

British Physical Lab India Ltd.

Vs

State of Karnataka and Another

Civil Appeals Nos. 11515-11517 of 1996

(S. P. Bharucha, V. N. Khare JJ)

24.09.1998

JUDGMENT

BHARUCHA, J. -

1. The appellants are manufacturers of television sets and the like in the State of Karnataka.
2. On 23-6-1986, a notification was issued by the respondent-State under Section 8-A of the Karnataka Sales Tax Act, 1957. Thereby the tax payable by a dealer under Section 5 of the Act on television sets and components manufactured in Karnataka was reduced to 2%. At that point of time, the tax payable by dealers in television sets under the Act was 4%. On 28-3-1987, the respondent-State issued another notification whereby the reduced tax payable by dealers in television sets and components manufactured in Karnataka was enhanced from 2 to 3%. On the same date, the rate of tax payable by dealers in television sets and components was enhanced from 4 to 6%.
3. The notifications by which the rate of tax payable by dealers in television sets and components manufactured in Karnataka had been reduced were challenged by Solidaire India Limited, a company manufacturing television sets outside the State of Karnataka. On 8-10-1990, the writ petition was allowed and these notifications were quashed.
4. In January 1991, the appellants received notices from the Sales Tax Authorities in the respondent-State calling upon them to show cause why they should not pay sales tax at the normal rate instead of the reduced rate, pursuant to the quashing of the said two notifications. A provisional assessment order in this regard was then passed and a demand notice was issued. On 8-2-1991, the appellants filed the writ petitions out of which these appeals arise. They challenged the aforesaid demand notices. They also prayed that the judgment of the learned Single Judge in the case of Solidaire should not be held to be enforceable as against them. These writ petitions were heard by a Division Bench along with the appeal filed by the State Government against the Single Judge's judgment in Solidaire as also the appeal filed by Solidaire itself. The appeals of the State Government and Solidaire were dismissed. Insofar as the appellant's writ petitions were concerned, it was held that the doctrine of prospective invalidation could not be employed in exercise of powers under Article 226. Accordingly these writ petitions were also dismissed.
5. It has been fairly pointed out by learned counsel for the appellants that the learned Government Pleader had, in relation to the Solidaire appeal, stated to the Division Bench on instructions that the Sales Tax Authorities proposed to recover the difference in duty from manufacturers within the State having regard to the fact that the notifications giving them the benefit of a lower rate of tax

had been struck down.

6. Learned counsel for the appellants drew our attention to the judgment of this Court in *W.B. Hosiery Assn. v. State of Bihar* [(1988) 4 SCC 134 : 1988 SCC (Tax) 486]. In that case, a notification granting a concessional rate of tax to local manufacturers was struck down and this Court said : (SCC p. 139, para 9)

"9. We find that the said Notification No. SO 934 dated August 1, 1984 is void for the reasons set out earlier and we quash the same. We realised that quashing of this notification on the ground that it was void ab initio might lead to undue hardship for the dealers in the State of Bihar who might have sold locally manufactured hosiery goods without taking into consideration any amount on account of the liability to sales tax in view of the exemption granted by the said notification dated August 1, 1984. In order to obviate this hardship we direct that the arrears of sales tax which would become payable by the dealers in the State of Bihar in respect of sales of local hosiery goods made during the period when the said notification was in operation should not be collected."

7. Attention was also drawn to the order of this Court in review petitions arising out of Writ Petition (C) No. 770 of 1989 and connected matters, passed on 18-8-1998. In the case of *Indian Cement v. State of A.P.* [(1988) 1 SCC 743 : 1988 SCC (Tax) 170] notifications providing for a concessional rate of tax to cement manufacturers within the States of Andhra Pradesh and Karnataka were quashed. Writ petitions were filed in this Court by local manufacturers challenging proceedings commenced in the State of Andhra Pradesh to recover the amounts of the sales tax which would have been paid but for these notifications. Counsel for the local manufacturers pointed out that, having regard to these notifications, the local manufacturers were disentitled by reason of the provisions of the Andhra Pradesh Sales Tax Act to recover the difference in the amounts from their customers and would have been liable to penalties if they had done so. This Court, treating the writ petitions as review petitions, noted that the attention of the learned Judges who delivered the judgment in *Indian Cement* [(1988) 1 SCC 743 : 1988 SCC (Tax) 170] had, apparently, not been drawn to the fact that the local manufacturers would have to pay by way of sales tax amounts which they had not and could not under the provisions of the Andhra Pradesh Sales Tax Act have collected from their customers. The notifications had been intended to protect the local cement industry. The quashing of the notifications should have the effect of putting the local cement industry and the same industry outside the State on a par; it could not place the former in a disadvantageous position qua the latter. It was, therefore, just and equitable not to permit the State to collect the differential amounts. Accordingly, it was ordered that the State "shall not collect the amounts of sales tax that has become payable only by reason of this order quashing its two impugned notifications".

8. Learned counsel for the respondent-State has, fairly, not contested this position but has expressed apprehension in regard to the possible outcome of any order that we might pass on television manufacturers in the same situation as *Solidaire*, particularly having regard to the statement made by the learned Government Pleader before the Division Bench of the High Court. Such television manufacturers are not before us and they appear to have taken no proceedings subsequent to the order on the appeal before the Division Bench. We see no reason why, in the circumstances, we should be deterred from passing the appropriate order on their account.

9. In the result following the judgments aforementioned, and in the interests of justice and equity, the appeals are allowed and the judgment and order under appeal is set aside insofar as it deals with

the writ petitions preferred by the appellants, that is, Writ Petitions Nos. 4040-4042 of 1991, before the High Court. (para 6 of the impugned judgment) These writ petitions are allowed and the respondent-State is directed not to collect the amounts of sales tax that have become payable only by reason of the order quashing the notifications under Section 8-A of the Karnataka Sales Tax Act, 1957 issued on 23-6-1986 and 28-3-1987 fixing reduced rates of sales tax payable by dealers in television sets and components manufactured in Karnataka. No order as to costs.