

(1962) 01 KAR CK 0013

In the Karnataka High Court

Case No : S.T.A. No. 359 of 1959-60, Petition No. 109 of 1959-60 and Civil
Revision Petition No. 850 of 1960

C. Mallarappa and Sons

APPELLANT

Vs

The State of Mysore

RESPONDENT

Date of Decision : 15-01-1962

Acts Referred:

Income Tax Act, 1961 — Section 25 (4), 56
Mysore Sales Tax Act, 1957 — Section 5 (3) (b), 7

Citation : (1962) 13 STC 400

Hon'ble Judges : K.S. Hegde, J; Iqbal Husain, J

Bench : Division Bench

Advocate : K. Jagannatha Setty, for the Appellant; D.M. Chandrasekhar, High
Court Government Pleader, for the Respondent

Judgement

1. This revision petition raises an interesting question of law.
2. The petitioner is a dealer in raw wool. The State wants to assess him for the purchase of raw wool in the State of Mysore during the period commencing from 25th October, 1957, and ending with 11th November, 1958. The petitioner contends that in view of section 7 of the Mysore Sales Tax Act (Act No. 25 of 1957), as it stood before its amendment in 1959, he is not liable to pay any tax in respect of his purchases during the period in question. His contention has been negatived by the authorities below and therefore he is before this Court.
3. Act 25 of 1957 came into force on 1st October, 1957. The charging section in that Act is section 5. Section 5(1) provides :

"Every dealer shall pay for each year tax on his total turnover at the rate of two per cent. of such turnover."
4. Certain exceptions are provided for in that section. The exception material for our purpose is the one laid down in sub-section (3)(b) of section 5 and that section reads as follows :

"Notwithstanding anything contained in sub-section (1), the tax under this Act shall be levied -

(a)

(b) in the case of purchase of any of the goods mentioned in column (2) of the third schedule, at the rate and only at the point specified in the corresponding entries of columns (4) and (3) of the said schedule, on the dealer liable to tax under this Act, on his turnover of purchases in each year relating to such goods."

5. The relevant entry in the third schedule is entry No. 4 (raw wool), the point of levy being the purchase by the first or the earliest of successive dealers in the State liable to tax under that Act and the rate of tax being one per cent.

6. The next relevant section is section 7, which as it stood prior to its amendment read :

"The tax under this Act shall be levied on any transaction of sale or purchase deemed to take place inside the State under this Act or any other law for the time being in force. The provisions of this Act relating to taxation on sales or purchases inside the State only at a single point or only at one or more stages apply only to the sales inside the State."

7. Section 7 was amended by the Legislature as per the Amending Act 32 of 1958 which came into force from 1st January, 1959. Section 4 of that Act reads :

"In section 7 of the principal Act for the words "apply only to the sales inside the State", the words "apply to sales or purchases inside the State" shall be substituted."

8. Sri D. M. Chandrasekhar, the learned Government Pleader contends that though the turnover of business, with which we are concerned in this case relates to purchase of wool within the State of Mysore and that was prior to the date the amendment in question came into force, we should still consider that the same is liable to be taxed u/s 5(3)(b) of the Mysore Sales Tax Act, 1957, which shall be hereinafter referred to as the Act. He advanced a twofold argument in support of his contention. His first contention was that the expression "sales" includes within its ambit "purchases" as well. He pointed out that the Sales Tax Acts in this country as a rule provide for taxing not only "sales" but also "purchases". This, according to him, is an indication to show that the word "sales" is wide enough to include "purchases" as well. In support of that contention of his, he placed reliance on the decision of the Madras High Court in V.M. Syed Mohamed and Co. and Another Vs. The State of Madras and Another, . Therein, their Lordships were called upon to find out the ambit of the expression "sale of goods" in entry 48 of List II of the Seventh Schedule in the Government of India Act, 1935. Their Lordships came to the conclusion that the words "sale of goods" in entry 48 import in the ordinary sense the transaction which results in change of ownership from one person to another; that must, by its very nature, be a bilateral transaction, with a seller on the one hand and a purchaser on the other;

it is only when there is a contract to which both are parties that there can be a sale; and a power to tax sale of goods is, therefore, in reality a power to tax the transaction and the power to tax the transaction carries with it the power to tax either party thereto. They further observed that as the words "sales tax" are generally understood as importing a tax on the occasion of sale, it is immaterial whether it is collected in the first instance from the sellers or the purchasers, for, eventually it would be passed on to the consumers, and in either case it would be a tax on sales. They held that it is in that sense that the words "tax on sales" would appear to have been used in entry 48. In their Lordships' view entry No. 48 was of sufficient amplitude to authorise the levy of a tax on purchasers and therefore the Madras General Sales Tax Act which imposes a tax on the act of purchasing of goods is not ultra vires. When that decision went up to the Supreme Court in appeal (see V.M. Syed Mohammad and Company Vs. The State of Andhra, , the Supreme Court opined that entry No. 48 in List II of the Seventh Schedule to the Government of India Act, on a proper construction, was wide enough to cover a law imposing tax on the purchases of goods as well and the Constituent Assembly in entry 54 of List II in the Seventh Schedule to the Constitution accepted this liberal construction of the corresponding entry 48 and expressed in clearer language which was implicit in that corresponding entry. We do not think that the Government Pleader could take much assistance from these decisions. It must be remembered that the Madras High Court as well as the Supreme Court were interpreting an entry in one of the lists in a constitutional statute. It has always held that an entry in the lists annexed to constitutional statutes should be considered as a key and should be interpreted liberally, giving the words the widest possible amplitude.

9. It is unnecessary for our present purpose to consider whether "sales" could be ordinarily considered as including "purchases" as well. In the instant case, we have to find out what the Legislature intended when it used the word "sales" in the Act. For finding out the legislative intention we have to look to the several provisions contained in the Act, the scheme of the Act, etc. The preamble to the Act says : "Whereas it is expedient to consolidate and amend the laws relating to the levy of tax on the purchase or sale of goods in the State of Mysore." Again, in section 5, which is the charging section, a distinction is made between sales and purchases. Throughout the Act the sales are dealt with separately from purchases. Even according to the learned Government Pleader the only place where the Legislature used the expression "sales" to comprehend "purchases" as well is the second part of section 7. Coming to section 7 itself the Legislature has used in that section both the words "sale" as well as "purchase". Even in that portion of section 7, with which we are concerned in this case, the Legislature has used both the expressions "sale" as well as "purchase". On a plain reading of the several provisions of the Act and more particularly, on a reading of section 7 itself, it is clear that the Legislature used the word "sale" as something different from "purchase". For these reasons, we are unable to accede to the request of the learned Government Pleader when he wants us to give a wide meaning to the

word "sale" so as to include within its fold "purchase" as well.

10. This takes us to the second branch of the argument advanced by the learned Government Pleader. He says that in order to harmoniously construe section 5(3) (b) and section 7, we have to understand the word "sale" found in the second part of section 7 as including "purchase". According to him, the Legislature did intend to include both "sales" as well as "purchases" in the second part of section 7. But, due to oversight the word "purchase" was left out and therefore it is the duty of the Court to supply that omission.

11. Before considering the correctness of the contention of the learned Government Pleader, we should like to take note of one circumstance which appears to us to be quite relevant. It must be remembered that the Legislature amended section 7 as per Act 32 of 1958. If it was the view of the Legislature that by oversight the word "purchase" had been omitted in the second part of section 7 of the principal Act, there was no difficulty for the Legislature to make that aspect clear. The amending provision could have conveyed that idea by appropriate language. The amendment could have been made retrospective in operation. The language employed in section 4 of the amending Act does not justify the conclusion that any legislative declaration was made by the Legislature. It purports to be an amendment, pure and simple. Nobody would have been in a better position to know about the failure to express the legislative intention properly in the principal Act than the Legislature itself. If the Legislature did not make it clear in the amending Act that there was any unintentional omission in the principal Act, it is difficult for this Court to say that the Legislature omitted to say something in the principal Act, which in fact it intended to say. The learned Government Pleader in this connection invited our attention to the decision in *Kikabhoy Chandabhoy and Others Vs. Commissioner of Income Tax*, . He laid particular emphasis on the observations made by Chagla, C.J., in paragraph (a) of that judgment, which reads as follows :-

"Now it is not necessary to hold that in every case where the Legislature amends the law it does so because but for the amendment the effect would have been different. There are innumerable cases in the history of legislation where the Legislature has added or deleted words in order to clarify the position, and I refuse to read the amendment as meaning that but for it section 56 would have overridden the clear provisions of the proviso (a) to section 25(4) of the Income Tax Act".

12. We fail to see how these observations are of any assistance to the learned Government Pleader. In the instant case, we are considering whether this Court should supply an omission if there was one. This is not a case where the State can ask us to justify the tax proposed to be levied on the respondent, on the basis of the words found in the original enactment. As made clear earlier, unless the Court supplies the alleged omission of the word "purchase" in the second part of section 7, the respondent is not liable to be taxed. It is a well-accepted canon of interpretation that omission in a statute should not be lightly inferred.

Maxwell on Interpretation of Statutes, tenth edition, says :

"It is but a corollary to the general rule of literal construction that nothing is to be added to or to be taken from a statute, unless there are similar adequate grounds to justify the inference that the legislature intended something which it omitted to express. "It is a strong thing to read into an Act of Parliament words which are not there, and, in the absence of clear necessity, it is a wrong thing to do. We are not entitled to read words into an Act of Parliament unless clear reason for it is to be found in the four corners of the Act itself. Words plainly should not be added by implication into a statute unless it is necessary to do so to give the language sense and meaning in its context.""

13. It is further observed therein :

"A case not provided for in a statute is not to be dealt with merely because there seems no good reason why it should have been omitted, and the omission appears consequently to have been unintentional."

14. Somewhat similar are the observations found in the Statutory Construction on Interpretation of Laws by Crawford in its fourth edition at page 269, paragraph 169, under the heading *Casus Omissus*. Crawford says thus :

"Omission in a statute cannot, as a general rule, be supplied by construction. Thus, if a particular case is omitted from the terms of a statute, even though such a case is within the obvious purpose of the statute and the omission appears to have been due to accident or inadvertence, the Court cannot include the omitted case by supplying the omission. This is equally true where the omission was due to the failure of the legislature to foresee the missing case. As is obvious, to permit the Court to supply omissions in statutes, would generally constitute an encroachment upon the field of legislature. But, inasmuch as it is the intention of the legislature which constitutes the law of any statute, and since the primary purpose of construction is to ascertain that intention, such intention should be given effect, even if it necessitates the supplying of the omissions, provided, of course that this effectuates the legislative intention. Some decisions seem to indicate a trend in this direction, and allow words omitted by oversight to be supplied, if the statute is otherwise meaningless, or if an amendment without interpolation is ineffective. Similarly, a plain misnomer may be corrected, or a statute made intelligible by the addition of a word suggested by the statute. It is proper for the Court to supply such omissions because they are in fact part of the statute, having been intended to be included in the statute when drafted and enacted."

15. The above passage relates to interpretation of statutes in general. In the case of fiscal statutes Courts are extremely reluctant to hold the subject liable to tax by either extending the ordinary meaning of the words found in the statute or by supplying alleged omissions. In Craies on Statute Law, 5th edition, it is said that express and unambiguous language appears to be absolutely indispensable in statutes passed for imposing a tax or charge. Sir Lancelot Sanderson speaking

for the Judicial Committee in AIR 1940 183 (Privy Council) , quoted with approval a passage from the opinion of Lord Russell of Killowen at page 24 found in *Inland Revenue Commissioners v. Duke of Westminster* [1936] A.C. 1. which reads :

"I confess that I view with disfavour the doctrine that in taxation cases the subject is to be taxed if, in accordance with a Court's view of what it considers the substance of the transaction, the Court thinks that the case falls within the contemplation or spirit of the statute. The subject is not taxable by inference or by analogy, but only by the plain words of a statute applicable to the facts and circumstances of his case. As Lord Cairns said many years ago in *Partington v. Attorney-General* (1869) 4 H.L. 100 at page 122. "As I understand the principle of all fiscal legislation, it is this : If the person sought to be taxed comes within the letter of the law he must be taxed, however great the hardship may appear to the judicial mind to be. On the other hand, if the Crown, seeking to recover the tax, cannot bring the subject within the letter of the law, the subject is free, however apparently within the spirit of the law the case might otherwise appear to be.""

16. The Supreme Court in *The Central India Spinning and Weaving and Manufacturing Company, Limited, The Empress Mills, Nagpur Vs. The Municipal Committee, Wardha*, , held that if in construing a taxing statute, there are two interpretations possible, then effect is to be given to the one that favours the citizen and not that imposes a burden on him.

17. Sri D. M. Chandrasekhar, the learned Government Pleader urged that if we refuse to supply the omission pointed out, section 5(3)(b) would become otiose and hence the rules of construction require us to supply the omission; this is a case where the Legislature intended to include it but actually failed to use the language. It may be, that the Legislature intended to include "purchase" transactions also within the scope of the latter part of section 7 of the principal Act. But we cannot be positive about it. It will be seen from section 7 that the first part of that section takes within its fold "any transaction of sale or purchase deemed to take place inside the State under this Act or any other law for the time being in force", whereas the latter portion of that section speaks of "sales or purchases inside the State." It is not quite clear what distinction the Legislature had in mind when it used the expression "transaction of sale or purchase deemed to take place inside the State." While deemed sales or purchases under the Act as well as under the other Acts were included within the first part of section 7, only sales or purchases as such were mentioned in the latter part. The learned Government Pleader contended that the first part of the section relates to all taxation, multi-point as well as single point, whereas the latter part of the section relates only to single point transaction. We do not propose to pronounce on that point. But if the Legislature used different language at different places and that in the same section then it must ordinarily be held that it was dealing with different items. Suffice it to say, we are not in a position to say that the latter part of section 7 as it stood completely nullified the effect of section 5(3)

(b). In that view we are unable to read the word "purchase" as an unwritten word in the latter part of section 7.

18. For the reasons mentioned above, we think that the view of the authorities below that the impugned transactions were liable to be taxed cannot be upheld. We, accordingly, allow the revision petition and set aside the orders passed by the authorities below. The respondent shall pay the costs of the petitioner. Advocate's fee Rs. 100.

19. Petition allowed.