

REPORTABLE

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S).10680-10683 OF 2011

M/S HIGH RANGE COFFEE CURING PVT.LTD. APPELLANT(S)

VERSUS

THE STATE OF KARNATAKA & ORS.ETC. RESPONDENT(S)

WITH

CIVIL APPEAL NO.10684 OF 2011

O R D E R

1. Heard counsel for the parties.
2. The opening ground urged by the appellant is that the High Court ought not to have entertained the appeals on merits without condoning the delay in filing of appeals. This argument though attractive at the first blush, does not take the matter any further as we find the delay was only of 71 and 283 days respectively and sufficient explanation has been offered by the respondent(s) which could be condoned in the interest of justice and we order accordingly.

3. The core issue raised in these appeals, in our opinion, is no more *res integra*. It has been answered in the decision of this Court in "*Malnad Areca Processing and Marketing Limited vs. Deputy Commissioner of Commercial Taxes (Assessment) and Others*", reported in (2008) 11 SCC 536.

4. This very Industrial Policy, 1996 was considered by the Court. The Court opined that the same provides for exemption only in respect of sales tax and not for purchase tax as such. The relevant discussion in this behalf can be discerned from paragraph Nos.15 to 19 of the said decision, which read thus:

"15. In the government order what is provided to new industrial units is the sales tax exemption or deferral of sales tax under the Act and the Central Sales Tax Act, 1956 (in short "the CST Act").

16. Clause 5 of the Government Order dated 15-3-1996 of the Industrial Policy, 1996-2001 provides for sales tax concession and incentives. The said clause provides for an option to industrial investments in the tiny/SSI/medium

and large-scale sectors to claim either sales tax exemption or sales tax deferral.

17. A sale and a purchase are two different aspects of the same transaction. Whether sale or purchase, it will have same ingredients, both in common law and also under the Sale of Goods Act. As stated by this Court in ***Devi Das Gopal Krishnan v. State of Punjab***<sup>1</sup>, the transaction, which the sales tax laws are concerned with, is a transfer of property in goods for price, inter vivos, both in the case of sale as well as purchase.

18. In the government order, what is provided to the new industrial units, is an option to claim sales tax exemption or deferment of sales tax both under the Act and the CST Act. In the field of taxation, it is recognized that the power to classify the objects or persons to be taxed or exempted from levy is with the legislature. It also enjoys the power to select persons or transactions. A law of the State, could therefore, levy tax both at the sale point and at the purchase point.

19. Under the government order, the policy of the Government as spelt out is, that tiny and small-scale industries and medium-and large-scale industries may exercise their option either for sales tax exemption or sales tax deferral for number of years prescribed in the government order itself. In the context in which these expressions are used, they only mean "sales tax holiday" or exemption from payment of sales tax for number of years specified, depending on where the tiny or small-scale industry is located. "Sales tax" refers to any tax which includes within its scope all "business of sale of goods" specified in the Schedule. Similarly, "sales tax deferral" only means the aforesaid industries are entitled to collect tax but they need not pay sales tax collected immediately to the State. If understood in this manner and thereafter the New Industrial Policy of the State Government for the years 1993-1998 and the exemption notification is looked into, the only conclusion that can be drawn is, what is exempted under the notification issued by the State Government is tax

leviable under Section 5 of the Act on the goods manufactured and sold by an industrial unit. Therefore, the notification is in no way in variance or contrary to the industrial policy for the years 1993-1998. the above position has been rightly highlighted by the High Court."

5. We are in agreement with the opinion as recorded in the aforesaid decision, that the Government Order No.CI 30 SPC 96 dated 15<sup>th</sup> March, 1996, namely, the Industrial Policy merely provides for sales tax concession and incentives and nothing more.

6. Counsel for the appellant was at pains to distinguish the judgment on the argument that it has only considered the situation covered under Section 6 of the Karnataka Sales Tax Act, 1957, whereas Section 5 of the Act deals with both sale as well as purchase, and purchase being the part of the same sale, the benefit under the policy concerned must be extended also for purchase, especially, because of the amendment to the policy by inserting the industry of the appellant in Appendix-IV. We are

not impressed by this submission.

7. The fact that the appellant/assessee's industry has been included or added in Appendix-IV does not mean that the substance of the policy has undergone any change. The purport of amendment is only to include more industries which were left out in the first notification of 15<sup>th</sup> March, 1996.

8. Counsel for the appellant had also placed reliance on the Constitution Bench decision of this Court in *Devi Das Gopal Krishnan (supra)*, in particular, paragraph 24, which reads as under:

"Bearing that in mind let us look at clause (ff) in Section 2 of the Principal Act in which the said clause was inserted. The ingredients of the definition of "purchase" are as follows : (i) there shall be acquisition of goods; (ii) the acquisition shall be for cash or deferred payment or other valuable consideration; (ii) the said valuable consideration shall not be other than under a mortgage, hypothecation, charge or pledge. Clause (h) of Section 2 defines thus :

"sale" means any transfer of property in goods other than goods specified in Schedule C for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge."

If we turn to the Sale of Goods Act, Section 4 thereof define contract of sale of goods. It reads :

"Contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price..."

The essential requisite of sale are (i) there shall be a transfer of property or agreement to transfer property by one party to another; and (ii) it shall be for consideration of money payment or promise thereof by the buyer. A sale and a purchase are different aspects of the same transaction. If we look at it from the standpoint of a purchaser it is purchase and if we look at it from the standpoint of the seller it is a sale. Whether purchase or sale it shall have the said ingredients both in common law and under the Indian

Contract Act. 'Price' has been defined in the Sale of Goods Act to mean money consideration for the sale of goods : see Section 2(10) of the Indian Sale of Goods Act. It will, therefore, be seen that the definition of "purchase" in the Act *prima facie* appears to be wider in scope than "sale". While transfer of goods from one person to another is the ingredient of "sale" in general law, acquisition of goods, which may in its comprehensive sense take in voluntary as well as involuntary transfers, is an ingredient of "purchase" in clause (ff). While "price", i.e., money consideration, is the ingredient of "sale", cash, deferred payment or any valuable consideration is an ingredient of 'purchase'. But a closer scrutiny compels us to give a restricted meaning to the expression "acquisition" and "price". Acquisition is the act by which a person acquires property in a thing. "Acquire" is to become the owner of the property. One can, therefore, acquire a property either by voluntary or involuntary transfer. But the Sales Tax Act applies only to

"sale" as defined in the Act. Under clause (ff) of Section 2 of the Act it is defined as a transfer of property. As purchase is only a different, aspect of sale, looked at from the stand point of the purchaser, and as the Act imposes tax at different points in respect of sales, having regard to the purpose of the sale, it is unreasonable to assume that the Legislature contemplated different categories of transactions when the taxable event is at the purchase point. Whether it is sale or purchase the transaction is the same. If it was a transfer *inter vivos*, in the case of a sale, it must equally be so in the case of a purchase. Context, consistency and avoidance of anomaly demand a restricted meaning. That it must only mean transfer is also made clear by the nature of the transactions excluded from the acquisition, namely, mortgage, hypothecation, charge or pledge-all of them belong to the species of transfer. We must, therefore, hold that the expression "acquisition" in clause (ff) of Section 2 of the Act means only "transfer".

9. The exposition in paragraph 24 of the stated decision extracted above itself recognizes the distinction between sale and purchase as different aspects of the same transaction. As observed in the case of *Malnad* (supra), the State can levy tax both at the sale point and/or at the purchase point. That distinction being clear, the question of assuming that the purchase tax was also part of the industrial policy under consideration cannot be countenanced. As a result, we find no reason to deviate from the view taken by the High Court in following the principle expounded in the decision of *Malnad* (supra).

10. The companion appeal, Civil Appeal No.10684 of 2011, again raises a technical plea regarding justness of exercise of jurisdiction by the High Court in recalling the entire decision dated 9<sup>th</sup> March, 2004 at the instance of the appellant, who had merely moved an application for recall/clarification of one sentence occurring in the said decision. The fact remains that the appellant, after recall of

the entire decision, participated in the appeal proceedings before the Division Bench and argued the matter on merits. As a result, this technical plea cannot be the basis to undo the entire judgment which otherwise is in conformity with the legal principle stated in the case of *Malnad* (supra).

11. Hence, these appeals must fail and the same are dismissed accordingly. All pending applications are also disposed of.

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

....., J.  
(DINESH MAHESHWARI)

NEW DELHI  
FEBRUARY 05, 2020

ITEM NO.101

COURT NO.7

SECTION IV-A

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

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VERSUS

THE STATE OF KARNATAKA &amp; ORS.

Respondent(s)

WITH

C.A. No. 10684/2011 (IV-A)

Date : 05-02-2020 These appeals were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.M. KHANWILKAR  
HON'BLE MR. JUSTICE DINESH MAHESHWARI

For Appellant(s) Mr. Yashraj Singh Deora, Adv.  
Ms. Shivangi Sud, Adv.  
Ms. Sonal Mashankar, Adv.  
For M/S. Mitter & Mitter Co., AOR

For Respondent(s) Mr. Basava prabhu S. Patil, Sr. Adv.  
Mr. V. N. Raghupathy, AOR  
Mr. Manendra Pal Gupta, Adv.  
Ms. Rachitha Hiremath, Adv.  
Ms. Rudrali Patil, Adv.

Mr. Joseph Aristotle S., AOR

Ms. Radha Rangaswamy, AOR

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

The appeals are dismissed and all pending  
applications are also disposed of in terms of  
the signed reportable order.

(NEETU KHAJURIA)  
COURT MASTER

(VIDYA NEGI)  
COURT MASTER

(Signed reportable order is placed on the file.)