

(1984) 02 KAR CK 0010
In the Karnataka High Court
Case No : S.T.R.P. No. 41 of 1983

G.M. Patel

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 27-02-1984

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 25 a

Citation : (1987) 65 STC 56

Hon'ble Judges : S.R. Rajasekhara Murthy, J; Jagannatha Shetty, J

Bench : Division Bench

Advocate : G. Sarangan, for the Appellant; S. Rajendra Babu, Government Advocate, for the Respondent

Judgement

K. Jagannatha Shetty, J.—This revision arises out of the order dated May 29, 1982, of the Karnataka Appellate Tribunal, Bangalore, made u/s 25-A of the Karnataka Sales Tax Act (the "Act"), 1957.

2. The matter arises in this way :

The petitioner is a partnership firm and is a dealer registered under the "Act". For the assessment period 1977-78, the petitioner purchased certain quantity of cotton (kapas). That was ginned and sold as bales of cotton. The cotton seeds separated therefrom were also sold. The total purchase made by the petitioner was 8480.24 quintals. Upon ginning, the cotton yielded was 2884.13 quintals and the quantity of cotton seeds obtained was 5434.30 quintals. There was thus a shortage of 161.81 quintals which was nearly two per cent of the total purchase turnover.

The petitioner submitted gross turnover of Rs. 1,43,00,000, exempted turnover of Rs. 1,30,30,000 and taxable turnover of Rs. 12,70,000. The taxable turnover consisted of the sales of cotton seeds in respect of inter-State transactions. The exempted turnover consisted of the sales of cotton kapas and cotton seeds under own account on the ground that he was not the last purchaser. Accepting these

figures, the assessment was made.

But later, the assessing officer issued a notice u/s 25-A of the "Act" stating that there was a difference in the quantity of the cotton purchased and the quantity of cotton and cotton seeds sold and in respect of that difference, the petitioner should be held to be the last purchaser liable to tax under entry 6 of the Fourth Schedule.

The petitioner contested before the assessing officer that the difference in the weights between the purchase and the subsequent sale was due to the dryage in the processing of ginning, since the outturn of cotton and cotton seeds invariably would be at 34 per cent and 64 per cent which together comes to 98 per cent as against 100 per cent of kapas purchased and, therefore, he cannot be considered as the last purchaser in respect of the shortage of 2 per cent.

The assessing officer did not accept that contention. He levied the tax in respect of the shortage that was noticed in the quantity purchased and the quantity sold, treating the petitioner as the last purchaser in respect thereof.

3. The appeal against the said order was dismissed by the Deputy Commissioner of Commercial Taxes (Appeals), Bellary, and the further appeal preferred before the Tribunal also became unsuccessful. Both the authorities have held that the difference in the weight of the kapas purchased and the bales of cotton and cotton seeds sold would be exigible to tax in the hands of the petitioner as the last purchaser. The correctness of this conclusion has been assailed in this revision petition.

Entry 6 in the Fourth Schedule to the "Act" reads :

----- "Cotton, that is to say, all kinds Purchase by the Three of cotton (indigenous or imported) last dealer in per in its unmanufactured state, the State liable cent." whether ginned, baled, pressed, or to tax under this otherwise, but not including cotton Act. waste. -----

The levy of 3 per cent tax is on the last dealer. If the petitioner is not the last dealer, he cannot be taxed at all. If he proves that he has sold everything that he has purchased in the form of bales and cotton seeds, he cannot be taxed merely on the ground that there was a difference in the weighments between the purchase and sale. In other words, if he has sold the entire resultant bales of cotton and cotton seeds after ginning the cotton purchased, he cannot be held to be the last purchaser of cotton.

4. The case of the petitioner was that nothing was left with him and the entire kapas purchased was sold in the form of bales of cotton and cotton seeds. According to him, that which was sold was the only yield that he could get by a ginning the entire kapas into bales. The purchase and the yield upon ginning are reflected from the account books regularly maintained by the petitioner. The authorities have not rejected the account books nor they have doubted the

percentage of yield pointed out the petitioner. He has explained the difference in the weighments attributing it to the process or ginning or dryage due to climatic variations. That is also not doubted or disputed. That being the position, we fail to understand how the petitioner could be the last purchaser in regard to the cotton lost due to dryage or other incidental wastage due to ginning. The last purchaser, in the context, must be in possession of the goods or utilised the goods and that goods must not even be meant for further sale. The petitioner, in our opinion, cannot, therefore, be charged to tax merely on the basis that the difference in the quantity of the cotton purchased and the cotton and cotton and cotton seeds sold represents the purchase of kapas lost in the ginning.

5. In the result, we allow the revision petition, set aside the orders of the authorities below and restore the original order of assessment.

(March 8, 1984)

K. Jagannatha Shetty, J.

6. While dictating the order, we had directed that the matter should go back to the assessing officer with a direction to dispose of the matter in accordance with law in the light of the observations made. But now we find that the remand is totally unnecessary having regard to the finding recorded in the order.

7. In the result, we allow the revision petition, set aside the orders of the authorities below and restore the original order of assessment. This operative part of the record shall be incorporated in the original dictation.

8. Petition allowed.