

(1973) 11 KAR CK 0013

In the Karnataka High Court

Case No : Writ Petition No's. 2023 and 2362 of 1971, 64, 705, 2238 to 2241, 2440, 2282, 2283, 2292, 2293, 2294, 1182, 2041, 2463, 2944, 3234, 3235, 3241 and 3242 of 1972

B.J. Jeevendriah

APPELLANT

Vs

State of Mysore and Another

RESPONDENT

Date of Decision : 09-11-1973

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 6, 6 A, 6 A (1), 6 A (2)

Citation : (1975) 35 STC 104

Hon'ble Judges : V.S. Malimath, J

Bench : Single Bench

Advocate : K. Srinivasan, B.P. Gandhi, B.V. Katageri, S.P. Bhat, K. Shivashankar Bhat, G.S. Ullal and G. Sarangan, for the Appellant; M.P. Chandrakantaraj Urs, High Court Government Advocate, for the Respondent

Judgement

Malimath, J.—As common questions of law arise for consideration in this batch of writ petitions, they were heard together. The petitioners in some of the writ petitions have challenged the assessment orders passed by the concerned Commercial Tax Officers assessing the petitioners to tax u/s 6 of the Mysore Sales Tax Act, 1957 (hereinafter referred to as the Act). The petitioners in the remaining writ petitions have challenged the proposition notices issued by the concerned Commercial Tax Officers requiring the petitioners to show cause why tax u/s 6 of the Act should not be levied. The petitioners have challenged the validity of Section 6 of the Act. In one writ petition, the validity of Section 6-A of the Act has also been challenged. It was, however, contended by the learned counsel appearing for the petitioners that if the provisions of Sections 6 and 6-A of the Act are properly and reasonably construed, it will not be necessary to examine their contentions regarding the validity of those provisions. It is, therefore, necessary to examine, in the first instance, the relevant provisions of the Act and ascertain the true meaning and effect of the same.

2. Section 5(1) of the Act provides that every dealer shall pay for each year tax

on his taxable turnover at the prescribed rate. Clause (a) of Sub-section (3) of Section 5 provides that notwithstanding anything contained in Sub-section (1), in the case of sale of goods mentioned in the Second Schedule, single point tax is leviable at sale point. Clause (b) of Sub-section (3) of Section 5 provides that in the case of purchase of the goods specified in the Third Schedule, single point tax shall be levied at the purchase point. Sub-section (4) of Section 5 provides that in respect of sale or purchase of declared goods mentioned in the Fourth Schedule tax shall be levied either at the sale or purchase point as specified in the said schedule. The tax levied under Sub-section (4) of Section 5 is also single point tax. Section 8 of the Act provides for exemption of tax. It provides that no tax shall be levied on the sale of goods specified in the Fifth Schedule, subject to the conditions and exceptions, if any, set out therein. It is, therefore, clear that so far as the sale of goods specified in the Fifth Schedule are concerned, the same are exempt from tax under the Act. The clear effect of these provisions is that in respect of sale or purchase of goods specified in the Second, Third and Fourth Schedules, single point tax is leviable at the prescribed rate and in respect of sale of goods specified in the Fifth Schedule, no tax at all is payable. It, therefore, follows that in respect of sale or purchase of goods other than those falling under the Second, Third, Fourth and Fifth Schedules, multi-point tax is leviable under Sub-section (1) of Section 5 of the Act at the prescribed rate. Sections 6 and 6-A of the Act, which require a more detailed examination, read as follows:

6. Subject to the provisions of Sub-section (5) of Section 5, every dealer who in the course of his business purchases any taxable goods in circumstances in which no tax u/s 5 is leviable on the sale price of such goods and,

(i) either consumes such goods in the manufacture of other goods for sale or otherwise or disposes of such goods in any manner other than by way of sale in the State, or

(ii) despatches them to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce, shall be liable to pay tax on the purchase price of such goods at the same rate at which it would have been leviable on the sale price of such goods u/s 5 :

Provided that this section shall not apply-

(i) in respect of sale or purchase of goods specified in the Fourth Schedule, and

(ii) in respect of sale or purchase of goods specified in the Second Schedule which have already been subject to tax under Clause (a) of Sub-section (3) of Section 5.

6-A. For purposes of assessment of tax under this Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax shall lie on such dealer.

(2) Notwithstanding anything contained in this Act or in any other law, a dealer

in any of the goods liable to tax in respect of the first sale or first purchase in the State shall be deemed to be the first seller or first purchaser, as the case may be, of such goods and shall be liable to pay tax accordingly on his turnover of sales or purchases, relating to such goods, unless he proves that the sale or purchase, as the case may be, of such goods had already been subjected to tax under this Act.

3. It was contended by the learned counsel for the petitioners that Section 6 which purports to levy tax under certain circumstances is a charging section. Sri M. P. Chandrakantaraj Urs, learned Government Advocate, also took the same stand. It is clear from the plain language of Section 6 that it is a charging provision. Certain conditions are required to be satisfied before the charge u/s 6 is attracted. The section opens with the words "subject to the provisions of Sub-section (6) of Section 5". Sub-section (5) of Section 5 provides that a dealer whose total turnover in any year is less than twenty-five thousand rupees shall not be liable to pay tax for that year. It further provides that notwithstanding anything contained in Clause (a) of Sub-section (5) of Section 5, every casual trader in any of the goods specified in the Third Schedule or the Fourth Schedule shall be liable to pay tax at the rate specified in the Act on his taxable turnover of sales or purchases in each year whatever his total turnover during the year may be. The conditions to be satisfied for attracting the charge u/s 6 are the following :

- (1) The dealer must have purchased taxable goods in the course of his business;
- (2) the purchase of the aforesaid goods must have been in circumstances in which no tax u/s 5 is leviable at the sale point; and
- (3) the dealer must have either consumed such goods in the manufacture of other goods for sale or otherwise, or must have disposed of such goods in any manner other than by way of sale in the State or must have despatched those goods to a place outside the State except as a direct result of sale or purchase in the course of inter-State trade or commerce.

If the aforesaid three conditions are satisfied, subject to the provisions of Sub-section (5) of Section 5, a dealer shall be liable to pay tax at the purchase point at the same rate at which it would have been leviable on the sale price of such goods u/s 5 of the Act.

4. The proviso to Section 6, however, exempts sale or purchase of certain goods from the operation of that section. The proviso is, therefore, in the nature of an exemption clause. It provides that tax u/s 6 shall not be payable :

- (i) in respect of sale or purchase of goods specified in the Fourth Schedule and
- (ii) in respect of sale or purchase of goods specified in the Second Schedule which have already been subject to tax under Clause (a) of Sub-section (3) of Section 5 of the Act. If the sale or purchase does not come under the proviso and if the conditions mentioned in the first part of the section are satisfied, the dealer

would be liable to pay tax u/s 6 of the Act.

5. Section 6-A prescribes the burden of proof. Sub-section (1) of Section 6-A provides that for the purpose of assessment of tax under the Act, the burden of proving that any transaction or any turnover of a dealer is not liable to tax shall lie on such dealer. We are not concerned in this case with Sub-section (2) of Section 6-A. Sub-section (1) of Section 6-A places the burden of proving that any transaction or turnover of a dealer is not liable to tax, on such dealer. In other words, it is only in cases where tax is leviable under the relevant provisions of the Act, but the dealer claims exemption from the same in respect of certain transactions or turnover of his, that he has to establish all the circumstances entitling him to claim such exemption. But, Sub-section (1) of Section 6-A does not place the burden of proving the ingredients prescribed by the Act to justify levy of tax on the assessee. The burden of proving those ingredients is clearly on the taxing authority. Sri Chandrakantaraj Urs did not dispute this proposition. As the Supreme Court has in *Deputy Commissioner of Agricultural Income Tax and Sales Tax, Quilon Vs. Travancore Rubber and Tea Company*, laid down that in all cases of tax the burden of proving the necessary ingredients laid down by law to justify taxation is upon the taxing authority further discussion on this question has become unnecessary. The burden of establishing the ingredients of Section 6 must, therefore, be held to lie on the taxing authority.

6. But, the onus of proving special facts exclusively within the knowledge of the assessee to claim benefit for himself on the basis of proof of those facts, is undoubtedly on the assessee in view of the principles contained in Section 106 of the Indian Evidence Act. As I am not examining the facts in these cases, I consider it unnecessary to catalogue the special facts exclusively within the knowledge of the assessee, the burden of proving which lies on them. But, it is necessary to clarify that if the assessee claims exemption under the proviso to Section 6 of the Act, the burden of establishing the ingredients prescribed by the said proviso lies clearly on the assessee, in view of Sub-section (1) of Section 6-A of the Act. Sub-section (2) of Section 6-A provides that a dealer in any of the goods liable to tax in respect of the first sale or first purchase in the State shall be deemed to be the first seller or first purchaser, as the case may be, of such goods and shall be liable to pay tax accordingly on his turnover of sales or purchases, relating to such goods. But, the assessee can rebut that presumption by proving that the sale or purchase, as the case may be, of such goods had already been subjected to tax under the Act.

7. Sri Srinivasan fairly submitted that if, on a proper interpretation of Section 6-A of the Act it is held that except the burden of proving special facts within the exclusive knowledge of the assessee all ingredients laid down by the Act to justify taxation lies on the taxing authority, he cannot maintain his challenge to the validity of Sub-section (1) of Section 6-A, on the ground that the restriction imposed by Section 6-A is an unreasonable one. In view of the conclusion on the interpretation of section 6-A and its effect, the challenge to the validity of Sub-

section (1) of Section 6-A fails. As the learned counsel for the petitioners submitted that they are not pressing their contention regarding the validity of Section 6 of the Act at this stage, it has become unnecessary to examine the validity of Section 6 in these writ petitions.

8. In Writ Petition No. 2041 of 1972, the petitioner has challenged the order of assessment made by the Commercial Tax Officer (Leave Reserve), 1st Circle, Mysore, dated 27th June, 1972. By the said order, the Commercial Tax Officer has levied tax u/s 6 of the Act on the purchase turnover of timber amounting to Rs. 2,50,000. The petitioner had not included the said turnover as being liable to tax in the return submitted by him. The assessing authority without issuing any proposition notice, proposing to levy tax on the said turnover u/s 6 of the Act, has straightaway levied tax u/s 6 of the Act by the impugned order dated 27th June, 1972. The Commercial Tax Officer has also not recorded clear findings showing that all the ingredients attracting tax liability u/s 6 have been established.

9. Hence Writ Petition No. 2041 of 1972 is allowed and the impugned order of assessment made by the Commercial Tax Officer dated 27th June, 1972, is quashed, reserving liberty to the Commercial Tax Officer to make fresh assessment order in accordance with law and in the light of the enunciation of law made in this judgment, after issuing an appropriate proposition notice to the assessee.

10. In Writ Petitions Nos. 2282, 2283, 2292, 2293, 2294, 3234, 3235, 3241, 3242 of 1972, 2302 of 1971, 64, 705 and 2944 of 1972, the petitioners have challenged the assessment orders made by the assessing authority after issuing the necessary proposition notice to the petitioners. The petitioners have a statutory remedy available to them of preferring appeals. The petitioners have approached this court for relief, instead of preferring appeals, as they challenged the validity of Sections 6 and 6-A of the Act, which challenge they could not maintain before the appellate authority who functions under the Act. As challenge to the validity of Section 6-A(1) failed and the petitioners are not pressing their contentions regarding the validity of section C at this stage, these writ petitions are dismissed relegating the parties to the appellate remedy available u/s 20 of the Act.

11. As these writ petitions were pending in this court challenging the validity of the assessment orders on various grounds, Sri Chandrakantaraj Urs, learned Government Advocate, fairly submitted that if the petitioners prefer appeals within 30 days from the date of this order to the appellate authority, the same would be entertained after condoning the delay in preferring the appeals. Hence, I direct that if the petitioners in these cases prefer appeals within 30 days from the date of this order, the same shall be entertained by the appellate authority and disposed of in accordance with law and in the light of the enunciation of law made in this judgment. I may, however, observe that if the petitioners apply for grant of interim stay before the appellate authority, the said prayer may be

considered, taking note of the fact that this court, during the pendency of many of these writ petitions, granted interim orders of stay in their favour, which continued to be in force till today.

12. In Writ Petitions Nos. 2238 to 2241, 2440, 1182 and 2463 of 1972, the petitioners have challenged the proposition notices issued to them. It is submitted by the learned counsel on both the sides that no order of assessment in pursuance of the proposition notices have been passed in these cases. Hence, these writ petitions are dismissed, reserving liberty to the assessing authority to take further action in pursuance of the proposition notices issued to the petitioners in accordance with law and in the light of the enunciation of law made in this judgment.

13. Having regard to the circumstances of these cases, the parties are directed to bear their respective costs.