

STATE OF U.P. AND ORS.

v.

M/S. MAHINDRA AND MAHINDRA LTD.

(Civil Appeal No. 3405 of 2011)

IN

Special Leave Petition (C) No. 2190 of 2008

APRIL 20, 2011

**[DR. MUKUNDAKAM SHARMA AND
ANIL R. DAVE, JJ.]**

Jurisdiction: Jurisdiction of courts to issue a mandate to legislate an Act and to make subordinate legislation in a particular manner – Scope of – Assessment order – Sales tax exemption not granted to respondent – Challenged – High Court held that the wordings of central excise notification be read into the sales tax notification issued by the State Government – Held: The exclusive domain of legislation is with the legislature – Subordinate legislations are framed by the executive – The judiciary has been vested with the power to interpret the said legislations and to give effect to them – It is always appropriate for each of the organs to function within its domain – It is inappropriate for the courts to issue a mandate to legislate an Act and to make subordinate legislation in a particular manner – In the instant case, High Court had directed the subordinate legislation to substitute wordings in a particular manner, thereby assuming to itself the role of a supervisory authority, which is not a power vested in the High Court – Exemption clauses should be strictly interpreted – Since High Court exceeded its jurisdiction in passing the said order and in issuing the directions for inserting certain additional words into notification of exemption issued by the Uttar Pradesh Government, the judgment by the High Court and also by the Tribunal are set aside – Matter remitted to the First Appellate Court for consideration afresh

A – Sales tax – Interpretation of statutes – Administrative law – Doctrines/Principles of separation of powers – Legislation.

B *Bhai Jaspal Singh and another v. Assistant Commissioner of Commercial Taxes and others* (2011) 1 SCC 39; *Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others* (2011) 1 SCC 236; *Novopan India Ltd. Hyderabad v. Collector of Central Excise and Customs, Hyderabad* 1994 Supp (3) SCC 606 – relied on.

C *Supreme Court Employees' Welfare Association v. Union of India and another* (1989) 4 SCC 187; *Bal Ram Bali and another v. Union of India* (2007) 6 SCC 805; *Municipal Committee, Patiala v. Model Town Residents Association and others* (2007) 8 SCC 669; *M/s. Narinder Chand Hem Raj and others v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and others* (1971) 2 SCC 747 – referred to.

Case Law Reference:

E	(1989) 4 SCC 187	referred to	Para 8
	(2007) 6 SCC 805	referred to	Para 8
	(2007) 8 SCC 669	referred to	Para 8
	(1971) 2 SCC 747	referred to	Para 8
F	(2011) 1 SCC 39	relied on	Para 10
	(2011) 1 SCC 236	relied on	Para 10
	1994 Supp (3) SCC 606	relied on	Para 10

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 3405 of 2011.

H From the Judgment & Order dated 12.12.2006 of the High Court of Judicature at Allahabad, Lucknow Bench Lucknow in Writ Petition No. 1760 of 1992.

Kavin Gulati, S.K. Dwivedi, Shail Kumar Dwivedi, Manoj Kumar Dwivedi, Gunnam Venkateswara Rao for the Appellants. A

Dhruv Agarwal, Praveen Kumar for the Respondent.

The following order of the Court was delivered

O R D E R B

1. Leave granted.

2. We have heard learned counsel appearing for the parties in this appeal, which is filed challenging the legality of the judgment and order passed by the Allahabad High Court in a writ petition filed by the respondent, praying for issuance of a writ of mandamus to read in the exemption notification, the words "Tractor Engine specifying Cubic Capacity (CC) of the Tractor Engine not exceeding 1800 CC. The Government of India had issued notification on 16th April, 1985, making an amendment in the notification of the Government of India in respect of the table annexed to the notification, inserting by way of substitution the words "Tractors of Draw-Bar Horse Power not exceeding 25". Another notification was subsequently issued by the Government of India on 17th July, 1985, substituting the words "Draw-Bar" with the words "Power Take-off Horse". Be it stated here that all such notifications relate to the payment of excise duty. C D E

3. The Government of Uttar Pradesh, however, for the purpose of levy of sales tax issued a notification on 12th September, 1986, in which it was stated that under Section 4 of the Uttar Pradesh Sales Tax Act, 1948, Tractors with Power Take-off Horse Power not exceeding 25 would stand exempted from payment of tax under the Sales Tax Act, subject, however, to the condition that the said tractors are exempted from payment of Central Excise Duty. F G

4. A show cause notice was issued to the respondent from H

A the Office of the Assistant Commissioner (Assessment)-I Sales Tax, Lucknow, stating therein that at the time of survey made, and as per the literature made available it was found that the horse power of the tractors of the respondent had been disclosed as 30 Horse Power. In the aforesaid show cause
 B notice it was stated that in view of the facts mentioned in the said notice, the respondent may submit a reply as to why the return filed by the respondent would not be rejected and a provisional assessment order for the period in question may not be completed under Rule 41(5) of the Rules.

C 5. Pursuant to the aforesaid show cause notice issued, a detailed reply was filed by the respondent. The Assessment Officer considered the entire records and, thereafter, by his order dated 21st March, 1992, passed an assessment order on the basis of the contents of the notification dated 12th
 D September, 1986, denying exemption from payment of sales tax to the tractors of the respondent.

E 6. After the aforesaid assessment order was passed, the respondent filed a writ petition before the Allahabad High Court with the following reliefs:

F "1. A Writ of certiorari or any other suitable Writ, Order of direction be issued to modify or amend, the notification so as to bring in conformity with the Central Government and conformity in respect of measuring strength or engine by all manufacturer as contained in Annexure-1 to this Writ
 G Petition.

H 2. A Writ of mandamus directing the Opposite Party No.2 to clearly state in the said notification the basis of exemption being cubic capacity of the Tractor Engine not exceeding 1800 CC for exemption for Sales Tax in place of 25 P.T.O.H.P., and directing the Opposite Party No.2 to exempt the petitioners, tractor engine and specify the C.C. (Cubic Capacity) of the Tractor engine not exceeding 1800 C.C. And bring it at Par with Circular No.89/87/CE

dated 01.03.1987 issued by Central Government to clear the anomaly and ambiguity in both the circulars, which creates discrimination among manufacturer of Fuel Efficient engines and rest ones, and refrain the Opposite Party No.2 to desist from recovering disputed Sales Tax of Rs.2,34,00,965.400 from April' 91 to Feb. 92 created by Annexure II dated 21.03.1991, and stay operation thereof."

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7. Interestingly, in the said writ petition there was no challenge to the assessment order passed. Be that as it may, the Division Bench of the Allahabad High Court proceeded to hear the aforesaid writ petition and by a detailed order passed held that since the Central Government has by notification dated 28th February, 1987, replaced the word 25 PTOHP by the word 1800 CC and thereby exempted the tractor having capacity not exceeding 1800 from Excise Duty, the same wordings, namely, Tractors with Power Take-off Horse Power not exceeding 25 should also be read as Tractors not exceeding 1800 CC, which would stand exempted from levy of Sales Tax. The aforesaid findings recorded by the High Court are under challenge in this appeal.

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8. The first contention of the counsel appearing for the appellant is that there is no power vested on the High Court to issue such a direction to the Executive to re-frame the subordinate legislation, and that therefore the High Court exceeded its jurisdiction by issuing such directions in a field where the High Court cannot and should not tread. In support of the said contention, the counsel has relied upon the decision of this Court in *Supreme Court Employees' Welfare Association v. Union of India and another* (1989) 4 SCC 187, *Bal Ram Bali and another v. Union of India* (2007) 6 SCC 805 and *Municipal Committee, Patiala v. Model Town Residents Association and others* (2007) 8 SCC 669 as also the decision in *M/s. Narinder Chand Hem Raj and others v. Lt. Governor, Administrator, Union Territory, Himachal Pradesh and others*

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A (1971) 2 SCC 747. Wherein this Hon'ble court held as follows:

B “The power to impose tax is undoubtedly a legislative power. That power can be exercised by the legislature directly or subject to certain conditions, the legislature may delegate that power to some other authority. But the exercise of that power whether by the legislature or by its delegate is an exercise of a legislative power. The fact that the power was delegated to the executive does not convert that power into an executive or administrative power. No court can issue a mandate to a legislature to enact a particular law. Similarly no court can direct a subordinate legislative body to enact or not to enact a law which it may be competent to enact. [945 F-G] Article 265 of the Constitution lays down that no tax can be levied and collected except by authority of law. Hence the levy of a tax can only be done by the authority of law and not by any executive order. Unless the executive is specifically empowered by law to give any exemption, it cannot say that it will not enforce the law as against a particular person. No Court can give a direction to a Government to refrain from enforcing a provision of law”.

9. In Supreme Court *Employees' Welfare Association v. Union of India and another* (supra), in paragraph 51, this Court stated as follows:

F “51. There can be no doubt that no court can direct a legislature to enact a particular law. Similarly, when an executive authority exercises a legislative power by way of subordinate legislation pursuant to the delegated authority of a legislature, such executive authority cannot be asked to enact a law which he has been empowered to do under the delegated legislative authority.

H 10. Within our Constitution, we have specifically demarcated the ambit of power and the boundaries of the three organs of the Society by laying down the principles of

separation of powers, which is being adhered to for carrying out democratic functioning of the country. So far as the legislation is concerned, the exclusive domain is with the legislature. Subordinate legislations are framed by the executive by exercising the delegated power conferred by the Statue, which is rule making power. The judiciary has been vested with the power to interpret the aforesaid legislations and to give effect to them since the parameters of the jurisdiction of both the organs are earmarked. Therefore, it is always appropriate for each of the organs to function within its domain. It is inappropriate for the courts to issue a mandate to legislate an Act and also to make a subordinate legislation in a particular manner. In this particular case, the High Court has directed the subordinate legislation to substitute wordings in a particular manner, thereby assuming to itself the role of a supervisory authority, which according to us, not a power vested in the High Court. It is also by now settled law that so far exemption clauses are concerned, there should be strict interpretation of the same as has been held by this Court repeatedly. Suffice will be to refer to very recent decisions of this Court in *Bhai Jaspal Singh and another v. Assistant Commissioner of Commercial Taxes and others* (2011) 1 SCC 39 and *Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and others* (2011) 1 SCC 236. We would also extract a passage from the decision of the Supreme Court in *Novopan India Ltd. Hyderabad Vs. Collector of Central Excise and Customs, Hyderabad*, reported at 1994 Supp (3) SCC at page 606, wherein this Court has held that:

“16.such a notification has to be interpreted in the light of the words employed by it and not on any other basis. This was so held in the context of the principle that in a taxing statute, there is no room for any intendment, that regard must be had to the clear meaning of the words and that the matter should be governed wholly by the language of the notification i.e. by the plain terms of the exemption.”

A 11. During the course of the arguments, it was also brought
to our notice that subsequent to the order of assessment, an
appeal was filed, which came to be dismissed, subsequent to
which a second appeal was filed before the Tribunal, which
allowed the appeal giving effect to the orders of the High Court.
B Since, in our considered opinion, the High Court exceeded its
jurisdiction in passing the aforesaid orders and in issuing the
directions for inserting certain additional words into notification
of exemption issued by the Uttar Pradesh Government, we set
aside the impugned judgment and order passed by the High
C Court and also the order passed by the Tribunal. As the Tribunal
had given effect to the order of the High Court, the order of the
Tribunal is hereby set aside. Even otherwise Courts can always
take notice of the subsequent events and developments that
had taken place subsequent to the filing of the writ petition or
D filing of the special leave petition and it is also within the
jurisdiction of this Court to pass consequential orders to give
effect to the remedies available to the parties. Considering
these facts and circumstances from the aforesaid angle, we
after setting aside the order passed by the High Court and also
E by the Tribunal as also by the First Appellate Court, remit back
the matter to the First Appellate Court to consider the matter
de novo taking into consideration the notification as existing
and which was issued on 12th September, 1986, and decided
the matter without making any addition/alternation thereto.

F 12. However, counsel appearing for the respondent has
submitted before us that it would be possible for the respondent
to prove and establish that the tractor manufactured by the
respondent is below 25 PTOHP. If certain exemption is
available on the factual aspect, such benefit must be provided
G to an assessee but that is possible only when the respondent
is able to prove and establish with cogent and reliable
materials that he is entitled to the benefit of the exemption
notification. Therefore, we allow the parties to lead additional
evidence before the appellate authority, which shall be allowed
H to be filed within four weeks from their date of appearance and,

thereafter, the appellate authority shall proceed to decide the matter de novo in the light of the records available and also in the light of the exemption notification. A

13. This appeal stands allowed to the aforesaid extent as indicated and leave the parties to bear their own costs. The parties shall appear before the appellate authority on 2nd May, 2011, for obtaining further dates in the appeal. We also request the appellate authority to take up the matter and dispose of the same as expeditiously as possible, preferably within a period of three months from the date of receipt of the additional evidence, if produced by the parties. B

D.G.

Appeal allowed.