PETITIONER:
THE CENTRAL ARECAUNT & COCOA MARKETING& PROCESSING CO-OPERAT

Vs.

RESPONDENT:
STATE OF KARNATAKA & ORS.

DATE OF JUDGMENT: 16/09/1997

BENCH:
S.P. BHARUCHA, M. JAGANNADHA RAO

ACT:

HEADNOTE:

JUDGMENT:
THE 16TH DAY OF SEPTEMBER, 1997 PRESENT:
Hon'ble Mr.Justice S.P.Bharucha
Hon'ble Mr.Justice M.Jagannadha Rao

Joseph Vallapally, Sr.Adv., Mudgal, Adv. with him for the appellant.
M.Veerappa, Adv. for the Respondents.

J U D G M E N T

The following Judgement of the court was delivered:

J U D G M E N T

M.JAGANNADHA RAO,J.

The appellant before us is the Central Arecaunt Marketing and Processing Co-Operative Ltd., Mangalore. It was implied as the second respondent in writ Petition No. 15495 of 1981 filed by the respondent 2 to 19 in the karnataka High Court. The writ Petition filed in 1981 was allowed after nine years by the High Court by Judgement dated 27.8.1990.

The relevant facts of the case are as follows. The writ Petitioners were all registered dealers under the Karnataka Sales Tax on the first sale in the State and contended that thereafter they sold the same out side the State of Karnataka and that their sales in the course of inter-state trade and commerce were subject to tax under the Central Sales Tax Act, 1956. While so, a notification was issued on 14/17.9.1956 under Section 8 (5) of the Central Sales Tax Act,1956 by the State of Karnataka exempting the inter-State sales of tax-suffered arecaunt effected by the appellant- society. The respondent - Writ Petitioners contended before the High Court that the above notification not only impeded inter-state sales effected by them but was also violative of Article of Article 14 of the constitutions of India in as much as it discriminated against the writ Petitioners, who were also registered dealers in arecaunt.

Before the High Court, the appellant filed a statement of objections contending that the appellant society was sponsored by the Government of Karnataka and Kerala and its membership consisted of growers from both the States, that therefore it was a class by itself as compared to the writ petitioners and hence Article 14 did not apply. When the writ petition came up for hearing after 9 years in 1990,

counsel for the appellant pointed out there was no evidence that any of the writ petitioners had entered into transaction of inter-States sales, that the exception notification dated 14/17.9.1977 had since been superseded by a notification dated 31.3.1984 issued under Section 8 (5) of the Central Sales Tax Act, by the State of Karnataka and the benefit of the exemption stood extended from March 1984 to all other traders. In other words, it was pointed out that issue itself had become academic.

The High Court, Even though it noticed that the benefit of the exception notification of September 1977 in favour of all traders was issued by march 1984, proceeded to go into the merits of the case and quashed the exemption notification of September, 1977, without considering the peculier consequences of such quashing as against the appellant in 1990. It is against the said Judgement of High Court that this appeal has been preferred.

In this appeal, the respondent - Writ petitioners have not chosen to appear. The learned counsel for the State has supported the case of the appellant. It was contended by the learned senior counsel appearing for the appellants that before the High Court the writ petitioners did not adduce any proof of the extent of their inter-State sales, that the notification of September, 1977 was not hit by Article 14 because the appellant was a class by itself as it consisted of growers from Karnataka and Kerala. Learned counsel also submitted that the view of the subsequent notification of March, 1984 extending the benefit of the exemption to all traders including the writ petitoners, the High Court-while dealing with the case 1991 - ought not to have gone into the merits and ought not to have struck down the September 1977 notification in as much as the issue had become purely academic. Because of the exception, and the consequent statutory prohibition against collection any tax, the appellant was precluded from collecting any tax so as to meet any liability that might arise in case the notification was struck down. These factors were not borne in mind by the High Court.

In our view, the submissions of the learned counsel for the appellant are liable to be accepted. The High Court had noticed that the matter had become academic and in fact, observed at the end of the Judgement as follows:

> "Mr. Dattu, learned Government Pleader, pointed out of that 1977 notification had since been superseded by 1984 notification which extended to the benefit to all and therefore, striking down 1977 notification would be academic, It may appear be so".

But the High Court went on to observe that it was nonetheless deciding the issue, so that in future when power is exercised by the Stated in the State, the state could benefit by what was stated in the Judgement.

In our view, the High Court ought too have gone to the question merely for the purpose of the future and, at any rate, ought to have noticed the highly inequitable consequences of its interference so far as the appellant was given the exemption by the State, it was challenged by the respondents, the High Court did not suspend the notification pending the writ petition, the appellant was statutorily prohibited from collecting the sales-tax which was exempt and when the writ petition was allowed in 1991 quashing the exemption for September 1977, the appellant became liable to pay the tax for the period for September 1977 to march 1984.

Learned counsel for the appellant informed us that now the Department has indeed taken some steps to recover the tax relatable to the above period. It is also significant that none appears for the respondent - writ petitioners and that the state of Karnataka is supporting the appellant.

In that view of the matter, we hold that the High Court ought not to have gone into the issue on merits and even if it did, it could and should have issued appropriate directions saving the appellant from the adverse consequence of striking down an exemption in its favour and- an exception which while it was in force, precluded the appellant from collecting the tax from its buyers.

For the aforesaid reasons, the appeal is allowed and the judgement of the high Court is set aside. Any demand for recovery of tax consequent upon the judgement of the High Court will accordingly be withdrawn.