Supreme Court of India
P. Nagesware Rao vs Govt. Of A. P on 31 January, 1994
Equivalent citations: 1994 SCC, Supl. (2) 693
Author: K Ramaswamy
Bench: Ramaswamy, K.

PETITIONER:
P. NAGESWARE RAO

Vs.

RESPONDENT:
GOVT. OF A. P.

DATE OF JUDGMENT31/01/1994

BENCH:
RAMASWAMY, K.
BENCH:
RAMASWAMY, K.
VENKATACHALA N. (J)

CITATION:
1994 SCC Supl. (2) 693

ACT:

HEADNOTE:

JUDGMENT:

ORDER

1. Leave granted.

2. Heard learned counsel. These appeals arise from the common judgment dated 30-7-1993 of a Division Bench of the Andhra Pradesh High Court in Writ Petition No. 6901 and connected writ petitions including Writ Petition No. 6637 of 1993. The Government of Andhra Pradesh, exercising its power under Section 3 of the Andhra Pradesh Motor Vehicles Taxation Act (Amendment Act 11 of 1992), for short 'the Act', imposed taxes on stage carriages and contract carriages at varied rates through GOMs No. 75, dated 27-4- 1993. The impost was upheld by the said common judgment. SLP No. 13086 of 1993 filed by one of the writ petitioners, aggrieved against the said common judgment of the High Court, when came up for hearing on 3-9-1993 before this Bench, we dismissed it after hearing the counsel. When the present SLPs directed against the same judgment of the High Court were placed before another Bench of this Court, they were ordered to be posted before this

Bench for disposal. Thus these SLP's have come up before us for preliminary hearing.

3.The only argument which was not advanced before us when we dismissed the SLP earlier but which has now impressed us is that of the State Government lacking in power under the Act to issue the notification to collect the tax from a retrospective date, namely, 1-4-1993, even though that notification was made effective only from 27-4-1993. We shall consider and decide the argument, which relates to competence of the State Government.

4.Admittedly, the notification dated 27-4-1993 contained in the aforesaid GO expressly mentions that the tax imposed would be effective on and from 27-4-1993. Therefore, the Government in issuing the GO imposing tax liability on the stage carriages or contract carriages, of paying enhanced rates as quarterly tax, has made the order effective from 27-4-1993. Though Shri Sitaramiah, the learned Senior Counsel for the State, contended that in normal practice the quarter begins from 1-4-1993 and the High Court, therefore, had rightly held that the order would be effective from 1-4-1993, we find it difficult to accede to that contention. When the Government order itself expressly mentions that the liability to pay the tax operates on and from 27-4-1993, its operation cannot be prepared to an earlier date by placing such construction on the order. The High Court, therefore, was not right in its conclusion that the liability to pay enhanced motor vehicles tax commenced from 1-4-1993, inasmuch as the GO cannot be construed as having given retrospective operation to it. In fact, retrospective effect could not have been given by the State Government to the notification as it was not vested with such power. Hence, the common judgment of the High Court under the present appeals has to be held to be bad to the limited extent, it has said that the tax imposed under the notification impugned before it was liable to be paid from a date prior to 274-1993. The appeals are, therefore, allowed to the said limited extent only, while the common judgment of the High Court in other respects stands undisturbed. MINOCHA BROS. PVT. LTD. V. C. I. T.

ORDER

1. The only question in this appeal preferred by the assessee against the judgment of the Delhi High Court is whether the appellant is an "Industrial Company" within the meaning of the said expression as defined in the Finance Acts of 1971 and 1972. The definition reads as follows:

> " 'Industrial Company' means a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining.' Explanation.- For the purpose of this clause, a company shall be deemed to be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or i n mining, if the income attributable to any one or more of the aforesaid activities included in its total income of the previous year (as computed before making any deduction under Chapter VI-A of the Income Tax Act) is not less than fifty-one per cent of such total income."

2. The assessee is engaged in the construction of buildings. For that purpose, it manufactures windows, doors, shutters and other goods. The goods so manufactured by it are used in the constructions made by it. The assessee claimed that being an industrial company within the meaning of the said Finance Acts, it is entitled to the lower rate of tax. The ITO and AAC rejected the claim but the Tribunal agreed with the appellant. On reference at the instance of Revenue, the High Court has held that the assessee is not an 'Industrial Company'.

3. A reading of the definition aforesaid shows that for being characterised as an 'industrial company', the company must be mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining. The explanation says that a company shall be deemed to be mainly engaged in any of the specified activities, only if the income attributable to any one or more of the specified activities is not less than 51% of the total income i.e., total income for the relevant previous year, as computed before making any deduction under Chapter VI-A of Income Tax Act. The appellant upon whom lay the burden of establishing the requirements of the said definition has failed to adduce any material to establish that the income attributable to the manufacturing activity undertaken by him represents not less than 51% of its total income. We repeatedly asked the learned counsel for the appellant whether the appellant has adduced any material in this case to establish the said circumstance. He could not point to any such material except stating that the Tribunal and the High Court have not recorded any finding that the said requirement is not satisfied. The question is not so much whether the authorities under the Act or the High Court have or have not recorded such finding. The question is whether the appellant has adduced any material to establish the basis upon which he claimed the said benefit.

4. The learned counsel for the appellant relied upon a circular of the Central Board of Revenue dated 17-2-1992. Para 2 of the circular reads as follows:

> "The question as to the exact meaning of the Explanation to sub-section 7(d) of Section 2 of the Finance Act, 1966, came up for consideration and the Board are advised that an 'Industrial Company' would mean-
>
> (i) a company which is mainly engaged in the business of generation or distribution of electricity or any other form of power or in the construction of ships or in the manufacture or processing of goods or in mining, even if its income from such activities is less than 51 % of its total income; and
>
> (ii) a company which, even though not mainly so engaged, derives in any year 5 1 % or more of its total income from such activities."
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> 5. It may, however, be noted that construction of buildings is not one of the activities mentioned in clause (i). Clause
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> (ii) does not help the appellant. If so, it is unnecessary to express any opinion whether the said circular runs contrary to the Explanation to the definition of

"Industrial Company" in the Finance Acts and if so, whether it can be acted upon.

6. The appeals are accordingly dismissed. No costs.