(1970) 07 KAR CK 0002

In the Karnataka High Court

Case No : Writ Petition No''s. 7515, 7516, 7517 and 7520 of 1969

G.K. Chickanarasimhiah APPELLANT

Vs

State of Mysore and Another RESPONDENT

Date of Decision : 09-07-1970

Acts Referred:

Central Sales Tax Act, 1956 — Section 14, 14 (vi), 15
Mysore Sales Tax Act, 1957 — Section 21 (2)

Citation : (1971) 28 STC 94

Hon'ble Judges : G.K. Govinda Bhat, J;B. Venkataswami, J

Bench : Division Bench

Advocate : K. Srinivasan, for the Appellant; P.K. Shyamsundar, High Court Government Pleader, for the Respondent

Judgement

Govinda Bhat, J.—These are four writ petitions filed by an assessee under the Mysore Sales Tax Act, 1957, hereinafter called the "Act". The petitioner is a dealer carrying on business, inter alia, in coriander, (dhania). He was assessed to sales tax on the turnover of coriander under separate assessment orders for four years, viz., 1959-60, 1960-61, 1961-62 and 1962-63. On applications made by the petitioner, the Commercial Tax Officer who is the assessing authority ordered rectification of the assessment orders and exempted the turnover of coriander on the ground that coriander is an "oil-seed" liable to tax only at the point of first purchase and that the petitioner, being not the first purchaser, his turnover was not liable to tax. Consequent on the said orders of rectification, the excess tax paid by the petitioner was refunded. In October, 1969, about four years after the assessing authority had made the orders of rectification, the Deputy Commissioner of Commercial Taxes, Bangalore City Division, Bangalore (respondent No. 2 in all these writ petitions), issued notices to the petitioner stating that the rectification orders made by the assessing authority were illegal and improper because coriander should not have been regarded as an "oil-seed" and that its turnover should have been assessed u/s 5(1) of the Act. Therefore, the second respondent proposed to revise the orders made by the assessing authority and to assess the petitioner''s turnover in coriander and to levy tax thereon u/s 5(1) of the Act. The notice issued by the second respondent in each of these writ petitions is in identical terms. It is sufficient therefore if we set out the contents of the notice issued to the petitioner in Writ Petition No. 7516 of 1969 which relates to the period 1st April, 1959, to 31st March, 1960. It reads :

"No. SMR. 11/69-70 Office of the Deputy Commissioner of Commercial Taxes, Bangalore City Division, Bangalore,

dated 25th October, 1969.

Notice u/s 21(2) of the Mysore Sales Tax Act, 1957.

Please take notice that on review of the assessment records for the period from 1st April, 1959, to 31 st March, 1960, under the M.S.T. Act, 1957, in your case, it is observed that the sales turnover of dhania amounting to Rs. 13,46,956 is excluded from the turnover computed in the original order and the purchase turnover of dhania of Rs. 93,770.53 is subjected to tax in the rectification order dated 20th January, 1966, passed by the Commercial Tax Officer, III(1) Circle, Bangalore, and a refund of Rs. 25,063.70 is ordered treating dhania as an ''oil-seed'' liable to tax at the first purchase point and holding that the consideration of the said sales are not necessary whereas coriander is now considered as not an oil-seed as defined in entry No. 5(d) of the Fourth Schedule to the M.S.T. Act, 1957, and consequently it would attract tax u/s 5(1) of the M.S.T. Act, 1957. The view that coriander is not an ''oil-seed'' but only an article of spice, is based on the expert opinion of the Head of the Division of Genetics, I.A.R.I., New Delhi. Thus, the turnover of sales of dhania which is required to be assessed to tax u/s 5(1) of the M.S.T. Act, 1957, has been excluded from the turnover computed and the purchase turnover is subjected to tax in the above rectification order under a mistaken conception that dhania is an ''oil-seed''.

As the rectification order passed by the Commercial Tax Officer, III(1) Circle, Bangalore, is found to be illegal and improper, I the undersigned, in exercise of the powers vested in me u/s 21(2) of the M.S.T. Act, 1957, propose to revise the said order to rectify the above irregularities and to order the assessment of the turnover of sales of Rs. 13,46,956 to tax at the rate of 2%, and to cancel the purchase turnover of Rs. 93,770.53 assessed by the Commercial Tax Officer in the said order which results in the recovery of Rs. 25,063.70 refunded pursuant to the rectification order passed by the Commercial Tax Officer.

If you have any objections to the proposed revision, you may file your written objections on or before 5th November, 1969, on which date your case has been posted for hearing, failing which order will be passed as proposed above.

Sd./- T. H. Hanumantharayappa, Deputy Commissioner of Commercial Taxes, Bangalore City Division."

2. On 22nd December, 1969, the petitioner has preferred the above writ petitions praying for the quashing of the notices dated 25th January, 1969, and for a

direction to the respondents to forbear from revising the assessment orders made on the petitioner on the basis that coriander is an "oil-seed".

3. In support of these writ petitions, the learned counsel for the petitioner has urged the following two grounds : First, that the impugned notices were issued by the second respondent u/s 21(2) of the Act which empowers him of his own motion to call for and examine the records of any orders passed under the provisions of the Act by a Commercial Tax Officer subordinate to him and against which no appeal has been preferred u/s 20 for the purpose of satisfying himself as to the legality or propriety of such order and that under the revisional powers vested u/s 21, the Deputy Commissioner of Commercial Taxes can only examine the records of the proceedings but he has no jurisdiction to rely on matters extraneous to the record. Secondly, that coriander satisfies the definition of the term "oil-seed" u/s 14(vi) of the Central Sales Tax Act, 1956, and the expression "other oil-seeds" found in serial No. 5(d) of Schedule IV of the Act.

4. A copy of the opinion relied on by the second respondent for initiating the proceedings u/s 21 of the Act was produced before us by the learned Government Pleader. That opinion is contained in a letter of Shri H. K. Jain, Head, Division of Genetics, I.A.R.I., New Delhi, addressed to the Commissioner of Commercial Taxes in Mysore. That document reads thus :

"SUBJECT : Coriander - whether an oil-seed - certain information required.

Reference your No. CST. 989/68-69 of 19th August, 1968, on the above subject. My comments are as under :

Coriander does contain appreciable (10-20%) amounts of fixed oil which is reported to be used in soap-making in Europe. The volatile oil produced by it may also be used in perfumery in Europe. But so far as our country is concerned, the major use of coriander is as a spice and condiment, and it should not, in my opinion, be classified as an oil-seed crop."

5. The Head of the Division of Genetics in I.A.R.I., New Delhi, is not an authority competent to give an opinion as to whether a particular commodity should be classified as an "oil-seed" or not for the purpose of section 14 of the Central Sales Tax Act. The Parliament enacted sections 14 and 15 of the said Act in exercise of the power conferred under article 286(3) of the Constitution of India declaring that the goods mentioned in section 14 are of special importance in inter-State trade or commerce and imposing restrictions and conditions in regard to tax on the sale or purchase of declared goods within a State. Since the power of the State in levying sales tax on declared goods is subject to the limitations prescribed by section 15 of the Central Sales Tax Act the State Legislature while enacting the Act has provided by sub-section (4) of section 5 for levy of tax on declared goods at a single point. Serial No. 5 of Schedule IV of the Act provides for levy of tax on the sale or purchase of "oil-seeds". Groundnut including groundnut seeds, cocoanut, cardamom, castor seeds, honge seeds, neem seeds, til (gingelly) seeds, kusum (kardi) seeds and ginger have been specifically

enumerated as "oil-seeds". These not being exhaustive, the Legislature has under serial No. 5(d) of Schedule IV mentioned "other oil-seeds" in order to cover "oil-seeds" not specifically enumerated. The expression "other oil-seeds" has been explained by the Legislature as the "seeds other than those mentioned in sub-items (a), (b) and (c) of serial No. 5, yielding non-volatile oils used for human consumption, or in industry, or in the manufacture of varnishes, soaps and the like, or in lubrication and volatile oils used chiefly in medicines, perfumes, cosmetics and the like."

6. The authorities empowered to make assessments under the Act are the authorities competent to determine whether "coriander" satisfies the explanation of the term "other oil-seeds" given in serial No. 5(d) of Schedule IV of the Act. They can obtain the opinion of experts on the question of fact, whether coriander yields oil, volatile or non-volatile, and such oil is used for the purposes mentioned in the, definition; but the authorities under the Act cannot rely on the opinion of others as to whether coriander should be classified as an "oil-seed" or not, under the Act.

7. The question whether coriander falls within the expression "other oil-seeds" as explained in Schedule IV of the Act is neither a pure question of fact or law. It is a mixed question of fact and law. The assessing authority, on the view that coriander is an "oil-seed" has exempted the petitioner''s turnover relating to coriander during the assessment periods 1959-60 to 1962-63. If on an examination of the assessment proceedings, the revisional authority considers that coriander does not fall within the meaning of the expression "other oil-seeds", it is open to him to say that the order of the assessing authority is not legal or proper. The second respondent has not stated in his notice, exhibit I, that on an examination of the assessment records, he is satisfied that the order of the assessing authority is not legal or proper. It is not open to the second respondent to rely on the opinion of the Head of the Division of Genetics, I.A.R.I., New Delhi, for the purpose of deciding the legality or propriety of the orders of assessment. Therefore the second respondent, in our opinion, has acted illegally in the exercise of his jurisdiction and consequently the notices issued by him have to be quashed. In that view, it is unnecessary for us to express any opinion on the second contention urged by the learned counsel for the petitioner.

8. For the above reasons, these writ petitions are allowed and the impugned notices issued by the second respondent marked "annexure I" are quashed. In the circumstances there will be no order as to costs.

9. Petitions allowed.

