

Karnataka High Court

Sha M. Hastimal And Co. And Ors. vs Deputy Commissioner Of ... on 1 September, 1988

Equivalent citations: 1989 72 STC 308 Kar

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Bench: S R Murthy

ORDER Rajasekhara Murthy, J.

1. Petitioners in these writ petitions are dealers in jari. The petitioners purchase the jari goods from Surat and effect sales within the State. On the returns the petitioners disclosed the turnover in sale of jari which is exigible to levy as "gold-thread" falling under entry 49 of the Second Schedule. Assessments were completed in respect of each of the petitioners bringing to tax the sale of gold-thread at 4 per cent under entry 49 of the Second Schedule.
2. These assessment orders are now sought to be revised by the Deputy Commissioner of Commercial Taxes, Bangalore, in exercise of his powers under section 21(4) of the Karnataka Sales Tax Act, 1957 ("the Act"). These notices are challenged in these writ petitions.
3. The reason for invoking the revisional jurisdiction by the Deputy Commissioner, as is seen from the notices is, that there was an error in the assessment of the sale turnover in gold-thread under entry 49 of the Second Schedule and that the said turnover should have been taxed under section 5(1) of the Act treating it as sale of imitation jari.
4. The petitioners' case is that they are all dealers in gold-thread and they are not dealers in any imitation jari. It is, therefore, contended on behalf of the petitioners that there was no material for the Deputy Commissioner to invoke the revisional jurisdiction on the assumption that the petitioners had dealt with imitation jari and not gold-thread. It is also argued that from the very inception of the business of the petitioners, who deal exclusively in gold-thread, their turnover was being taxed under entry 49.
5. Entry 49, it is pointed out, has been on the statute book since 1957. This entry underwent a change in the year 1985 by Act 27 of 1985 when entry 49 was substituted by the following entry :

"All kinds of jari including metallic yarn, metallic jari yarn, metallic plastic yarn, polyester film yarn, and radiant yarn."
6. The further argument is that the other kinds of imitation jari which were brought within the net of taxation only with effect from 1st August, 1985 and for the period prior to the said amendment, it is only the turnover in sale of "gold-thread" that was exigible to tax under the Act. It is also argued that the gold-thread in which the petitioners are dealing, is not shown to be imitation jari by the department.
7. The petitioners have also produced a few orders made by the Deputy Commissioner of Commercial Taxes (Appeals) in which the assessments made in the case of dealers in gold-thread were upheld, as rightly done under entry 49. In the two appeal orders produced by the petitioners at

annexures A and R, the orders passed by the assessing authority under section 25A of the Act rectifying the assessments were set aside and the finding recorded in the rectification proceedings that the assesseees were dealing in imitation jari, which is liable to be taxed at multi-point under section 5(1) of the Act, was set aside. In another order made by the Deputy Commissioner in appeal, the assessment on jari under section 5(1) was set aside for the same reason.

8. The learned counsel for the petitioners, Sri B. P. Gandhi, has relied upon the following three decisions of this Court reported in :

(1) [1975] 36 STC 254 (State of Mysore v. U. M. Gulam and Sons), (2) [1983] 54 STC 190 (S. N. Gondakar v. Commissioner of Commercial Taxes in Karnataka, Bangalore), (3) [1985] 58 STC 199 (Sri Veerarajendra Corporation v. State of Karnataka), and the decision of the Supreme Court [Atul Glass Industries (P.) Ltd. v. Collector of Central Excise].

9. The first three decisions are relied upon by Sri Gandhi in support of his contention that in the absence of sufficient material, the notices issued by the Deputy Commissioner are liable to be quashed. It is also argued that on the facts of the present cases, the notices which do not indicate any ground or material which warranted the revision of the assessments, are to be quashed in the similar manner.

10. In the first of the decisions referred to above, this Court was dealing with the jurisdiction of the Deputy Commissioner of Commercial Taxes, who had initiated proceedings under section 21 of the Act to revise the assessment orders by charging the turnover relating to sale of lime at a higher rate prescribed for heavy chemicals. This Court upheld the order of the Sales Tax Appellate Tribunal, who had set aside the orders made by the Deputy Commissioner. This Court held that the orders made by the Deputy Commissioner revising the assessments were themselves erroneous and should fail for want of jurisdiction. This Court held that there was no material before the revisional authorities on the basis of which they could have held that lime was a heavy chemical in order that its sale could have been subjected to levy at a higher rate.

11. In Sri Veerarajendra Corporation's case [1985] 58 STC 199 this Court was dealing again in heavy chemicals. The revision petitions filed by the assesseees before the High Court were allowed and the orders of the Tribunal and the Deputy Commissioner of Commercial Taxes were reversed. The Deputy Commissioner had initiated proceedings under section 21 of the Act and has subjected the turnover of the petitioners to a higher rate treating trichloroethylene as a heavy chemical. This Court held, that there was no material or other information brought on record on the basis of which the Deputy Commissioner could have revised the assessments. It was also observed that the assessments which had been accepted for decades should not ordinarily be revised without any compelling reason, which was lacking in those cases.

12. In Gondakar's case the same view was reiterated by the Division Bench, and held, that the turnover in sale of pickle jars which was consistently being taxed under entry 118 treating them as containers, could not have been taxed at a higher rate treating them as "chinaware or porcelainware" under entry 112.

13. The petitioners being unsuccessful before all the authorities came up in revision before this Court. The sole reason on which this Court set aside the orders of all the authorities was that the turnover in sale of pickle jars was being subjected to levy as containers and this was the consistent view taken by the department over a long period of time. This Court, therefore, held that there was no justifiable reason, except relying upon the circular of the Commissioner which was not applicable to the case to deviate from the consistent view taken in the previous years and to levy tax on the very same goods at a higher rate.

14. These decisions are, therefore, relevant to consider the two contentions of the petitioners, namely, that there was no material warranting issue of notice of revised assessment, and, secondly, that the department had consistently taxed the turnover in gold-thread under entry 49 right from 1957 to 1985. It is significant to note that this assertion made by the petitioners is not controverted on behalf of the department.

15. However, the notices are sought to be justified by the learned Government Pleader on several grounds. It is stated in the statement of objections filed that the petitioners are dealers in imitation jari which is liable to be taxed under section 5(1), and not as gold-thread under entry 49. In support of this contention it is pleaded, the gold-thread in which the petitioners are dealing is not "kalabattu" as understood and explained by the Allahabad High Court in *Kalika Prasad Hanuman Das v. Sales Tax Officer, Sector II, Varanasi Circle, Varanasi* [1963] 14 STC 88. It is, therefore, argued by the learned Government Pleader that the "jari" (gold-thread) sold by the petitioners does not satisfy the description of gold-thread or kalabattu, as explained by the Allahabad High Court.

16. What is relevant to examine in a case like this is : whether the revisional authority who took action to revise the assessments in exercise of the revisional powers conferred on him under the Act was satisfied as to the legality or propriety of the order sought to be revised, and that the said orders were prejudicial to the interests of the Revenue ?

17. The learned Government Pleader has produced before me the file relating to the issue of notices impugned in these writ petitions. It is seen that the provision of section 21(4) was invoked in these cases on the basis of a report submitted by the Commercial Tax Officer, and the Deputy Commissioner ordered issue of notices on receipt of the said report. It is seen that the Deputy Commissioner being a revisional authority has not recorded any reason or had brought on record any other information or material which warranted the revision of the assessments. On the other hand, the Commercial Tax Officer's report, which was submitted in the light of the audit objections pointed out by the Accountant-General, the Commercial Tax Officer suggested the revision of assessment orders. The Accountant-General appears to have taken a view that the sale in gold-thread should appropriately be brought to tax under section 5(1) and not under entry 49 of the Second Schedule. It is very interesting to note the reasons for this recording of objections.

18. The amendment brought about to the Act by substituting entry 49 in which was included all kinds of imitation jari was found as a valid reason to suggest the revision of assessments.

19. The question, therefore, that arises for decision on the arguments advanced by both sides is : whether the turnover of the petitioners in gold-thread for the years 1982-83 and 1983-84, is to be taxed under entry 49 or under section 5(1) ?

20. Entry 49 until it was substituted by Act 27 of 1985 with effect from 1st August, 1985 referred to "gold-thread", in which all the petitioners are dealers, is also known as jari in common parlance. The dealers purchased the jari from the manufacturers in Surat and other places and effect sale in the State. It is also asserted by the petitioners that they have never dealt in any imitation jari. In the notices issued under section 21(4), the only ground for proposing the revision is that the turnover of the petitioners related to imitation jari, and not in gold-thread. Except this ipse dixit of the Deputy Commissioner, the notice does not contain how the Deputy Commissioner was impelled to arrive at this conclusion and to propose revision of the assessments. Obviously, in the absence of any reason recorded by the Deputy Commissioner, the only ground that provoked the issue of notices was the audit objections. It is unnecessary to deal with the view expressed in the audit objections since the Accountant-General is not the competent authority, to clothe the Deputy Commissioner with jurisdiction to revise the assessments. It is the Deputy Commissioner of Commercial Taxes that should be satisfied about the legality or the propriety of the assessment orders made under the Act. What is more, he should also record his reasons on the basis of which he proposes to revise the assessment order and the reasons so recorded should also disclose how the order sought to be revised is prejudicial to the interests of the Revenue.

21. On a perusal of the notices issued by the Deputy Commissioner in these cases, it is evident that it does not contain any reason nor in the files of the Deputy Commissioner any reason is recorded independently applying his mind to justify the revision of the assessments. The notices are, therefore, liable to be quashed on this sole ground.

22. Since both the petitioners' counsel and the Government Pleader have addressed arguments on merits also, whether the turnover in gold-thread is exigible to levy under section 5(1), or under entry 49 of the Second Schedule, I propose to deal with this point also in these writ petitions.

23. The point that arises for consideration is, how the "gold-thread" or "jari" occurring in entry 49 of the Second Schedule should be understood ?

24. The petitioners' contention is that gold-thread is understood in common parlance as jari or jarthari and also known in the trade as "kalabattu" which may include both pure and art gold-thread. It is also submitted on behalf of the petitioners who are the exclusive traders in jari that no jari is made out of pure gold and it is always made out of an alloy which is a combination of silver or any other metal from which the jari thread is drawn which is later used in weaving of silk sarees.

25. Sri Gandhi has also relied upon the orders made by several Deputy Commissioners before entry 49 was substituted with effect from 1st August, 1985 to include imitation jari. One such order is produced as annexure Q which was an appeal against the order made by the Additional Deputy Commissioner of Commercial Taxes (Appeals), Bangalore, under section 25A of the Karnataka Sales Tax Act. The assessing officer had rectified the assessment and brought the turnover in the sale of

gold-thread to tax under section 5(1) which had been earlier subjected to tax under entry 49 of the Second Schedule.

26. It is seen from the said order that such a rectification was made on account of the audit objections raised by the Accountant-General. The Deputy Commissioner, in the course of his order, by which he allowed the appeal and set aside the rectification order, has dealt with, in detail, as to how the turnover in gold-thread should be understood in common parlance and also from the point of view of the traders in such goods. The Deputy Commissioner, after considering the entire materials placed before the assessing officer, held that what the appellants were dealing was only gold-thread that is jari irrespective of the purity and has given a categorical finding that the turnover of the appellants was not in imitation jari.

27. Again some assessing officers taxed the turnover in gold-thread or jari under section 5(1). In an appeal filed against one such order, the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore, by his order produced at annexure R again set aside the assessment made on the turnover of gold-thread under section 5(1) and the Deputy Commissioner held in the course of his order that gold-thread is understood in common parlance as kalabattu, jari or jarthari which may include both pure or art gold-thread without any distinction.

28. On other later order made in the year 1985 by the same Deputy Commissioner, Bangalore, may be referred. The Deputy Commissioner in the said order set aside the assessment made on the turnover in jari under section 5(1) and directed the assessing authority to tax it under entry 49 of the Second Schedule. The Deputy Commissioner has relied upon the orders made by the two Deputy Commissioners referred to earlier.

29. These various orders of the Deputy Commissioner have become final and no further appeal was preferred by the department to the Appellate Tribunal. Thus the consistent view taken by the appellate authorities under the Act is accepted by the department.

30. In all the assessment orders produced in these writ petitions and in the other batches of cases which are posted for hearing, the assessing authorities have consistently held that the turnover in gold-thread is exigible to tax under entry 49 of the Second Schedule. It is also seen that the dealers in all these writ petitions are jari dealers and Bangalore appears to be the centre for the jari trade in the South. The assertion made on behalf of the petitioners that all the petitioners are dealers in jari only, namely, gold-thread and not in imitation jari, is not controverted by the department.

31. The Deputy Commissioner of Commercial Taxes (Administration), Bangalore, has proposed to revise the assessments only because of the Accountant-General's objections. That this is the only ground and sole ground on which notices have been issued, is clear from the record of the Deputy Commissioner which contains the report of the Commercial Tax Officer who has recommended for revision of assessment on account of the audit objections.

32. Therefore, this is not the first time such objections are raised by the Accountant-General. It is seen from one of the Deputy Commissioner's order that even during the year 1976-77 such

assessments were rectified and assessments were done relying upon the objections raised by the Accountant-General. Those assessments were set aside by the Deputy Commissioner in appeal who held that the turnover of sale in gold-thread should be brought to tax only under entry 49 of the Second Schedule and not under section 5(1) as an unclassified article. The department appears to be issuing notices only because of the audit objections and not for any other reason justifying revision. What is significant to be noted is that the department did not challenge any of the Deputy Commissioner's orders and accepted them.

33. As already stated, the show cause notices issued by the Deputy Commissioners impugned in all these cases do not contain any reason of their own nor is any fresh material brought on record to take a different view from what the assessing authorities and Deputy Commissioners earlier had taken consistently and which view held the field for over a decade.

34. The subsequent amendment brought about to entry 49 substituting entry with effect from 1st August, 1985 by the Act 27 of 1985 needs to be referred to in this connection. After the amendment to entry 49 which reads thus :

"All kinds of jari including metallic yarn, metallic jari yarn, metallic plastic yarn, polyester film yarn, and radiant yarn."

35. Entry 49 before the amendment mentioned only gold-thread. The amended entry is more comprehensive and includes all kinds of jari whether it is silver, gold or other artificial or synthetic jari. The amendment indicates the intention of the legislature to tax all kinds of jari including imitation jari or art jari with effect from 1st August, 1985.

36. This also gives a clue to the interpretation of the entry before the amendment having in view the object and intention of the legislature to include all types of imitation jari in entry 49, whether it is gold-thread or synthetic yarn of all kinds.

37. It is permissible to interpret a statute by reference to what has been done in subsequent statutes; sometimes light may be thrown upon the meaning of an Act by taking into consideration the enactment contained in subsequent Acts. (See Craies on Statute Law, page 146).

38. So also an earlier statute may be referred to for the purpose of throwing light upon the construction of a provision in a subsequent statute. [See *Morgan v. London General Omnibus Co.* (1883) 12 QBD 201 - Lord Day].

39. If an ambiguity can be found, it becomes permissible to look at a later statute, not perhaps to construe the earlier statute, but to see the meaning which Parliament puts on the self-same phrase in a similar context, in case it throws any light on the matter. (See *Payne v. Bradley* [1962] AC 343 at page 357) (by Lord Denning). [See also *Ormond Investment Co. v. Betts* [1928] AC 143 at page 164 (HL)].

"Where it is gathered from a later Act that the legislature attached a certain meaning to certain words in an earlier cognate Act this would be taken as a legislative declaration of its meaning." (From Dore v. Gray 2 TR 358).

40. Entry 49 as amended by Act 27 of 1985, therefore, gives a clear indication as to the intention of the legislature for the purpose of understanding and interpreting the entry before amendment. It is seen that the amended entry is made comprehensive to include all types of imitation jari. Therefore, there can be no doubt as to the interpretation of the entry before amendment that it was meant to tax only the "gold-thread" or "jari" and not any other kind of imitation jari.

41. For the reasons stated above, the writ petitions are allowed, and the notices issued by the Deputy Commissioner of Commercial Taxes, in each case, under section 21(4) of the Act, are quashed.

42. Writ petitions allowed.