
(1983) 05 KAR CK 0009
In the Karnataka High Court
Case No : WP. 9671-74/78

Bagalkot Udyog Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-05-1983

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 11

Citation : (1983) 2 KarLJ 363

Hon'ble Judges : K. S. Puttaswamy, J

Judgement

1. Bagalkot Udyog Ltd., formerly called as Bagalkot Cement Company Ltd., a public limited company incorporated under the Indian Companies Act with its registered office at Bombay is the common petitioner in these cases. Among others, the petitioner is engaged in the business of manufacturing and selling cement from its factory situated at Bagalkot Town Bijapur District, Karnataka State. The petitioner is a registered dealer under the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the KST Act) and the Central Sales Tax Act, 1956 (hereinafter referred to as the CST Act) on the file of the Commercial Tax Officer, Bagalkot (hereinafter referred to as the CTO or the Assistant Commissioner, Commercial Taxes, (Assessments), Belgaum (hereinafter referred to as the AC).

2. Between the period from 1.1.1969 to 31.3.1972 the petitioner had appointed Bharat Overseas P. Ltd. (hereinafter referred to as the Bharat) and Shree Rishabh Investment Ltd. Calcutta, (hereinafter referred to as the Rishabh) for different periods as its sole selling agents of cement manufactured and sold at its Bagalkot factory on the terms and conditions set out in separate but substantially identical agreements entered into with them on different dates.

3. Clause 11 of the agreements entered into between the petitioner and Bharat or Rishabh as the case may be, which alone is material for these cases reads thus;

"11. That the agent shall be responsible to collect State or Inter-state sales tax

and other local and State Government taxes as may be leviable from persons to whom cement is sold on behalf of the manufacturer and pay the same to the Government concerned in accordance with law. They shall also discharge all liabilities devolving upon them as "Dealers" and/or "Sole Selling Agents under various Sales Tax Acts and Rules. The Manufacturer will not be liable to reimburse to the Agent any amount paid or incurred by the Agent by way of sales tax or other local taxes."

Under this clause, Bharat and Rishabh had obliged themselves to pay sales tax due to the State of Karnataka under the KST and the CST Acts.

4. In conformity with the agreements entered into with the petitioner and otherwise, Bharat and Rishabh who were also dealers within the meaning of the term "dealer" occurring in S. 2 (k) of the KST Act and S. 2 (b) of the CST Act, were also registered dealers on the file of the CTO, the AC or some officer under the said Acts. 5. During the aforesaid period, the petitioner, Bharat and Rishabh filed, their respective returns for different periods under the Acts either before the CTO, the AC or the other officer. In its returns the petitioner disclosed the sales made by it either to Bharat or Rishabh and claimed exemption from payment of sales tax on those sales. So also Bharat and Rishabh filed their separate returns inter-alia including the purchases or sales made by the petitioner to either of them and accepted their liability for taxes before the assessing authorities.

6. At all times from 1.1.69 to 31.3.1972 the Cement Control Order promulgated by the Central Government in exercise of the powers conferred on it by the Essential Commodities Act, 1955 regulating the sale, releases and supplies was in force.

7. On an examination of the returns filed by the petitioner, the A.C. by 7 separate and distinct orders dated 29.7.74 (Ex. "L" Series) completed the assessments for different periods against the petitioner allowing the exemptions claimed by it inter alia noticing that Bharat and Rishabh had filed their returns and had paid the taxes due thereon also. So far as Bharat, assessments under the KST Act have been completed and the taxes due thereon have also been paid. But on the returns filed by Bharat under the GST Act, assessments are stated to have not been completed so far, for reasons that cannot be gathered from the memo filed or the records placed before the Court. Notwithstanding the same, Bharat has paid a sum of Rs. 9,29,425-60 P as advance tax on the inter-State sales (vide Memo dated 13.4.83). So far as Rishabh, the assessments under the KST and the CST Acts have been completed and a sum of Rs. 22,01,409.-84p is stated to be due from it towards the balance of taxes (vide Memo dated dated 13.4.83) and that efforts made, by the Department for the recovery of the aforesaid amount with penalties imposed thereon have so far proved abortive.

8. On 18.7.1977 the AC issued a notice under S. 11 of the Act to the petitioner

calling upon it to pay the amounts specified in that notice and the same reads thus:

"No. AC/ASSTS/B-538/77-78

Office of the Assistant Commissioner of Commercial Taxes (Assessments)
Belgaum. Dated 18th July 1977.

Re: Payment of K.S.T. and C.S.T. during the year 1969-70, 1970-71 and 1971-72
by your agent Rishabh Vanijya, Bagalkot.

NOTICE u/s 11 of K.S.T. ACT, 1957. It is seen from the R. C. Records of M/s. Rishabh Vanijya Bagalkot, now residing at New Delhi that they have been acting as selling agents during the year 1969-70, 1971-72 and 1972-73. As such the liability to pay tax on the sale of cement during the said years as shown was with your agent.

K.S.T.

Rs. C.S.T.

Rs.

1969-70

1970-71

1971-72 9469.85

308195.47

310999.79 52,798.24

-

-

But the said collection of tax from your agent is however not realised.

In accordance with the contemplation of Section 11 of K.S.T. Act 57 the Principal has to claim exemption on his sale through agent only after exhausting the burden that the taxes are duly paid by the agent. In other words, the failure to adduce proof should result in payment of taxes by the principal himself. Hence it is proposed to proceed with actions for collection of the above said taxes along with the penalty accruing till 31.12.71 as shown below:

1969-70

1970-71

1971-72 Rs. 5385-75

Rs. 40066-53

Rs. 40430-00

Your objections, if any, should reach this office within ten days from the receipt of this notice, failing which action will be taken as per provisions of law which please take note of.

Sd/- (V.T. Upadhye)

Asst. Commissioner of Comml. Taxes (Assessments)

Belgaum

To

M/s. Bagalkot Udyog Ltd. Bagalkot

In response to that notice, the, petitioner filed a detailed reply on 22.8. 1977 (Ex-M) denying its liability to pay the aforesaid amount on the various grounds stated therein. But, instead of passing a final order on that reply the AC issued a further notice on 29.10.77 (Ex-M) to the petitioner calling upon it to pay the amounts detailed therein for the reasons stated therein which reads thus:

"REGD. A.P.

No. AC/Assts/ST/B-1150/77-78

Office of the Assistant Commissioner of Commercial Taxes (Assessments),
Belgaum.

Dated 28th October 77.

To

The Bagalkot Udyog Ltd.,

Bagalkot.

Sub: Recovery of Sales Tax dues-Reg.

Ref: Your reply to this office notice u/s. 11.

"In continuation of the notice issued for recovery of tax in lieu of following payment of the same amount by the then agent M/s. Rishabh Vanijya Bagalkot.

1969-70

to

1972-73 K.S.T.

Penalty

C.S.T.

Penalty Rs. 7,76,246-90

Rs. 90,309-73

Rs. 21, 60,697-44

Rs. 3,78,331-78

Total -----

Rs. 34,05,545-35

I am to write that the objections raised in your reply at reference above is not considerable. The, reference to so called contract entered into by the firm with the agent is in nature of contravening the provisions enunciated in K.S.T. Act, 57. Any terms and conditions entered into in the contract that contravene the provisions of the state Act become void and it cannot be defence any more. Further there is no provision in the K.S.T. Act 57 suggesting that terms and conditions in contracts should be considered as a precedent to Section 11 of the K.S.T. Act, 57. As such it can be said that the principal firm cannot escape payment of tax in case of the Agent failing to do so, on the pretext that according to the contract the liability is on the Agent. As per the provision of Sec. 11 of K.S.T. Act the liability of payment of tax by the Agent is co-extensive with that of the principal and vice versa. The contracts and terms therein of a Company that contravene the provisions of the State Act 57 has to get obliterated and the actions taken according to the provisions of the State Act, under the circumstances as prevailing now, requires to be treated as legal.

In view of the above, it is decided to afford a final opportunity, before proceeding to Court of Law as to make good the aforementioned amount of Tax and Penalty.

Sd/-

Asst. Commissioner of Comm.

Taxes (Assessments) Belgaum."

Even to this notice or demand, the petitioner filed its further objections on 21.11.1977 (Ex-M) before the AC and thereafter the AC even afforded a personal hearing to the petitioner. But, very curiously, the AC does not appear to have followed up the same to its logical conclusion and does not appear to have passed his final orders so far and has virtually abandoned those proceedings.

9. But when the above matters were pending before the AC or so, Commercial Tax Officer (Audit) of the Commercial "Taxes Department (hereinafter referred to as the Auditor) Examined the papers and submitted his report thereto to the Commissioner of Commercial Taxes (hereinafter called the Commissioner) who is the Head of the Department. On an examination of the report of the Auditor and the records, the Commissioner on 3.7.1978 wrote to the Deputy Commissioner of Commercial Taxes, Belgaum Circle, Belgaum (hereinafter called the DC) suggesting him to initiate proceedings either under S. 21 or under S. 25A of the Act. That letter and the report of the Auditor annexed to the same read thus:

"No. RVN. 62/78-79.

Office of the Commissioner of Commercial Taxes,
Karnataka, Vanijya Therige Karyalaya",

Bangalore, dated: 3.7.1978.

To

The Deputy Commissioner of Commercial Taxes, Belgaum Division,
Belgaum.

Sir

Sub: Karnataka Sales Tax Act, 1957 Recovery of arrears of tax under Karnataka Sales Tax and Central Sales Tax Acts due from M/s. Rishabh Vanijya-Regarding.

The enclosed records relating to the recovery of arrears of tax under Karnataka Sales Tax and Central Sales Tax Acts due from M/s. Rishabh Vanijya may please be perused. They disclose the following facts:

(i). Bagalkot Udyog, Bagalkot, who produce cement, appointed one Rishabh Vanijya as its sole selling agent during the period between 1.4.1970 and 24.7.1972. Rishabh Vanijya was also registered dealer, assessed by the Assistant Commissioner of Commercial Taxes (Assessments), Belgaum. It seems to have fallen into arrears of tax under Karnataka Sales Tax and Central Sales Tax Acts. Rishabh Vanijya appears to have wound up its affairs in Karnataka State and is presently said to be head quartered at Delhi with some properties in Bombay. Revenue Recovery Certificates issued to the revenue authorities at Delhi and Bombay for execution against the defaulting dealer have not proved effective.

(ii) The Assistant Commissioner of Commercial Taxes (assessments) has, taking a view that in view of Section 11 of the Karnataka Sales Tax Act, 1957 the agent (Rishabh Vanijya) was not different from the principal (Bagalkot Udyog Limited), issued notice to Bagalkot Udyog Limited to pay up the arrears" of tax owed by Rishabh Vanijya.

(iii) Bagalkot Udyog has contested the correctness of the interpretation placed on Section 11 by the Assistant Commissioner of Commercial Taxes and argued that it was not responsible for the arrears of tax due from Rishabh Vanijya.

(iv) In the meanwhile, the Commercial Tax Officer (Audit) during his audit has observed that neither the principal nor the agent has paid taxes on the transactions effected by Bagalkot Udyog through its sole-selling agent Rishabh Vanijya. He therefore, suggested, vide his Audit Enquiry No. 98 (Extract enclosed), to reopen the relevant assessments of the principal (Bagalakot Udyog) in order to cancel exemptions granted to it on the turnover effected through its above agents.

(v) The suggestion of the Commercial Tax Officer (Audit) seems to be very correct. Under proviso to Section 11 of the Karnataka Sales Tax Act, 1957 the principal can be exempted on the turnover effected by him through an agent only if he proves that the agent has paid the tax on the said transactions. While assessing and exempting Bagalkot Udyog in this regard, obviously such proof has not been called for and verified. On this ground the assessments made on the principal can be said to suffer from illegality and impropriety warranting action under Section 21 of the Karnataka Sales tax Act, 1957.

(vi) You are, therefore, requested to call for the relevant assessment records of Bagalkot Udyog Limited under Karnataka Sales Tax and Central Sales Tax Acts for the years in question, and initiate action under Section 21 to cancel the exemption granted to it on the transactions effected through the agent (Rishabh Vanijya) who has not paid taxes on the said transactions. If, however, action under Section 21 is barred by time, the assessing officer may be asked to initiate if limitation permits, action under Section 25-A on the ground that exemption granted to the principal without proof of payment of taxes by the agent was a mistake discernible from the records.

(vii) As large amounts of tax are involved you are requested to see that no time is lost in initiating proper action within time. I request you to please make detailed report under a D.O. letter on the action taken by you in this regard within two weeks from the date of receipt of this letter.

Yours faithfully,

Sd/-

(A. Mohandas Moses).

Commissioner of Commercial Taxes.

"A.E. No. 98

Shri Rishabh Vanijya of M/s. Rishabh Investment Ltd., Bagalkot-period of Assessment.

While calculating the penalty u/s S. 13 (2), it is noticed that the assessee is a dealer registered with effect from 2.2.70 both under K.S.T. as well as C.S.T. Act, 1956.

The assessee has acted as selling agent on behalf of M/s. Bagalkot cement Factory, Bagalkot. Assessment for the following period have been concluded as detailed under:

K.S.T. upto 31.12.1976

No. Period Tax Penalty By whom Assessed

1. 1.2.70 to 31.3.70 9,469-83 5,385-75 ACCT, Dharwad.

2. 1.4.70 to 31.3.71 3,08,195-47 40,066-53 ACCT, Bellary
3. 1.4.71 to 31.3.72 3,10,999-79 40,430-00 ACCT, Dharwad.
4. 1.4.72 to 31.3.73 1,47,581-61 4,487-45 ACCT, Dharwad.
7,68,246-90 90,369-73

CST

It is noticed from the assessment records that exparte orders have been passed and demand notices issued. The tax has so far not been recovered due to the fact that the assessee has wound up his business and left the place.

The principal becomes liable to pay the taxes in case of default by the agent provided an assessment has been concluded on the principal exempting the turnover routed for sale through an agent. In the instant case, although M/s. Bagalkot Cement Factory Ltd. Bagalkot, the principal has been registered as a dealer both under KST as well as under CST Acts, it is not known whether the assessments were at all concluded. If so those assessments require to be reopened and a demand raised against the exempted turnovers and recovery proceedings initiated.

This aspect shall be, re-examined by the A.C.C.T. (Assts). Belgaum and appropriate recovery proceedings initiated immediately.

Period Tax Penalty

- 1.2.70. to 31.3.70 52,798-24 Nil
1.4.70 to 31.3.71 7,99,776-73 1,42,959-60
1.4.71 to 31.3.72 7,25,969-73 1,30,538-00
1.4.72 to 31.3.73 5,82,352-77 1,04,822-68

21,60,697

3,78,330.28

Sd/-

Commercial Tax Officer (Audit),

Belgaum."

On receipt of this letter, a subordinate official of the DC very probably a clerk prepared a draft of the notices to be issued to the petitioner under S. 21 of the Act which were initialled at the appropriate places by the then DC, Sri. A.N.

Naganoor, without making any corrections. In conformity with that approved draft, 4 notices typed and dated 4.8.1978 (Ex. 01, 02; 03 and 04) signed by the DC have been issued to the petitioner proposing to revise the assessment orders made against it for the periods from 1.1.1969 to 31.12.1969, 1.1.70 to 31.3.70, 1.4.70 to 31.3.71 and 1.4.1971 to 31.3.1972. One such notice No. SMR/B-3941 dated 4.8.78 Ex. I issued by the DC for the period from 1.1.1969 to 31.12.1969 reads thus:

"By R.P.A.D. Office of the Deputy Commissioner of Commercial Taxes, Belgaum
No. SMR/B-3941/78-79 dt. 4.8.1978.

Sub: K.S.T. Act, 1957-Suo Motu Revision in the case of M/s. Bagalkot Udyog Ltd.,
Bagalkot for the period, 1.1.69 to 31.12.69.

Notice Under Sec. 21 (4) of the K.S.T. Act, 1957.

On going through the assessment order passed in your case by the Addl. Commercial Tax Officer, II Circle, Bagalkot for the period 1.1.1969 to 31.12.1969, it is observed that a sale turnover of cement at Rs. 3,64,39,145-55 has been exempted as sales effected through the commission agents. But no proof to the effect that the selling commission agents have paid tax on this turnover has been produced by you at the time of assessment. The order passed by the Addl. Commercial Tax Office II Circle, Bagalkot granting exemption on the said sale turnover is thus illegal.

Therefore, in exercise of the powers vested in me under Section 21 (2) of the K.S.T. Act, 1957. I propose to revise the assessment and levy tax on the turnover of Rs. 3,64,39,145-55 at the rate applicable under the Act.

Objection, if any may be filed by appearing in person or through a legal representative, duly authorised, on 14.8.1978 at 11.00 A.M. at my office at B.C.No. 24" Fort, Belgaum, failing which it will be presumed that you have no objection in the matter and the contents of this notice will be confirmed without giving you any further opportunity in this behalf.

Sd/- (A.N. Naganoor)

Deputy Commissioner of Commercial Taxes,

Belgaum

To

M/s. Bagalkot Udyog Ltd.,

"Bagalkot."

The other 3 notices are similar to this notice and the difference lies only in the periods mentioned therein In these petitions under Art. 226 of the Constitution, the petitioner has challenged the notice issued by the DC and has obtained stay

of further proceedings before the DC.

10. Firstly, the petitioner has urged that the DC has sought to reopen the assessments, though he has no such power under the K.S.T. Act. Secondly, the petitioner has urged that the notices are vague, unintelligible and are violative of the principles of natural justice. Lastly, the, petitioner has urged that it was not liable to pay the taxes that have not been paid either by Bharat or Rishabh.

11. In denial of the factual allegations made by the petitioner, respondents have not filed their return. But at the hearing, the respondents have filed a written Memo on 13.4.1983 noticed earlier and have produced the records. In answer to the memo filed by the respondents, the petitioner has also filed his counter memo contesting the factual statements stated in that memo.

12. Sri. Rafie Dada, learned counsel for the petitioner, has contended that the DC without jurisdiction and power has sought to reopen the assessments concluded by the assessing authority under the Act. In support of his contention Sri. Dada has strongly relied on the rulings of this Court in Nagaraja Overseas Traders v. The State of Mysore, (1974) 33 STC 315 and in R.A. Kashappanavar v. The State of Mysore, (1974) 34 STC 334.

13. A proceeding for re-assessment can be initiated by the very assessing authority and not by an appellate or revisional authority can hardly be doubted.

14. S. 21 of the Act confers suo moto revisional power on an Assistant Commissioner of Commercial Taxes or a Deputy Commissioner of Commercial Taxes against the orders made by their subordinates within the stipulated time, if one or the other circumstances exist.

15. The fact that the DC is the revising authority under the Act and that the AC, whose order is proposed to be revised, was his subordinate is not and cannot also be in dispute. The notices issued by the DC are under S. 23 of the Act. Their validity cannot be adjudged with reference to any other proceeding initiated and completed or pending before any other authority under the Act. Even assuming that the proceedings for re-assessment are barred by time and cannot therefore be initiated by the assessing authority that does not touch on the power of the DC to revise the order if one or other circumstances exist, and the period of limitation for initialling suo-moto proceedings had not expired. The ratio of the rulings of the this Court in Nagaraja"s, (1974) 33 STC 315 and Kashappanavar"s, (1974) 34 STC 334 cases does not bear on the point and assist Sri. Dada. On any principle it is difficult to hold that the DC had sought to reopen the assessment proceedings. For these reasons I see no merit in this contention of Sri. Dada and I reject the same.

16. Sri. Dada has next contended that the impugned notices are devoid of particulars, vague and unintelligible and are violative of the principles of natural justice. In support of his contention, Sri Dada has strongly relied on the ruling of the Supreme Court in Mohinder Singh Gill v. Chief Election Commissioner, AIR

1978 SC 851 and the rulings of the Bombay High Court in *Commr. of Sales Tax v. Paramount Industrial Stores*, (1976) 38 STC 555 and in *S.K. Manekia v. Commr. of Sales Tax*, (1977) 39 STC 406.

17. Smt. M.R. Vanaja learned High Court Government Pleader appearing for the State has sought to justify the impugned notices.

18. The notices issued by the DC invoke S. 21 (4) of the Act instead of invoking S. 21 (2) of the Act that confers suo-moto powers of revision, though there is a reference to the same in the body of the notices. Section 21 (3) and (4) that prescribe the period of limitation and the manner of exercise of power does not touch on the power conferred by S. 21 (2) of the Act. But the omission to invoke and mention S. 21 (2) of the Act at the top of the notice is not a serious infirmity to invalidate the same.

19. The KST Act regulates the levy-on Intra State Sales and the CST Act regulates the levy on Inter State Sales. The incidence and rates of taxes under these Acts though they are administered by the very State authorities are not one and the same. The Acts provide for filing of separate returns and separate assessments. The petitioner is a registered dealer under the KST and the CST Acts.

20. An examination of the impugned notices and the memo filed setting out the particulars of amounts, disclose that the DC has hardly realised this aspect and has issued lumped up notices. On any principle, it was not open to the DC to issue lumped up notices though the power to revise could be exercised under S. 21 of the KST Act only. In this view, the impugned notices are liable to be quashed.

21. In the notices, the one and only reason set out by the DC was that the exemptions granted by the Assessing authority without satisfying with the payment of taxes by the Selling agents was not in order. Except for this no other details necessary for the assessee petitioner to state its case, is set out by the DC. The notices are delightfully vague and unintelligible and on this ground also, they are liable to be quashed.

21. S. 29 confers power of revision against an order made or a proceeding recorded by a subordinate, officer and not against a particular period. Unfortunately, (the DC has not even noticed this basic and elementary aspect and has not even specified the orders made or the proceedings recorded of his subordinate officer that he proposes to revise. On this ground also the impugned notices are liable to be quashed.

23. Apart from the above, there is yet another serious infirmity in the notices issued by the DC.

24. While noticing the facts, I have briefly noticed the basis and the manner in which the DC has issued the notices.

25. An examination of the file, and the notices issued reveal that the DC has not applied his mind to the requirements of Section 21 of the, Act, the facts and circumstances and the grounds for the exercise of the power, but has issued them in a casual and cavalier manner by approving the draft prepared by his office without even crossing the "t" and dotting the "i".

26. Any opinion to be, formed by an authority under S. 21 of the Act before issuing a show cause notice is only tentative and the authority is expected to re-examine the matter in the light of the objections and contentions to be urged before him by the person that is notified. But still it is necessary for the DC to genuinely apply his mind and prima facie find that the orders justify to be revised on one or the other grounds set out in the section which had not been done at all by the DC. The power of revision cannot be exercised for the heck of it or at the dictate of another authority. The notices issued by the DC without applying his mind and prima facie finding that one or the other circumstances exist are illegal and liable to be quashed.

27. Sri. Dada has lastly contended that the petitioner was not liable to pay the taxes that had not been paid by its selling agents, viz., Bharat and Rishabh. In support of his contention Sri. Dada has strongly relied on the ruling of the Supreme Court in an earlier case of the very petitioner, viz., Bagalkot Cement Co. Ltd., v. State of Mysore, (1976) 37 STC 73.

28. Smt. Vanaja has urged that the liability of the petitioner who was the principal was co-extensive with that of its agent and on the default of payment of taxes by the latter, the former was liable to pay the taxes. In support of her contention Smt. Vanaja has strongly relied on an unreported ruling of this Court in G. Pampapatheppa & Sons v. Commr. of Commercial Taxes, STC 21 & 22/76 dt. 11.1.1979.

29. The Memo dated 13.4.1983 filed by the respondents and the records reveal that Rishabh a selling agent of the petitioner and a registered dealer had been assessed in respect of the very sales and that agent had committed default in payment of taxes levied against it to the extent of Rs. 22,01, 409-84p and this is the real and hard fact on which the proceedings have been initiated against the petitioner and not the reason stated in the notices.

30. So far as the liability of Rishabh for payment of Rs. 22,01,409-84p ignoring the penalties imposed thereon for non-payment on the due dates and the necessity to recover at least the taxes if not penalties from that party, there can hardly be any dispute. Bharat has paid the taxes due under the KST Act and has also paid a sum of Rs. 9,20,425-60p as advance tax towards the taxes due under the GST Act. In all likelihood, Bharat is not likely to be, a defaulter and the letter of the Commissioner also appears to suggest the same. But the question is whether the petitioner is liable to pay the tax amount which had not been paid by its agent.

31. In the contracts entered between the petitioner and the selling agents, the

latter had undertaken to pay the taxes due to the State. Even though the parties to the contract are bound by the terms of the contract, the State which is not a party to those contracts is not bound by them. A contract entered into between two parties, cannot affect their liabilities under the Acts. In this view, the petitioner cannot place any reliance on clause 11 of the agreements to avoid its liability, if any, under the law.

32. In ascertaining the liability of a sole selling agent for taxes under the Acts, we are not concerned with the relationship of the parties under the agreements, whether the property in goods passes to the agent and whether in such a case there will be a sale or not, as the extended meanings of the terms "sale" and "dealer" under the Acts, take within themselves the Commission and Selling Agents and make them liable to taxes under the Acts. The Agents who are dealers are also made liable to pay taxes.

33. S. 5 of the KST Act and S. 6 of the CST Act which are the charging sections fasten liability for taxes on a dealer. The liability to pay the taxes determined under the Acts is primarily on the dealer.

34. The KST Act or CST Act does not provide for recovery of taxes due by one dealer from another dealer. The Acts do not also provide for the recovery of taxes from a principal when his agent registered as a dealer and assessed as such commits default in the payment of taxes due by him. The principle of the principal and agent being jointly and severally liable to third parties relevant in the realm of contract or common law has not been recognised and provided in the two Acts. If the Act, in clear and express terms does not provide for recovery of the taxes defaulted by the agent from his principal, which also is fraught with grave dangers, then it is not open to a Court to read such power in the Act. The Court cannot supply an omission in a taxation measure. An examination of the KST or CST Act reveals that the principal cannot be proceeded with for the defaults of his agent. But this observation cannot be, understood as this Court expressing that the assessing authority cannot disallow the exemption claimed by the principal and fasten him with liability for taxes at the time of original assessment on the ground that the agent had not paid the taxes. The liability to be fastened on the principal at the assessment and the liability that arises after defaults in payment of taxes by the agent are not one, and the same and there is no inherent conflict between the two at all.

35. S. 11 of the KST Act which is, also applicable to recoveries under the CST Act on which strong reliance was placed by Smt. Vanaja reads thus:

"11. Licencing of Agents-(1) Every person who for an agreed commission or brokerage buys or sells on behalf of known principals specified in his accounts in respect of each transaction shall obtain a licence from the assessing authority concerned on payment of such fee not exceeding fifty rupees as may be prescribed in that behalf:

"Provided that- (i) in the case of an agent who carries on such business in the

state of Karnataka on behalf of the principal who is a resident of the State of Karnataka the agent shall be assessed to the tax or taxes leviable under this Act in respect of the transaction provided that the agent may voluntarily pay the tax or the taxes collected as and when collected to the State Government pending assessment of the tax payable by him, without prejudice to his other rights to recover from his principal the tax or taxes paid by him on behalf of the principal such agent may retain out of any moneys payable to the principal by the agent, a sum equal to the amount of the tax assessed on or paid by the agent. The principal on whose behalf the agent has paid the tax as aforesaid shall not again be taxed in respect of the same transaction but the burden of proving that the tax in respect of the transaction has been paid by the agent shall be on such principal.

(ii) the commission or brokerage agreed upon and specified in the accounts represents the entire remuneration payable to the agent, apart from the tax paid by him on behalf of the principal and the legitimate incidental charge actually incurred by him and specified in the accounts in respect of insurance, transport, loading and unloading, godown rent, interest, correspondence, telegram, the use of the telephone and the like.

(2) Notwithstanding anything contained in sub-section (1) in the case of goods taxable at the point of purchase by the last dealer in the State liable to tax under the Act, the commission agent (other than the agent of a non-residential principal) purchasing such goods shall not be assessed to tax but the principal who has effected such purchase through the commission agent shall be assessed to tax, as if he is the last dealer in the State."

Sub section (1) of S. 11 requires a person that buys or sells goods on behalf of a known principal on an agreed commission or brokerage to obtain a licence from the prescribed authority. The first proviso of that sub-section regulates the liability of an agent that carries on business within the State of Karnataka on behalf of a resident principal. Such an agent, notwithstanding any terms of agreement between him and his principal, is free to pay the taxes due by the principal and adjust the same from out of the amounts payable by him to his principal. When taxes have been paid by the agent, the principal is discharged of his liability to pay taxes to that extent only. The second proviso does no more than to elaborate the amounts that can be paid by the agent under S. 11 (1) of the Act. Sub-sec. (2) of S. 11 of the Act only deals with the liability at taxes on goods taxable at the point of purchase by the last dealer in the State An analysis of S. 11 of the Act does not support the case of the Revenue.

36. In Pampapatheppa's case, STC 21 & 22/76 dt. 11.1.1979, the assessing authority had fixed the liability against the principal and that was upheld by the Commissioner exercising his suo-moto revisional jurisdiction reversing the order of the DC who had held that the agent was liable and on that view had upheld the claim of the assessee. Dismissing the appeals filed by the assessee and uphold the order of the Commissioner this Court observed thus:

"2. There is no substance in these two appeals. Merely because there is a provision in section 11 of the Act enabling the authorities under the Act to pass orders of assessment against commission agents acting on behalf of known principals, it cannot be said that the principal cannot be proceeded against. They are dealers within the meaning of that expression found in the Act and an assessment order passed against them Would not be illegal. There is no bar in law for making an order of assessment against the principals, in such a case, unless there is already an order of assessment, against the Commission agents in respect of the same, turnover. This view is in conformity with the view of the Division Bench of this Court in State of Mysore v. F.D. Malladad & Bros., (23 STC 230)."

But that is not the position in the present case. In this view, the ratio in Pampapatheppa's case does not bear on the point and assist the Revenue. As I apprehend, the Division Bench in Pampapatheppa's case has also taken the very view I have expressed in this case.

37. In Bagalkot Cement Company's case, (1976) 37 STC 73 on which strong reliance was placed for the petitioner, the question that arose for consideration was whether the petitioner was liable to pay sales tax on compulsory sales made by it to the State Trading Corporation and not the precise question that arises for determination in these cases. In this view, the ratio in the earlier case of the petitioner does not bear on the point and conclude the question.

38. A crafty dealer probably with the connivance of some officials in the Department that had occasion to deal at earlier stages has caused a huge loss of revenue to the State. Any legitimate attempt to collect taxes legitimately due to the State from a person legitimately due cannot be interfered with by this Court. But, any attempt made to collect taxes from a person other than the person that legitimately due as in the present cases, as an alibi for the omissions and commissions committed by the Officers that had occasion to deal earlier with the, assessments and recoveries, this Court is in duty bound to interfere and prevent the same. But this order cannot and does not prevent the authorities from recovering the amounts from Rishabh which I do hope they will sincerely and earnestly attempt instead of needlessly pursuing the matter against the petitioner, all because that it is easy to do so and an alibi can be easily found to cover up their own earlier defaults.

39. In the light of my above discussion, I hold that the impugned notices are liable to be quashed. I therefore quash the impugned notices.

40. Rule issued is made absolute in all these cases. But in the circumstances of the cases, I direct the parties to bear their own costs.

41. Let a copy of this order be also sent to the Chief Secretary to Government for taking such action as he deems fit to protect the revenue of the State.