REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 4837 OF 2011

M/s. ACHAL INDUSTRIES .....Appellant(s)

VERSUS

STATE OF KARNATAKA ....Respondent(s)

WITH

CIVIL APPEAL NO(s). 4838 OF 2011

J U D G M E N T

Rastogi, J.

The present appeals have been preferred against the impugned judgment dated 17th April, 2007 passed by the High Court of Karnataka disposing of the Sales Tax Revision Petition examining the applicability of the turnover tax as defined under

Section 6-B(1) by the Karnataka Sales Tax Act, 1957(hereinafter being referred to as "KST Act").

2. The brief facts of the case which may be relevant for the present purpose are that the appellant is a manufacturer and registered dealer of the cashew kernels cashew shell oil, etc. Assessments were made for the years 1990-91 to 1999-2000 by the respective assessing authorities under Section 12(3) of the Act. Against the assessment orders of the assessing authorities, appeals/revision petitions were preferred before the appellate/revisional authority and the contention advanced by the learned counsel for the appellant was that levy of tax under Section 6-B of the Act, on the total turnover is a misconstruction of the provision and it has to be on the "taxable turnover" which may be in conformity with Article 286 of the Constitution of India but that was neither accepted by the assessing authority nor at the appellate/revisional stage against which the present appeals have been preferred impugning the assessments made for the years 1990-91 to 1999-2000 in the instant appeals.

3. The main thrust of the submission of Mr. Mohit Chaudhary, learned counsel for the appellant is that Courts below have manifestly erred in appreciating that the 'total turnover' as defined under Section 6-B(1) for the purpose of levy turnover tax can in no event include the 'turnover' with reference to which the State has no power to levy tax under the constitutional scheme and the submission proceeds that the levy of tax under Section 6-B can be on the 'taxable turnover' alone. Though the first limb of the Section has adopted the word 'total turnover' but it is only for the limited purpose of identifying the dealers and further submits that the 'turnover' which is not liable to tax under the provisions of the Act, cannot be included in the calculation of 'total turnover' for the purpose of assessment of turnover tax and that is according to him the basic error which has been committed in interpreting Section 6-B(1) of the KST Act.

4. Learned counsel submits that the interpretation which has been advanced by the respondent State if taken at its face value, would amount to permitting the State to indirectly levy turnover tax on part of a dealer's total turnover which is non exigible to

intra sales tax and indeed would be beyond the legislative competence of the State.

5. Learned counsel further submits that although the constitutional validity of the provision has been upheld but still open to the Court to read down the provision in a manner that it do not offend the Constitutional scheme. The concept of 'total turnover' has been incorporated under Section 6-B(1) for the purpose of identification of the dealers and for prescribing rate/slabs and the actual levy is intended only on intra-state turnover by reason of the proviso, it may be within the competence of the State Legislature. In support of submission, learned counsel has placed reliance on the decision of this Court in ***Indra Das Vs. State of Assam*** 2011(3) SCC 380 and ***Rakesh Kumar Paul Vs. State of Assam*** 2017(15) SCC 67.

6. Per contra, Mr. Devadatt Kamat, learned AAG appearing for the respondent State submits that the issue in the instant appeals stands conclusively answered by this Court in ***M/s. Hoechst Pharmaceuticals Ltd. and Others*** Vs. ***State of Bihar***

and Others 1983(4) SCC 45 and further submits that once the constitutional validity of Section 6-B has been upheld by the jurisdictional High Court in the series of decisions, wherein the challenge to Section 6-B(1) offending Article 14 and 19(1)(g) of the Constitution of India regarding the classification of dealers being repelled and it was held that the inclusion of inter-state export and import turnover is only for the purpose of identifying dealers and not for levying tax, that was within the competence of the State Legislature. This Court has explained in ***M/s. Hoechst Pharmaceuticals Ltd. and Others*** ***Vs.*** ***State of Bihar and Others***(supra) to reiterate the principle of economic superiority for the purpose of levying turnover tax.

7. Learned counsel for the respondent State further submits that in the instant case, the appellant filed returns for the assessment years in question claiming certain deductions. When such returns were assessed by the assessing authorities, it was noticed that as far as the determination of the rate at which 'turnover tax' was to be levied, the dealer has made incorrect deductions and in turn has furnished returns at a lower rate.

Upon assessment, the assessing authority determined the actual slab applicable to the assessee for each assessment year and levied the turnover tax accordingly and it is in conformity with Section 6-B(1) of the KST Act.

8. Before we proceed to examine the question raised any further, it will be relevant to note the pre-amendment (1st April, 2000) of the KST Act, as under:-

> **"2. Definitions. – (1) In this Act, unless the context otherwise requires, --**
> **...**
> **"(u) "tax"** means a tax leviable under the provisions of this Act;
> [(u-1) "taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed, but shall not include the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;
>
> **(u-2) "total turnover"** means the aggregate turnover in all goods of a dealer at all places of business in the State, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of inter-State trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India;]
>
> **(v) "turnover"** means the aggregate amount for which goods are bought or sold, or supplied or distributed [or delivered or otherwise disposed of in any of the ways referred to in clause (t)] by a dealer, either directly or through another, on his own account or on account of

others, whether for cash or for deferred payment or other valuable consideration;

....

[6-B. Levy of Turnover Tax.- [(1) [Every registered dealer and every dealer who is liable to get himself registered under sub-sections (1) and (2) of Section 10] whose total turnover in a year is not less than [ten lakh] rupees whether or not the whole or any portion of such turnover is liable to tax under any other provisions of this Act, shall be liable to pay tax,-

(i) at the rate of one and a quarter per cent of his total turnover, if his total turnover is not less than ten lakh rupees but is less than two hundred lakh rupees in a year; or

(ii) at the rate of one and three-fourths per cent of his total turnover, if his total turnover is not less than two hundred lakh rupees [but is less than five hundred lakh rupees in a year; or]

(iii) at the rate of [two and three fourth per cent] of his total turnover, if his total turnover is not less than five hundred lakh rupees in a year]:

Provided that no tax under this sub-section shall be payable on that part of such turnover which relates to,-

(i) sale or purchase of goods specified in the Fifth Schedule;

(ii) sale or purchase of good specified in the Fourth Schedule;

(iii) sale or purchase of goods in the course of inter-State trade or commerce;

....

Provided further that save as otherwise provided in this sub-section, no other deduction shall be made

from the total turnover of a dealer for the purposes of this Section."

9. The expression "total turnover" + "turnover" which has been used under Section 6-B has the same meaning as defined under Section 2(1)(u-2) and 2(v) of the Act. It may be further noticed that under Section 6-B, reference is made on 'total turnover' and not the 'turnover' as defined under Section 2(v) of the KST Act and taking note of the exemption provided under first proviso clause(iii), exclusion has been made in reference to use of sale or purchase of goods in the course of inter-state trade or commerce. It clearly indicates that the expression 'total turnover' which has been incorporated as referred to under Section 6-B(1) is for the purpose of identification of the dealers and for prescribing different rates/slabs. The first proviso to Section 6-B(1) provides an exhaustive list of deductions which are to be made in computation of such turnover with a further stipulation as referred to in second proviso that except for the manner provided for in Section 6-B(1), no other deduction shall be made from the total turnover of a dealer.

10. This Court, in ***M/s. Hoechst Pharmaceuticals Ltd. and Others case***(supra), while examining the *pari meteria* provision of sub-Section (1) of Section 5 of the Bihar Finance Act which provides for levy of surcharge on gross turnover in relation to the tax payable in reference to Article 286 of the Constitution of India read with Entry 54 under List II of Seventh Schedule into consideration held as under:-

> **90.** The decision in *Fernandez case* [AIR 1957 SC 657] is therefore clearly an authority for the proposition that the State Legislature notwithstanding Article 286 of the Constitution while making a law under Entry 54 of List II of the Seventh Schedule can, for purposes of the registration of a dealer and submission of returns of sales tax, include the transactions covered by Article 286 of the Constitution. That being so, the constitutional validity of sub-section (1) of Section 5 of the Act which provides for the classification of dealers whose gross turnover during a year exceeds Rs 5 lakhs for the purpose of levy of surcharge, in addition to the tax payable by him, is not assailable. So long as sales in the course of inter-State trade and commerce or sales outside the State and sales in the course of import into, or export out of the territory of India are not taxed, there is nothing to prevent the State Legislature while making a law for the levy of a surcharge under Entry 54 of List II of the Seventh Schedule to take into account the total turnover of the dealer within the State and provide, as has been done by sub-section (1) of Section 5 of the Act, that if the gross turnover of such dealer exceeds Rs 5 lakhs in a year, he shall, in addition to the tax, also pay a surcharge at such rate not exceeding 10 per centum of the tax as may be provided. The liability to pay a surcharge is not on the gross turnover including the transactions covered by Article 286 but is only on inside sales and the surcharge is sought to be levied on

> dealers who have a position of economic superiority. The definition of gross turnover in Section 2(*j*) of the Act is adopted not for the purpose of bringing to surcharge inter-state sales or outside sales or sales in the course of import into, or export of goods out of the territory of India, but is only for the purpose of classifying dealers within the State and to identify the class of dealers liable to pay such surcharge. The underlying object is to classify dealers into those who are economically superior and those who are not. That is to say, the imposition of surcharge is on those who have the capacity to bear the burden of additional tax. There is sufficient territorial nexus between the persons sought to be charged and the State seeking to tax them. Sufficiency of territorial nexus involves a consideration of two elements viz.: (*a*) the connection must be real and not illusory, and (*b*) the liability sought to be imposed must be pertinent to that territorial connection: *State of Bombay* v.*R.M.D. Chamarbaugwala* [AIR 1957 SC 699], *Tata Iron & Steel Co. Ltd.* v. *State of Bihar*[(1958) SCR 1355] and *International Tourist Corporation* v. *State of Haryana* [(1981) 2 SCC 318]. The gross turnover of a dealer is taken into account in sub-section (1) of Section 5 of the Act for the purpose of identifying the class of dealers liable to pay a surcharge not on the gross turnover but on the tax payable by them.

11. This Court also noticed the economic superiority principle for the purpose of levy of turnover tax while holding that the interpretation of statute would not depend upon contingency. It is trite law which the Court would ordinary take recourse to golden rule of strict interpretation while interpreting taxing statutes. In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation and this is what

has been considered by this Court in ***Commissioner of Customs(Import), Mumbai*** **Vs.** ***Dilip Kumar and Company and Others*** 2018(9) SCC 1 in para 24 and 34 as under:-

> **"24.** In construing penal statutes and taxation statutes, the Court has to apply strict rule of interpretation. The penal statute which tends to deprive a person of right to life and liberty has to be given strict interpretation or else many innocents might become victims of discretionary decision-making. Insofar as taxation statutes are concerned, Article 265 of the Constitution prohibits the State from extracting tax from the citizens without authority of law. It is axiomatic that taxation statute has to be interpreted strictly because the State cannot at their whims and fancies burden the citizens without authority of law. In other words, when the competent Legislature mandates taxing certain persons/certain objects in certain circumstances, it cannot be expanded/interpreted to include those, which were not intended by the legislature.
>
> **34.** The passages extracted above, were quoted with approval by this Court in at least two decisions being *CIT* v. *Kasturi and Sons Ltd.* (1999) 3 SCC 346 and *State of W.B.* v. *Kesoram Industries Ltd.* (2004) 10 SCC 201 (hereinafter referred to as "*Kesoram Industries case*", for brevity). In the later decision, a Bench of five Judges, after citing the above passage from Justice G.P. Singh's treatise, summed up the following principles applicable to the interpretation of a taxing statute:
>
> "(*i*) In interpreting a taxing statute, equitable considerations are entirely out of place. A taxing statute cannot be interpreted on any presumption or assumption. A taxing statute has to be interpreted in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any deficiency;

> (*ii*) Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section; and (*iii*) If the words are ambiguous and open to two interpretations, the benefit of interpretation is given to the subject and there is nothing unjust in a taxpayer escaping if the letter of the law fails to catch him on account of the legislature's failure to express itself clearly."

12. In the instant scheme of the Act of which reference has been made in detail, the expression 'total turnover' has been referred to for the purpose of identification/classification of dealers for prescribing various rates/slabs of tax leviable to the dealer and read with first and second proviso to Section 6-B(1), this makes the intention of the legislature clear and unambiguous that except the deductions provided under the first proviso to Section 6-B(1) nothing else can be deducted from the total turnover as defined under Section 2(u-2) for the purpose of levy of turnover tax under Section 6-B of the Act.

13. The submission of learned counsel for the appellant that the 'total turnover' in Section 6-B(1) is to be read as 'taxable turnover' and the determination of the rate of the turnover tax is to be ascertained on the 'taxable turnover' on the face of it is unsustainable and deserves outright rejection.

14. The judgments on which learned counsel has placed reliance in ***Indra Das*** ***Vs.*** ***State of Assam*** (supra) is in context of the fundamental rights in reference to the provisions of Terrorists & Disruptive Activities (Prevention) Act, 1987, and it was observed that the endeavour of the court should be to try to sustain the validity of the statute by reading it down as possible.

15. The judgment in ***Subramanian Swamy and others*** ***Vs.*** ***Raju through Member, Juvenile Justice Board and Another*** 2014(8) SCC 390 was in reference to a challenge to the validity of the Juvenile Justice(Care and Protection of Children) Act, 2000. Though the validity was repelled by this Court, the doctrine of 'reading down' was discussed. It was held to be inapplicable in the facts of the said case.

16. In ***Rakesh Kumar Paul Vs. State of Assam***(supra), this Court has examined the interpretation of Section 167(2) of the Code of Criminal Procedure, 1973 which has a reference to the liberty of a citizen. Either of the cases referred to may not have any remote relevance to the question which has come up before us for consideration.

17. Consequently, in our considered view, the appeals are without substance and the same are dismissed accordingly. No costs.

18. Pending application(s), if any, stand disposed of.

.....J.
(A.M. KHANWILKAR)

.....J.
(AJAY RASTOGI)

NEW DELHI
March 28, 2019