(1998) 01 KAR CK 0062

In the Karnataka High Court

Case No : STRP No. 145 of 1997

Bellad Automobile Engineers APPELLANT

Vs

K.A.T RESPONDENT

Date of Decision : 21-01-1998

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 4, 5, 8, 8 A

Citation : (1998) ILR (Kar) 1460

Hon'ble Judges : Y. Bhaskar Rao, J;S.R. Bannurmath, J

Bench : Division Bench

Advocate : B. Veerabhadrappa, for the Appellant; D''sa, HCGP, for the Respondent

Final Decision : Allowed

Judgement

1. This revision is filed assailing the order of the Tribunal dismissing the appeal and confirming the assessment made by the assessing authority. The facts of the case are that the appellant is a dealer in automobiles carrying on business in selling two wheelers. The Assessing Authority during the final assessment for the period 1.4.1991 to 31.3.1992 held that the petitioner is liable to pay sales tax at the rate of 8% on the two wheelers.

2. Learned Counsel for the petitioner contended that he is not liable to pay tax at the rate of 8% and he is liable to pay only at the rate of 4% as per the notification issued by the Government dated 27.3.1991. The Assessing Authority came to the conclusion that the notification dated 27.3.1991 applies only to the two wheelers which are sold from the canteen stores and not to the two wheelers sold in the open market. Assailing the said order the present petition is filed.

3. The Learned Government Advocate contended that the notification issued by the Government deleted the specified goods mentioned in the notification under Entry 34 of the V schedule making them liable for the tax and that tax is fixed at 4% in the same notification. Therefore 4% tax is applicable to the two wheelers

sold from the canteen stores and not for two wheelers sold in the open market.

4. In view of the these rival contention, the question that arises for consideration is whether the notification dated 27.3.1991 imposes 4% tax on the two wheelers sold through the canteen stores only or it applies to the two wheelers sold in the open market also.

To appreciate the question raised, we would like to extract the notification dated 27.3.1991.

NOTIFICATION XIII

No. FD 78 CSL 91, Bangalore, dated 27th March, 91.

In exercise of the powers conferred by the explanation - IV in fifth schedule of the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957), the Government of Karnataka hereby specifies with effect from the first day of the April, 1991 that for the purpose of Entry 34 of the said schedule, ''Canteen Stores'' shall not include the goods (hereinafter referred to as specified goods) mentioned in Column (2) of the table below, and in exercise of the powers conferred u/s 8A of the said Act, the Government of Karnataka reduced the sales tax on the sale of the specified goods including motor cycles, scooters, motorcabs, mopeds and motor cycle combinations, to four percent with effect from first day of April, 1991.

5. By a reading of the above notification it is manifest that in the exercise of the power conferred by virtue of explanation 4 to the V Schedule deleted 10 items of goods specified in the notification for the purpose of Entry 34 of the V Schedule and further in exercise of the powers conferred by Section 8A of the Act, the Government reduced the tax payable on the sale of the specified goods to four percent with effect from the first day of April, 1991.

6. Entry 34 of the V Schedule of the Karnataka Sales Tax Act deals with the goods sold through canteen stores. Neither in the V Schedule nor under any provision of the Act nor under Rules, there is any enumeration of the list of goods to be sold under the canteen stores. Thus, whenever the goods sold through canteen stores are exempted from payment of tax by virtue of Section 8, it provides for exemption of the goods enumerated in V Schedule. Section 8A of the Act empowers the Government to issue notification providing for exemption of tax. Therefore, by reading of Section 8, 8A and the notification together, it manifests that the goods enumerated in the notification are deleted from Entry 34 of V Schedule making them liable for payment of tax at the rate of 4% instead of 8%. It is not specifically stated in the second part of the notification that the specified goods sold through canteen are liable to pay 4% tax. But once they are deleted from Entry 34 of the V Schedule, they are liable for the tax as the goods sold in the open market but the tax is fixed at 4%. Therefore by reading of the notification, it is only possible to come to the conclusion that the specified goods are deleted from Entry 34 of the V Schedule and made liable to 4% tax. Once they are deleted from the entry 34 of the V

Schedule the exemption provided under the V Schedule is not available. Therefore, it cannot be treated that 4% tax is fixed only for specified goods under the notification when they are sold through canteen stores and not otherwise.

7. It is settled principle of law that the fiscal statute must be interpreted strictly as per the law of the statute. The Courts cannot draw inferences from the language used in the taxing statute. In this regard we refer the case of POLESTAR ELECTRONIC (P) LTD v. ADDITIONAL COMMISSIONER, SALES TAX, SCST VOL - 5 5321, where in it is held that the courts cannot interpret the statute according to the language interpreted in the statute and the notification and they are not required to draw inferences from the statute which are not provided under the statute.

8. Learned Government Advocate contended that notification was issued in respect of the goods sold through canteen stores. Therefore the entire notification has to be interpreted only with regard to the goods sold through canteen stores and not with regard to the goods sold in the open market.

We are not able to agree with the said contention.

9. It is to be noticed that the Government issued another notification dated 30.3.1992 by way of amendment making it clear that the goods sold through canteen stores are liable for 4% tax, further it is also stated that me said notification comes into force from the First of April, 1992. When the notification itself comes into effect from 1.4.1992 it cannot be interpreted that only 4% tax has to be paid on two wheelers sold through canteen stores even earlier to the notification dated 30.3.1992, when the same is not in the earlier notification dated 27.3.1991.

In this regard the Supreme Court in the case of Mathra Prashad and Sons Vs. State of Punjab, , has observed as follows:-

"13. The exemption thus must operate either from the date of the notification or from the commencement of the financial year. Here, the nature of the tax, as disclosed in Section 4 and 5, is decisive. In Section 5 the tax is made leviable "on the taxable turnover every year of a dealer." The Divisions of the year and the taxable turnover into different parts are to make easy the collection of tax, and from part of the machinery sections. If the tax is yearly and is to be paid on the taxable turnover of a dealer, then the exemption, whenever, it comes in, in the year for which the tax is payable, would exempt sales of those goods throughout the year, unless the Act said that the notification was not to have this effect, or the notification fixed the date for the commencement of the exemption. In the present case, the Notification did not fix the date from which the exemption was to operate, probably because the Act omitted to make such provision, enabling the State to do so, and the exemption must, therefore operate for the whole year, during which it was granted."

The principle laid out in the above judgment of the Apex Court makes it clear that the notification is deemed to come into force from the date on which it was directed to come into force. Therefore in the present case, the notification issued on 30.3.1992 comes into effect from 1.4.1992 and not earlier. Even looking from other angles, if the first notification were to state that the specified goods deleted from Entry 34 of the fifth schedule is liable for only 4% tax there was no necessity for issuing the second notification. The issuing of second notification makes it clear that the first notification was not intended to convey 4% tax for the specified goods when they are sold through canteen stores only. In view of the above circumstance, petition has to be allowed.

Accordingly, petition is allowed. Impugned orders are quashed.

