

State of T. N. and Another

Vs

Sun Paper Mills and Another

Civil Appeals Nos. 3243-49 of 1991

(S. P. Bharucha, S. C. Sen JJ)

23.10.1997

ORDER

1. On 12-11-1965, the appellant issued a notification under the provisions of Section 8(5) of the Central Sales Tax Act, 1956, directing that the rate of sales tax on the sale of white printing paper to newspaper concerns in the course of inter-State trade or commerce should be calculated at the rate of 2%. The exemption notification was gazetted on 24-11-1965.

2. On 20-3-1967, another notification was issued under the provisions of Section 8(5) of the Central Sales Tax Act, the relevant portions of which read thus :

"Cancellation of certain notifications relating to reduction in rate of tax under Section 8(5) of Central Sales Tax Act.

(GOP No. 642 Revenue 20th March, 1967) III No. 169 of 1967.

In exercise of the powers conferred by sub-section (5) of Section 8 of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) the Governor of Madras hereby cancels, with effect on and from the 1st April, 1967, the Revenue Department notifications, published in the Fort St. George Gazette, as detailed below :

----- Number of the Page, part
and section of Date of the Fort St. notification the Fort Sr. George George Gazette in
Gazette, in which the which the notification notification was published was published
----- 1 2 3 -----
----- * * * 10. III No. P. 2442 of Part III 24th November,
1965." 601 of 1965 ##

3. On 4-1-1982/16-1-1 982, notices of reassessment were issued to the respondents for the period 1975-76 to 1981-82. The notice stated that the exemption notification had been withdrawn on 20-3-1967, and that, therefore, reassessments were required to be made at the unexempted rate. The notices of reassessment were challenged in a writ petition filed before the High Court of Madras. The writ petition was dismissed. The respondents filed an appeal before the Division Bench of the High Court. The appeal succeeded, and this appeal by special leave is directed against the Division Bench's judgment.

4. The Division Bench took the view that the power of withdrawal of an exemption had not been exercised in like manner and subject to like conditions that governed the exercise of the power to

grant the exemption. The Division Bench took notice of a plea that was raised by the respondents in additional grounds taken before it, namely, that the withdrawal notification did not disclose that the appellants had been satisfied that it was necessary in the public interest to withdraw the exemption notification, and that there was no material on which the appellants were or could be said to have been so satisfied. The High Court noted the proceedings of the Board of Revenue which were produced before it by the appellants and which gave the reason that, in view of the changes in the rates of sales tax payable, the appellants found that there was no need to continue the lower rates of tax admissible under exemption notifications. It appears that it was then contended before the High Court by the respondents that the reasons of the Board of Revenue could not refer to Item 10 of the withdrawal notification because there was no reference to Section 8(2)(6) of the Central Act therein. The High Court, therefore, held that there had been non-application of mind in issuing the withdrawal notification.

5. Section 21 of the General Clauses Act, 1897, provides that where a statute or regulation confers a power to issue notifications, orders, rules or bye-laws, that power includes

"a power, exercisable in the like manner and subject to the like sanction and conditions (if any) to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued".

The State statutes are on similar lines. The exemption notification was issued under the provisions of Section 8(5) of the Central Act, which requires the publication of the notification in the Official Gazette. The withdrawal notification refers to the number of the exemption notification, the page, part and section of the Gazette in which was published and the date of that Gazette. It is difficult, in the circumstances, to agree with the High Court that the withdrawal notification was not published as required in law. There can be no doubt that the withdrawal notification could and should have been more explicit. The fact that it was not is clear from the fact that not only the respondent but also the Sales Tax Officers of the appellants and, indeed, authors and publishers were oblivious to its existence. But that is not to say that the bare bones of the requirements of law were got satisfied.

6. It was contended before us on behalf of the respondents that the special importance of newsprint has not been considered by the appellants and that it was in that light that the appellants should have considered whether or not it was in the public interest to withdraw the exemption notification. It is necessary, we think, to see how this second argument has progressed from stage to stage. It was only in the appeal court that the respondents' additional grounds took the plea that the withdrawal notification did not disclose that the appellants were satisfied that it was necessary in the public interest to withdraw the exemption notification and that this condition for the exercise of the power of withdrawal had not been satisfied. It was in response to this plea that the appellants filed an affidavit setting forth the proceedings of the Board of Revenue, to which we have adverted. Based upon these proceedings it was argued by the respondents before the High Court that there had been non-application of mind because the proceedings did not refer to Section 8(2)(b) of the Central Act, which was relevant. The High Court upheld the argument. It is now contended by the respondents that due importance was not given to the special place that newsprint occupies. We are not inclined to give any weight to this line of argument. In our view, the High Court should not have permitted or upheld the argument of non-application of mind in the absence of the relative pleading. The only plea in the written arguments, which the High Court permitted, was that public interest to withdraw the exemption notification was not disclosed and that was satisfactorily met by the disclosure in the appellants affidavit before the Division Bench of the proceedings of the Board of Revenue. At this point the argument should have been closed.

7. In the premises, we are of the view that the judgment under appeal is erroneous and must be reversed.

8. The appeal is allowed. The judgment and order under appeal is set aside. The judgment of the learned Single Judge is restored. No order as to costs.