
(1969) 10 KAR CK 0004

In the Karnataka High Court

Case No : S.T.R.P. No"s. 30, 31, 32 and 39 of 1968

A. Misrimal Jain and Co. and Others

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 15-10-1969

Acts Referred:

Madras Turnover Rules — Rule 17

Mysore Sales Tax Act, 1957 — Section 12 A, 34, 5 (5A)

Citation : (1970) 2 MysLJ 386 : (1971) 28 STC 137

Hon'ble Judges : G.K. Govinda Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; E.S. Venkataramaiah and Dodda Kalegowda, for the Respondent

Judgement

Govinda Bhat, J.—These are four sales tax revision petitions raising common questions of law.

2. In order to appreciate the contentions urged on behalf of the petitioners, it is necessary to set out the material facts which are not in dispute. The petitioners are dealers in cloth. Sale of cloth was charged to sales tax under the Mysore Sales Tax Act, 1957, hereinafter called the "Act", at the rates specified in the Second Schedule of the Act. In 1957, pursuant to an agreement between the State and Central Governments, the former exempted from sales tax articles on which additional excise duty is levied by the latter Government. The Mysore Sales Tax Act, 1957, was accordingly amended. The levy of additional excise duty on the cloth manufactured in India came into force on 14th December, 1957. On 14th December, 1957, the petitioners held stocks of cloth which did not suffer additional excise duty. On the sale of cloth made during the period 14th December, 1957, and 31st March, 1958, out of the said stock, the Commercial Tax Officers levied sales tax as per assessment orders made on different dates. Against the said orders, the petitioners preferred revision petitions to the Deputy Commissioner of Commercial Taxes who in all the cases except in the case of the

petitioner in S.T.R.P. No. 39 of 1968 set aside the assessment orders and remanded the matter to the Commercial Tax Officers for disposal afresh.

3. In the meantime, the levy of sales tax on sales of cloth held in stock on 14th December, 1957, was challenged before this court in Writ Petition No. 368 of 1961. In the said writ petition disposed of on 21st August, 1963, it was held that section 5(5-A) as it then stood did not authorise the levy of sales tax on stock of cloth held by dealers on 14th December, 1957. On 6th September, 1963, the Government of Mysore published a Bill for amendment of the Act. One of the amendments proposed was the amendment of section 5(5-A). The object of the said amendment, inter alia, was to ensure that tax was realised on the sale of cloth held in stock on 14th December, 1957, notwithstanding the judgment of this court. That Bill became law on 27th February, 1964, by the enactment of Mysore Act No. 9 of 1964. Act No. 9 of 1964 appropriately amended with retrospective effect section 5(5-A) so as to levy sales tax on the sale of cloth held in stock on 14th December, 1957, which had not suffered additional excise duty. Section 34 of the said amending Act further provided for validation of the earlier assessments made on the sales of cloth.

4. Though the Bill to amend the Act has been published on 6th September, 1963, the Commercial Tax Officers to whom the matters had been remanded by the Deputy Commissioner of Commercial Taxes, made fresh assessment orders exempting the turnovers relating to sale of cloth held in stock on 14th December, 1957. In the case of the petitioners in S.T.R.P. Nos. 30, 31 and 32 of 1968, the said orders were made on 23rd November, 1963. In the case of the petitioner in S.T.R.P. No. 39 of 1968, the Deputy Commissioner of Commercial Taxes himself in revision made the order on 27th September, 1963, exempting the turnover. Consequent on the orders exempting the turnovers from tax, the petitioners were granted refund of the taxes paid by them earlier.

5. On 29th November, 1967, the Deputy Commissioner of Commercial Taxes, in exercise of the powers u/s 21 of the Act, revised the assessment orders made in the case of the petitioners in S.T.R.P. Nos. 30, 31 and 32 of 1968 and levied tax on the turnover of cloth which had been exempted earlier. In the case of the petitioner in S.T.R.P. No. 39 of 1968, the Deputy Commissioner made an order on 30th January, 1968, under rule 38 of the Mysore Sales Tax Rules, hereinafter called the "Rules" rectifying the mistake made by him earlier. As a result of the orders made either u/s 21 of the Act or rule 38 of the Rules, the petitioners were called upon to pay the tax on the sale of cloth held in stock on 14th December, 1957. Against the said orders, the petitioners preferred appeals to the Mysore Sales Tax Appellate Tribunal which by a consolidated order made on 8th April, 1968, dismissed the appeals. Aggrieved by the said order, the petitioners have preferred the above four revision petitions before this court.

6. In support of the revision petitions, the petitioners' learned counsel Sri Katageri urged two grounds. The first ground was that these are cases of escaped turnovers and they could be assessed only within a period of five years

from the expiry of the year to which the tax relates and since all the orders were made beyond the period of five years from 31st March, 1958, the revised orders were illegal. The second ground was that the revised assessment orders exempting the sale of cloth and the consequent refund orders have all been validated by section 34 of Act 9 of 1964.

7. Re. GROUND No. 1. - The impugned orders in S.T.R.P. Nos. 30, 31 and 32 of 1968 were made u/s 21 which empowers the Deputy Commissioner of Commercial Taxes to call for and examine the records of any orders passed under the Act by a Commercial Tax Officer subordinate to him and against which no appeals have been preferred to him for the purpose of satisfying himself as to the legality or propriety of such Orders and pass such orders with respect thereto as he thinks fit. Sub-section (3) of section 21 of the Act fixes the period of limitation within which the revisional powers can be exercised. It was not contended by the learned counsel for the petitioners that the Deputy Commissioner of Commercial Taxes had passed the orders beyond the period of limitation provided under sub-section (3) of section 21. It was also not contended that the order made under rule 38 of the Rules in the case of the petitioner in S.T.R.P. No. 39 of 1968 was made beyond the period of five years provided under the said rule.

8. The argument of the learned counsel for the petitioners was that these are cases of escaped turnover which could be brought to assessment only u/s 12-A of the Act. This argument is clearly untenable. The turnovers in dispute in all the four revision petitions were brought to tax in the first instance. The said turnovers were exempted by the subsequent orders made following the judgment of this court in W.P. No. 368 of 1961. Mysore Act 9 of 1964 amended the Act with retrospective effect levying tax on the turnovers in dispute. By the fiction of law, the said amendment is deemed to have been present in the statute book even when the original assessment orders were made. In *State of Kerala Vs. Shri M. Appukutty*, the Supreme Court had occasion to consider the scope of the revisional powers and the power to assess escaped turnover under the Madras General Sales Tax Act and the Turnover Rules made thereunder. Section 12 of the Madras Act conferred revisional jurisdiction while rule 17 of the Turnover Rules conferred the power to assess escaped turnover. Section 21 of the Act corresponds to section 12 of the Madras Act. Section 12-A of the Act corresponds to rule 17 of the Madras Turnover Rules. It was urged before the Supreme Court on behalf of the assessee that section 12 contains the totality of the powers of the Deputy Commissioner and the power to assess the escaped turnover was merely incidental to the power of revision and may be exercised only when revisional jurisdiction u/s 12 was invoked under that section. Dealing with the said argument, the Supreme Court observed that the power to assess escaped turnover does not arise out of the revisional jurisdiction and in exercising revisional jurisdiction the Deputy Commissioner would be restricted to the examination of the records for determining whether the order of assessment was according to law while rule 17 conferred power to assess the escaped

turnover which may normally be exercised on matters de hors the record of assessment proceedings before the Deputy Commercial Tax Officer. It was held that the revisional jurisdiction was distinct from the power to assess escaped turnover.

9. In the instant case, the disputed turnovers were before the assessing authorities when the original assessment orders were made. The turnovers had not escaped assessment but they were exempted from tax following the decision of this court. The Act having been amended by the Mysore Act No. 9 of 1964 with retrospective effect, the assessment orders made exempting the disputed turnovers were clearly illegal and the Deputy Commissioner of Commercial Taxes rightly exercised his powers of revision or rectification of mistakes apparent on the record. Therefore, the first ground urged by the learned counsel for the petitioners fails.

10. Re. GROUND No. 2. - The second ground urged by the learned counsel for the petitioners rests on section 34 of the Mysore Act 9 of 1964 and therefore it is necessary to set out its provisions. Section 34 reads thus :

"34. Validation. - Anything done or action taken or purported to be done or taken (including any notices or orders issued, or assessments, payments, recoveries or refunds made, and all proceedings held for the levy or collection of tax or amount purported to have been collected by way of tax) under the principal Act before the commencement of this section shall, notwithstanding any judgment, decree, or order of any court or tribunal, be deemed to have been validly done, taken, issued, made or held, and shall have effect for all purposes as if it had been done, taken, issued, made or held by or under the provisions of the principal Act as amended by sections 5, 10, 11(1) and 14 of this Act and accordingly no suit or other legal proceeding shall be entertained or continued in any court or tribunal on the ground that any such thing was done or action taken under or in pursuance of provisions which were invalid or not in force at that time."

11. The argument of the learned counsel for the petitioner was that the object of section 34 was to maintain the status quo and not to disturb the orders of assessment and refunds made following the decision of this court in W.P. No. 368 of 1961. He urged that the revised assessments and refunds have all been validated and they are deemed to have been validly done. Therefore, it was not open to the Deputy Commissioner of Commercial Taxes to revise the assessment orders.

12. As observed by the Supreme Court in *The State of Bombay Vs. Pandurang Vinayak Chaphalkar and Others*, , when a statute enacts that something shall be deemed to have been done, which in fact and truth was not done, the court is entitled and bound to ascertain for what purposes and between what persons the statutory fiction is to be resorted to and full effect must be given to the statutory fiction and it should be carried to its logical conclusion. The purpose of the

amending Act 9 of 1964 was to ensure that tax payable on the sale of cloth held in stock on 14th December, 1957, was realised and for that purpose sub-section (5-A) of section 5 was amended with retrospective effect. Section 34 further validated the invalid assessment orders made on the assumption that sub-section (5-A) of section 5 of the Act as it stood before the amendment empowered the levy of tax. When this court held in W.P. No. 368 of 1961 that sub-section (5-A) of section 5 did not levy a charge on the sale of cloth held in stock on 14th December, 1957, there were many assessment orders made levying tax on the sale of such cloth. As a result of the validation of such assessments which section 34 does, all those orders are deemed to have been validly done. Where the assessments had been made but taxes were not paid, it was not open to the assessees to contend that the assessment orders were invalid. Where the tax had been paid, it was not open to the assessees to claim back the taxes paid on the ground that the taxes had been illegally levied. By virtue of the validation, the assessment orders and also the refund orders made are deemed to have been validly done under the Act as amended by Act 9 of 1964. But that does not mean that if the assessment orders were open to revision or rectification under the provisions of the Act, such revision or rectification could not be done. If the argument of the learned counsel for the petitioners is accepted as valid, it would follow that an assessee cannot prefer any appeal or revision in the manner provided under the Act against the assessment orders validated by section 34 of the Act. Let us suppose a case where there is dispute as to the turnover of cloth sold by the dealer or there is dispute as to the rate of tax. In both cases, the dealers cannot appeal if the argument that the assessment orders validated cannot be revised or corrected is accepted as correct. All that section 34 means is that assessments and refunds made in proceedings for levy and collection of tax shall be deemed to have been validly made under the provisions of the Act as amended by Act 9 of 1964. Without revising the orders, the authorities under the Act could not have demanded the tax refunded on the ground that the refund was made under any mistake. As stated earlier, the object of the amendment was not to exempt from tax sales of cloth held in stock on 14th December, 1957, but to realise the tax on such sales. It could not be the intention of the Legislature to collect the tax from some dealers and exempt others. That object is clear from the fact that sub-section (5-A) of section 5 has been amended with retrospective effect and assessments made prior to the amendment on the basis that sale of cloth held in stock on 14th December, 1957, was chargeable to tax, have been validated. Therefore the second ground also fails.

13. In the result, these revision petitions fail and are dismissed. In the circumstances, no costs.

14. Petitions dismissed.