
(1968) 06 KAR CK 0011
In the Karnataka High Court
Case No : S.T.R.P. No. 50 of 1966

Harakchand Rugchand

APPELLANT

Vs

State of Mysore

RESPONDENT

Date of Decision : 28-06-1968

Acts Referred:

Mysore Sales Tax (Amendment) Act, 1964 — Section 34, 5 (5A)
Mysore Sales Tax Act, 1957 — Section 5

Citation : (1968) ILR (Kar) 634 : (1968) 2 MysLJ 189 : (1969) 23 STC 197

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

Bench : Division Bench

Advocate : B.V. Katageri, for the Appellant; S. Shantaraju, for the High Court
Special Government Pleader, for the Respondent

Judgement

Somnath Iyer, J.—In respect of the assessment year 1957-58, the Commercial Tax Officer, Gadag, made an order of assessment by which the turnover of the petitioner relating to the sale of cloth held by him on 14th December, 1957, was also included in the assessment. In Writ Petition No. 1235 of 1962, this Court made an order on 21st August, 1963, setting aside that part of the assessment. That judgment rested on the view that the relevant part of section 5 of the Mysore Sales Tax Act, 1957, did not charge that part of the turnover with sales tax.

2. But, by the Mysore Sales Tax (Amendment) Act, 1963 (Mysore Act 9 of 1964) section 5(5A) was amended retrospectively, and in consequence, the turnover which had been included by the Commercial Tax Officer in the order of assessment stood properly included. Section 34 of the amending Act validated the assessments made under the principal Act notwithstanding any judgment, decree or order of any court or tribunal So, the assessment made by the Commercial Tax Officer thus stood retrospectively validated.

3. But, mean while on the strength of the order of this Court, in W.P. No 1255 of 1962, the petitioner sought a refund of the tax attributable to the turnover

which, in the opinion of this Court, had been wrongly included in the assessment, and that refund was made to him. On the validation of the assessment by Mysore Act 9 of 1964, the Commercial Tax Officer called upon the petitioner to pay back the amount which had been refunded to him, and the petitioner contends that this demand is without competence.

4. This challenge to the demand is made on two grounds : The first submission made by Mr. Katageri on behalf of the petitioner was that the refund made by the Commercial Tax Officer also stood validated u/s 34 of the amending Act and that it was thus impossible for the Commercial Tax Officer to demand the payment of what was refunded. The second submission was that the impugned demand could be made only after there was a rectification, under rule 38 of the Mysore Sales Tax Rules, of the order of assessment which the Commercial Tax Officer had previously made.

5. Neither of these submissions, in our opinion, can be accepted. The postulate that the refund made by the Commercial Tax Officer also stood validated by section 5 of the amending Act is plainly groundless. What is validated under that section is a refund made under the principal Act. But the refund which was made by the Commercial Tax Officer was not made under the principal Act but was made because this Court quashed that part of the assessment which, in its opinion, was not authorised by the principal Act. The refunds to which section 34 refers are refunds authorised by the Act such as those which are enumerated in These are refunds which are made under the principal Act.

6. But, if a refund is made because this Court directed a refund while it quashed some part of the order of assessment, it is not a refund made under the Act, but is one made in obedience to the direction of the Court. If, as explained by this Court, the assessment itself was not authorised by the Act, the collection of the tax made in enforcement of that order of assessment is not a collection made under the Act nor is its refund made under the orders of the Court, a refund made under the Act.

7. So, the argument that there was legislative validation of the refund must be negated.

8. The argument that the impugned demand had to be preceded by an order of rectification under rule 38 is, in our opinion, equally untenable. Section 34 of the amending Act validated an order of assessment notwithstanding the pronouncement of this Court to the contrary. So, on such retrospective validation, it was a good assessment when it was made and, under that assessment, the petitioner was liable to pay the tax, which, however, had been by then refunded to him, under an order of this Court. If the order of assessment was, therefore, a good assessment, the tax paid by the petitioner should not have been refunded to him and if it was nevertheless refunded, because this Court directed the refund, the Commercial Tax Officer on the validation of the assessment, had the power to call upon the petitioner to repay the amount which

had been refunded to him. The liability to pay back that amount was a consequence which plainly flowed from retrospective validation.

9. It is difficult to understand the assertion that the impugned demand was not possible unless there was a rectification of the assessment. The assessment, on validation, no longer of invalidity which constituted the foundation of the judgment of this Court in Writ Petition No. 1235 of 1962. As the assessment order now stands after its validation, the amount refunded to the petitioner was tax properly payable by him. A rectification of the order of assessment was necessary only if without such rectification the amount refunded could not have been demanded as tax and it became necessary for the Commercial Tax Officer to clothe himself with the authority to demand it, to make a rectification of his own assessment. But, such rectification was obviously unnecessary in the present case.

10. The decision of the Supreme Court in *M.K. Venkatachalam, I.T.O. and Another Vs. Bombay Dyeing and Mfg. Co., Ltd.*, . and of the High Court of Madras in *Ceylon Thowfeck Hotel v. The State of Madras* [1961] 12 STC 238. have no resemblance to the case before us.

11. In the former case, the Income Tax Officer made a refund of interest on the advance tax paid by the assessee on the basis of statutory provisions which were subsequently retrospectively amended. The elucidation made by the Supreme Court was that the recovery of the interest could not be demanded unless such demand was preceded by rectification of the assessment.

12. In the latter case, the assessment made under the Madras General Sales Tax Act by the Deputy Commercial Tax Officer by which he made a demand of tax at a higher rate than that authorised by the Act, was modified by the Sales Tax Appellate Tribunal which substituted a tax computed at a lower rate which was what was charged by the Act. Here again, there was an amendment of the Sales Tax Act by which the higher rate was retrospectively substituted. The High Court of Madras reached the conclusion that since under the modified order of assessment made by the Sales Tax Appellate Tribunal the tax was payable only at the lower rate, the rectification of that order of assessment was a condition precedent to the demand for the payment of the difference which had by then been refunded to the assessee.

13. But, in the case before us, unlike the assessments in the two cases on which Mr. Katageri depended, the order of assessment made by the Commercial Tax Officer required no rectification, and, as it stood, when the impugned demand was made it made the petitioner liable to pay the tax which was subsequently refunded to him. It would, therefore, be futile to suggest that there was any necessity for the rectification of that order of assessment.

14. So, we dismiss this revision petition. No costs.

15. Petition dismissed.