

(1990) 12 KAR CK 0003
In the Karnataka High Court
Case No : S.T.A. No"s. 22, 23 and 24 of 1984

C. Mahalingaiah and Sons

APPELLANT

Vs

State of Karnataka and another

RESPONDENT

Date of Decision : 19-12-1990

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 18 (1), 22 A

Citation : (1991) 83 STC 296

Hon'ble Judges : M.P. Chandrakantaraj Urs, J;K.B. Navadgi, J

Bench : Division Bench

Advocate : K.S. Ramabhadran, for G. Sarangan, for the Appellant; H.L. Dattu, High Court Government Pleader, for the Respondent

Judgement

M.P. Chandrakantaraj Urs, J.—These three sales tax appeals are disposed of by the following common order as the questions of facts and law raised in them are identical and only the assessment years being different. They relate to the assessment years 1977-78, 1978-79 and 1979-80, the accounting period being the calendar year.

2. The appellant-assesses is a commission agent as well as a registered dealer under the Karnataka Sales Tax Act, 1957. The assessee is a partnership firm carrying on the business of merchants and commission agents at Turuvekere in Tumkur district. The firm filed its returns for the relevant assessment years disclosing the turnover in copra and also in coconut. In respect of the turnover relating to copra, it claimed exemption as its turnover related to inter-State sales. The same was granted in regard to that turnover. It had collected tax for the year 1978 in a sum of Rs. 2,222.29, for the year 1979 in a sum of Rs. 3,790.72 and for the year 1980, Rs. 4,467.03. The assessment was concluded accepting the return. Thereafter, the Commercial Tax Officer, Tiptur, by his notice dated October 13, 1981, as at annexure B, called upon the petitioner to show cause why for the year ending December 31, 1979 (only the show cause notice issued for that year has been produced as a specimen) in which he had collected

Rs. 3,790.72 as sales tax on inter-State sales should not be held to be in contravention of section 18(1) of the Karnataka Sales Tax Act and as such penalty levied at 1 1/2 times the amount so collected. In the course of the order dated November 9, 1981, relating to assessment year 1979, the Commercial Tax Officer has observed that despite the notice being served on the assessee, there was no response and as such he was compelled to proceed to levy penalty but restricting it to the amount collected which was forfeited to the Government. Similar orders were passed presumably for the year 1978 and for the year 1980.

3. Aggrieved by such assessment orders, appeals were preferred in Appeal Nos. 442, 443 and 445/81-82 before the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore Division, Bangalore. The appellate authority, as evidenced by its order dated April 3, 1982, passed a common order for all the three years after noticing the contentions advanced for the appellant-firm and came to the conclusion that the petitioners had acted only as commission agents for their principals and had collected the purchase tax from the buyers and as such there was no justification for the assessing authority to invoke his jurisdiction u/s 18-A of the Act and proceed to levy penal penalty for contravention of section 18(1) of the Act. In that circumstance, the Joint Commissioner of Commercial Taxes (Vigilance) by his notice dated May 7, 1984, relating to all the three years invoking his jurisdiction u/s 22-A of the Karnataka Sales Tax Act suo motu proceeded to hold that the Deputy Commissioner of Commercial Taxes (Appeals), Bangalore Division, was in error in construing the sale by the appellant-firm to be the first sale which should be treated as a sale made subsequent to the purchase made by the appellant-firm itself and as such it could not have collected sales tax from its purchasers in Bangalore, despite the explanation offered by the appellant-firm, that it has only acted as a commission agent.

4. Neither the appellant nor the department had produced material before him to examine whether the commission agent was a commission agent under the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 (hereinafter referred to as "the Regulation Act"), or was only a dealer under the Karnataka Sales Tax Act which within its definition includes an agent of any kind.

5. On the undisputed facts, we feel that it would not make much difference to assume that he was an agent under the Act or a commission agent under the Regulation Act. In the notice as at annexure B purported to be one issued u/s 18-A of the Act, it is clearly stated that the tax has been collected from the buyers in Bangalore and remitted to the Government which by the order passed u/s 18-A has been forfeited to the Government which rather perplexes us inasmuch as what had been given to the Government being forfeited to the Government once again would not arise. In any event, the assessee could have kept quiet without filing an appeal as no penalty actually was imposed on it which would expose it to the rigour of paying any further sum. Instead of forfeiting the amount which had been collected and paid as tax, the assessing authority proceeded to demand the sums to be paid for the three relevant years within three days after

the receipt of the order. As earlier noticed it resulted in the three appeals which came to be allowed. The transaction between the buyers in Bangalore and the firm so far as we can make out from the records appears to be the only sales which have been subjected to tax at the purchase point in the hands of the purchaser. That there was a sale between the purchaser and the commission agent, there was no material either before the assessing authority or any other authority under the Act. Therefore, the learned Government Pleader was unable to take an emphatic stand as to whether there was an earlier sale in favour of the appellant-firm. In that view of the matter, the assessee-firm could be only an agent of a registered dealer in Bangalore in effecting a purchase and as such when the goods were remitted to the principal purchaser, i.e., the buyer in Bangalore, it was bound to be first purchase of the coconuts liable to tax and as such recoup the same from the principal purchaser in which event, it cannot be said that an offence u/s 18(1) of the Act had been committed.

6. At this juncture, it is useful to set out section 18(1)(a). It reads :

"18. Collection of tax by dealers. - (1)(a) A person who is not a registered dealer liable to pay tax shall not collect any amount by way of tax or purporting to be by way of tax under this Act; nor shall a registered dealer collect any amount by way of tax or purporting to be by way of tax at a rate or rates exceeding the rate or rates specified u/s 5.

(b) No person shall collect any amount by way of tax or purporting to be by way of tax in respect of sales of any goods on which no tax is payable by him under the provision of this Act."

7. From the language employed in section 18(1)(a), on the facts of the case, no offence as such has been committed by the appellant-firm under the latter half of sub-section (a). It certainly cannot be said to be an unregistered dealer because the assessment order says that it is a registered dealer. Therefore, even if the first half of sub-section (a) is not attracted, on that ground alone the proceedings initiated should be considered illegal. Assuming for a moment that clause (b) of sub-section (1) of section 18 is attracted on the assumption that the appellant had admitted a second sale in favour of the buyers in Bangalore, then the facts disclosed, to which we have referred earlier, do not evidence second sale.

8. If we assume that the firm is a commission agent under the Regulation Act in terms of the definition of "commission agent" in that Act which is clause (8) of section 2 of the Regulation Act. It reads :

"(8) "commission agent" means a person who on behalf of his principal and in consideration of a commission or percentage upon the amount involved in each transaction keeps in his custody the goods of his principal and sells the same and holds himself liable to deliver it to the buyer and to make payment of its price to his principal."

The firm will be acting as intermediary for the sale of the commodity, namely,

coconuts on behalf of the growers and the purchasers and effect purchase in that behalf and as such collects sales tax from the buyers at the first purchase point. If that be the case, then the appellant has acted in accordance with law as coconut is liable to be taxed at the first purchase point under item 5 of Schedule IV to the Act. Thus, in either event, the appellant could not be held to have committed any offence u/s 18(1) of the Act.

9. In that view of the matter, the appellate order not being erroneous, the Joint Commissioner could not assume jurisdiction u/s 22-A nor could it be said that such collection was prejudicial to the interest of the Revenue. In that event also, he could not have invoked suo motu jurisdiction u/s 22-A of the Act.

10. In the result, for the reasons given by us above, the appeals stand allowed. But in the circumstances of the case, there will be no order as to costs.

11. Appeals allowed.