SUPREME COURT OF INDIA

Tata Motors Limited

Vs

State of Maharashtra

Appeal (Civil) 1153 of 1998, [With C.A. No... of 2004[@ Slp (C) No.5260/1999], Civil Appeal No. 1153 of 1998

(S. R. Babu and P. Venkatarama Reddi)

06/05/2004

JUDGMENT

RAJENDRA BABU (CJI), J.

The assessees are engaged in the manufacture of motor vehicle chassis and spare parts. The assessees claimed certain set off in respect of sales tax payable by them for the period from 1st April 1982 to 31st March 1983 invoking the benefit available under rules 41D and 41E framed under the Bombay Sales Tax Act, 1959 [for short 'the Act']. The set off claimed by the assessees was in terms of Rule 41D and 41E read with Rule 44D framed under Section 42 of the Act which enables a draw back, set-off or refund of the whole or any part of the tax in such circumstances and subject to such conditions as may be specified in respect of tax paid or levied or leviable in respect of any earlier sale or purchase of goods under the Act or any earlier law to be granted to the purchasing dealer. Rule 41D enables draw back, set-off or refund of tax paid by the manufacturers in respect of certain purchases made by claimant dealer. It lays down that in assessing the tax payable in respect of any period by a registered dealer who manufactures taxable goods for sale or export, the Commissioner shall, in respect of purchases made by such dealer on or after the notified day of any goods specified in Part II of Schedule C and used by him within the State in the manufacture of taxable goods for sale or in the packing of goods manufactured, grant him a draw-back, set-off or, as the case may be, a refund of the aggregate of the sums determined in accordance with Rule 44D. The concept of export is defined to include dispatches made by the claimant to his own place of business or to his

agent outside the State where the claimant dealer produces certificate in Form 31C issued declaring that the goods would in fact be sold by him or would be used by him in the manufacture of goods which would in fact be sold by him and that he, his manager or, as the case may be, his agent is registered under the Central Sales Tax Act in respect of that place of business. The aggregate of the sum referred to in sub-rule (1) shall be reduced by 5 per cent of the purchase price representing the sums in respect of the goods which are dispatched in the manner referred to in clause (iii) of sub-rule (2), provided that the aggregate of such sum shall be reduced by certain percentage of such purchase price. Rule 41E provides that in assessing the amount of tax payable in respect of any period by a registered dealer the Commissioner shall in respect of the purchases made by the claimant dealer on or after the notified day of goods specified in any entry of Schedule B which were used by him in the manufacture of goods specified in the same entry of Schedule B for sale or export, grant him a draw-back, set off or, as the case may be, a refund of the aggregate of the sums determined in accordance with the provisions of Rule 44D.

By Section 26 of the Maharashtra Sales Tax Laws [Levy, Amendment and Repeal] Act, 1989 during the period from 1st July 1981 to 31st March, 1984 Rule 41-E as it existed before 1.4.1984 was deemed to have been re-enacted in the same form as it then existed but with certain modifications. The amended version of Rule 41E by the 1989 Act reads as follows:

*"41E. Draw-back, set-off etc. of tax paid by a manufacture of goods specified in Schedule B. In assessing the amount of tax payable in respect of any period of any registered dealer [hereinafter in this Rule referred to as the 'claimant dealer'] the Commissioner shall, in respect of the purchases made by the claimant dealer on or after the notified day, of goods specified in any entry of Schedule B which were used by him in the manufacture of goods [not being waste goods or scrap goods or by products] specified in the same entry of Schedule B, for sale or export, grant him a draw back, set off or, as the case may be, a refund of the aggregate of the sums determined in accordance with the provisions of Rule 44D." **

Section 27 of the said amendment Act of 1989 further amended the Rule 41E as follows : -*"27. Amendment of Rule 41E of Bombay Sales Tax Rules, 1959- "In the existing rule 41E of the Bombay Sales Tax Rules, 1959, during the period commencing from 1st April, 1984, and ending on 31st March, 1988, after the words "manufacture of goods" the brackets and words "(not being waste goods or scrap goods or by-products)" shall be deemed to have been inserted." **

Section 30 of the Act (IX of 1989) also enacted a validating provision. The effect of the amendment is that facility of draw-back, set-off etc., of tax paid by a manufacturer of goods specified in Schedule-B is not applicable to manufacture of goods out of waste, scrap goods or products for the period between 1.7.1981 to 31.3.1988 by virtue of Sections 26 and 27 of the said Amendment Act of 1989.

By the Bombay Sales Tax (Amendment) Rules, 1992 Rule 41-E was amended as follows:-

(a) "for the words, brackets, figures and letter "from one Group to another of the Groups specified in

clause (xviii-a) of rule 3", the words, figure and letter "specified in entry 6 of Schedule B" shall be substituted;

*(b) in the second proviso, for the words, figures and letter "on the basis of the sale prices of such manufactured goods and shall be allowed only to the extent that it pertains to the manufactured goods specified in entry 6 of Schedule B", the words, figures and letters "on the basis of the purchase price of goods specified in entry 6 of Schedule B used in the process of manufacture and shall be allowed only to the extent to which it pertains to the manufactured goods specified in entry 6 to Schedule B and where such purchase prices are not ascertainable, the apportionment shall be on the basis of the sale prices of such manufactured goods and shall be allowed only to the extent that it pertains to the manufactured goods specified in entry 6 of Schedule B" shall be substituted." **

On incorporation of this amendment, the said Rule reads as follows:

"In assessing the amount of tax payable in respect of any period by a registered dealer (hereinafter in this rule referred to as "the claimant dealer") the Commissioner shall, in respect of the purchases made by the claimant dealer on or after 1st April 1984, of goods specified in Entry 6 of Schedule B for sale of export, grant him a draw back, set off, or as the case may be, refund, of the aggregate of the sums determined in accordance with the provisions of Rule 44 D.

Provided that, no draw back set off, or as the case may be, refund shall be granted under this rule where the goods manufactured by the claimant dealer have been sold by him in the state in respect of which sale the claimant dealer has been allowed deduction under clause (i), (ii), or (ii) of sub-section (1) or sub-section (2) of Section 7.

Provided further that where the process of manufacturing results in the production of goods specified results in the production of goods specified in Entry 6 of Schedule B as well as goods other than those specified in entry 6 of schedule B, then such draw-back, set-off or as the case may be, the refund shall be apportioned as between goods specified in Entry 6 of Schedule B and goods other than those specified in Entry 6 of Schedule B on the basis of sale price of such manufactured goods and shall be allowed only to the extent that it pertains to the manufactured goods specified in Entry 6 of Schedule B.

Provided further that where the process of manufacturing results in the production of goods specified in Entry 6 of Schedule B as well as goods other than those specified in entry 6 of Schedule B, then such draw-back, set-off or as the case may be, the refund shall be apportioned as between goods specified in Entry 6 of Schedule B and goods other than those specified in Entry 6 of Schedule B on the basis of purchase price of goods specified in Entry 6 of Schedule B used in the process of manufacture and shall be allowed only to the extent to which it pertains to the manufactured goods specified in Entry 6 of Schedule B and where such price are not ascertainable, the apportionment shall be on the basis of sale price of such manufactured goods and shall be allowed only to the extent that it pertains to the manufactured goods specified in the Entry 6 of the Schedule B.

*Explanation:- for the purpose of this Rule, the explanation "export" means a sale in the course of inter-state trade or commerce or in the course of export of the goods out of territory of India, where such sale occasions movement of the goods from the State." **

These amendments had the effect of removing exclusionary clause of goods manufactured out of waste or scrap goods or products thereby restoring the position as it stood prior to 1981. Some amendments have been effected to this Rule on 19.11.2001 but the same have no bearing on the present case.

The validity of the amendment made to Rule 41-D and 41-E of the Bombay Sales Tax Rules retrospectively by Section 26 of the Amendment Act IX of 1989 was challenged before the High Court. The High Court upheld the validity of the same and the writ petitions were partly allowed. In the writ petitions, several other contentions were also raised and the same were rejected or upheld by the High Court but has no relevance to the present cases.

In these appeals, the contentions put forth before us are two-fold:

1. the constitutional validity of retrospective amendment of Rule 41-E;

2. the scope of set off under Rule 41D before transfer of stock to regional sales office at Silvassa located in the Union Territory of Dadra & Nagar Haveli.Rule 41-E was introduced in the Rules with effect from 1.7.1981 providing for set off of tax paid on purchases falling under Schedule B used in the manufacture of goods also falling under Schedule B. The Rule did not provide for any apportionment or any other method when goods purchased fall under Schedule B but goods manufactured would fall under Schedule B in part and another part in any other Schedule. The said Rule 41-E was amended in 1984 restricting its scope but had no impact upon the appellant. On 3.5.1988, Rule 41-E was amended with effect from 1.4.1984 providing for proportionate set off in proportion to sale price of manufactured goods falling under Schedule B and those falling in any other Schedule where the process of manufacturing resulted in the manufacture of goods falling under Schedule 'B' partly and any other Schedule partly. By an amendment made on 31.3.1989, the benefit of Rule 41-E was altogether denied for the period 1.7.1981 to 31.3.1988. By further amendment made in 1992, Rule 41-E provided proportionate set off as was earlier in force except for the period 1.4.1984 to 31.3.1988.

So far as the constitutional validity is concerned, it is submitted that the appellant procured steel in primary form covered by Entry B-6 for use in manufacture and the appellant's manufacturing process resulted mainly in the production of vehicles or parts thereof and to some extent, iron and steel scrap in the form of off-cuts, end pieces, turning and boring scrap etc. In the sales tax returns filed by the appellant, set off of Rs. 38.64 lakhs was claimed in terms of Rule 41E for the quantum of iron and steel purchased which was converted into iron and steel scrap as the iron and steel scrap is also overed by Entry B-6 which they were eligible for set off. Rule 41-E was amended and benefit was restricted only to Entry B-6 in 1984 and in the assessment order passed for 1982-83, set off under Rule 41-E was allowed by the quantum restricted to tax collected on sale of iron and steel scrap. Computation of this amount was disputed in the writ petition filed before the High Court. The

Tribunal in the meanwhile rendered a decision and held that rule 41E did not provide for apportionment of set off where the manufactured goods were partially covered under Schedule 'B' and partially under any other Schedule and in such a case the manufacturer would be entitled to claim set of tax paid on entire purchases falling under Schedule B. Thereafter the Maharashtra Act IX of 1989 was enacted and by clauses 26 and 27, the benefit of Rule 41E set off was denied altogether where the manufactured goods falling under Schedule B are in the nature of waste goods/scrap goods/by products for the period 1.7.1981 to 31.3.1988.

The constitutional validity of the amendment was challenged before the High Court on the basis that the withdrawal with retrospective effect of any relief granted by a valid statutory provision to an assessee stands on a footing entirely different from that which may necessitate the passing of a validating Act seeking to validate any statutory provision declared unconstitutional or to make the law clear. While the legislature makes an amendment validating any provision, which might have been found to be defective, the legislature seeks to enforce its intention which was already there by removing the defect or lacuna. However, withdrawal or modification with retrospective effect of the relief properly granted by the statute to an assessee which the assessee has lawfully enjoyed or is entitled to enjoy as his vested statutory right, depriving the assessee of the vested statutory right has the effect of imposing a levy with retrospective effect for the years for which there was no such levy and cannot, unless there be strong and exceptional circumstances justifying such withdrawal or modification cannot be held to be reasonable or rational.

The learned counsel for the appellant placed reliance on the decision of this Court in Rai Ramkrishna & Ors. vs. State of Bihar, 1964 (1) SCC 897, wherein at para 17 it was observed by this Court that it is conceivable that cases may arise in which the retrospective operation of a taxing or other statute may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional. The learned counsel contends that if the retrospective operation covers a long period like ten years [eight years in the present case] it should be held to impose a restriction which is prima facie unreasonable and as such must be struck down as being unconstitutional. Our attention was also drawn to the Statutes and Statutory Construction by Sutherland to the effect that "Tax Statutes" may be retrospective if the legislature clearly so intends. If the retrospective feature of a law is arbitrary and burdensome the statute cannot be sustained. The reasonableness of each retroactive tax statute will depend on the circumstances of each case. In general, income taxes are valid although retroactive, if they affect prior but recent transaction. This Court, in fact, noticed that retrospective operation of a taxing or other statute may introduce such an element of unreasonableness that the restrictions imposed by it may be open to serious challenge as unconstitutional. Therefore, it is submitted that particularly when subsequently the same rule in the same form has been reintroduced deleting the amendment made by repealing of the provisions which have been introduced, it is submitted that there is no material forthcoming to show as to why a special treatment has to be given only for that period of eight years to which we have adverted to.

The learned counsel for the State of Maharashtra, except to make available the amendments of the enactment and Rules, was not able to meet the arguments advanced on behalf of the appellant. We specifically and repeatedly asked him as to why the denial of benefit of Rule 41-E as amended was confined only to the period between 1.7.1981 and 31.3.1988 but he had no answer at all.

It is no doubt true that the legislature has the powers to make laws retrospectively including tax laws. Levies can be imposed or withdrawn but if a particular levy is sought to be imposed only for a particular period and not prior or subsequently it is open to debate whether the statute passes the test of reasonableness at all. In the present case, the High Court sustained the enactment by adverting to Rai Ramkrishna's case when the benefit of the rule had been withdrawn for a specific period. The learned counsel for the State contended that the amendments had been made to overcome certain defects arising on account of the decision of the tribunal in regard to the modalities of working out the relief. But, the impugned amendment brought about by Section 26 is not for that purpose. Assuming that it was the legislative policy not to grant set off in respect of waste or scrap material generated, it becomes difficult to appreciate the stand of the State in the light of the fact that the original Rule continued to be in operation (with certain modifications) subsequent to 1.4.1988. The reason for withdrawal of the benefit retrospectively for a limited period is not forthcoming. It is no doubt true that the State has enormous powers in the matter of legislation and in enacting fiscal laws. Great leverage is allowed in the matter of taxation laws because several fiscal adjustments have to be made by the Government depending upon the needs of the Revenue and the economic circumstances prevailing in the State. Even so an action taken by the State cannot be so irrational and so arbitrary so as to introduce one set of rules for one period and another set of rules for another period by amending the laws in such a manner as to withdraw the benefit that had been given earlier resulting in higher burdens so far as the assessee is concerned without any reason. Retrospective withdrawal of the benefit of set-off only for a particular period should be justified on some tangible and rational ground, when challenged on the ground of unconstitutionality. Unfortunately, the State could not succeed in doing so. The view of the High Court that the impugned amendment of Rule 41-E was of clarificatory nature to remove the doubts in interpretation cannot be upheld. In fact, the High Court did not elaborate as to how the impugned legislation is merely clarificatory. In that view of the matter, although we recognise the fact that the **State has enormous powers in the matter of legislation both prospectively and retrospectively and can evolve its own policy, we do not think that in the present cases any material has been placed before the Court as to why the amendments were confined only to a period of eight years and not either before or subsequently and, therefore, we are of the view that the impugned provision, namely, Section 26 deserves to be quashed by striking down the words "not being waste goods or scrap goods or by products" occurring in the said Section 26 of the Maharashtra Act IX of 1989 and the authorities concerned shall rework assessments as if that law had not been passed and give appropriate benefits according to law to the parties concerned. #**

Another contention has been advanced with regard to the requirement under Rule 41-D that the assessee concerned has to register in the place to which the goods are 'exported' under the Central Sales Tax Act and such requirement is impossible of performance because the Central Sales Tax Act was not extended to Silvassa, Dadra & Nagar Haveli, where the assessee's branch office is located. Inasmuch as what is claimed by the appellant is one in the nature of benefit under taxation law, all conditions thereto must be complied with. One of the conditions imposed therein is that he should have registered under the Central Sales Tax Act at the appropriate place to claim the benefit claimed thereunder. It is not necessary for the appellant to carry his business in a place where the Central Sales Tax Act is not extended. **It is open to the appellant to carry on his business elsewhere and claim the benefit in a place where the Central Sales Tax Act is applicable. He cannot put forth a ground that what is impossible of performance cannot be done by him and, therefore, that condition arising under the relevant provision should be ignored. We do not think there is any justification to do so. #** This contention stands rejected.

The appeal is allowed accordingly.

SPECIAL LEAVE PETITION (C) No. 5260/1999

Leave granted.

Following the judgment in Civil Appeal No. 1153 of 1998 (Tata Motor Ltd. Vs. State of Maharashtra & Ors.) just now delivered, this appeal is allowed in terms of that judgment. The assessment for the relevant year shall be redone in the light of the judgment.