

12. As stated above, though the Parliament was empowered - at any rate, till 1956 - to levy tax on sale or purchase of newspapers, no such tax was ever levied by it. On the contrary, soon after the coming into force of the Constitution, the Parliament enacted the Taxes on Newspapers (Sales and Advertisements) Repeal Act, 1951 whereby taxes levied earlier on the sale of newspapers and on the advertisements published therein was repealed. It may be recalled that under the Government of India Act, 1935, Entry 48 in List II of the Seventh Schedule did not exclude the sale of newspapers from its purview and on that account, they were liable to pay tax on their sale. It is this feature which was sought to be put an end to by the aforesaid repealing Act. Entry 92-A of List I, it is relevant to notice, while empowering the Parliament to levy tax on sale or purchase of goods taking place in the course of inter-State trade or commerce, specifically excluded newspapers from its purview which means that no tax can be imposed upon the inter-State sale or purchase of newspapers. In short, the position is : no tax can be imposed on the inter-State sale of newspapers and no tax is imposed on their intra-State sale. This special treatment of newspapers has a certain philosophy and a historical background behind it which may briefly be noticed.

13. Freedom of press has always been a cherished right in all democratic countries. The newspapers not only purvey news but also ideas, opinions and ideologies besides much else. They are supposed to guard public interest by bringing to fore the misdeeds, failings and lapses of the Government and other bodies exercising governing power. Rightly, therefore, it has been described as the Fourth

Estate. The democratic credentials of a State are judged today by the extent of freedom the press enjoys in that State. According to Douglas, J. (An Almanac of Liberty) "acceptance by Government of a dissident press is a measure of the maturity of the nation". The learned Judge observed in Terminiello v. Chicago (93 L Ed 1131 : 337 US 1 (1949) :

> "[A] function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger. Speech is often provocative and challenging. It may strike at prejudices and preconceptions and have profound unsettling effects as it presses for acceptance of an idea. ... There is no room under our Constitution for a more restrictive view. For the alternative would lead to standardisation of ideas either by legislatures, courts or dominant political or community groups."

The said observations were of course made with reference to the First Amendment to the US Constitution which expressly guarantees freedom of press but they are no less relevant in the Indian context subject, of course, to clause (2) of Article 19 of our Constitution. We may be pardoned for quoting another passage from Hughes, C.J. in De Jonge v. State of Oregon (299 US 353 : 81 L Ed 278 (1937) to emphasise the fundamental significance of free speech. The learned Chief Justice said :

> "The greater the importance of safeguarding the community from incitements to the overthrow of our institutions by force and violence, the more imperative is the need to preserve inviolate the constitutional rights of free speech, free press and free assembly in order to maintain the opportunity for free political discussion, to the end that Government may be responsive to the will of the people and that changes, if desired, may be obtained by peaceful means. Therein lies the security of the Republic, the very foundation of constitutional government."

14. It is true that very often the press, whether out of commercial reasons or excessive competition, descends to undesirable levels and may cause positive public mischief but the difficulty lies in the fact, recognised by Thomas Jefferson, that this freedom "cannot be limited without being lost". Thomas Jefferson said, "it is, however, an evil for which there is no remedy; our liberty depends on the freedom of the press and that cannot be limited without being lost" (in a letter to Dr. J. Currie, 1786). It is evident that "an able, disinterested, public-spirited press, with trained intelligence to know the right and courage to do it, can preserve that public virtue without which popular Government is a sham and a mockery. A cynical, mercenary, demagogic press will produce in time a people as base as itself. The power to mould the future of the Republic will be in the hands of the journalism of future generations," as stated by Joseph Pulitzer.

15. This does not mean that the press is immune either from taxation or from the general laws relating to industrial relations or from the State regulation of the conditions of service of its employees, as has been emphasised by this Court in Express Newspapers v. Union of India (AIR 1958 SC 578 : 1959 SCR 12 : (1961) 1 LLJ 339). Nor is it immune from the general law of the land including civil and criminal liability for libel and defamation. The prohibition is upon the imposition of any restriction directly relatable to the right to publish, to the right to disseminate information and to the circulation of newspapers. In Sakal Papers v. Union of India ((1962) 3 SCR 842 : AIR 1962 SC 305) an Act, the Newspaper (Price and Page) Act, 1956, empowering the Central Government to regulate the price of newspapers in relation to their pages and size and to

regulate the allocation of space for advertising matter, was struck down as violative of Article 19(1)(a). It was held that the said Act was not saved by clause (2) of Article 19. It was held that freedom of press was implicit in Article 19(1)(a) and that a citizen not only has the right to propagate his ideas but has also the right to publish them, to disseminate them and to circulate them either by word of mouth or by writing. It was further held that the said right extended not merely to the matter which he was entitled to circulate but also to the volume of circulation. It was further held that the freedom of speech could not be restricted for the purpose of regulating commercial aspect of the activities of the newspapers.

16. In Bennett Coleman & Co. v. Union of India ((1972) 2 SCC 788) the validity of the Newsprint Control Order, 1982 issued under Section 3 under the Essential Commodities Act, 1955 was questioned. The said control order imposed several restrictions, viz., (a) a bar was created on starting a newspaper or editions by common ownership unit; (b) it rigidly limited the pages of newspaper to 10; (c) it imposed a bar on interchangeability within common ownership unit; and (d) it allowed a 20% page increase only to newspapers below 10 pages. The import policy evolved for the year 1972-73 under the said control order was struck down on various grounds. For our purpose, it is sufficient to notice one of those grounds, viz., that the compulsory reduction of newspapers to 10 pages offends Article 19(1)(a) and infringes the right to freedom of speech and expression. It was held that fixation of pages will not only deprive the newspapers of their economic viability but also restrict the freedom of expression by reason of compulsive reduction of page level entailing reduction of circulation and denuding the area of coverage for news and views.

17. Reference must be made in this connection to the judgment in Indian Express Newspapers v. Union of India ((1985) 1 SCC 641 : 1985 SCC (Tax) 121) wherein not only the importance of freedom of press was emphasised, it was also held that a newspaper cannot survive and sell itself at a price within the reach of a common man unless it is allowed to take in advertisements. (See para 84). This decision is significant for the reason that it seeks to place freedom of press on a higher footing than other enterprises. E. S. Venkataramiah, J., as he then was, speaking for the Bench, said : (SCC p. 686, para 69)

> "In view of the intimate connection of newsprint with the freedom of the press, the tests for determining the vires of a statute taxing newsprint have, therefore, to be different from the tests usually adopted for testing the vires of other taxing statutes. In the case of ordinary taxing statutes, the laws may be questioned only if they are either openly confiscatory or a colourable device to confiscate. On the other hand, in the case of a tax on newsprint, it may be sufficient to show a distinct and noticeable burdensomeness, clearly and directly attributable to the tax."

18. Now coming back to the amendment of the definition of "goods" in Section 2(d) of the Central Sales Tax Act, the said amendment, brought in with a view to bring the said definition in accord with the amendments brought in by the Constitution Sixth (Amendment) Act (referred to hereinbefore) was actuated by the very same concern, viz., to exempt the sale of newspapers from the levy of Central Sales Tax. The amendment was not intended to create a burden which was not there but to remove the burden, if any already existing on the newspapers - a policy evidenced by the enactment of the Taxes on Newspapers (Sales and Advertisements) Repeal Act, 1951. This concern must have to be borne in mind while understanding and interpreting the expression "goods" occurring in the second half of Section 8(3)(b). Now, the expression "goods" occurs on four occasions in Section 8(3)(b). On first three occasions, there is no doubt, it has to be understood in the sense it is defined in clause (d) of Section 2. Indeed, when Section 8(1)(b) speaks of goods, it is

really referring to goods referred to in the first half of Section 8(3)(b), i.e., on first three occasions. It is only when Section 8(3)(b) uses the expression "goods" in the second half of the clause, i.e., on the fourth occasion that it does not and cannot be understood in the sense it is defined in Section 2(d). In other words, the "goods" referred in the first half of clause (b) in Section 8(3) refers to what may generally be referred to as raw material (in cases where they were purchased by a dealer for use in the manufacture of goods for sale) while the said word "goods" occurring for the fourth time (i.e., in the latter half) cannot obviously refer to raw material. It refers to manufactured "goods", i.e., goods manufactured by such purchasing dealer - in this case, newspapers. If we attach the defined meaning to "goods" in the second half of Section 8(3)(b), it would place the newspapers in a more unfavourable position than they were prior to the amendment of the definition in Section 2(d). It should also be remembered that Section 2 which defines certain expressions occurring in the Act opens with the words : "In this Act, unless the context otherwise requires". This shows that wherever the word "goods" occurs in the enactment, it is not mandatory that one should mechanically attribute to the said expression the meaning assigned to it in clause (d). Ordinarily, that is so. But where the context does not permit or where the context requires otherwise, the meaning assigned to it in the said definition need not be applied. If we keep the above consideration in mind, it would be evident that the expression "goods" occurring in the second half of Section 8(3)(b) cannot be taken to exclude newspapers from its purview. The context does not permit it. It could never have been included by Parliament. Before the said amendment, the position was - the State could not levy tax on intra-State sale of newspapers; the Parliament could but it did not and Entry 92-A of List I bars the Parliament from imposing tax on inter-State sale of newspapers; as a result of the above provisions, while the newspapers were not paying any tax on their sale, they were enjoying the benefit of Section 8(3)(b) read with Section 8(1)(b) and paying tax only @ 4% on non-declared goods which they required for printing and publishing newspapers. Their position could not be worse after the amendment which would be the case if we accept the contention of the Revenue. If the contention of the Revenue is accepted, the newspapers would now become liable to pay tax @ 10% on non-declared goods as prescribed in Section 8(2). This would be the necessary consequence of the acceptance of Revenue's submission inasmuch as the newspapers would be deprived of the benefit of Section 8(3)(b) read with Section 8(1)(b). We do not think that such was the intention behind the amendment of definition of the expression "goods" by the 1958 (Amendment) Act. Even apart from the opening words in Section 2 referred to above, it is well settled that where the context does not permit or where it would lead to absurd or unintended result, the definition of an expression need not be mechanically applied. [Vide T. M. Kanniyan v. ITO ((1968) 2 SCR 103 : AIR 1968 SC 637 : 68 ITR 244), Pushpa Devi v. Milkhi Ram ((1990) 2 SCC 134, 140) (para 14) and CIT v. J. H. Gotla ((1985) 4 SCC 343 : 1985 SCC (Tax) 670).]

19. For the above reasons, we hold that the expression "goods" occurring in the words "for use by him in the manufacture or processing of goods for sale" in Section 8(3)(b) of the Central Sales Tax Act, 1956 does take in, i.e., does not exclude newspapers. We agree with the view taken by the Madras and Kerala High Courts. In our view, the view taken by the Karnataka High Court is unsustainable.

20. For the above reasons, Civil Appeal No. 1550 of 1985, C.A. No. 2494 of 1993 and C.A. No. 694 of 1994 [arising from SLP (C) No. 3439 of 1992] are allowed and the Civil Appeal No. 672 of 1994 [arising from SLP (C) No. 2 of 1991] is dismissed. No orders in W.P. (C) No. 278 of 1991. No costs.

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