
(1995) 09 KAR CK 0052
In the Karnataka High Court
Case No : Sales Tax Appeal No. 9 (A) of 1994

Basith Khan

APPELLANT

Vs

Commissioner of Commercial Taxes

RESPONDENT

Date of Decision : 13-09-1995

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 22 A, 5 (1)

Citation : (1996) 101 STC 267

Hon'ble Judges : S. Rajendra Babu, J;Kumar Rajaratnam, J

Bench : Division Bench

Judgement

S. Rajendra Babu, J.—The appellant is a dealer in Agnidevi which is the brand name of certain wastes of several carbon materials consisting of charcoal, coal, tamarind husk, etc. The assessing authority took the view that the goods in question consists of waste carbon material and hence fan u/s 5(1) of the Karnataka Sales Tax Act and not under entry 1 of Schedule IV of the Karnataka Sales Tax Act and brought to tax accordingly. Aggrieved by this order, the appellant carried the matter in appeal.

2. The appellate authority held that the said goods fall under entry 1 of the Fourth Schedule of the Act since they are covered by the expression "coal in all its forms" and directed the assessing authority to levy tax at 4 per cent.

3. The Additional Commissioner of Commercial Taxes in exercise of powers of suo motu revision u/s 22A of the Act initiated proceedings and passed an order holding that the order of the appellate authority is erroneous and prejudicial to the interest of the revenue inasmuch as the goods sold by the appellant is neither wholly made of charcoal nor coal nor coke nor any of its forms and as such the assessing authority was justified in bringing the same to tax u/s 5(1) of the Act. That order was carried in appeal to this Court in S.T.A. No. 32 of 1987. This Court allowed the appeal and set aside the order made by the revisional authority and remitted the matter for fresh consideration. While doing so, this Court noticed a decision of the Punjab and Haryana High Court in Haryana

Briquettes Industries Vs. State of Haryana and Another, wherein it was held that coal briquettes are only a product of transformation of remainder of coal, that is, coal-dust and the coal briquettes are used for domestic kitchen consumption as combustible material in the same manner as coal or coke is used and it is always treated as fuel corresponding to coal and it was also held that coal briquettes come within the phraseology of coal in all its forms. Therefore, this Court thought fit to direct the Commissioner to make a fresh decision after ascertaining the facts in the present case to find out as to what was the basic material used.

4. On remand, before the Commissioner the briquettes in question were produced at the time of hearing of the case. Reliance was placed on the technical certificate issued by the Associated Industrial Consultants, Salem and M/s. Integral Fuels, manufacturers and suppliers of Agnidevi brand coal to contend that the goods are made of coal-dust and tamarind husk and they are used for domestic purpose by poorer people such as for heating water and other cooking purposes. The revisional authority proceeded to analyse the entry 1 of the Fourth Schedule of the Karnataka Sales Tax Act that coal including coke in all its forms but excluding charcoal and held that "in all its forms" will have to be attributed only to coke and not to coal. It is a rather strange way of interpreting the provisions of the entry. When expression coal is used in the entry and its meaning is expanded to include coke, the meaning of the expression coal is expanded. Thereafter, the expression "in all its forms" is used which is relatable to primary expression used in the entry namely, coal and not the ancillary expression used therein, namely, coke. Further, the expression excluding charcoal would only mean that from the category of coal in all its forms, charcoal is excluded otherwise charcoal would also have been included. Proceeding on an erroneous basis, the Commissioner came to the conclusion that two independent carbon materials, coal-dust and tamarind husk are used in the manufacture of goods and therefore they do not constitute coal and the carbon briquettes manufactured out of coal-dust and tamarind husk are different from coal and are liable to tax. It is plainly contrary to the provisions. In the circumstances, we have no hesitation in setting aside the order made by the Commissioner and affirming the order made by the appellate authority.

5. Learned Government Pleader however, urged that the assessee had collected tax at the rate prescribed u/s 5(1) of the Act and therefore, no relief should be granted to the appellant in this case. This inference drawn by the Additional Commissioner is plainly without any basis. There is absolutely no justification to draw such an inference. On what basis the Commissioner has drawn this inference is not clear at all from the records. A perusal of the assessment order would make it clear that the appellant has all along been claiming the benefit of lower rate of tax bringing the commodity in question under entry 1 of Schedule IV to the Karnataka Sales Tax Act and it is the assessing authority for the first time, brought the commodity to tax u/s 5(1) of the Act. Therefore, we fail to understand as to how the Commissioner could have drawn an inference that the tax had been collected at the rate prescribed u/s 5(1) of the Act. After all, in this

case, the commodity used is only for domestic purpose for consumption as combustible material by poorer class of people. Thus, when the Legislature in its wisdom had thought it fit to levy lower rate of tax on the commodity by giving an expanded meaning to coal, that object is defeated by adopting a strange interpretation on the provisions of the Act which we strongly deprecate. The appellant is therefore, entitled to costs. Costs are quantified in a sum of Rs. 2,500.

6. Appeal allowed with costs.

7. Appeal allowed.