

Supreme Court of India

Ruchi Fabrics Ltd. vs State Of M.P. And Ors. on 11 November, 1998

Equivalent citations: 2000 117 STC 273 SC

Author: S Bharucha

Bench: S Bharucha, V Khare

JUDGMENT S.P. Bharucha, J.

1. This appeal by special leave impugns the correctness of a judgment and order of a Division Bench of the High Court of Madhya Pradesh Ruchi Fabrics Ltd. v. State of M.P., [1997] 106 STC 300.

2. The Madhya Pradesh General Sales Tax Act contains Schedule I. By reason of Section 10 thereof, no tax is payable on the sales or purchases of goods specified in Schedule I. Sub-section (2) of Section 10 reads thus :

"The State Government may, in respect of any goods, by notification, amend Schedule I so as to include therein any goods not already specified or may relax or omit any of the conditions and exceptions set out in the corresponding entry in the third column thereof."

3. Schedule I, as it originally stood, covered "all varieties of cloth manufactured in mills or on powerlooms or handlooms including processed cloth". The State Government, in exercise of powers under Section 10(2), amended Schedule I, as a result whereof certain cloth that was covered by Schedule I, as it originally stood, was now excluded.

4. During assessment proceedings the appellants were denied the exemption on such cloth manufactured by them, the same now being outside the purview of Schedule I. The appellants filed a writ petition in the High Court of Madhya Pradesh challenging the validity of the notification, dated September 20, 1990, by which the relevant entry of Schedule I had been amended as aforestated.

5. The High Court dismissed the writ petition. It based its judgment upon Section 21 of the Madhya Pradesh General Clauses Act, 1957, which reads thus :

"21. Power to make to include power to add. amend, vary or rescind orders, etc.--Where, by any Madhya Pradesh Act, a power to issue notification, orders, rules or by-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or by-laws, so issued."

The High Court, observed that where, by any Madhya Pradesh Act, power had been given to issue notifications, orders, rules or byelaws, then that power included the power exercisable in the like manner and subject to the like sanctions and conditions, if any, to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued. It added, "Therefore, when the State Government has been given a power to include certain entries in Schedule I, then such power will include in it the power to exclude certain items also". Again, the High Court said :

"In the present case, Under Sub-section (2) of Section 10 of the Act power has been given to the State Government to amend the Schedule, that also includes the power to exclude the items in the Schedule. Simply because a Schedule has been issued at one tune, that does not mean that the State Government becomes functus officio. In fact, Sub-section (2) of Section 10 facilitates and enables the State Government to amend the Schedule from time to time and that means that it can include and exclude the items mentioned in the Schedule."

The writ petitioners are in appeal by special leave.

6. The High Court fell into error. Schedule I was a part of the original statute, that is to say, it was a creation of the Legislature. By virtue of Section 10(2) of the statute the State Government was given the power, by notification, to amend Schedule I only "so as to include therein goods not already specified or may relax or omit any of the conditions and exceptions set out in the corresponding entry in the third column thereof. The Legislature, therefore, empowered the State Government to amend Schedule I only to this extent that it could widen the scope thereof, either by including therein goods which had not already got its benefit or by relaxing or removing conditions which were a pre-requisite for obtaining the exemption thereunder. No power was conferred by the statute upon the State Government in any way to curtail the scope of Schedule I. Having regard to the express terms of Section 10(2), reliance upon Section 21 of Madhya Pradesh General Clauses Act was uncalled for. In any event, under Section 21 the power to issue a notification, order, rule or bye-law conferred by a Madhya Pradesh Act is to be read as including a power to add to, amend, vary or rescind the notification, order, rule or bye-law so issued. Section 21 has no application to a case such as this where the Schedule (Schedule I) is a part of the statute itself and not the creation of a notification, order, rule or bye-law.

7. The appeal is allowed. The judgment and order under appeal are set aside. The writ petition filed by the appellant is allowed to the extent aforestated.

No order as to costs.