

(1990) 11 KAR CK 0020
In the Karnataka High Court
Case No : W.A. Nos. 11728 to 11174 of 1988

J.S. Auto Machine Shop

APPELLANT

Vs

State Or Karnataka and Another

RESPONDENT

Date of Decision : 09-11-1990

Acts Referred:

Karnataka Tax on Entry of Goods Into Local Areas for Consumption, Use or Sale
Therein Act, 1979 — Section 3(1)

Citation : (1991) 35 KarLJ 77

Hon'ble Judges : G. P. Shivaprakash, J;M. Rama Jois, J

Judgement

G.P. Shivaprakash, J.-These appeals are presented against the order dated 13-4-1988 passed by the learned single Judge in W.P. Nos. 19038 to 19040 Reported in 1988(32) Kar. LJ. (Tri. Supp.) 81 (HC): ILR 1988 Kar. 2510 dismissing the petitions holding that the industrial machinery is one of the scheduled goods exigible to levy of tax under the Karnataka Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act, 1979 (hereinafter referred to as "the Act").

1. The facts of the case, in brief, are as follow. The appellant, which is a partnership firm, during the years ending Deepavali, 1984, 1985 and 1986, purchased and brought into the local area of Davangere certain industrial machinery for the purpose of job work i.e., repairing of machines and reconditioning of engines. The Assistant Entry Tax Officer (Assessment), Davangere, issued proposition notices in Form No. 8 for the aforesaid years proposing to levy Entry-tax on industrial machinery determining the total value of the goods brought into the local area for use at Rs. 17,27,664/-, Rs. 66978/- and Rs. 26,520/-, respectively, He proposed to levy Entry-tax on the same and it worked out to Rs. 34,553-28, Rs. 1,339/- and Rs. 530-40, respectively.

2. In the petitions, the said levy was challenged by the appellant on the ground that the proposed levy was not in conformity with the charging Section 3 of the Act, since the machineries brought by the appellant for use in his workshop was

not meant for consumption, use or sale in the local area. Section 3(1) of the Act reads thus:

"3. LEVY OF TAX.-(1) There shall be levied and collected a tax on entry of the Scheduled goods into a local area for consumption, use or sale therein at such rate not exceeding two per cent advalorem and from such date as may be specified, whether prospectively or retrospectively by the State Government and different dates and different rates may be specified for different local areas:

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3. The relevant item for imposing the impugned levy is item No. 7 of the Schedule to the Act which reads thus:

"7. Industrial machinery and parts and accessories thereof.

It was submitted by Sri K. Srinivasan, learned counsel for the appellant, that the said machineries, which were brought into the local area were installed for effecting repairs and reconditioning of the machineries brought by (he customers and since the said application in the workshop did not amount to "consumption", "use" or "sale" of those machineries within the local area, the provisions of the Act are not attracted. According to the appellant, the expression "use" should be understood to mean as "used" and not as "put to use". Otherwise it was submitted that item 7 of the Schedule to the Act which seeks to levy Entry-tax on industrial machinery, is beyond the competence of the State Legislature, since the power to legislate is to be traced to Entry 52 of List-II of Seventh Schedule to the Constitution of India which reads thus:

"52. Taxes on the entry of goods into a local area for consumption, use or sale therein."

4. Therefore, the only question that arises for consideration in this appeal is the meaning to be given to the expression "consumption", "use" or "sale" therein. In support of the submission that the expression "use" should be understood as "used up", the learned counsel for the appellant relied on an unreported decision of the Supreme Court in S.M. Ram Lal & Company v Secretary to Government of Punjab & Others, C.A. No. 369 of 1966, DD: 3-4-1969 wherein while interpreting the meaning of the word "use" in the context of levy of octroi on wool purchased by the dealer from its head office in Delhi, it was held on the facts and the circumstances of that case as follows:

"It is common ground that the goods brought within the Notified Area Committee of Faridabad were not brought for consumption or sale. It was argued, however, that the goods were brought into the Notified Area Committee for use and on that account octroi was leviable. The expression "use" is not defined in the Act. In its ordinary meaning the word "use" as a noun, is the act of employing a thing; putting into action or service; employing for or applying to a given purpose. But the word "use" occurs in Entry 52 List-II of the Seventh Schedule to the Constitution sandwiched between "consumption" and "sale", and it must

take colour from the context in which it occurs. It is a settled rule of interpretation that when two or more words which are susceptible of analogous meaning are coupled together they are understood to be used in their cognate sense. They take, as it were, their colour from each other, that is, the more general is restricted to a sense analogous to the less general: Maxwell on Interpretation of Statutes, 11th Edition, p. 321. The coupling of three words "consumption", "use" and "sale" connotes that the underlying common idea was that either the title of the owner is transferred to another, or the thing or commodity ceases to exist in its original form. Unless it is proved that the wool brought within the limits of the Notified Area Committee, Faridabad, by the appellant was intended to be so employed that it was to cease to be the original commercial commodity and was to become a new commodity or a component of a new commodity, no octroi would be levied by the Notified Area Committee on the entry of wool."

In *Burman-Shell Oil Storage and Distributing Company of India Ltd. v Belgaum Municipality*, AIR 1963 SC 906, while tracing the history of octroi and terminal taxes, the Supreme Court in the context of interpreting certain provisions of Bombay Municipal Boroughs Act considered the meaning of the terms "use", "consumption" or "sale" and held inter alia, at para 19, thus:

"** The Boroughs Act, which was enacted in 1925 mentioned only "consumption and use" Ever since its enactment, no dispute seems to have been raised by any person that goods brought in for sale were exempt from octrois. All persons who brought the goods apparently paid this tax without objection. It was only in 1954 when the Legislature seeking to bring the description of octroi in the Municipal Act in line with the Constitution included the word "use" also, that the dispute was raised by persons who were affected, and they were some of the persons who had paid the tax before, even though the word "sale" was not there. Of course, the conduct of the tax-payer is not determinative of the meaning of the words "consumption or use". But it shows how the term was always understood. The word consumption in its primary sense means the act of consuming and in ordinary parlance means the use of an article in a way which destroys, wastes or uses up that article. But in some legal contexts, the word "consumption" has a wider meaning. It is not necessary that by the act of consumption the commodity must be destroyed or used up."

Similarly in *Kathiawar Industries Ltd. v Jaffrabad Municipality*, AIR 1979 SC 1720 at para 6 it is held thus:

"6. In this appeal it is necessary for us to consider the scope of the words "consumption" and "use". The precise meaning to be given to the words "consumption" and "use" will depend upon the context in which they are used. These words are of wide import. In the Constitution of India, Entry 52 in List-II in Seventh Schedule a right to impose tax "on entry of goods into the local area for consumption, use or sale" is conferred. In *Burmah Shell Oil Storage & Distributing Co. India Ltd. v The Belgaum Borough Municipality*, (1963) Suppl.

(2) SCR 216, this Court after tracing the history of octroi and terminal tax observed that while terminal tax is a kind of octroi which is concerned only with the entry of goods in a local area irrespective of whether they would be used there or not, octrois were taxes on goods brought into the area for consumption, use or sale. They were leviable in respect of the goods put to some use or the other in the area but only if they were meant for such user."

In this decision reference is made to *Burmah Shell's case* and also to *Anwarkhan Mahboob Co. v State of Bombay*, AIR 1961 SC 213 wherein it is held at para 9 thus:

"Consumption consists in the act of taking such advantage of the commodities and services produced as constitutes the "utilisation" thereof."

5. Mr. Dattu, learned High Court Government Pleader, relying on the aforesaid decisions submitted that the machineries brought into the local area by the appellant have been rightly taxed since the meaning of the term "use" under the charging section should be interpreted as a noun and not as a verb and so interpreted the term "used" cannot be understood to mean as "used up" as contended for the appellant. Besides, he submitted that the decisions in *Burmah Shell's case* and *Anwarkhan's case* are of a larger Bench and therefore the terms "consumption", "use" or "sale" should be understood in the manner laid down in those cases.

6. However, Mr. K. Srinivasan contended that the decision in *Ram Lal & Company's case* is on the point in question wherein the Supreme Court has clearly stated that the expression "use" occurring in Entry 52, List-II of the Seventh Schedule to the Constitution must take colour from the context in which it occurs since the word "use" is sandwiched between "consumption" and "sale" and, therefore, coupling of three words "consumption", "use" and "sale" connotes that the underlying common idea was that either the title of the owner is transferred to another, or the thing or commodity ceases to exist in its original form. He submitted that the decision in *Burma Shell's case* is mere obiter, even though of a larger Bench, and that the ratio of a smaller Bench in the case of *S.M. Ram Lal* should prevail over the obiter of a larger Bench. We are of the considered opinion that the decision in *Burmah Shell's case* cannot be considered as a mere obiter and the ratio of the decision in *Burmah Shell's case* and the *Anwar Khan Mahaboob's case*, which are of a larger Bench, and the decision in *Kathiawar Industries Ltd.*, are applicable to the facts of this case.

7. Mr. Srinivasan also submitted that since the appellant is not a dealer as defined under Section 2(4) of the Act and that Section 29 of the Act clearly provides that nothing in the Act shall apply to the persons who are not dealers in scheduled goods, the levy of Entry-tax cannot be sustained. Mr. Srinivasan contended that the appellant, in this case, does not carry on the business of buying and selling of the industrial machineries which he has brought within the local area for his own use i.e., for executing job works in the work-shop and,

therefore, he cannot be treated as a dealer under the Act. In support of this submission, Mr. Srinivasan relied on the decision in *State of Gujarat v Raipur Manufacturing Co. Ltd.*, 19 STC 1, wherein the Supreme Court while considering the definition of dealer under the Bombay Sales Tax Act held that in order to fall within the charging provisions of the Sales Tax Act it must be shown that the person had an intention to carry on the business of selling those goods before his turnover from the sale of those commodities is brought to tax. Mr. Srinivasan also relied on a decision in *State of Andhra Pradesh v Abdul Baksh & Others*, 15 STC 644, in support of the above proposition.

8. Per contra Sri Dattu submitted that the taxable event was the entry of goods to the local area whether meant for "consumption", "use" or "sale". In the instant case, since the machineries in question were brought by the appellant within the local area for the purposes of using the same for executing job works, the provisions of the Act were attracted in terms of the charging Section of the Act and, therefore, the appellant is liable to pay Entry-tax on the entry of the Scheduled goods. Besides Section 4(1) provides for registration of dealers, which reads thus:

"4. 4. REGISTRATION OF DEALERS.- (1) Every dealer who buys or receives scheduled goods and who is doing business in a local area and whose total turnover under the Karnataka Sales Tax Act, 1957 (Karnataka Act 25 of 1957) or, in the case of person executing works, contracts, the gross receipts therefrom or the aggregate of both, as the case may be, during the year is not less than rupees forty thousand shall get himself registered under this Act, in such manner and within such period as may be prescribed."

It is, therefore, obvious that every dealer who buys or receives scheduled goods, who is doing business in a local area and whose total turnover under the Karnataka Sales Tax Act, 1957 or in the case of a person executing works contract, as in the case of the appellant, if the gross receipts is not less than Rs. 40,000/- is obliged to get himself registered under the Sales Tax Act. The said Section 4 was amended by Act No. 38/84 providing for registration of dealers who buys or receives scheduled goods and who is doing business in local area. In view of the amendment there cannot be any doubt that the appellant is a dealer and the provisions of the Act are applicable to him. In support of this submission, Mr. Dattu relied on decision in *State of Andhra Pradesh v Abdul Bakshi & Others*, 15 STC 644.

9. In the Judgment under appeal, the learned single Judge, after considering all the decisions on the point, at issue, held as follows:

"(i) In *Randal's* case (Civil Appeal No. 869/1966), Supreme Court did not lay down any categorical ratio, remanded the case to the High Court for recording further evidence on the question whether the entry of the wool belonging to the appellants into the limits of the Notified Area Committee, Faridabad was with the object of converting it into a different commercial commodity. The Supreme

Court also left open the question whether mere dyeing of the wood converted it into a different commercial commodity?

Therefore, the observation of the Supreme Court made in the context of the facts of that case should be understood in the light of the later decisions of the Supreme Court in *Burmah Shell* AIR 1963 SC 906 and *Anwarkhan's* case AIR 1961 SC 213. Reliance of *Ramlal's* case by the petitioner is, therefore misplaced, (ii) The connotation of the expression, "consumption", "use" and "sale" as explained by the Supreme Court in the above mentioned cases should prevail and should govern the interpretation of these terms used in the Karnataka Entry Tax Act, also.

To sum up, the light of the ratio laid down by the Supreme Court in the above mentioned decisions, the term, "use" need not always be understood as "used up".

(iii) The decisions of the Supreme Court in *Raipur Manufacturing Company* and the *Director of Disposals*, only laid down and explained when an activity can be construed as business and in both the cases the said conclusion was based on the facts. Those decisions, therefore, do not help in deciding the question that arises for decision in these cases nor do they support the petitioner's contentions.

(iv) So far as the second point as to the definition of "dealer" is concerned, the contention of the petitioner has to be rejected in view of what was stated by the Supreme Court in *Abdul Bakshi's* case, wherein it was held, a commodity may be used as an ingredient or in aid of manufacturing process leading to the production of another saleable commodity and one need not sell the very article to become a dealer."

10. In view of the above, we are in agreement with the judgment of the learned single Judge and, therefore, this appeal fails and the same is dismissed.

Appeal dismissed.