

P.ITEM NO.102 COURT NO.3 SECTION IIIA
Part-heard

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 5152-5161 OF 2001

STATE OF JAMMU & KASHMIR & ORS.

Appellant (s)

VERSUS

SHAKTI TRADERS & ORS

Respondent(s)

(With appl(s) for directions and with office report)

Date: 29/08/2007 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE V.S. SIRPURKAR

For Appellant(s) Mr. Anis Suhrawardy, Adv.

For Respondent(s)

Mr.Dushyant A. Dave, Sr. Adv.

Mr. Ramesh Singh, Adv.

Ms. Bina Gupta, Adv.

Mr. Gaurav Singh, Adv.

Ms. Shweta Verma, Adv.

Mr. D.N. Ray, Adv. for

Mrs. Sumita Ray, Adv.

UPON hearing counsel the Court made the following
ORDER

The Appeals are dismissed.

(Parveen Kr. Chawla)

Court Master

(Kanwal Singh)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS.5152-5161 OF 2001

State of Jammu & Kashmir & Ors.

..Appellants

Versus

Shakti Traders & Ors.

..Respondents

ORDER

1. State of Jammu & Kashmir, hereinafter referred to as 'the State' in exercise of its powers under sub-section 5 of Section 3 of the Levy of Tolls Act, 1995 (1938 A.D.) (for short 'the Act') issued SRO No. 184 of 1997 dated 30 th

May, 1997 imposing additional toll tax at the rate of four per cent on the edible oil brought in the State for re-sale in the State.

2. Respondents, being aggrieved, filed writ petitions in the High Court challenging the SRO No. 184 of 1997 dated 30th May, 1997 being violative of the provisions of the Act as well as Articles 301 and 304 of the Constitution of India.

3. Learned Single Judge before whom the writ petitions came up for hearing dismissed the writ petitions, aggrieved against which the respondents-assessee filed Letters Patent Appeals before the Division Bench of the High Court. The Division Bench relying upon a judgment of this Court in Shree Mahavir Oil Mills & Another vs. State of J & K & Others reported in (1996) 11 SCC 39 accepted the appeals, set aside the order passed by the Single Judge and struck down SRO 184 of 1997 dated 30 th May, 1997 being violative of Articles 301 and 304 of the Constitution of India. This judgment was delivered on 14th March, 2001.

4. State, in supersession of SRO 184/97 dated 30th May, 1997, issued SRO 80 of 2000 dated 27th/30th March, 2000 levying the toll tax at the same rate at which it had levied the toll tax by SRO 184/1997 dated 30 th May, 1997. SRO 80 of 2000 was challenged by filing OWP Nos.556/2000 along with other connected cases. Out of various writ petitions challenging vires of section 3(5) of the Act and SRO 80, OWP Nos. 512, 513 and 524 of 2000 were dismissed by a learned Single Judge on 26.11.2001 giving rise to the LPA Nos.40, 43 and 260/2002. The rest of the petitions came up for hearing before another learned Single Judge who took the view that there was conflict between the two sets of judgments (i) impugned judgment and (ii) in OWP No.512/2000 titled Mahavir Oil Company vs. State of J&K and by order dated 21.12.2001 referred the petitions to a larger Bench for decision on the following questions of law:

"Is section 3(5) of Levy of Tolls Act 1995 violative of Articles 286 and 301 of the Constitution of India?"

5. The Division Bench of the High Court vide its order dated 22 nd July, 2004 allowed the writ petitions and the Letters Patent Appeals and struck down SRO 80 of 2000 dated 27th/30th March, 2000. This judgment has

attained finality as the same was not put to challenge by the State.

6. Subsequent to the aforesaid two judgments, the State amended Section 3 of the Act and again issued a fresh SRO 225 dated 10 th July, 2003 levying the toll tax at the rate of four percent on the goods brought in the State. The validity of the amended Section 3 of the Act as well as SRO 225 dated 10th July, 2003 is under challenge before the High Court which is still pending.

7. The point involved in these appeals stands concluded by the judgment of this Court in Shree Mahavir Oil Mills (supra). We respectfully follow the same and dismiss these appeals leaving the parties to bear their own costs.

8. On 29th October, 2001, this Court had passed the following order:

"The operation of the High Court order is stayed subject to the condition that in the event of the appeal being dismissed the respondent shall be entitled to get back the refund along with 12 per cent interest."

The said order is vacated and the State is directed to refund the amount to the respondents in terms of the aforesaid order within three months from today.

9. It is made clear that we are not recording any opinion to the subsequent challenge to SRO 225 dated 10 th July, 2003 or to vires of section 3 of the Act and the High Court shall decide the same in accordance with law without being influenced by the dismissal of these appeals.

.....J.
[ASHOK BHAN]

NEW DLHI;
AUGUST 29, 2007.

.....J.
[V.S.SIRPURKAR]