

Supreme Court of India

M/S. Modh. Jabbar Malik Lasjan And ... vs State Of Jammu And Kashmir And ... on 30 August, 1994

Equivalent citations: AIR 1995 SC 1119, JT 1994 (5) SC 419, 1994 (3) SCALE 874, 1994 Supp (3) SCC 247, 1994 95 STC 361 SC

Bench: S Bharucha, S C Sen

ORDER

1. These appeals are against a judgment of the High Court of Jammu & Kashmir dated 24.8.1983. The point for consideration before the High Court was whether the State had arbitrarily exercised its power under Section 5 of the Jammu & Kashmir General Sales Tax Act, 1962 (hereinafter referred to as the Act) by not extending the period of exemption from Sales Tax enjoyed by the brick manufacturers of the State.

2. Section 4 of the Act is the charging section. Section 5 enables the Government to exempt in whole or in part any good from the charge of tax. Relevant portions of Sections 4 and 5 are as under: -

4. Liability to tax under this Act: (1) Subject to the provisions of this Act, every dealer except the one dealing exclusively in goods declared tax free under Section 5, shall pay for each year tax on his total turnover at a rate not exceeding twelve per cent of such turnover as may be determined by the Government and notified by the Government in the Government Gazette and such tax shall be charged on the sale of goods once only:

XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX XXXXX

5. Exemption from taxation: The Government may, subject to such restrictions and conditions as may be prescribed including conditions as to licence and licence fees, by order exempt in whole or in part from payment of tax any class of dealers or any goods or class or description of goods.

3. In exercise of its power under Section 5, the Government issued a Notification No. SRO-468 dated i. 8.1977 whereby exemption was given to a number of Small Scale Units. It was specifically provided in the Notification that for the purpose of grant of exemption this Notification shall be and shall always be deemed to have been in force from 5.7.1968 to 31.3.1977. A list of industries, which qualified for exemption, was appended to the Notification, which qualified for exemption. PCC Poles, files, Hollow Blocks, Tenazzo Tiles and Bricks' were included in the list of exempted small scale industries under the heading "CEMENT. CERAMIC AND STONE INDUSTRIES".

4. By virtue of this Notification any good included in the exempted list could not be subjected to Sales Tax during the period 5th July, 1968 to 31st March, 1977.

5. Thereafter, another Notification was issued being No. SRO-267, which came into force on 1st April, 1977, Under this Notification, various goods included in Annexure- 1 of the Notification were exempted from Sales Tax. Among the exempted goods PCC Poles, Tiles and Hollow Blocks were included under the heading "CEMENT, CERAMIC AND STONE INDUSTRIES".

6. As a result of the aforesaid Notification No. SRO-267, industries engaged in the production of Tiles continued to enjoy relief from Sales Tax, but the exemption, hitherto enjoyed by the brick manufacturers, came to an end with effect from 1st April, 1977.

7. On behalf of the appellants, it has been contended that since bricks and tiles were both clubbed together for the purpose of granting exemption under the first Notification, there was no reason to discontinue the relief enjoyed by the brick manufactures with effect from 1st April, 1977 and at the same time continue to grant the relief to the manufacturers of tiles.

8. We see no substance in this contention. The Government, in exercise of its power given by Section 5 of the Act, can decide to exempt any good from taxation. The power may be exercised having regard to social, economic, administrative and fiscal considerations. It was held in the case of Orient Weaving Mills (P) Ltd. and Anr. v. Union of India and Ors. , that it was always open to the State to tax certain classes of goods and not to tax others. There must be a great deal of flexibility in the incidence of taxation of a particular kind. There is no reason why the State cannot exempt tiles from taxation without giving similar exemption to bricks.

9. Moreover, it has been stated in the counter affidavit of the State in the court below that tile industry was a new industry. It required some incentive, so that it could stand on its own feet. As compared to it, brick industry was an old one, which was well established and required no further incentive from the Government.

10. Therefore, it cannot be said that the State had acted arbitrarily in treating brick industry and tile industry differently for imposition of Sales Tax.

11. It was next contended that the withdrawal of the exemption from taxation was done retrospectively and it caused undue hardship to the brick industry.

12. This contention again is untenable. The brick industry was given exemption upto 31st March, 1977. It was not continued thereafter. There is no question of any hardship being caused by a retrospective legislation.

13. Lastly, it was contended that the Government had promised to grant exemption to the brick manufacturing industry for a certain period of time. It was on the basis of this promise that brick manufacturers had set up their industries and the Government could not go back on the promises it had made. The brick manufacturers had set up industries at enormous cost on the strength of the promise made by the Government. The Government should not be allowed to go back on the promises made to the brick industry.

14. This point was not urged in the court below. The point raised by the appellants is basically a question of fact. It is for the petitioners to allege the facts and to establish their case in the writ petition. This was not done. The respondents had no opportunity to rebut the allegation. The appellants cannot be permitted to raise this point at this stage without any factual basis.

15. In view of the aforesaid, these appeals fail and are dismissed. There will be no order as to costs.