

(1985) 11 KAPT CK 0001
In the Karnataka Appellate Tribunal
Case No : STA No. 851/1983

Ashraf B.M. and Co.,

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 26-11-1985

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 6

Citation : (1987) 31 KarLJ 60

Hon'ble Judges : P. B. Chougule, D.J.M.; K. M. ShettyCTM, J

Judgement

Sri K.M. Shetty, C.T.M.-The only question for our decision in this appeal is whether the purchases of fish oil made from URD's by the appellant and sold to an exporter are liable to tax under Section 6 of the KST Act 1957? The facts in brief are as under: During the period from 1-9-1978 to 31-8-1979, the appellant purchased fish oil of Rs. 3,32,856-00 and empty barrels of Rs. 44,314-00 from URD's and sold fish oil worth Rs. 4,31,775-00 to an exporter against declarations in Form H under Section 5(3) of the CST Act 1956 and used the barrels for packing the fish oil. The purchase of barrels were taxed under Section 6 and accepted by the appellant. Sales of fish oil inter-State are Rs. 2,759-00 and locally Rs. 28,200-00 which are taxed. The Commercial Tax Officer, I Circle, Mangalore, while finally assessing the appellant for the year 1978-79 on 20-4-1981 did not levy tax under Section 6 on the purchase of fish oil from the URD's and sold to an exporter. Here, the learned Deputy Commissioner of Commercial Taxes (Administration), Mangalore Division, Mangalore, in SMR order No. 66/82-83 dated 16-6-1983 revised the assessment under Section 21 (2) of the said Act and ordered levy of tax under Section 6 on the corresponding purchases of fish oil of Rs. 3,03,000-00 holding that sales falling under Section 5(3) of the CST Act 1956 are not sales inside the State in order to be eligible for an exemption under Section 6. Therefore, the appellant is now before us in this appeal.

2. Sri P.V. Aithala, the learned Advocate for the appellant, argued that the fish oil was sold to M/s. Kalbhavi Venkat Rao & Bros, Mangalore, for the purpose of

export against prior order of a foreign buyer, that the Commercial Tax Officer has exempted the purchase turnover on the strength of H Forms, that the sales in the course of export are in fact local sales as per Explanation 3 to the definition of "sale" available in Section 2(1)(t) of the KST Act, that the Madras High Court decision in the case of M/s. Taxtool Company Ltd., (1978) 42 STC 78 is applicable to the case of the appellant in which it was held that certain sales to a buyer at Calcutta for the purpose of export through Cochin port are inter-State sales and those exported from Madras are local sales, the goods having moved from Coimbatore to Madras within the State of Tamil Nadu, that as per Madras High Court decision in the case of M/s. P.P.M. Tangaiah (1980) 46 STC 67 it was held that "Section 7-A (similar to Section 6) will not be attracted if there is a local sale in the State under the provisions of the Act" and "the fact that such local sale occasioned the export and was therefore not chargeable to tax under the Act would be irrelevant." Sri T.V. Sathyaprakash, the learned State Representative for the State, rightly contended that the Commercial Tax Officer has never considered the question of the taxability of the relevant URD purchases, that he has granted exemption only on the sales under Section 5(3) of the CST Act, that the taxable event has started the moment the goods are purchased from URD's, that there is no local sale involved but the sale falls in the course of export falling under Section 5(3) of the CST Act 1956 and that the Madras High Court decision in the case of M/s. Ponnusaw Mills (1980) 45 STC 291 is squarely applicable to the case in which it was held that an exporter purchasing certain goods from agriculturists and exporting them to foreign countries would be liable to tax under Section 7-A of the Tamil Nadu General Sales Tax Act as the exception is only in favour of a transaction in the course of inter-State trade and commerce and export sale is not such a sale.

3. We have considered the rival contentions. The Madras High Court decision relied on by the learned Advocate for the appellant was rendered on 19-11-1979 and the decision relied upon by the learned State Representative for the State is dated 22-11-1979, the Division Bench consisted of the Judges in both the cases. Both the judgment relate to periods prior to 1-4-1976 when sub-Section (3) was inserted in Section 5 of the CST Act 1956 and the facts are same in both the cases. We rely on the later decision in M/s. Ponnusaw Mills case (1980) 45 STC 291.

4. Section 6 of the KST Act authorises the levy of tax on certain purchases from URD's under certain conditions and in case of resale of the goods no purchased, the exceptions provided are only when the goods are sold inside the State or in the course of the inter-State trade and commerce when the tax is payable on the respective sales. In case, the goods are consigned for sale outside the State or stock is transferred to another State after purchase from URD's purchase tax is attracted. So also when the goods are consumed in the manufacture of other goods for sale. The further exceptions to Section 6 are provided in the proviso (i) and (ii) relating to declared goods and mentioned in the II Schedule, both in respect of which the purchase tax is not attracted in case the goods have already

been subjected to tax. Thus, an over-all reading of the provisions of Section 6 would indicate that the dealers should buy the goods from registered dealers only in order to ensure proper accounting of the transactions and in case the purchases are made from the URD's, tax at one stage should be realised. Therefore, with respects to Their Lordships of Madras High Court, we are unable to subscribe to their views in 46 STC 67 that a local "taxable"" sale is not visualised but a local sale occasioning export would also fall within the terms "sale in the State" appearing in Section 7-A of the Tamil Nadu General Sales Tax Act similar to Section 6 of the KST Act. We may also state that, strictly speaking, the sales in the course of inter-State trade and commerce and the sales in the course of export are completed within the particular State as per Section 4 of the CST Act and the State has no power to levy tax on such sales. The Central Sales Tax Act takes over that function. Therefore, the inter-State sales and export sales are outside the purview of the State Act. Coming to the case of the appellant, though the sale to the exporter may be completed in Mangalore, the sale fall in the course of export and cannot be said to be a local sale under the KST Act. Therefore, the purchases of fish oil from the URD's by the appellant will be liable to tax under Section 6. Of course, the Madras High Court observed in Ponnusaw Mills case (the later decision 45 STC 291) as under:

"We may make it clear that the present judgment will not in any manner affect the question of the liability to tax or otherwise with reference to the amendment made by Central Act 103 of 1976."

5. We, therefore, hereby dismiss the appeal.