

CASE NO.:
Appeal (civil) 2225 of 2008

PETITIONER:
M/s Malnad Areca Processing & Marketing Ltd

RESPONDENT:
The Dy. Commissioner of Commercial Taxes (Assessment) and Ors

DATE OF JUDGMENT: 28/03/2008

BENCH:
Dr. ARIJIT PASAYAT & D.K. JAIN

JUDGMENT:
J U D G M E N T
REPORTABLE

CIVIL APPEAL NO. 2225 OF 2008
(Arising out of SLP (C) No. 5968 of 2006)

Dr. ARIJIT PASAYAT, J

1. Leave granted.

2. Challenge in this appeal is to the order passed by a Division Bench of the Karnataka High Court dismissing the Writ Petition and the Sales Tax Revision Petition filed by the appellant.

3. The Writ Petition No.18392/2005 was filed under Articles 226/227 of the Constitution of India, 1950 (in short the 'Constitution') with a prayer to quash the assessment orders on the ground that they are contrary to the policy notification issued by the Karnataka Government. The Sales Tax Revision Petition was filed under Section 23(1) of the Karnataka Sales Tax Act, 1957 (in short the 'Act') against the judgment and order dated 29.6.2004 passed by the Karnataka Appellate Tribunal, Bangalore (in short the 'Tribunal').

4. The only question that arose for consideration in the petitions before the High Court was whether the assessee-industry was eligible for exemption in respect of purchase tax leviable under Section 6 of the Act on the value of arecanut purchased from member-growers and consignment of arecanut outside the State for sale, as also the levy of turnover tax under Section 6-B and cess under Section 6-D of the Act by virtue of the Notification issued by the State Government pursuant to the Government Order No.CI.30SPC.96(I) dated 15.3.1996 as amended by Government Order No.CI.30.SPC.96(I) dated 14.5.1999.

5. The assessee was engaged in the processing of arecanut purchased from members growers and sale thereof to non resident commission agents. The assessee was registered as a new industrial unit with the Directorate of Commerce and Industries and claimed to be governed by package of New Industrial Policy, 1996 and Package of Incentives and Concessions under 1996-2001 Scheme and eligibility certificate in that regard had been issued. Though initially the claim was accepted, subsequently, the revisional authority initiated proceedings under Section 21(1) of the Act and revised the assessment orders and levied purchase tax under

Section 6 along with the turnover tax under Section 6-B of the Act and cess under Section 6-D of the Act on the ground that the appellant is eligible for sales tax exemption only on the sales turnover of manufactured goods in terms of the Government Order dated 15.3.1996 as amended by Government Order dated 14.5.1999 and thus Notifications did not cover tax leviable under Section 6 of the Act on the purchase value of arecanut effected from registered and unregistered dealers. It is to be noted that the writ petition related to the assessment years 2001-2002 and 2002-2003 while revision petition related to assessment years 1999-2000 and 2000-2001.

6. Stand of the assessee before the High Court was that the expression "commercial tax, incentives and concessions" finds its place in the Government Order dated 14.5.1999. It was the assessee's stand that the expression "tax" covers the tax leviable under the provisions of the Act and there was no justifiable reason to exclude purchase tax levied or leviable under Section 6 as the same was tax under the provisions of the Act. Stand of the revenue on the contrary was that what is exempted under the Government orders and the implementation notification is only "sales tax" and not "purchase tax" levied under Section 6 of the Act. It was pointed out that the Government Orders dated 15.3.1996 and 14.5.1999 and Notification issued by the State Government in exercise of its powers under Section 19(C) of the Act in implementing the Government orders exempts only tax payable under the Act in respect of the goods manufactured and sold by the industrial units. The High Court after referring to various clauses in the Government Order and the Industrial Policies accepted the stand of the revenue.

7. The stand taken before the High Court was re-iterated by learned counsel for the appellant.

8. With reference to one of the items covered by Notification i.e. coffee curing unit, it was stated that there was no question of any exemption being given at the time of purchase. It was therefore submitted that the purchasers have been given the additional benefits only. For the purpose of making the benefit meaningful purchase tax has to be included. It is to be read into it. The exemption is at the discretion of the Government and there cannot be any doubt about it. But it was the deliberate policy of the State Government to grant the benefit under Section 6. The levy of purchase tax is under certain circumstances.

9. Learned counsel for the State on the other hand submitted that both the GOs dated 15.3.1996 and 14.5.1999 lay emphasis on manufacture and sale. It is pointed out that the articles purchased by the appellant are processed and sent to places outside the State and they purportedly sell the goods in the course of inter State trade in other States. The stress is on sale and not purchase of raw materials. The GOs speak of exemption or deferment. It is never the intention of the State Government, it is pointed out, to grant the benefit to a dealer who after getting the benefit effected sales purportedly in course of inter State sale in some other States. There is no logic for granting such exemption.

10. In order to appreciate the rival submissions the Notification and Government order need to be noted. The Notification dated 15.11.1996, so far as relevant, provided as follows:

"(i) (a) hereby exempts the tax payable under the said Act in respect of goods manufactured and sold by new industrial units mentioned in column (2) of the 'Table-A' below, located in the zones specified in column (3) and during the period and to the extent mentioned in column (4)."

11. The subsequent Government order dated 14.5.1999 so far as relevant reads as follows:

"Para II(7) of Annexure III to Government Order No.CI 30 SPC 96, dated 15.3.1996 shall be modified to read as under:

"Commercial tax incentives and concessions under the said order shall be available only for the manufacturing units as defined for the purposes of Karnataka Sales Tax Act. However, certain specified categories of non manufacturing units as detailed in Appendix IV shall be eligible for the incentives and concessions as per the said order."

12. As rightly submitted by learned counsel for the respondents there is no change so far as the requirement in the notification dated 15.11.1996 relating to prescription that the goods manufactured and sold by new industrial units.

13. Clause 5 of the 1996 Industrial Policy reads as follows:

"Clause 5: Sales Tax Concession for new Units:

Industrial investments in the Tiny/SST/Medium and Large Scale Sectors would be provided with the option of either Sales Tax exemption or sales tax deferral (KST/CST). The option is allowed one time only, at the initial stage of availing the concession."

Clause 7 reads as follows:

"7. Incentives and concessions under this order shall be available only for 'manufacturing' units as defined for the purpose of Karnataka Sales Tax Act. However, specified categories of 'Non-manufacturing' units, as detailed in Appendix-IV shall also be eligible for the incentives and concessions as per this order."

14. There appear to be some amount of confusion as to the effect of the two clauses 5 and 7. It is to be noted that the confusion relating to entitlement of manufacturing and non manufacturing units was sought to be clarified by the Government Order. Primary objective of the subsequent Government Order dated 14.5.1999 was to extend benefit under Government Order dated 15.3.1996 to certain non-manufacturing units.

15. In the Government Order what is provided to new industrial units is the sales tax exemption or deferral of sales tax under the Act and the Central Sales Tax Act, 1956 (in short the 'CST Act').

16. Clause 5 of the Government Order dated 15.3.1996 of the industrial policy 1996-2001 provides for sales tax concession and incentives. The said clause provides for an option to industrial investments in the tiny/SSI/medium and large scale sectors to claim either sales tax exemption or sales tax deferral.

17. A sale and a purchase are two different aspects of the same transaction. Whether sale or purchase, it will have same ingredients, both in common law and also under Sale of Goods Act. As stated by this Court in *Devi Dass Gopal Krishnan v. State of Punjab* (AIR 1967 SC 1895), the transaction, which the Sales Tax Laws are concerned with, is a transfer of property in goods for price, inter vivos, both in the case of sale as well as purchase. In the Government Order, what is provided to the new industrial units, is an option to claim sales tax exemption or deferment of sales tax both under the Act and CST Act. In the field of taxation, it is recognized that the power to classify the objects or persons to be taxed or exempted from levy is with the legislature. It also enjoys the power to select persons or transactions. A law of the State, could therefore, levy tax both at the sale point and at the purchase point. Under the Government Order, the policy of the Government as spelt out is, that tiny and small scale industries and medium and large scale industries may exercise their option either for sales tax exemption or sales tax deferment for number of years prescribed in the Government Order itself. In the context in which these expressions are used, they only mean "sales tax holiday" or exemption from payment of sales tax for number of years specified, depending on where the tiny or small scale industry is located. "Sales tax" refers to any tax which includes within its scope all 'business of sale of goods' specified in the Schedule. Similarly, "Sales tax deferral" only means the aforesaid industries are entitled to collect tax but they need not pay sales tax collected immediately to the State. If understood in this manner and thereafter the New Industrial Policy of the State Government for the years 1993-1998 and the exemption notification is looked into, the only conclusion that can be drawn is, what is exempted under the notification issued by the State Government is tax leviable under Section 5 of the Act on the goods manufactured and sold by an industrial unit. Therefore, the notification is in no way in variance or contrary to the industrial policy for the years 1993-1998.

The above position has been rightly highlighted by the High Court.

18. In that view of the matter, we find no infirmity in the impugned order of the High Court. The appeal is dismissed. There will be no order as to costs.