VASAVADATTA CEMENTS ETC.

v.

STATE OF KARNATAKA AND ANOTHER

JANUARY 18, 1996

[S.C. AGRAWAL AND G.B. PATTANAIK, JJ.]

Sales Tax—Section 5(3-D) of Karnataka Sales Tax Act 1957—Cement sold in Containers-Packing material exigible to tax—Provisions similar to Section 6-C of the Andhra Pradesh General Sales Tax Act 1957—Interpretation—Sales Tax liability in such cases depends upon the facts of each case and intention of the parties.

The appellants are the manufacturers of cement and they supply cement either packed in plastic bags/gunny bags or loose to bulk consumers. They enjoyed the deduction in respect of packing charges from the taxable turnover. After the introduction of Sub-section (3-D) in Section 5 of the Karnataka Sales Tax Act 1957, packing material was made exigible to tax.

Appellants challenged the constitutional validity of the said Sub-Section by filling Writ petitions in the Karnataka High Court. The High Court dismissed the Writ petitions on the ground that the question raised is covered by the decision in *Ranganath Associates* v. *State of Karnataka,* ILR (1990) KAR 82 after taking note of the decision of the Supreme Court in *Rajsheel and Ors.* v. *State of Andhra Pradesh,* (1989) 74 STC 379. Hence this appeal.

Appellants contended that Section 5 (3-D) of the Karnataka Sales Tax Act 1957 is similar to Section 6-C of the Andhra Pradesh General Sales Tax Act 1957. Constitutional validity of Section 6-C was upheld by the Supreme Court in *Rajsheel* case, and that Karnataka High Court while deciding *Ranganath Associates* case, completely departed from the law laid down by the Supreme Court in *Rajsheel* case. They also contended that in *Rajsheel* case, this court held that the question as to the liability for sales tax would depend on the actual ingredients of the contract and intention of the parties which has to be determined in each case.

Allowing the appeal, this Court

A **HELD: 1.1 The High Court was in error in construing the provisions of Section 5 (3-D) of Karnataka Sales Tax Act to hold that the legislature has thought it fit and convenient to treat the sale of goods contained in a container as an integrated, single transaction of sale of the goods and that it makes it unnecessary to analyse the components of a particular sale and enter upon investigation to find out the real price at which the packing material is purported to have been sold, and separate it from the computation of the turnover regarding the particular goods which was packed in the packing materials or housed in the container. [757-E-F]**

B

Jamana Flour & Oil Mill (Pvt.) Ltd. **v.** *State of Bihar,* **[1987] 2 SCR 1048, referred to.**

C

1.2 The observations made by this court in *Rajsheel* **case are equally applicable to the present case involving construction of Section 5 (3-D) of the Karnataka sales tax Act, 1957. The liability for sale tax on the gunny-bags used for packing the cement sold by the appellants has to be considered having regard to the facts of each case after determining what are the ingredients of the contract and the intention of the parties in accordance with the decision of this court in** *Rajsheel* **case. [759-D]**

D

Union of India **v.** *Bombay Tyre International Ltd.,* **[1984] 1 SCR 347, referred to.**

E

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2084 of 1996 Etc.

From the Judgment and Order dated 7.12.90 of the Karnataka High Court in W.P. No. 20736 of 1986.

F

Harish N. Salve, C.K. Shashi and Kailash Vasdev for the Appellants.

T. Vishwanath Iyer, M. Veerappa and K.H. Nobin Singh for the Respondents.

G

The Judgment of the Court was delivered by

S.C. AGRAWAL, J. Special leave granted in both the special leave petitions.

H Both these appeals are directed against the judgment of the Kar-

nataka High Court dated December 7, 1990 in Writ Petitions (Writ Petitions Nos. 20736 and 21195 of 1986) filed by the appellants wherein they had assailed the constitutional validity of Section 5(3-D) of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as 'the Act'). By the impugned orders the said Writ Petitions of the appellants have been dismissed by the High Court on the ground that the question raised is covered by the decision in *Ranganatha Associates* v. *State of Karnataka,* ILR 1990 Kar. 82.

The appellants are manufactures of cement the price of which is controlled by the Cement Control Order, 1967 issued by the Central Government in exercise of the powers conferred by Section 18-G and Section 25 of the Industries (Development and Regulation) Act, 1951. The appellants supply the cement packed either in gunny bags or in plastic bags. They also sell the same loose to bulk consumers. Till April 1, 1986 the appellants were enjoying deduction in respect of packing charges from the taxable turn-over. After the introduction of sub-section (3-D) in Section 5 of the Act the packing material was brought within the purview of the Act and made exigible to tax. Section 5(3-D) of the Act provides as under :

"Section 5. Levy of Tax on Sale or Purchase of Goods.

(3-D). Notwithstanding anything contained in the Act where goods sold or purchased are contained in containers or are packed in any packing materials liable to tax under this Act, the rate of tax and the point of levy applicable to turn-over or such containers or packing materials, as the case may be, shall whether the containers or the packing materials have already been subjected to tax under this Act or not or whether the price of the containers or of the packing materials is charged separately or not, be the same as those applicable to goods contained or packed :

Provided that no tax under this sub-section shall be leviable if the sale or purchase of goods contained in such containers or packed in such packing materials is exempt from tax under this Act."

The said provision in Section 5(3-D) is comparable to similar provision contained in Section 6-C of the Andhra Pradesh General Sales Tax Act, 1957, which provides as follows :

A "*Section 6-C.* Notwithstanding anything in sections 5 and 6-A, where goods packed in any materials are sold or purchased, the materials in which the goods are so packed shall be deemed to have been sold or purchased along with the goods and the tax shall be leviable on such sale or purchase of the materials at the rate of tax, if any, as applicable to the sale, or, as the case may be, purchase of goods themselves."

In *Rajsheel & Ors.* v. *State of Andhra Pradesh & Ors.*, (1989) 74 STC 379, this Court has upheld the constitutional validity of the said provisions contained in Section 6-C of the Andhra Pradesh General Sales Tax Act, 1957, and, in that context, this Court has laid down :

"It is commonly accepted that a transaction of sale may consist of a sale of the product and a separate sale of the container housing the product with respective sale considerations for the product and the container separately; or it may consist of a sale of the product and a sale of the container but both sales being conceived of as integrated components of a single sale transaction: or, what may yet be a third case, it may consist of a sale of the product with the transfer of the container without any sale consideration therefor. The question in every case will be a question of fact as to what are the nature and ingredients of the sale. It is not right in law to pick on one ingredient only to the exclusion of the others and deduce from it the character of the transaction. For example, the circumstance that the price of the product and the price of the container are shown separately may be evidence that two separate transactions are envisaged, but that circumstance alone cannot be conclusive of the true character of the transaction. It is not unknown that traders may, for the advantage of their trade, show what is essentially a single sale transaction of product and container, or a transaction of a sale of the product only with no consideration for transfer of the container, as divisible into two separate transactions, one of sale of the product, and the other a sale of the container, with a distinct price shown against each. Similarly where pursuant to a transaction where there is no sale of the container and its return is contemplated, and in the event of its not being returned the security is liable to forfeiture. Alternatively, it may be a case where the container is sold and the deposit represents the consideration for the sale, and in the event

of the container being returned to the dealer the deposit is returned by way of consideration for the resale. In every case, the assessing authority is obliged to ascertain the true nature and character of the transaction upon a consideration of all the facts and circumstances pertaining to the transaction. That the problem almost always requires factual investigation into the nature and ingredients of the transaction has been repeatedly emphasised by this Court." [pp.384-85]

After referring to the decision this Court in *Jamana Flour & Oil Mill (P) Ltd.* v. *State of Bihar,* [1987] 2 SCR 1046, this Court has observed :

"It is, therefore, perfectly plain that the issue as to whether the packing material has been sold or merely transferred without consideration depends on the contract between the parties. The fact that the packing is of insignificant value in relation to the value of the contents may imply that there was no intention to sell the packing, but where any packing material is of significant value it may imply an intention to sell the packing material. In a case where the packing material is an independent commodity and the packing material as well as the contents are sold independently, the packing material is liable to tax on its footing. Whether a transaction for sale of packing material is an independent transaction will depend upon several factors, some of them being :

1. The packing material is a commodity having its own identity and is separately classified in the Schedule;

2. There is no change, chemical or physical, in the packing either at the time of packing or at the time of using the content;

3. The packing is capable of being reused after the contents have been consumed;

4. The packing is used for convenience or transport and the quantity of the goods as such is not dependent on packing;

5. The mere fact that the consideration for the packing is merged with the consideration for the product would not make the sale of packing an integrated part of the sale of the product."
[p. 387]

"Turning to section 6-C of the Act, it seems to envisage a case where it is the goods which are sold and there is actual sale of the packing material. The section provides by legal fiction that the packing material shall be deemed to have been sold along with the goods. In other words, although there is no sale of the packing material, it will be deemed that there is such a sale. In that event, the section declares, the tax will be leviable on such deemed sale of the packing material at the rate of tax applicable to the sale of the goods themselves. It is difficult to comprehend the need for such a provision. It can at best be regarded a provision by way of clarification of an existing legal situation. If the transaction is one of sale of the goods only, clearly all that can be taxed in fact is the sale of the goods, and the rate to be applied must be the rate as in the case of such goods. It may be that the price of the goods is determined upon a consideration of several components, including the value of the packing material, but none the less the price is the price of the goods. It is not open to anyone to say that the value of the different components which have entered into a determination of the price of the goods should be analysed and separated, in order that different rates of tax should be applied according to the character of the component (for example, packing material). What section 6-C intends to lay down is that even upon such analysis the rate of tax to be applied to the component will be the rate applied to the goods themselves. And that is for the simple reason that it is the price of the goods alone which constitutes the transaction between the dealer and the purchaser. No matter what may be the component which enters into such price, the parties understand between them that the purchaser is paying the price of the goods. Section 6-C merely clarifies and explains that the components which have entered into determining the price of the goods cannot be treated separately from the goods themselves, and that no account was in fact taken of the packing material when the transaction took place, and that if such account must be taken then the same rate must be applied to the packing material as is applicable to the goods themselves. We find it difficult to accept the contention of the appellants that a rate applicable to the packing material in the Schedule should be applied to the sale of such packing material in a case under section 6-C, when in fact there was no such sale of packing material and it is only by legal fiction, and for a limited purpose; that such sale can be con-

templated. In the circumstances, no question arises of section 6-C being constitutionally discriminatory, and therefore invalid." [p. 388] A

In *Ranganatha Associates* v. *State of Karnataka* (supra) a Division Bench of the Karnataka High Court, after taking note of the decision of this Court in *Raj Sheel & Ors.* v. *State of Andhra Pradesh & Ors.* (supra), has observed : B

"The principle behind Section 5 (3-D) seems to us, to be, that, a buyer bargains for the goods and pays the price in its entirety inclusive of the value of the packing material, whenever the goods are sold in a packed condition (or housed in a container); the consideration for the sale essentially, is the consideration for the goods, though, the price (i.e., the consideration) may have as a component of it, the price of the packing material (or of the container). This is not an irrelevant principle at all, if one considers the practical aspect of a trading transaction. Here under Section 5(3-D) the Legislature has thought it fit and convenient to treat the sale of goods contained in a container as an integrated, single transaction of sale of the goods; this levy makes it simpler the assessee to maintain his accounts, and convenient for the revenue to levy and collect the tax; it makes it unnecessary to analyse the components of a particular sale and enter upon investigation to find out the real price (i.e., genuine price) at which the packing material (or the container) is purported to have been sold, and separate it from the computation of the turnover regarding the particular goods (which was packed in the packing materials or housed in the container). C D E F

Simplicity of procedure and convenience of the tax collection are not irrelevant while considering the validity of a particular levy. Section 5(3-D) on the fact of it elevates the status of the container (or the packing material) to that of the goods dressed in it. Such a container/packing material is distinct from, another container/packing material which has not housed any goods." [pp. 852-53] G

The Karnataka High Court has also referred to the decision of this Court in *Union of Indian* v. *Bombay Tyre International Ltd.,* [1984] 1 SCR H

A 347, and has said :

> "A seller who sells the bottles only and the purchaser who purchases them as such, are not concerned with anything else, except the marketability of the bottles. But the person who sells liquor contained in a bottle, and a person who purchases such a liquor, is concerned with the liquor and its marketability; the payment of a price for the bottle in such a situation is part of the bargain for the sale and purchase of the liquor. In other words, the sale and purchase of the bottles, here, is incidental to and integrated with the sale and purchase of the liquor. This makes all the difference and for the purpose of the levy of sales tax, this distinction between the two types of sales which classify the dealers differently i.e., a trader who sells or purchases only bottles and another dealer who sells or purchases the bottles, because it contains the liquor, cannot be held as an arbitrary classification, bearing no nexus to the object of the Act. Such a classification, also, makes the levy and collection simpler reducing the area of disputes to the minimum; it also, prevents the dealers from resorting to tax evading mechanisation, while dealing in goods which are sold in containers or in packed condition by showing unrealistic prices for the container (or the packing materials) and the goods, so as to reduce the sales tax payable in a given case, i.e., if the sale of the goods attracts a higher rate of taxation, then, the dealers are likely to sell the goods for a lesser price and offset the reduction by increasing the sale price of the container. Section 5(3-D), thus, prevents the dealers from being tempted to resort to such a scheme of tax evasion. Taxation operates in the sphere of realities and a law levying a tax normally takes note of such realities. A hypothetical equality, is not the basis of Article 14 of the Constitution. Whenever, a distinction exists in reality, and such a distinction has a reasonable nexus with the object of the law, the distinction made by the law cannot be nullified as violative of Article 14 of the Constitution; every distinction made, is not an act of discrimination; a reasonable distinction is the product of a sound discretion."

Shri Harish M. Salve, the learned senior counsel appearing for the appellants, has not assailed the constitutional validity of the provisions of H Section 5(3-D) of the Act. He has confined his submissions to the inter-

pretation of the said provisions. The learned counsel has submitted that in *Ranganatha Associates* v. *State of Karnataka* (supra) the High Court was in error in departing from the law laid down by this Court in *Raj Sheel & Ors.* v. *State of Andhra Pradesh & Ors.* (supra). Shri Salve has urged that in view of the decision in *Raj Sheel & Ors.* v. *State of Andhra Pradesh & Ors.* (supra) in respect of provisions of Section 6-C of the Andhra Pradesh General Sales Tax Act, 1957, which are similar to the provisions contained in Section 5(3-D) of the Act, the question as to the liability for sales tax would depend on the actual ingredients of the contract and intention of the parties which has to be determined in each case.

Shri T.L. Vishwanath Iyer, the learned senior counsel appearing for the State, has, however, supported the decision of the Karnataka High Court and has placed reliance on the decisions of this Court in *Commissioner of Sales Tax, U.P.* v. *Raj Bharat Das & Bros.,* 1988 Vol. 71 STC 277 and *Ramco Cement Distribution Co. Pvt. Ltd.* v. *State of Tamil Nadu & Ors.,* 1993 Vol. 88 STC 151.

Having carefully considered the decision of the Karnataka High Court in *Ranganatha Associates* v. *State of Karnataka* (supra), we are of the view that the High Court was in error in construing the provisions of Section 5(3-D) to hold that the legislature has thought it fit and convenient to treat the sale of goods contained in a container as an integrated, single transaction of sale of the goods and that it makes it unnecessary to analyse the components of a particular sale enter upon investigation to find out the read price at which the packing material is purported to have been sold, and separate it from the computation of the turnover regarding the particular goods which was packed in the packing materials or housed in the container. The reasoning of the Karnataka High Court is similar to that of the Andhra Pradesh High Court in *Raj Sheel* v. *The State Andhra Pradesh,* (1987) 64 STC 398. In that case the Andhra Pradesh High Court was dealing with cases with of manufacturers of or dealers in beer as well as manufacturers of or dealers in cement who had challenged the constitutional validity of Section 6-C of the Andhra Pradesh General Sales Tax Act, 1957 on the ground that it was violative of Article 14 of the Constitution. While considering the constitutional validity of Section 6-C, the Andhra Pradesh High Court had examined the nature and characteristics of the transaction involving the sale of cement packed in the materials which are generally used for packing purposes for the sale of these goods in the market and had observed that in the sale of those goods the

A container are necessary concomitants and the transfer of property in the containers in favour of the purchaser of the contents is incidental or unavoidable and that such a sale transaction would be a composite and integrated sale of the containers and the contents and one is not divisible from the other and the transaction is understood by the seller and the purchaser as the sale of the contents in those containers. Having regard to
B the nature of the such transactions and the goods sold, the Andhra Pradesh High Court held that Section 6-C did not bring about any change in the legal position and that it was incorporated in the Andhra Pradesh General Sales Tax Act to obviate the possibility of different assessing authorities taking different views on the rate of tax exigible on the turn over and
C relating to packing material. The Andhra Pradesh High Court rejected the contention that by virtue of section 6-C the rate of tax applicable to the containers will vary according to the rate applicable to the contents and this would lead to arbitrariness and discrimination inasmuch as the same kind of containers would be subject to different rates of tax. The High Court held that when the content was sold with the container, both the
D dealer as well as the purchaser treated the transaction as the one involving the sale of the merchandise (the contents) only and the sale of the container, if any, would get merged in the sale of the content itself and thus it is always treated as a single transaction of sale of both the container and the content and the container whose identity pales into insignificance is identified with the content itself and the value of the container forms part
E of the consideration paid by the purchaser and it is one of the components of the sale price like the other components such as freight charges, excise duty, sales tax, etc.

This Court in *Raj Sheel & Ors.* v. *State of Andhra Pradesh & Ors.*
F (supra), however, did not approve the said view of the Andhra Pradesh High Court and, while allowing the appeals, observed :

> "In the appeals before us, we find that the High Court has proceeded on the assumption that the transactions are covered by trade practice and having regard to the nature of the goods it has
G inferred that what is charged is the price of the bottled beer or of cement packed in gunny bags, and reference has also been made to the excise law and the Cement Control Order requiring that the liquor or the cement, as the case may be, must be sold in bottles or in gunny bags respectively. We are constrained to observe that
H no attempt has been made by the tax authorities to ascertain the

facts of each case and to determine what were the actual ingredients of the contract and the intention of the parties. Assumptions have been made when what was required was a detailed investigation into the facts. We have indicated earlier the several possibilities which are open in cases of this kind, and how the ultimate conclusion can be vitally affected by the tests to be applied. Because of the lack of adequate and clear factual material, the High Court also was compelled to proceed on the basis of generalised statements and broad assumptions. We are unable, in the circumstances, to hold that the cases can be regarded as disposed of finally. It is regrettable but the cases must go back for proper findings on facts to be ascertained on fuller investigation." [pp. 388-89]

The said observations are equally applicable to the present case involving construction of Section 5(3-D) of the Act. The liability for sale tax on the gunny bags used for packing the cement sold by the appellants has to be considered having regard to the facts of each case after determining what are the ingredients of the contract and the intention of the parties in accordance with the decision of this Court in *Raj Sheel* case (supra).

In *Commissioner of Sales Tax, U.P.* v. *Rai Bharat Das & Bros.* (supra) and *Ramco Cement Distribution Co. Pvt. Ltd.* v. *State of Tamil Nadu & Ors.* (supra) there were findings of fact recorded by the authorities under the sale tax enactments and the decision was given in the light of the facts found. The said decisions have, therefore, no bearing on the matter in issue.

The appeals are therefore, allowed and the Writ Petitions filed by the appellants are disposed of with the direction that the liability of the appellants for sales tax under Section 5(3-D) on the gunny bags/plastic bags in which the cement manufactured by the appellants is packed for sale would have to be determined after investigation into the facts and determining what were the ingredients of the contract and the intention of the parties. The impugned order of the High Court dated December 7, 1990 would stand modified accordingly. But, in the circumstance, there is no order as to costs.

M.K. Appeal allowed.