

SUPREME COURT OF INDIA
RECORD OF PROCEEDINGS

C.A.No.4552/1998 M/S.SUNRISE ASSOCIATES

XVI Vs.GOV.T.OF NCT OF DELHI & ORS

(With Appl.(s) c/delay in filing synopsis/submissions and office report)

WITH

C.A.No.4553/1998

C.A.No.4554/1998 (With Office Report)

C.A.No.4555/1998 (With Office Report)

C.A.No.4556/1998 (With Office Report)

C.A.No.4557/1998 (With Office Report)

C.A.No.4913/1998 (With Office Report)

C.A.No.6256/1998 (With Office Report)

C.A.No.6257/1998 (With Office Report)

C.A.No.6258/1998 (With Office Report)

C.A.No.6259/1998 (With Office Report)

C.A.No.6260/1998 (With Office Report)

C.A.No.177/1999

(With Appl.(s) for Raising additional grounds and with office report)

C.A.No.178/1999 (with office report)

C.A.No.179/1999 (With Office Report)

C.A.No.2155/2000(with office report)

SLP(C)No.2469/2000

SLP(C)No.2473/2000

SLP(C)No.2614/2000

SLP(C)No.2617/2000

SLP(C)No.2507/2000

SLP(C)No.2841/2000

SLP(C)No.5225-5226/2000

SLP(C)No.5608/2000

SLP(C)No.11129/2000

SLP(C)No.11768/2000

(With Prayer for Interim Relief and Office Report)

W.P(C)No.33/2002 (With Office Report)

SLP(C)No.18466/2002 (with office report)

C.A.No.6893/2003

W.P(C)No.127/2005

SLP(C)No.16270/2001

SLP(C)No.6907/2002

SLP(C)No.17894/2002

(With Prayer for Interim Relief and Office Report)

Date: 23/8/2006 These matters were called on for hearing today.

CORAM:

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Appellant (s)

In CA 4552/98, Mr. Bhargava V. Desai, Adv.

4553 & 4554/98 Mr. Rahul Gupta, Adv.

In CA 4556/98 Mr. Devendra Singh, Adv.

In CA 4557/98 Mr. Sushil Kumar Jain, Adv.

In CA 4913/1998 Mr. Vinay Kumar Garg, Adv.

In CA 4555/1998, Mr. Hari Shankar K, Adv.

CA 6256-60/98,

SC 2469, 2473, 2614,

2617, 2507, 2841,

5225-5226 & 5608/2000

In CA 177-179/99, Mr. Yogesh Jagia, Adv.

SC 11129 & 11768/00 Mr. Rajesh Jain, Adv.

Mr. S.P. Sharma, Adv.

In CA 2155/00 Mr. Pradeep Misra, Adv.

In WC 33/2002 & Mr. S. Balaji, Adv.
WC 127/2005 Mr. K.V.Vijayakumar, Adv.

In SLP 18466/02 Mr. S.K. Bhattacharya,Adv.
Mr. L.K.Paonam,adv.

In CA 6893/03 Mr. Jay Savla,Adv.
Ms. Reena Bagga, Adv.

In SLP 16270/01 Mr. Randhir Chawla,Adv.
Mr. Padeep Tara, Adv.
Miss.Renu Saigal, Adv.
Mr. Praveen Kumar,Adv.

In SLP 6907,17894/02 Ms. Prasanthi Prasad,Adv.
Mrs. Padmavathy,Adv.

For Respondent(s) Mr. T.S.Doabia,Sr.adv.
Mr. S.W.A.Qadri,Ms.Rekha Pandey,
Ms.Asha G. Nair,Mr.MPS Tomar, Mr. D.S.Mahra,
Mrs Anil Katiyar,Advs.

In CA 4552/98 Mr. K.K. Mani,Adv.

In 4552/98 Mr. K.V. Vijayakumar,Adv

In WP33/02 Mr. T.Harish Kumar, Adv. for
& WP 127/05 Mr. Subramonium Prasad,Adv.

For State of Mr. Sanjay Kharade, Adv. for
Maharashtra Mr.R.K.Adsure,adv.
in 6893/03
Mr. Sanjay R. Hegde, Adv.

RR-Ex-Parte

UPON hearing counsel the Court made the following

O R D E R

CIVIL APPEAL NO. 4552 OF 1998, CIVIL APPEAL NOS. 4553-4557/1998, 4913/1998, 6256-6260/1998, 177-179/1999, CIVIL APPEAL NOS. 3643-3653 OF 2006 @ SLP(C) NO. 2469, 2473, 2614, 2617, 2507, 2841 5225-5226, 5608, 11129, 11768 OF 2000 & SLP 18466/2002 & WP Nos. 33/2002 & 127/2005

Leave granted in the special leave petitions.

The Appeals are allowed and disposed of in terms of the signed order leaving the parties to bear their own costs.

The writ petitions are allowed and disposed of in terms of the signed order.

Civil Appeal Nos. 6893/2003, 2155/2000, SLP 16270/2001, 6907/2002 & 17894 of 2002

In these cases, the appellants/petitioners have challenged the legislative competence of the State Legislature to impose sales tax on transfer of Replenishment Licence (for short 'REP Licence') or the Duty Entitlement Passbook (for short 'DEPB') which has replaced the REP licences on the ground that transfer of these licences was not sale of 'goods'. This issue along with the tax on sale of lottery tickets was referred to a Constitution Bench in the case of Sunrise Associates vs. Govt. of NCT of Delhi. The Constitution Bench in

its judgment reported in (2006) 5 SCC 603 has held that the sale of lottery

could not be taxed as the same was not 'goods'. The judgment in H.Anraj vs.

Government of Tamil Nadu (1986) 1 SCC 414 relying upon which the tax on sale

of lottery tickets was imposed was overruled. In so far as the transfer of DEPB

or REP licences is concerned, the Constitution Bench left it open as this did

not form part of the referral order. It was observed in para 29 as follows:

of "It is necessary at this stage to clarify that the order reference in Sunrise v. NCT Delhi is limited to the question whether lottery tickets are "goods". We have not been called upon to answer the question whether REP licences (or the DEPB which has replaced the REP licences) are "goods". Although we have heard counsel at length on this, having regard to the limited nature of the reference, we do not decide the issue. The decision in Vikas Sales (1996) 4 SCC 433 was referred to only because it approved the reasoning in H.Anraj (1986) 1 SCC 414 and not because the referring court disagreed with the conclusion in Vikas Sales that REP licences were goods for the purposes of levy of sales tax. Indeed REP licences were not the subject-matter of the appeal before the referring court and could not have formed part of the reference. The only question we are called upon to answer is whether the decision in H.Anraj that lottery tickets are goods for the purposes of Article 366(29-A) (a) of the Constitution and the State sales tax laws, was correct."

The Constitution Bench did not overrule the decision of the three

Judge Bench in Vikas Sales(supra), relying upon which the High Court

dismissed the writ petitions filed by the appellants/petitioners. Counsel for

the appellants/petitioners contend that though the Constitution Bench did not overrule the decision in Vikas Sales but the reasoning adopted by the Vikas Sales which had approved the reasoning in H.Anraaj case has been impliedly overruled. They contend that since the reasoning adopted in Vikas Sales has been overruled, the ratio of the judgment in Vikas Sales has been impliedly overruled. The judgment in Vikas Sales has been rendered by a three Judge Bench.

Sitting in a Bench of two Judges, it would not be appropriate for us to say one way or the other as to whether the judgment in Vikas Sales has been impliedly overruled or not. In view of this , Registry is directed to place these matters before the Hon'ble the Chief Justice of India for appropriate orders to place these matters before a Bench of three Hon'ble Judges.

(Parveen Kr. Chawla)

Court Master

(Kanwal Singh)

Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4552 OF 1998

M/s Sunrise Associates

..Appellant

Versus

Govt. of NCT of Delhi & Ors.

..Respondents

WITH

CIVIL APPEAL NOS.4553-4557/1998, 4913/1998, 6256-
6260/1998, 177-179/1999, CIVIL APPEAL NOS.3643-3653
OF 2006 @ SLP(C) NO.2469, 2473, 2614, 2617, 2507,2841
5225-5226, 5608, 11129, 11768 OF 2000 & SLP
18466/2002

O R D E R

Leave granted in the special leave petitions.

As the common point is involved in all these appeals,
these appeals are disposed of by a common order.

For the sake of convenience, the facts are taken from
Civil Appeal No. 4552 of 1998.

Writ petitioner-appellant herein, hereinafter referred to as
the appellant, filed writ petition in the High Court of Delhi seeking a
declaration that provisions of Section 4(1)(cc) of the Delhi Sales Tax
Act, 1975 (for short 'the Act') as inserted by the Delhi Sales Tax
(Second Amendment) Act, 1994 w.e.f. 2.1.1995 are void and
unconstituional being beyond the legislative competence of the State
Legislature. Appellant also prayed for quashing of the notice under
Section 23(6) of the Act calling upon them to show cause as to why
the penalty be not imposed for their failure to secure registration and
as to why the best judgment assessment be not framed against them
for the period 1990-91 onwards for their failure to file the returns.

The High Court of Delhi by the impugned judgment has

dismissed the writ petition and summed up the various contentions raised before it in para 82 of the judgment as under:

"(i) Lottery tickets are 'goods' within the meaning of clause (g) of Section 2 of Delhi Sales Tax Act, 1975 and are susceptible to tax as any other goods under clause (d) until 2.1.1995 and under clause (cc) of sub Section (1) of S.4 of the Delhi Sales Tax Act w.e.f. 2.1.1995.

ii) The levy of sales tax on sale of lottery tickets does not suffer from any infirmity for want of constitutional amendment akin to insertion of Clause 29(A) in Art. 366 of the Constitution; also the levy cannot fail for want of any principle or machinery laid down either by the Act or rules framed thereunder enabling separate valuation of two components of the lottery tickets. No such separate valuation is called for.

(iii) Under Art. 239(AA) of the constitution, the Legislative Assembly of NCT of Delhi is competent to insert by amendment Clause (cc) in DST Act, 1975. The amendment is intra vires the legislative authority of Delhi Legislative Assembly.

(iv) There is no repugnancy between the provisions of Delhi Sales Tax (Second Amendment) Act, 1994 and the provisions of Delhi Sales Tax Act, 1975.

(v) Levy of Sales Tax on lottery tickets cannot be defeated by reference to the doctrine of desuetude.

(vi) Contemporanea expositio rule of interpretation of statutes does not assist the petitioners in supporting the plea that the lottery tickets are not goods.

(vii) The Delhi Sales Tax (2nd Amendment) Act, 1994 and the notices under Section 23 (6) of DST Act issued pursuant thereto are neither vitiated by malafides nor are void.

(viii) The impugned levy of tax @ 20% on sale of lottery tickets is neither arbitrary nor discriminatory.

(ix) The present judgment cannot be made to operate prospectively merely (i.e. made effective from the date of its pronouncement)."

Being aggrieved, appellant has filed the present appeal by grant of special leave.

The appeals were referred to a Constitution Bench in view of the conflict noticed between two sets of cases. The Constitution Bench pronounced its judgment on 28th April, 2006 and the same is reported in (2006) 5 SCC 603. It has been held therein that the tax could be levied on the right to participate in the draw which was taken to be the 'goods' but not on the chance to win which was held to be an actionable claim. The decision in H.Anraj vs. Government of Tamil Nadu (1986) 1 SCC 414 was specifically overruled prospectively with effect from the date of the judgment. It was held that the distinction

sought to be drawn in H.Anraj's case (supra) between the chance to win and the right to participate in the draw was unwarranted. It was further held that there was no sale of 'goods' within the meaning of Sales Tax Acts of the different States but at the highest a transfer of an actionable claim. That lottery tickets are not 'goods' and as per the provisions of the Sales Tax Act, tax is to be levied on the sale of 'goods' only.

While explaining the principle of prospective overruling, a Constitution Bench of this Court in the case of Somaiya Organics (India) Ltd. vs. State of U.P. & Another reported in (2001) 5 SCC 519, in para 41 observed as follows:

".....It is declared that the vend fee realised by the States is not to be refunded to the appellants and, at the same time, the State cannot collect any vend fee for the period prior to 25-10-1989 or thereafter notwithstanding that notices of demand may have been issued or recovery proceeding initiated...."

Concurring with the view expressed in para 41, Hon'ble Mrs. Justice Ruma Pal explained the effect of prospective overruling in para 46 in the following terms:

"The argument of the appellant proceeds on a misunderstanding of the effect of prospective overruling. As has been

elaborately stated in my learned brother's judgment, by prospective overruling the court does not grant the relief claimed even after holding in the claimant's favour. In this case, the Court held that the statutory provision imposing vend fee was invalid. Strictly speaking, this would have entitled the appellant to a refund from the respondents of all amounts collected by way of vend fee. But because, as stated in Synthetics (1990) 1 SCC 109 decision itself, over a period of time imposts and levies had been imposed by virtue of the earlier decision and that the States as well as the petitioners and manufacturers had adjusted their rights and their positions on that basis, this relief was denied. The Court did not, by denying the relief, authorise or validate what had been declared to be illegal or void nor did it imbue the legislature with competence up to the date of the judgment."

to mean that neither the State will be liable to refund the tax, already collected nor collect any further tax for the period prior to the date of the judgment.

Following this judgment, in a similar case, this Bench dismissed Civil Appeal No. 24 of 2001 on 27th July, 2006 filed by the State of U.P. & Another against Sugal & Damani.

In view of above, these appeals are accepted and the impugned judgment of the High Court is set aside. It is declared in

terms of the Constitution Bench Judgment that the sale of lottery tickets does not involve sale of 'goods' and there is no sale of 'goods' within the meaning of Delhi Sales Tax Act (Second Amendment) 1994 and the same is declared to be void and unconstitutional. It is clarified that neither the State will be liable to refund the tax, already collected nor collect any further tax for the period prior to the date of the judgment. Notice under Section 23(6) of the Act issued by the respondents is hereby quashed.

The Appeals are disposed of in the above terms leaving the parties to bear their own costs.

Writ Petition (C) Nos.33 of 2002 and 127 of 2005

The present Writ Petitions have been filed challenging the legislative competence of the State Legislature of Tamil Nadu to impose sales tax on the sale of lottery tickets. A Constitution Bench of this Court in the case of M/s Sunrise Associates vs. Govt. of NCT of Delhi & Others (2006) 5 SCC 603 has held that there could be no tax on the sale of lottery tickets.

In view of this, Entry 43 of Part-B of the First Schedule to the Tamil Nadu General Sales Tax Act, 1959 introduced by TNGST (Amendment Act 1987 of 96) w.e.f 17.9.1996 levying 4% sales tax on the first sale of lottery ticket is void and ultra vires and beyond the legislative competence of the State Legislature. This would be operative prospectively. Neither the State will be liable to refund the

tax, already collected nor collect any further tax for the period prior to the date of the judgment.

The Writ Petitions are allowed and disposed of in the above terms.

.....J.

[ASHOK BHAN]

NEW DELHI;

.....J.

AUGUST 23, 2006.

[MARKANDEY KATJU]