

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

CIVIL APPEAL NO. 628 OF 2000

M/S BHARAT ELECTRONICS LTD.

Appellant (s)

VERSUS

THE DY.COMNR.OF COMMERCIAL TAXES(ASSTS)& ANR

Respondent(s)

(With office report)

Date: 02/03/2005 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N. VARIAVA
HON'BLE DR. JUSTICE AR. LAKSHMANAN
HON'BLE MR. JUSTICE S.H. KAPADIAFor Appellant(s)Mr. Dhruv Mehta,Adv.
Mr. S.K. Mehta,Adv.

For Respondent(s)Mr. Sanjay R. Hegde,Adv.

UPON hearing counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

There will be no order as to costs.

(Neena Verma) (Jasbir Singh)
Court Master Court MasterSigned order is placed on the file.
IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.628 OF 2000

M/s. Bharat Electronics Limited
...Appellant

Versus

The Deputy Commissioner of Commercial Taxes (Assts) and Anr.
...Respondents

O R D E R

This Appeal is against the Judgment of the Karnataka High Court dated 20th July, 1999 in Writ Appeal No.2498 of 1999 in Writ Petition No.7834 of 1994.

Briefly stated, the facts are as follows:

In the State of Karnataka, as per the Schedule to the Karnataka Sales Tax Act, 1957, sales tax on television sets and components was at 6%. On 20th June, 1986, the State of Karnataka issued a Notification under Section 8-A of the said Act by which dealers who sold television sets and components manufactured in the State of Karnataka were to pay sales tax at the reduced rate of 2% whereas dealers who sold television sets and components manufactured outside the State were to pay sales tax @ 4%. On 28th March, 1987, the State issued another Notification by which the rate of 2% was raised to 3% and 4% was raised to 6%.

Both these Notifications were challenged by one M/s. Solidaire India Limited on the ground that they were discriminatory. On 8th October, 1990, the Karnataka High Court struck down these two Notifications. Thus, from that date onwards, the rate of tax was again as per the Schedule to the Act, i.e. at the rate of 6%.

It seems that the State as well as some other dealers filed Appeals before the Division Bench of the Karnataka High Court. No stay was granted by the Division Bench. Pending the Appeals, in spite of the fact that the Notifications stood quashed by the High Court, the State issued a Notification on 30th March, 1992 rescinding the Notification dated 28th March, 1987.

On 29th January, 1994, an assessment order was passed directing the Appellants to pay to the Government tax @ 6% instead of 3% at which they were paying to the Government. In pursuance to the assessment order, a demand notice was issued on 23rd February, 1994. The Appellant filed Writ Petition in the Karnataka High Court challenging the assessment order and the demand notice. The Writ Petition came to be dismissed on 23rd July, 1998. The Appeal filed by the Appellant has been dismissed by the impugned Judgment dated 20th July, 1999.

It must be mentioned that the Appeals filed against the Judgment of the High Court dated 8th October, 1990 (quashing the two Notifications) were dismissed on 15/18th September, 1995.

Reliance has been placed upon the authorities of this Court in the cases of British Physical Lab India Limited Vs. State of Karnataka and Anr. (1999 (1) SCC 170), Texmaco Limited and Anr. Vs. State of Andhra Pradesh and Anr. (2000 (1) SCC 763) and Shree Cement Limited and Anr. Vs. State of Rajasthan and Ors. (2000 (1) SCC 765) and it was submitted that this Court has, in similar circumstances, directed the respective Governments not to collect tax for the relevant period. It was submitted that as the State had filed an Appeal and that Appeal was pending, the Appellant could not have collected tax @ 6%, as if the Appeals were allowed, they would have become liable to penalty under Section 18-A for having collected tax contrary to the provisions of Section 18 of the Karnataka Sales Tax Act, 1957. It was also submitted that the Appellant did not know about the Judgment of the High Court dated 8th October, 1990 as that Judgment was reported only in 1994.

We see no substance in these submissions. Ignorance of law is no excuse. Once the Notifications stood quashed, the dealers were bound to collect tax @ 6%. Even otherwise, it is difficult to believe that parties in the trade do not know the prevailing rate of tax.

The three authorities relied upon are of also no assistance. Those are cases where during the pendency of the relevant Notifications, the parties were prevented, by law, from collecting tax at a different rate. Subsequently those Notifications were struck down. The question was whether the parties were liable to pay differential tax during the period when the Notifications were in force. It was under those circumstances that this Court held that during the period the Notifications were in force, the parties could not have collected at a rate different from that specified in the Notifications. As the parties were prevented by law, from so collecting, this Court held that the authorities cannot claim the differential tax.

In the present case, as per the law in force, the Appellants were bound to collect @ 6%. If the Appellant chose not to collect @ 6% from their customers, the Appellant did so at their own peril. They cannot refuse to pay the Respondents tax at the rate in force at the relevant time.

We see no infirmity in the Judgment of the High Court. We, thus, therefore, see no reason to interfere. The Appeal is, accordingly, dismissed. There will, however, be no order as to costs.

.....J.

(S.N. VARIAVA)

.....J.

(Dr. AR. LAKSHMANAN)

.....J.

(S.H. KAPADIA)

New Delhi,

March 02, 2005.