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C.A.No. 1979 OF 1998
ITEM No.106

Court No. 7

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No. 1979 of 1998

M/s. Motor Industries Co. Ltd.

...

Appellant (s)

VERSUS

Dy. Commnr. Of Commercial Taxes & Ors.

...

Respondent (s)

(With office report)

Date : 20/01/2004 This appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.N.VARIAVA
HON'BLE MR. JUSTICE H.K.SEMA

For Appellant (s) Mr. Dhruv Agrawal, Adv.
Mr. Praveen Kumar, Adv.

For Respondent (s) Mr. T.L.V.Iyer, Sr.Adv.
Mr. Sanjay R.Hegde, Adv.
Mr. Anil K.Mishra, Adv.

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

Heard learned counsel for the parties for about an hour.

The appeal is dismissed in terms of the Signed order.

There will be no order as to costs.

Anita

(Jasbir Singh)
Court Master

(Signed order is placed on the file.)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1979 OF 1998

M/S. MOTOR INDUSTRIES CO. LTD.

...

Appellant (s)

Versus

DY.COMMISSIONER OF COMMERCIAL TAXES & ORS.

...

Respondent (s)

O R D E R

This appeal is against the Order of the Karnataka High Court dated 28th August, 1997. Briefly stated the facts are:-

The Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1979 was amended on 1st May, 1992 by Ordinance No. 2 of 1992. This Ordinance substituted a schedule to this Act. Tax was now levied on certain goods which were earlier not being taxed. On 13th July, 1992, when the Legislative Assembly assembled, the Bill was introduced but was not passed.

Article 213 (2)(a) of the Constitution of India reads as follows:-

"An Ordinance promulgated under this article shall have the same force and effect as an Act of Legislature of the State assented to by the Governor, but every such Ordinance -

(a) shall be laid before the Legislative Assembly of the State, or where there is a Legislative Council in the State, before both the Houses, and shall cease to operate at the expiration of six weeks from the reassembly of the Legislature, or if before the expiration of that period a resolution disapproving it is passed by the Legislative Assembly and agreed to by the Legislative Council, if any, upon the passing of the resolution or, as the case may be, on the resolution being agreed to by the Council; and"

The Ordinance therefore ceased to operate on the expiration of six weeks from the date on which the Assembly assembled. Before this period was over, a Notification was issued on 30th July, 1992 and a Corrigendum was issued on 19th August, 1992.

On 28th August, 1992, Ordinance No. 10 of 1992 was promulgated. This Ordinance provided that it would be deemed to have come into force with effect from 1st May, 1992. Section 5 (2) of the Ordinance reads as follows:-

"(2) Notwithstanding such repeal anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Ordinance."

On 5th January, 1993 the Bill was passed by the Assembly and on 18th February, 1993 it was sent to the President for his assent. The President however gave his assent only on 6th September, 1994. The Act, being Act No. 3 of 1995, was published in the official Gazette on 23rd March, 1995. The Act provides that it shall be deemed to have come into force with effect from the 1st day of May, 1992. Section 5(2) of the Act reads as follows:-

"(2) Notwithstanding such repeal anything done or any action taken under the principal Act as amended by the said ordinance shall be deemed to have been done or taken under the principal Act as amended by this Act."

The Appellants filed a writ petition challenging the levy of tax between the period from 11th February, 1993 till the publication of the Act on 23rd March, 1995. They claimed that both Ordinance 2 of 1992 and Ordinance 10 of 1992 had lapsed by virtue of Article 213 (2) and that therefore there was no law in existence during this period which authorised levy of such tax. The writ petition was dismissed by the single Judge. The appeal has been dismissed by the impugned Judgment.

It has been contended that by virtue of Article 213 (2) of the Constitution of India, the Ordinance had lapsed and that as the Ordinance had lapsed, there was no power to levy taxes. It was urged that Section 5(2) of the Act only saves actions taken pursuant to the aforementioned Ordinances but does not validate the above-mentioned two Ordinances. It was submitted that if the Ordinances had themselves lapsed, the action taken pursuant thereto could not have been saved. It was submitted that in spite of the provisions of Section 5(2), the levy would be unauthorised. In support of the submission that there could be no saving, reliance was placed upon the case of Trust Mai Lachmi Sialkoti Bradri vs. The Chairman Amritsar Improvement Trust reported in (1963) 1 SCR 242. In this case a scheme for development of an area had been framed. In pursuance of that scheme the concerned property was sought to be acquired. The proposed acquisition was challenged on the ground that the power to frame the scheme was only in respect of a "damaged area". One of the questions before the Court was whether a Notification issued under the Punjab Damaged Areas Act, 1947 could accrue for the benefit of the scheme. The Punjab Damaged Areas Act, 1947 ceased to operate in 1949. Subsequently the Punjab Damaged Areas Act of 1949 had been enacted. Section 22 of the Punjab General Clauses Act saved any action taken pursuant to any Act which was repealed or re-enacted. This Court held that Section 22 did not save the Notification because the Punjab Damaged Areas Act, 1947 had neither been repealed

ed nor been enacted. This Court however was careful enough to observe that even temporary enactments could be repealed and/or re-enacted and if there was a repeal or re-enactment then the provision of Section 22 would apply. Thus, even though on facts this Court had held that there was no repeal or re-enactment, it was clarified that if there was an express provision then the earlier action could be saved.

Even otherwise, in our view, the argument cannot be sustained for the simple reason that the Karnataka Act 3 of 1995 has been given a retrospective effect from 1st May, 1992. Therefore, the position is as if this Act was always in existence from 1st May, 1992, Section 5 (2) is merely clarificatory in nature and saves all acts taken under the earlier ordinances by providing that they are deemed to have been done or taken under this Act. It is not disputed that Legislature could mandate retrospectively. This position is otherwise well settled by authorities of this Court in the cases of M/s. West Ramnad Electric Distribution Co. Ltd. Vs. The State of Madras and another reported in AIR 1962 SC 1753, M.K.Venkatachalam, I.T.O. And another vs. Bombay Dyeing and Mfg. Co. Ltd. reported in AIR 1958 SC 875 and Krishna Chandra Gangopadhyaya and Others vs. The Union of India and Others reported in (1975) 2 SCC 302. In view of the fact that this Act has been given retrospective effect, the entire submission that the ordinances had lapsed is of no consequence. Whatever taxes have been levied are now deemed to have been levied under this Act as it is in force from 1st May, 1992.

We, therefore, see no infirmity in the impugned Judgment. The Appeal stands dismissed. There will be no order as to costs.

.....J.

(S.N.Variava)

.....J.

(H.K.Sema)

New Delhi,
January 20, 2004.