
(2005) 06 KAR CK 0020
In the Karnataka High Court
Case No : Writ Petition No. 16867 of 2005

J.K. Industries Ltd.

APPELLANT

Vs

State of Karnataka and Others

RESPONDENT

Date of Decision : 30-06-2005

Acts Referred:

Karnataka Sales Tax Act, 1957 — Section 19 C
Karnataka Sales Tax Rules, 1957 — Rule 20C (1) (c)

Citation : (2007) 10 VST 796

Hon'ble Judges : D.V. Shylendra Kumar, J

Bench : Single Bench

Advocate : Chaitanya Hegade, for the Appellant; Niloufer Akbar, A.G.A., for the Respondent

Final Decision : Dismissed

Judgement

D.V. Shylendra Kumar, J.—Writ petition is by a person, who is a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957 (for short, "the Act"). The claim of the petitioner is that the petitioner is entitled for certain tax benefits in terms of a notification issued by the Government under the provisions of the Section 19C of the Act.

2. The present grievance of the petitioner is that because of the provisions of Rule 20C(1)(c) of the Karnataka Sales Tax Rules, 1957 (for short, "the Rules"), the petitioner has been virtually subjected to tax liability in respect of the goods manufactured and transported to the sub-offices or such branches of the petitioner as also that of an agent within the State.

3. The petitioner in fact is aggrieved by the assessment order dated May 16, 2005, copy produced as annexure H to the petition, passed by the fourth respondent--the Deputy Commissioner of Commercial Taxes, whereunder certain tax liability is determined on the petitioner and it is averred that while determining such tax liability under the assessment order, the assessing officer has also examined the extent of entitlement to which the petitioner can claim

benefit in terms of the notification issued u/s 19C of the Act and for such purpose, the authority having relied upon the provisions of Rule 20C(1)(c) of the Rules and that being not to the liking of the petitioner, the petitioner is before this court, inter alia, questioning the constitutional validity of Rule 20C(1)(c).

4. Submission of Sri Chaitanya Hegade, learned Counsel for the petitioner, is that under Rule 20C(1)(c) of the Rules no tax liability can be determined and, at any rate, tax liability cannot be on the basis of the goods which the petitioner transfers to its sub-divisional offices or branches or even to its agents, if it is not a transaction in the nature of sale; that the provision of Rule 20C(1)(c) having the effect of creating a liability on such transfer of goods, the provision is unconstitutional and it is liable to be struck down, etc. Rule 20C(1)(c) reads as under:

20C. Procedure and conditions for granting deferred payment of tax or exemption of tax for new industry.--(1) Where a new industrial unit referred to in Section 19C is eligible for specified tax incentive with reference to the investment made in fixed assets, the extent of such incentive shall be arrived at, on the basis of the following:

(a) ...

(b) ...

(c) Aggregate amount of tax at the rate of four per cent or the rate applicable under the Karnataka Sales Tax Act, 1957, whichever is lower on the sale price of the goods transferred by the eligible new industrial unit to its own place of business or to the place of business of its agent at any place within India but outside the State of Karnataka for sale there.

5. A perusal of Rule 20C(1)(c) indicates that it is only a measure for determining the extent of concession that the petitioner can avail of in respect of his tax liability determined under the assessment order. The provision is not one for determining any tax liability of the petitioner. In fact, no tax liability can be fastened on any person under a rule much less under a rule which is for the purpose of giving effect to the provisions of Section 19C of the Act, a provision under which certain concessions are extended to a dealer under the Act by issue of an appropriate notification by the Government. Assuming for arguments sake that the assessing authority has committed an error in computing the extent of concession that the petitioner is entitled to, that is a matter which the petitioner can agitate in an appeal before the appellate forum. The provision is an innocuous one which, if at all, provides for working out concession in terms of Section 19C of the Act, even if the rule is so understood and interpreted by the assessing authority in a manner not so provided in the Rules and to the detriment of the interest of the petitioner, that by itself will not render the rule to be bad.

6. It is open to the petitioner in such an event to pursue the matter by way of

statutory remedies as provided under the Act itself. There is no occasion to hold that the rule is unconstitutional. The arguments itself is fallacious and proceeds on the premise that the rule creates a liability for payment of tax, whereas in fact the rule does not create any tax liability under the Act. Reserving liberty to the petitioner to avail of statutory remedies, this writ petition is dismissed.