

IN THE HIGH COURT OF KARNATAKA DHARWAD BENCH

Dated this the 11th day of February 2014

PRESENT

THE HON'BLE MR.JUSTICE N.KUMAR

AND

THE HON'BLE MR.JUSTICE C.R.KUMARASWAMY

STRP No.211/2009

C/w

STRP Nos.501 & 502/2012

IN STRP No.211/2009:

BETWEEN:

STATE OF KARNATAKA
REP. BY THE DEPUTY COMMISSIONER
FOR COMMERCIAL TAXES
BELGAUM

...PETITIONER

(BY SRI.K.S.PATIL, HCGP)

AND:

M/S.DECCAN SALES CORPORATION LTD.,
REP. BY ITS MANAGER,
KHADAKLAT, CHIKKODI TALUK,
BELGAUM DISTRICT, BELGAUM

...RESPONDENT

(BY SRI.PRAMOD S.YADWAD, ADVOCATE)

THIS STRP UNDER SECTION 23(1) OF STA ACT, AGAINST THE ORDER DATED 12.06.2008 PASSED IN STA NOS.466, 467 AND 468/2007 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL, BANGALORE, ALLOWING THE APPEAL UNDER THE KST ACT.

IN STRP No.501/2012:

BETWEEN:

STATE OF KARNATAKA,
REP. BY THE DEPUTY COMMISSIONER
FOR COMMERCIAL TAXES,
BELGAUM

...PETITIONER

(BY SRI.K.S.PATIL, HCGP)

AND:

M/S.DECCAN SALES CORPORATION LTD.,
KHADAKLAT, CHIKKODI TALUK,
BELGAUM DISTRICT, BELGAUM.

...RESPONDENT

(BY SRI.PRAMOD S.YADWAD, ADVOCATE)

THIS STRP IS FILED UNDER SECTION 23(1) OF THE ACT, AGAINST THE ORDER DATED 12.06.2008 PASSED IN STA NO.468/2007 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL, BANGALORE ALLOWING THE APPEAL BY SETTING ASIDE THE ORDER PASSED BY THE FAA FOR THE FINANCIAL YEAR 1997-98, 1998-99 AND 1999-2000.

IN STRP No.502/2011:

BETWEEN:

STATE OF KARNATAKA,
REP. BY THE DEPUTY COMMISSIONER
FOR COMMERCIAL TAXES
BELGAUM ...PETITIONER

(BY SRI.K.S.PATIL, HCGP)

AND:

M/S.DECCAN SALES CORPORATION LTD.,
KHADAKLAT, CHIKKODI TALUK,
BELGAUM DISTRICT
BELGAUM ...RESPONDENT

(BY SRI.PRAMOD S.YADWAD, ADVOCATE)

THIS STRP IS FILED UNDER SECTION 23(1) OF THE ACT, AGAINST THE ORDER DATED 12.06.2008 PASSED IN STA NO.467/2007 ON THE FILE OF THE KARNATAKA APPELLATE TRIBUNAL, BANGALORE, ALLOWING THE APPEAL BY SETTING ASIDE THE ORDER PASSED BY THE FAA FOR THE FINANCIAL YEAR 1997-98, 1998-99 AND 1999-2000.

THESE PETITIONS ARE COMING ON FOR FINAL HEARING THIS DAY, **N.KUMAR, J.**, MADE THE FOLLOWING:

ORDER

These three petitions are preferred against the common order passed by the Karnataka Appellate Tribunal,

setting aside the rectified re-assessment orders impugned herein and to restore the assessment orders for the financial year 1997-1998, 1998-1999 and 1999-2000.

2. The Assessee is a Limited Company, registered as a dealer under the provisions of the Karnataka Sales Tax Act (for short hereinafter referred to as 'the Act'). It was engaged in the sale of chemical fertilizers including chemical fertilizer mixtures. In the original assessment orders passed under the Act by the assessing authority for the financial year 1997-98, 1998-99 and 1999-2000, the turnover on sale of chemical fertilizer mixtures obtained by the appellant out of the chemical fertilizers, which had already suffered local sales tax under the KST Act, were allowed exemption from the levy of turnover tax under Section 6-B of the said Act in terms of the three notifications dated 31.03.1997, 31.03.1998, 31.03.1999.

3. Subsequently, reassessment under section 12-A of the Act was passed on the basis of the judgment dated 25.11.2004 of this Court in the case of Pali Chemical Industries, Nippani, Belgaum vs. The Additional Commissioner of Commercial Taxes, Zone-I, Bangalore and another reported in 2005 (58) KLJ 54 (HC) (DB), that the chemical fertilizer mixture is not eligible for exemption from turn over tax even if its components have already suffered local tax under the Act. Appeal filed by the assessee against the said order also came to be dismissed. It is against the said order, the assessee preferred an appeal before the Karnataka Appellate Tribunal.

4. The Tribunal after noticing that, while delivering the judgment in Pali Chemical Industries Case, the decision in State of Karnataka Vs. Kothari Industrial Corporation, reported in 2000-01 (5) K.C.T.J. 193 was not noticed or brought before the Hon'ble High Court by the parties concerned in Pali Chemical Industries case, held that the

judgment in Pali Chemical Industries case cannot be considered as a binding precedent. The Tribunal has gone on to observe that, since the lower authority passed orders relying only on the decision in Pali Chemical Industries case, it is at liberty to come to a conclusion contrary to the one arrived at by the lower authority if the facts and circumstances of the case required so, by virtue of the order dated 19-07-2006 of the Division Bench in WA No.3025 of 2005.

5. The Tribunal under the assumption that it has the liberty to follow the earlier judgment in Kothari Corporation Ltd., case has proceeded to hold as under:

“The term ‘fertilizer’ as used in First Schedule to the Fertilizer (Control) Order, 1985, includes fertilizer mixtures. It is not true that the term ‘fertilizer’ only means straight fertilizers. The said term means every item of fertilizers narrated in the First Schedule including complex fertilizers, fortified fertilizers and mixtures made out of the different fertilizers list in Schedule-I to the

aforesaid control order with plant nutrients and/or other inert materials. Entry 11 of Part C of the Second Schedule of the KST Act has specific reference to the First Schedule under the Fertilizer (Control) Order, 1985 and the said Schedule is an appendage to clauses 2(h) and 2(q) of the said control order and clause 2 (h) defines fertilizer to include fertilizer mixtures and special mixtures of fertilizers. Therefore, when in the Government notifications mentioned supra, the term 'chemical fertilizers' has been used, the said term has necessarily to be understood as including chemical fertilizer mixtures and for that reason the lower authorities were in error to have recorded a finding to the contrary effect. The assessee has exclusively sold only such chemical fertilizer mixtures which were entirely made from locally purchase KST suffered fertilizers. Such fertilizer mixtures are entirely outside the purview of the aforesaid schedule entry. Therefore, there is no justifiable reason to refer to the said schedule entry for interpreting the aforementioned notifications exempting the levy of turnover tax on the second and subsequent sales of chemical fertilizers. The legislature clearly recognizes that

the fertilizer mixture is to be understood as a collection of individual fertilizers and not as a manufactured commodity different and distinct from the components thereof and therefore, it was held that there was no justification to reassess these cases under Section 12-A of the Act which are followed by rectification orders.”

and set aside the order.

6. Aggrieved by the said order of the Tribunal, the State has preferred these revision petitions.

7. Before going to the merits of the case, we would like to place on record that we are very much disturbed by the tendency exhibited by the lower authorities in refusing to follow the law laid down by this Court saying that the same is not binding on them merely because other binding precedents are not taken into consideration in those judgments. It appears that the Tribunal has assumed the power to declare the judgment of the Division Bench of this

Court as *per incuriam* and thereby refused to follow the judgment. The justification for such a course of action is that it is permitted to do so by another Division Bench. If this tendency is not nipped in the bud, we are afraid that there will be total lawlessness especially in the branch of Taxation Law.

8. In M/s. Pali Chemical Industries case, interpretation of the very notification which is the subject matter of these proceedings, was involved and the question that arose for the consideration of a Division Bench of this Court was, whether the State Government has exempted only Chemical Fertilizers from the levy of turnover tax effected by second or subsequent dealer and not Chemical Fertilizer Mixtures. Speaking for the bench Justice **H.L.Dattu** has ruled as under:

“8. In order to resolve the controversy in these appeals, in our opinion Entry 11 of part 'C'

of the Second Schedule to the Act requires to be extracted. It reads as under;

"11(i) Chemical fertilizers other than those falling under item(ii) below, (ii) Chemical fertilizer mixtures of two or more chemical fertilizers on the turnover relating to components thereof viz, individual chemical fertilizers which have not already suffered tax".

9. The notification issued by the State Government in FD.32.CSL.81(1) dated 28.6.1981 which is being continued from time to time up-to 1998 has granted exemption from the levy of turnover tax in respect of chemical fertilizers on the second and subsequent sales.

10. Analysis of Entry 11 of the Second Schedule;

The Second Schedule to the Act enumerates goods on the sale of which a single point tax is leviable on the first or earliest of successive dealers in the State under Section 5(3)(a) of the Act.

Entry 11(i) speaks of Chemical Fertilizers other than those falling under item(ii). Entry 11(ii) of the Second Schedule to the Act speaks of chemical fertilizer mixtures of two or more chemical fertilizers on the turnover relating to components thereof, viz, individual chemical fertilizers which have not already suffered tax.

The expression "Chemical Fertilizers" occurring in the opening part of the Entry speaks of individual chemical fertilizers and the Legislature specifically excludes items falling under sub-entry (ii) from chemical fertilizers. The chemical fertilizer mixture is a mixture of two or more chemical fertilizers. The mixtures and its components have different chemical properties of their own and their use is also different. If an assessee purchases chemical fertilizers and brings about a new product by mixing one or more of the said products, the mixed product cannot be said to be chemical fertilizers and the mixed product will have different properties of its own and it cannot be said that it retains the same characteristics or properties of any one of the chemical fertilizers which went to make up the resultant mixture.

Secondly, the intention of the Legislature appears to be clear and unambiguous. The intention is to levy single point tax on chemical fertilizers and chemical fertilizer mixtures. Therefore, the Legislature under Entry 11(ii) of the Schedule to the Act intends to levy tax on chemical fertilizer mixtures on such of the components, which have not already suffered tax.

Thirdly, even in common parlance and also in commercial parlance, the expressions "chemical fertilizers" and "chemical fertilizer mixtures" are understood as different commercial commodities.

11. What is a chemical fertilizer mixture did come up for consideration before the Division Bench of this Court in Shaw Wallace Co. Ltd., vs. State of Karnataka, (1992) 36 Karnataka Law Journal 478. In the said decision the Court had an occasion to notice how a Chemical Fertilizer Mixture is prepared in the market. The Court has observed that;

"In the preparation of Fertilizer Mixtures the petitioner has to necessarily had a few

other articles such as leather meal, neem cake meal gypsum etc. However, the ultimate product that is obtained out of mixing all these with leather meal neem cake meal, gypsum etc, would be a Chemical Fertilizer Mixture".

12. In Re. Shaw Wallace And Co. Ltd v. The State Of Tamilnadu, the assessee was a manufacturer and dealer in chemical fertilizers. It also prepared fertilizer mixtures by mixing various chemical fertilizers and fillers like china clay, gypsum etc, by a shovel. The question before the Court was whether the sales of such fertilizer mixtures could be considered as second sales since components had already suffered tax. The Apex Court held that the fertilizer mixture is not the same article as the ingredients composing it. It is sold as a different commercial product. It is put to different use and has different chemical properties and therefore it has to be treated as a different article from its components. Further, the Court has observed that the question whether there is manufacturing process or not is irrelevant.

13. Fertilizer is a substance that is added to soil to help plants to grow. Fertilizers contain nutrients that are essential for plant growth. Some fertilizers are made from organic waste, such as manure or sewage. Others are manufactured from certain minerals or synthetic compounds produced in factories. There are two kinds of fertilizers, namely, mineral and organic. Manufacturers produce mineral fertilizers from certain minerals or synthetic substances. Organic fertilizers come from decayed plant or animal matter.

Fertilizer is produced in four basic forms. Straight good fertilizer is any chemical compound that contains one or two fertilizer elements. Bulk blend fertilizer is a mixture of straight goods in certain proportions. Manufactured fertilizer consists of two or more chemicals that are mixed and then formed into small grains. Chemical fertilizer mixtures consist of two or more chemical fertilizers in addition to a few other articles such as gypsum, leather meal, etc. The chemical fertilizer mixtures that are produced out of two or more chemical fertilizers are different commercial

commodities since it has different use and has different chemical properties.

14. Now let us consider the notification issued by the state Government in No. FD.32 CSL 81(1) dated 29.6.1981. The notification reads as under;

"In exercise of the powers conferred by Section 8-A of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby exempts, with effect from 1st July 1981, the turnover tax payable under Section 6-B of the said Act by registered dealers, on the second and subsequent sales of the following goods in the State namely:-

(i) Chemical Fertilizers bone-meal & oil cake, and

(ii) Insecticides and pesticides".

15. The analysis of the aforesaid notification is as under;

The notification is issued by the State Government in exercise of its powers conferred under Section 8-A of the Act. The exemption is with effect from 1.7.1981 and being continued from time to time what is exempted under the notification is the turnover tax payable under Section 6-B of the Act by a registered dealer on his second and subsequent sales of chemical fertilizers.

16. The expressions in an exemption notification should be understood by the language employed therein. The benefit of the notification can be extended to a dealer, if he falls squarely within the four corners of the notification.

17. Keeping in view the object of the notification, the language employed in the notification and the specific entries in Entry 11 of the Second Schedule to the Act, in our opinion, the State Government while issuing notification has exempted only chemical fertilizers simpliciter, and not a mixture of two or more chemical fertilizers. If it is understood in that manner, in our opinion, the revisional authority was justified in invoking his powers under Section 22-A of the Act to set at

naught the orders passed by the first appellate authority, who had mis-understood the language employed in the notification to grant exemption on the sales turnover of chemical Fertilizer mixtures under Section 6-B of the Act. Since the order passed by the revisional authority is in consonance with Entry 11 of the Second Schedule to the Act and the language of the notification, we are of the view that the revisional authority was justified in annulling the order passed by the first appellate authority and in restoring the order passed by the assessing authority.”

9. The Apex Court in *Re Shaw Wallace's case*, while dealing with Chemical Fertilizer has categorically held as under:

“A plain reading of the above mentioned provisions would show that it is only when a chemical fertiliser specified in sub-items 1 to 15 of item No. 21 of the First Schedule is sold in the same condition in which it is purchased that it is not subject to a fresh levy. Fertiliser mixture, it would be noted, is not the same article as the

ingredients composing it. It is sold as a different commercial product. It is put to a different use and has different chemical properties. As such, it has to be treated as a different article from its component parts. The question whether there is any manufacturing process involved in the preparation of any fertiliser, mixture or whether shovel mixing of the chemical fertilisers amounts to manufacture or not is wholly irrelevant for the purpose of the determination of the question before us.”

Noticing that the entries in Part C of Entry 11 of Second Schedule, had been set out in *Re Shaw Wallace's Co Ltd.*, analysing Entry 11 of Second Schedule and taking note of the wordings of the notification, judgment was delivered by the Division Bench of this Court laying down the law in *Pali Chemical Industries*.

10. If another Division Bench of this Court is not persuaded to accept the said view, the only course open to is

to place relevant papers before Hon'ble the Chief Justice to enable him to constitute a Larger Bench to examine the question. That is the proper and traditional way to deal with such matter. It is founded on healthy principles of judicial decorum and propriety; certainty is a thing that is absolutely necessary in law than any other thing. That quality would totally disappear if Judges of co-ordinate jurisdiction in a High Court start over-ruling one another's decision. If one Division Bench of the High Court is unable to distinguish an earlier decision of another Division Bench, and holding that the view of the earlier decision is wrong, the same would result in utter confusion. In such a case, lawyers would not know how to advise their clients and all courts subordinate to the High Court would find themselves in an embarrassing position of having to choose between such judgments.

11. When an appeal is not entertained on the ground of availability of an alternative and efficacious remedy, the Division Bench cannot observe that the earlier

judgment may not be correct and then call upon the Appellate Authority to decide the case on merits ignoring a binding decision of the Division Bench. What the Division Bench of this Court could not do, cannot be permitted to be done by a subordinate judicial forum.

12. Coming to the case on hand, earlier judgment of this Court which, according to the Tribunal, was a binding precedent, was rendered under the provisions of the Karnataka Tax on Entry of Goods Act, 1979. Interpreting Item No.80 & 81 of the First Schedule to the Act, it was observed that only when there is a manufacture of any intermediate or finished product, the raw material or component parts or inputs which are used in the manufacture will attract levy of tax under the KTEG Act at the rate of 1 per cent. If there is no manufacture, there can, obviously, be no levy of tax. Therefore, the question of Division Bench or the Tribunal following the said judgment to decide the case under the Act would not arise especially

when Entry 11 of the Act specifically contains entry under the heading Chemical Fertilizers other than those falling under item (ii) below and item No.(ii) dealing with Chemical fertilizer mixtures of two or more chemical fertilizers on the turnover relating to components therefore, viz., individual chemical fertilizers which have not already suffered tax. Therefore, the question of the Division Bench in the case of Pali Chemical case, noticing the earlier judgment, following or distinguishing the same did not arise.

13. According to the Tribunal, yet another decision rendered in *M/s. B.H.Vasudeva Pai & Sons Vs. State of Karnataka* has not been noticed. Though this is also a judgment under the provisions of the Act, the entry therein was regarding insecticides or pesticides and the question that arose for consideration of the Court was whether it includes copper sulphate. Therefore, it has no application to the facts of this case.

14. What is relevant to the facts of this case is, the judgment of Supreme Court though was rendered under the Tamilnadu Sales Tax Act. The subject matter dealt therein was the same as in the judgment rendered by this Court and in the present case. It is high time that the lower authorities learn to maintain judicial discipline and stop showing disrespect to the constitutional ethos. Breach of discipline has great impact on the credibility of the judicial institution and encourages chance litigation. It must be remembered that practicability and certainty is a hallmark of the judicial jurisprudence developed in the country in the last six decades. In our constitutional set up, every citizen has a duty to abide by the Constitution and respect its ideals and the institution. Those who are entrusted with the task of administering the system and operating various constituents of the State, having taken oath to act in accordance with the Constitution and uphold the same, should set an example by exhibiting total commitment to the Constitutional ideals.

This principle is required to be observed with greater rigour by the members of judicial fraternity who are bestowed with the power to adjudicate upon important constitutional and legal issues and protect and preserve rights of the individuals and society as a whole.

15. Discipline is *sine-qua-non* for effective and efficient functioning of the judicial system. If the Courts command others to act in accordance with the provisions of the Constitution and rule of law, it is not possible to countenance violation of the constitutional principle by those who are required to lay down the law. Therefore, the Tribunal should have kept in mind that the doctrine of binding precedent has the merit of promoting a certainty and consistency in judicial decisions, and enables an organic development of the law, besides providing assurance to the individual as to the consequence of transactions forming part of his daily affairs, and, therefore, the need for a clear

and consistent enunciation of legal principle in the decisions of a court.

16. It was contended that, in interpreting the notification, the Court should not be guided by the entry in the schedule as held by the Division Bench of this Court in the case of *B.H. Vasudev's case*. Therefore, the argument was that the chemical fertilizer includes chemical fertilizer mixture. The observations of the Division Bench cannot be taken out of context. In *Vasudev's case*, the Court was interpreting Entry 117 of Second Schedule which dealt with insecticide and pesticides. Fungicides, weedicides, herbicides etc., were added to this entry with effect from 01.04.1992. If fungicides and herbicides also fall under the category of pesticides and insecticides, then the need for the Legislature to add fungicides, weedicides and herbicides in Entry 117 vide Karnataka Amendment Act No.4/1992, would not have been there. It was further observed that the Legislature had chosen to include fungicides, herbicides etc. in Entry 117 of

the Second Schedule in 1992, since those chemical compounds are different from insecticides and pesticides. That was a case where dealers claimed exemption from payment of turnover tax in respect of copper sulphate relying on the Government Notification dated 29.06.1981. The argument was the copper sulphate fell under the category of insecticide and pesticides under Entry 117 of Second Schedule. Even after the amendment of the said provision by including copper sulphate in Entry No.117, it does not cease to be insecticide and pesticide and it is only for the purpose of tax leviable under Section 5 of the Act, such tax could be attracted. In respect of all other taxes where there is no change of entry; copper sulphate could be still termed as insecticide/pesticide and it does not cease to get the benefit of notification issued by the State Government dated 29.06.1981. Accepting the said argument, the Division bench held that, when the notification was issued on 29.06.1981, Entry 117 in the Second Schedule included copper sulphate insofar as the expression

insecticide/pesticide was concerned. It is only subsequently, the same underwent change making it clear that Insecticide/Pesticide excluded copper sulphate. Copper sulphate does not go out of the category of Insecticide/Pesticide, but for the purpose of II Schedule the same should be dealt with separately. Therefore that treatment cannot be applied to the said expression when it occurs elsewhere. When the authority granting exemption itself understood that the copper sulphate is included in the expression 'Insecticide/Pesticide', the only question to be considered by the authorities is whether copper sulphate is Insecticide/Pesticide. That question has been considered by the Appellate Authority in these cases by reference to a statute viz., Insecticides Act, 1969 and Insecticides Rules, 1971, and that certainly forms an excellent piece of evidence to indicate whether copper sulphate is Insecticide/Pesticide. When the Legislature itself recognises such a fact, it is certainly proper for the authorities to rely upon the same. It

is in that context it was held that one need not go by the entry in deciding the turnover tax.

17. In the instant case, there is no such amendment. From the beginning Entry 11 defines what a chemical fertilizer is and what a chemical fertilizer mixture is. Both are distinct entries and so understood, as such exemption was granted only to chemical fertilizer. This benefit was not extended to chemical fertilizer mixture. Therefore, when the Legislature made a distinction between chemical fertilizer and chemical fertilizer mixture from the inception, a notification exempting from payment of turnover tax on chemical fertilizer cannot be extended to chemical fertilizer mixture. If that is done by the interpretation process, the Court would be adding to the notification which the Legislature and the Government did not intend to.

18. The Courts have no power to legislate, to add or to remove from the notification issued by the Government. When the government notification specifically refers to the chemical fertilizer, there is no scope for interpretation also. In that view of the matter, we do not see any substance in the said contention. In fact, in the Pali Chemicals case, the Division Bench, as stated earlier, has extracted the entries, examined the entire scheme of Entry 11, followed the judgment of the Apex Court, looked into the very same notification and has placed interpretation, which, in our opinion, is also proper and correct. We do not see any justification to differ from the said interpretation and the judgment in Pali Chemicals case equally binds this Court. In that view of the matter, the order passed by the Tribunal cannot be sustained.

19. It is submitted that after reassessment orders were passed, an application was filed to rectify the orders and accordingly order has been passed rectifying the said

mistakes. That rectified reassessment order stands and, if there is any liability, it is only under the rectified reassessment order

20. For the foregoing reasons, we pass the following order:

- (i) Revision petitions are allowed.
- (ii) The impugned order passed by the Tribunal is hereby set aside.
- (iii) The re-assessment orders passed by the Assessing Authority as confirmed by the Appellate Authority is restored.
- (iv) Parties to bear their own costs.

**Sd/-
JUDGE**

**Sd/-
JUDGE**

Vnp*/Kms