(1969) 01 KAR CK 0011

In the Karnataka High Court

Case No : S.T.R.P. No. 7 of 1968

G.R. Byappa and Sons APPELLANT

Vs

The State of Mysore and Another RESPONDENT

Date of Decision : 02-01-1969

Acts Referred:

Mysore Sales Tax Act, 1957 — Section 2 (t), 21
Mysore Sales Tax Rules, 1948 — Rule 38

Citation : (1969) 1 MysLJ 427 : (1969) 24 STC 34

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

Bench : Division Bench

Advocate : S. Nanjundaswamy, for the Appellant; Shantharaju, for E.S. Venkataramaiah, High Court Special Government Pleader, for the Respondent

Judgement

1. The petitioner was carrying on business in chillies as a commission agent of his principals. The transaction relating to the sale of chillies was chargeable to sales tax under the provisions of the Mysore Sales Tax Act, 1957, at the purchase point as can be seen from the 5th item of Schedule three to that Act. But by the order of assessment which the concerned assessing authority made with respect to the year 1959-60 on the turnover relating to chillies, the petitioner was called upon to pay the tax although he was the seller and not the buyer.

2. So, under rule 38 of the Mysore Sales Tax Rules, the petitioner sought a rectification of the assessment since he was only a commission agent who sold chillies on behalf of his principals, and so could not be called upon to pay sales tax which had to be paid only by the purchaser to whom he sold the chillies.

3. The assessing authority dismissed the application and the Deputy Commissioner dismissed the revision petition which was presented to him u/s 21 of the Act. The appeal to the Sales Tax Appellate Tribunal was also dismissed.

4. The Tribunal rested its decision on more than one ground. It was of the opinion that the revision petition presented to the Deputy Commissioner was not

maintainable, since under the Act as it stood when the revision petition was presented, the Deputy Commissioner could exercise his revisional power only suo motu and not in a revision petition presented by the petitioner. It then thought that the revision petition presented to the Deputy Commissioner was barred by limitation. It was also of the opinion that the petitioner had no case even on the merits.

5. It is clear that the view taken by the Tribunal that the Deputy Commissioner could not exercise any revisional jurisdiction on the revision petition presented by the petitioner cannot be sustained and Mr. Shantharaju very rightly did not advance any argument in support of the view taken by the Tribunal. Even under the amended Act, as it now stands, the Deputy Commissioner could exercise revisional jurisdiction of his own motion and the mere fact that he entertained the revision petition presented by the petitioner and decided the contentions raised in that revision petition does not support the postulate that the Deputy Commissioner did not exercise revisional jurisdiction of his own motion. It is obvious that the mere fact that the petitioner appealed to the revisional jurisdiction of the Deputy Commissioner did not preclude the Deputy Commissioner from exercising revisional jurisdiction of his own motion and if he did exercise that revisional jurisdiction, as he did in this case, we should presume that he exercised it of his own motion.

6. The view taken by the Tribunal that the revision petition was barred by limitation overlooked the fact that the last date on which the revision petition should have been presented was a holiday and so the petitioner was entitled to present the revision petition on the next day as he did.

7. So, we now proceed to consider the sustainability of the order made by the assessing authority on its merits. It is an admitted fact that the petitioner sold the chillies with which we are concerned as a commission agent of his principals. But the assessing authority was of the view that even so, the petitioner must be deemed to have in the first instance purchased the chillies belonging to his principals and that he must be further deemed to have sold those chillies to the persons to whom he sold them. In support of this conclusion he depended upon sub-clause (iii) of clause (b) of the 3rd explanation to section 2(t) of the Mysore Sales Tax Act, 1957, as it then stood. That clause reads :

"Explanation 3 - Notwithstanding anything to the contrary contained, in this Act, two independent sales or purchases shall for the purpose of this Act be deemed to have taken place -

(a) when the goods are transferred from a principal to his selling agent and from the selling agent to the purchaser, or

(b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal if the agent is found -

* * * (iii) not to have accounted to his principal for the entire collections or

deductions made by him in the sales or purchases effected by him on behalf of his principal or

* * *

8. Clause (b) of this explanation has no relevance and clause (a) has, for the reason that it is undisputed that the petitioner was a selling agent on behalf of his principals. But the assessing authority thought that notwithstanding the fact that he was only an agent for his principals, and that the sales were made by him as the agent of his principals, two independent transactions must be deemed to have taken place since the case fell within sub-clause (iii) of clause (a) of this explanation. In the course of his discussion with respect to this matter, he said this :-

"...... The final assessment order for the year 1959-60 is concluded on 25th September, 1961. In this order the Commercial Tax Officer determined the turnover of chillies at Rs. 4,69,150 and levying the tax on the some has stated, ''I allow a lump sum of Rs. 2,50,000 representing such agency sales and disallow the balance of Rs. 4,69,150 as relating to independent transactions as the assessee has not credited the full realisation to principal''s accounts. [Vide explanation 2(t) as per which the transactions are to be treated as independent only under such circumstances). In other aspects the return is accepted. No sales tax is collected.''

* * *

9. This conclusion reached by the assessing authority is, it is clear, based upon an incorrect comprehension of the provisions of sub-clause (iii) of the 3rd explanation. Under that clause, a dichotomy of the sale by an agent on behalf of his principal permissible only in a case where the agent has not accounted to his principal in respect of the entire collections or deductions made by him. But the assessing authority did not record a finding that the petitioner had not made any such accounting. All that he stated was that he had not credited the full realisation to the principal''s accounts. But what authorises the binary classification is not an omission on the part of the agent to credit the realisation in full to the principal''s account, but the default on his part to render a full account to the principal in respect of the transaction of sale. But there was no finding that such accounting had not been made.

10. There is a distinction between the failure on the part of an agent to render a full account to his principal and the failure on his part to credit to the principal''s account the realisation made on his behalf. While in the former case the sale by the agent for the purposes of the Sales Tax Act becomes his own independent transaction falling as it does within sub-clause (iii) of clause (a) of the 3rd explanation to section 2(t), it does not become so in the latter.

11. The mistake which was responsible for the assessment made by the assessing authority was attributable to the impression that even in a case where

the agent does not credit the principal''s account with all the realisations and collections it was possible under the Act to deduce two transactions, although it is clear that it could not be so done.

12. Even the Deputy Commissioner and the Tribunal committed the same mistake committed by the assessing authority. So we allow this revision petition and set aside all the three orders against which this revision petition is directed. We issue a direction to the assessing authority to make the rectification sought by the petitioner. The petitioner will get his costs. Advocate''s fee Rs. 100.

13. Petition allowed.

