

(1968) 11 KAR CK 0021

In the Karnataka High Court

Case No : S.T.R.Ps. No"s. 15 and 16 of 1966 against the order dated 19th January, 1968 passed by the Mysore Sales Tax Appellate Tribunal, Bangalore, in S.T.A. 840 of 1967 and S.T.A. 841 of 1967 respectively

Canara Workshops Ltd.

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 21-11-1968

Acts Referred:

Central Sales Tax Act, 1956 — Section 9 (3)
Mysore Sales Tax Act, 1957 — Section 38, 38 (2) (a)
Mysore Sales Tax Rules, 1948 — Rule 11 (2), 6 (4) (h)

Citation : (1969) ILR (Kar) 318 : (1969) 23 STC 438

Hon'ble Judges : Ahmed Ali Khan, J;A.R. Somnath Iyer, J

Bench : Division Bench

Advocate : P. Vasudeva Aithala, for the Appellant; Shantharaju, for the Respondent

Judgement

Somnath Iyer, J.—The Canara Workshops Ltd., in Mangalore, which is a company carrying on business in the manufacture of springs is the petitioner before us. When the Commercial Tax Officer assessed the company's turnover of inter-State sales in respect of the assessment years 1959-60 and 1960-61, he deducted from the sale price the tax collected under the Central Sales Tax Act, which will be referred to as the Central Act. So, from the aggregate sale price of Rs. 36,06,773.60 in respect of the assessment year 1959-60, he deducted a sum of Rs. 70,614.81 and from the sum of Rs. 44,10,939.55, he deducted a sum Rs. 74,436.01 in respect of the assessment year 1960-61.

2. But the Deputy Commissioner of Commercial Taxes thought that those deductions were illegitimate deductions, and so, in the exercise of his revisional power created by section 21(2) of the Mysore Sales Tax Act, 1957, which will be referred to as the Mysore Act, he enhanced the tax in respect of both the years.

3. The appeals preferred to the Sales Tax Appellate Tribunal were dismissed, and

so, these revision petitions.

4. It was explained by the Supreme Court in *The State of Mysore v. Yaddalam Lakshminarasimhiah Setty & Sons* [1965] 16 STC 231 that the clear meaning of section 9(3) of the Central Act is that sales tax is payable under the Central Act only if it would have been payable under the general sales tax law of the State had the sale been made inside the State. That was how that sub-section which directs the assessment and collection of the tax under the Central Act in the same manner in which the tax on the sale or purchase of goods under the general sales tax law of the State is assessed, paid and collected, was interpreted. But section 9(3) makes that direction subject to the rules made under the Central Act, and so, the quantification of the taxable turnover under the Central Act should be made by the same process by which it is made under the State law, unless, a rule made under the Central Act contains provisions contrary to the provisions of the State law or the Rules made thereunder, in which event, a question would arise whether the provisions under the State law and the Rules made thereunder, stand superseded by that rule made under the Central Act. But, for reasons presently to be stated, that question does not arise in the case before us, and so, we should abstain from expressing any opinion on that question.

5. So, what we should proceed to investigate is whether under the Mysore Act and the Rules made under it, tax collected by the registered dealer under the Mysore Act is part of the taxable turnover under that Act. If it is, tax collected under the Central Act is also taxable turnover under that Act. Otherwise not.

6. Now, section 38 of the Mysore Act authorises the State Government to make rules with respect to a multitude of matters, and clause (a) of sub-section (2) of that section authorises rules in respect of matters expressly required by the Act to be prescribed by rules. Section 2(1)(u-1) of the Mysore Act defines a taxable turnover, and that definition reads :

"2. Definitions. - (1) this Act, unless the context otherwise requires, -

* * * * (u-1) "taxable turnover" means the turnover on which a dealer shall be liable to pay tax as determined after making such deductions from his total turnover and in such manner as may be prescribed,"

7. So, with respect to the deductions to be made from the total turnover, the State Government had the power to make rules u/s 38(2)(a) of the Mysore Act, and, it was in the exercise of that power that it made rule 6(4)(h) of the Mysore Sales Tax Rules, 1957, which reads :

"6. Determination of total and taxable turnovers. -

* * * * (4) In determining the taxable turnover, the amount specified in clauses (a) to (k) shall subject to the conditions specified therein, be deducted from the total turnover as determined under clauses (a) and (b) of sub-rule (1).

* * * * (h) all amounts collected by way of tax under the Act by a dealer;

* * * *

8. It is clear from the provisions of this clause ion rule 6(4) that tax collected under the Mysore Act by a dealer is not part of his taxable turnover. That being so, the determination of the turnover under the Central Act must also be made in the same way, and, in the determination of the turnover under the Central Act, the tax collected by a dealer under the Central Act should be excluded from the total turnover by reason of the clear provisions of section 9(3) of the Central Act. But, Mr. Shantharaju appearing for the State contended that the provisions of rule 6(4)(h) of the Rules under the Mysore Act are as stated in section 9(3) of the Central Act subject to the Rules made under the Central Act and that rule 11(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957, which according to him, contains an exhaustive provision with respect to the determination of turnover order the Central Act excludes the application of the rules for such determination under the Mysore Act.

9. Section 13(1)(b) of the Central Act empowers the Central Government to regulate by Rules the manner in which the turnover in relation to the sale of goods under that Act shall be determined and the deductions which may be made in the process of such determination. It was said that rule 11(2) of the Central Sales Tax (Registration and Turnover) Rules, 1957, which will be referred to as the Central Rules in the course of this judgment, is an exhaustive rule with respect to deductions and that the only deductions which could be made in the process of the determination of the taxable turnover is the deduction to which that rule refers, and that sub-rule as it stood at the relevant point of time, reads :

"11.(1) * * * * (2) In determining the turnover of a dealer for the purposes of section 8, there shall be deducted the sale price of all goods returned to the dealer by the purchaser of such goods within a period of three months from the date of delivery of the goods :

Provided that satisfactory evidence of such return of goods and such repayment of the amount by way of refund in cash or adjustment in accounts is produced before the prescribed authority."

10. On the basis of this sub-rule, an argument was constructed that the only deduction that could be made from the total turnover was the price of goods returned to the dealer by the purchaser within the period referred to in that sub-rule.

11. This argument is founded on the unsupportable assumption that this sub-rule incorporates an exhaustive provision with respect to deductions. It is plain that it does not. It is more reasonable to take the view that all that rule 11(2) of the Central Rules provides is that in addition to the deductions climbable under the State law or the Rules made under it, the deduction authorised by rule 11(2) of the Central Rules shall also be made. That part of section 9(3) of the Central Act

which subjects the application of the State law to the Rules made under the Central Act may present a difficult question for decision in a case where there is a repugnancy between the Rules made under the Central Act and the general sales tax law of the State or the Rules made thereunder. But this question does not arise in this case since there is no such repugnancy, and so, as to what would be the consequence emanating from any such repugnancy is a matter on which it is unnecessary for us to pronounce.

12. Now, if section 9(3) of the Central Act says that the provisions in the general sales tax law of the State shall be subject to the Rules made under the Central Act and if all that rule 11(2) of the Central Rules does is no more than to authorise a particular deduction, the other deductions allowed by the general sales tax law of the State have nevertheless to be made and the provisions in the general sales tax law of the State directing those deductions do not stand superseded or displaced.

13. That is the only restricted way in which the State law becomes subject to the Central Rules. Rule 11(2) of the Central Rules in that view of the matter supplements the State Rules but does not displace them.

14. That that is the correct view is what emerges from the pronouncement of the Supreme Court in Civil Appeal No. 684 of 1967 (*The State of Kerala v. Pothan Joseph & Sons*) [1968] 22 STC 13 : 1969 KLT 5 in which it was explained that in respect of the assessment year 1960-61, the assessee was entitled to claim a deduction of the excise duty which was authorised by rule 7 of the Kerala General Sales Tax Rules, 1950, and that the source of that claim was the provision contained in section 9(3) of the Central Act. Although the Supreme Court in that decision did not discuss rule 11(2) of the Central Rules its pronouncement is destructive of the contention that rule 11(2) of the Central Rules excludes the other deductions claimable under the general sales tax law of the State.

15. The Tribunal made the mistake of thinking that the deduction of the Central tax was claimed under clause (a) of rule 11(2) of the Central Rules which at the relevant point of time had been deleted from that sub rule. What was overlooked by the Tribunal was that the deduction which was made by the Commercial Tax Officer was what had to be made under rule 6(4)(h) of the Mysore Rules read with section 9(3) of the Central Act and that clause (a) of rule 11(2) of the Central Rules had no relevance.

16. So, we allow these two revision petitions and set aside the orders made by the Deputy Commissioner and the Sales Tax Appellate Tribunal, In consequence, the determinations made by the Commercial Tax Officer who made the determinations of the taxable turnover in accordance with law stand restored.

17. The petitioner will get its costs in these two revision petitions. Advocate's fee Rs. 300 in each case.

18. Petitions allowed.