

(2010) 07 KAR CK 0056
In the Karnataka High Court
Case No : S.T.R.P. No. 98 of 2009

Ashoka Creations Pvt. Ltd.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 16-07-2010

Acts Referred:

Citation : (2011) 43 VST 120

Hon'ble Judges : N. Kumar, J;B.V. Nagarathna, J

Bench : Division Bench

Advocate : R.V. Prasad with K. Hema Kumar for Vasan Associates, for the Appellant; T.K. Vedhamurthy, High Court Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

N. Kumar, J.—This revision petition is directed against the order passed by the Karnataka Appellate Tribunal confirming the findings recorded by the authorities holding that the petitioner is liable to pay purchase tax u/s 6 of the Karnataka Sales Tax Act, 1957 (for short, hereinafter referred to as, "the Act").

2. The petitioner is a dealer registered under the provisions of the Gujarat Sales Tax Act, 1969 and also under the provisions of the Central Sales Tax Act, 1956. The registration certificate produced as annexures K and L discloses that he is carrying on the business as "re-seller". Further it is disclosed that he is carrying on the business of re-sale of ball bearing copper wire. He is not registered as a dealer under the Karnataka Sales Tax Act, 1957. In pursuance of the notice of sale of assets of M/s. Powerflow Ltd., Bangalore, issued and published in the Economic Times dated September 3, 2003 by the official liquidator attached to the High Court of Karnataka, the petitioner made a bid. The petitioner was declared the successful bidder for the plant and machinery by virtue of an order passed by this court in O. L. R. No. 89 of 2004 confirming the sale of machinery which was handed over to the petitioner on March 13, 2004. The sale certificate dated March 13, 2004 came to be issued stating that the plant and machinery was sold for a consideration of Rs. 101 lakhs to the petitioner. The sale of goods

was effected by the official liquidator who sold the property of M/s. Powerflow Ltd., which has gone into liquidation. Therefore, the official liquidator was not a dealer as defined u/s 2(1)(k) of the Act and he could not have collected any sales tax. Accordingly, it was not so done.

3. A notice was issued to the petitioner calling upon him to get himself registered as a non-residential dealer and pay tax on the aforesaid purchase. In reply to the same, it was contended by the petitioner that as he was not carrying on any business in the State of Karnataka, there was no necessity to get himself registered as a dealer under the Act. As the purchase of the aforesaid machinery was only a solitary transaction he was not liable to pay tax and therefore, he denied payment of tax. The assessing authority considered the aforesaid objections and held that the petitioner being a dealer, had not registered under the Act though he had purchased from an unregistered dealer and the machinery in question had not suffered tax u/s 5 of the Act and was therefore liable to pay tax u/s 6 of the Act. Aggrieved by the said order, the assessee preferred an appeal before the Joint Commissioner of Commercial Tax who upheld the order of the assessing officer and dismissed the appeal. Aggrieved by those two orders, the assessee preferred an appeal before the Karnataka Appellate Tribunal, Bangalore. The Appellate Tribunal after considering various decisions cited by the petitioner in support of his case came to a conclusion that section 9 of the Act is attracted. The goods after purchase were transferred outside the State of Karnataka. It had not suffered tax in Karnataka as the machinery was transferred outside Karnataka other than by way of sale. Section 6(2) squarely applied to the case of the petitioner and therefore, it dismissed the appeal. Against these concurrent findings, the petitioner is before this court.

4. The learned counsel for the petitioner assailing the correctness of the impugned orders contended that for application of section 6, the essential ingredients to be satisfied is that, the goods should have been purchased in the course of business of the dealer, then, section 6 is attracted. On the other hand, section 6 has no application to a case of solitary transaction and in support of this contention he relied upon various judgments of the apex court and held that when admittedly the transaction in question being a solitary transaction, section 6 is not attracted and therefore, these three authorities have committed a serious error in not properly understanding and appreciating the true purport of section 6 of the Act and therefore, he submits that the order requires to be set aside.

5. We have heard the learned counsel for the parties. The short question that arises for consideration in this appeal is as to, whether the purchase by the petitioner is in the course of his business or not.

6. The law on the point is fairly well-settled. In this context, it is relevant to peruse the observations made by the honourable Supreme Court in the case of State of Gujarat v. Raipur Manufacturing Co. Ltd. reported at (1967) 19 STC 1, wherein their Lordships have observed as follows (page 1 in 19 STC) :

Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into a profit motive...

7. The honourable Supreme Court of India in its judgment rendered in the case of Manipur Administration Vs. M. Nila Chandra Singh, has held as under :

The definition in clause 2(a) shows that before a person can be said to be a dealer it must be shown that he carries on business of purchase or sale or storage for sale of any of the commodities specified in the Schedule, and that the sale must be in quantity of 100 Mds. or more at any one time. The requirement is not that the person should merely sell, purchase or store the foodgrains in question, but that he must be carrying on the business of such purchase, sale, or storage; and the concept of business in the context must necessarily postulate continuity of transactions. It is not a single casual or solitary transaction of sale, purchase or storage that would make a person a dealer. If this element of continuity is ignored, it would be rendering the use of the word "business" redundant and meaningless.

8. Further, another Bench of the honourable Supreme Court by placing reliance on the decision cited supra, has in the case of State of Uttar Pradesh and another Vs. M/s. Gulshan Sugar and Chemicals Ltd.,, has observed as under :

7. The High Court held the respondent not to be a dealer for two reasons : (i) it does not carry on the business of sale or storage for sale; and (ii) it being a consumer of coal, it would not be a dealer because of what has been mentioned in the last part of the definition of dealer. The contention of the appellant before the High Court that carrying on business of sale, etc., is not necessarily to be regarded as a dealer because of the expression "in conjunction with" finding place in the definition, was rejected by the High Court. According to us, this expression as placed in the definition clause cannot mean that to become a dealer one need not carry on business, because mention has been made about "in conjunction with" to make it clear that carrying on of business may be either separately or along with some other business; but business it has to be.

8. The High Court, in taking the view it did, has referred to the decision of this court in Manipur Administration Vs. M. Nila Chandra Singh, in which, while interpreting the meaning of the word business as finding place in Manipur Foodgrains Dealer Licensing Order, it was held that mere selling of articles or storing of the same would not make it a business, as this concept postulates continuity of transaction. It was stated that a casual solitary transaction would not make a person a dealer. There being nothing on record to show if there was continuity in transactions of sale of coal dust or rejected coal by the respondent, we agree with the High Court that the respondent was not in the business of sale or storage for sale of coal. What has been stated in the concluding part of the definition of "dealer" also lends assurance to the view taken by the High Court.

9. Another Bench of the honourable Supreme Court in its judgment rendered in the case of State of Tamil Nadu Vs. Thiru Murugan Brothers, has stated hold as under (page 413 in 68 STC) :

(ii) that, however, since the respondent was a dealer in publicity material who had been constrained to part with the unfinished film, it was a solitary transaction, neither in the course of the respondent's business nor with a profit-motive. The transaction, having taken place in 1963, did not fall within the restricted scope of the definition of "business" as contained in section 2(d) of the Act, before amendment in the year 1964, and was, therefore, not liable to tax under the Act.

10. A three-judge Bench of the honourable Supreme Court in its decision rendered in the case of The Sole Trustee, Lok Shikshana Trust Vs. The Commissioner of Income Tax, Mysore, has enunciated as under (pages 243 and 244 in 101 ITR) :

9. It is true that there are some business activities like mutual insurance and co-operative stores of which profit-making is not an essential ingredient, but that is so because of a self-imposed and innate restriction on making profit in the carrying on of that particular type of business. Ordinarily profit-motive is a normal incident of business activity and if the activity of a trust consists of carrying on of a business and there are no restrictions on its making profit, the court would be well justified in assuming in the absence of some indication to the contrary that the object of the trust involves the carrying on of an activity for profit. The expression "business", as observed by Shah J. speaking for the court in the case of State of Gujarat Vs. Raipur Manufacturing Company Ltd., though extensively used in taxing statutes, is a word of indefinite import. In taxing statutes, it is used in the sense of an occupation, or profession which occupies the time, attention and labour of a person, normally with the object of making profit. To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive, and not for sport or pleasure. Whether a person carries on business in a particular commodity must depend upon the volume, frequency, continuity and regularity of transactions of purchase and sale in a class of goods and the transactions must ordinarily be entered into with a profit-motive. By the use of the expression "profit-motive" it is not intended that profit must in fact be earned. Nor does the expression cover a mere desire to make some monetary gain out of a transaction or even a series of transactions. It predicates a motive which pervades the whole series of transactions effected by the person in the course of his activity. In the case of The Commissioner of Income Tax, Punjab Vs. The Lahore Electric Supply Co., Sarkar J., speaking for the majority, observed that business as contemplated by section 10 of the Indian income tax Act, 1922, is an activity capable of producing a profit which can be taxed. In the case of the appellant-trust the activity of the trust, as already observed earlier, has in fact been yielding profits and that apparently accounts for the increase in the value of

its assets.

11. Further, in the case of Director of Supplies and Disposals, Calcutta Vs. Member, Board of Revenue, West Bengal, Calcutta, the honourable Supreme Court was of the opinion that (page 405 in 20 STC):

... To regard an activity as business there must be a course of dealings, either actually continued or contemplated to be continued with a profit-motive; there must be some real and systematic or organised course of activity or conduct with a set purpose of making profit...

12. There cannot be any quarrel in respect of the aforesaid legal proposition. A single, casual or a solitary transaction of sale or purchase would not make a person a dealer within the meaning of the Act. But in the instant case, it is an admitted fact that the petitioner is a dealer who is duly registered in the State of Gujarat both under the Central Sales Tax Act as well as under the Gujarat State Act. The registration certificate discloses that nature of business of the petitioner is re-sale of machinery, in particular, ball bearing and copper wire. Therefore, the petitioner is a dealer carrying on the business of re-sale of certain items of machine. Such a dealer has come to Karnataka State and has purchased used machinery in an auction sale. After such purchase, he has despatched the same to the State of Gujarat. In the aforesaid judgments of the apex court what has been stated is that, if a person purchases machinery as a solitary instance, the said purchase would not make him a dealer. But in the instant case the facts are that the petitioner is a dealer who is dealing in purchase and sale and re-sale of the used machinery has purchased the machinery in question. Therefore, he cannot be said to be a person who has made a solitary purchase. The purchase which he has made may be solitary, in the sense, that for the first time, within the State of Karnataka he has made the purchase. But he is a regular dealer carrying on the business of resale of machinery parts. He has made the purchase in the course of his business though not carried on in Karnataka, but certainly carried on in Gujarat. In no judgment of the apex court is stated that he must carry on regular business as a dealer in the State where he has purchased the machinery. In that view of the matter, when once it is clear from the material on record that the petitioner is a registered dealer in the State of Gujarat dealing in re-sale of used machinery and if he has come to Karnataka and purchases used machinery and transferred it to the State of Gujarat, it is only in the course of his business and for carrying on business for which he has obtained registration both under the Central Sales Tax Act and Gujarat Sales Tax Act. The Karnataka Sales Tax Act in its definition of "dealer" in section 2(1)(k) of the Act includes a non-resident dealer within the scope of the said definition. The petitioner is in fact a non-resident dealer within the meaning of the said Act and therefore, he is liable to pay tax. It is not a case of solitary transaction as contended by the petitioner. In that view of the matter, all the three authorities on proper appreciation of the factual aspects of the case keeping in mind the legal position, have rightly held tax is payable u/s 6(2) of the Act. Therefore, we do not see any infirmity in the

order passed by the Appellate Tribunal which calls for interference and therefore, the petition is rejected at the stage of admission itself.