

(1981) 02 KAR CK 0026
In the Karnataka High Court
Case No : S.T.R.P. No. 58 of 1977

K. Konappa and Bros.

APPELLANT

Vs

State of Karnataka

RESPONDENT

Date of Decision : 02-02-1981

Acts Referred:

Karnataka Agricultural Produce Marketing (Regulation) Act, 1966 — Section 72 (2), 78
Karnataka Sales Tax Act, 1957 — Section 2 (1) (k), 6 A (1)

Citation : (1981) ILR (Kar) 675 : (1981) 48 STC 136

Hon'ble Judges : M.K. Srinivasa Iyengar, J; M. Rama Jois, J

Bench : Division Bench

Advocate : B.P. Gandhi, for the Appellant; M.R. Vanaja, High Court Government Pleader, for the Respondent

Judgement

Rama Jois, J.—This is a revision petition presented by a registered dealer under the provisions of the Karnataka Sales Tax Act, 1957 (hereinafter referred to as the Act), praying for revising the order of the Karnataka Appellate Tribunal confirming the order of the Deputy Commissioner of Commercial Taxes (Appeals), Bellary, who in turn, had confirmed the order of assessment made by the Commercial Tax Officer, I Circle, Bellary.

2. The petitioner is a dealer in agricultural produce. He is a trader as well as a commission agent. For the assessment period commencing from 1st April, 1971, to 31st March, 1972, he filed his returns. As far as the purchases and sales effected by him as a trader, the assessment has been made and that is not the subject-matter of controversy. The assessee had acted as a commission agent in respect of known principals who were producers and the turnover of commission sales during the said period came to Rs. 2,64,901.36. The assessee claimed exemption from tax on the said turnover on the ground that he had acted as selling agent on behalf of the agriculturist-principals who are exempted from tax in view of the exception incorporated below section 2(1)(k) of the Act. On the ground that the assessee had not produced proof in respect of the exemption, a

notice was served on 6th December, 1973, calling upon him to file objections, if any, before 14th December, 1973, for the proposal to reject the claim for exemption. The assessee failed to appear before the Commercial Tax Officer. He therefore proceeded to make the assessment as proposed in the notice. Aggrieved by the said order, the assessee preferred an appeal before the Deputy Commissioner of Commercial Taxes. In the appeal, the assessee urged the following two grounds :

- (1) that the assessee had acted as a commission agent of agriculturists and therefore the turnover relating to commission sales was not liable to tax; and
- (2) that the turnover of each of the principals on whose behalf he acted as commission agent was below Rs. 25,000 and therefore the said turnover could not be brought to tax under the Act.

Before the appellate authority one other ground urged for the petitioner was that no sufficient time was given to him to file his objections and adduce evidence, as notice was served on the petitioner only on 6th December, 1973, and the assessee was asked to file objections, if any, before 14th December, 1973, and that time was highly insufficient as it was a peak business season.

3. As regards the second ground urged for the petitioner, the appellate authority proceeded to state that it was not set out in the grounds of appeal and no application was made urging the said additional ground. As regards the first ground the appellate authority proceeded to state that notice was issued to the petitioner but he failed to appear before the assessing authority and the papers also did not disclose that he had requested for grant of time. He further held that there was no material evidence in support of the stand of the assessee that he had acted as agent of the agriculturist-principals.

4. Aggrieved by the order of the first appellate authority, the petitioner preferred a second appeal before the Appellate Tribunal. The same two grounds urged before the first appellate authority were also urged before the Tribunal. As regards the first ground, the Tribunal also proceeded to state that no material had been produced to decide the issue as to whether the principals on whose behalf the petitioner had acted as agent were agriculturists. Regarding the second ground urged before the first appellate authority which had also been urged before the Tribunal, it observed that the assessee had not raised that ground in the appeal preferred before the first appellate authority. The Tribunal also proceeded to state that in view of section 6-A(1) the burden of proving that any transaction or any turnover of a dealer was not liable to tax lay on the dealer and in the present case, the petitioner had failed to discharge the said burden. It also proceeded to state that the petitioner ought to have produced the pahani extracts and some other evidence to show that his principals were agriculturists.

5. Shri B. P. Gandhi, the learned counsel appearing for the petitioner, urged the same two contentions which had been urged before the first and second appellate authorities and submitted that the petitioner had not been given

sufficient time by the assessing officer to file his objections and to prove that the turnover in question was not liable to tax under the Act. Elaborating his contention that the petitioner being a commission agent on behalf of the agriculturists who sold the agricultural produce produced by them through the petitioner as commission agent, the commission agency sales were not liable to tax, he submitted that in view of sections 72(2) and 78 of the Karnataka Agricultural Produce Marketing (Regulation) Act, 1966, and the conditions imposed in the licence, a commission agent could act only on behalf of the producers who were agriculturists and this fact had not been taken into account by the authorities. He also submitted that the account books produced by the petitioner also showed the names of persons for whom the petitioner had acted as commission agent. In support of the second contention, the learned counsel submitted that the books of account produced as also the booklets produced by him, which contained the names of several principals, themselves indicated that the turnover of each of those principals was below Rs. 25,000.

6. In our view, the first contention urged for the petitioner that as a commission agent acting as a marketing functionary under the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act he was acting as the agent of only producers and therefore the entire turnover relating to commission agency sales was not liable to tax is not without substance. The provisions of the Marketing (Regulation) Act and the conditions imposed thereunder support the contention urged for the petitioner and give rise to a reasonable inference that as a commission agent, the petitioner had acted only as agent of the principals who were agriculturists and producers. Even so, it is true that the petitioner should have adduced evidence to show that the principals on whose behalf he acted were agriculturists and producers. The learned counsel submitted that sufficient time was not given by the assessing officer to enable the petitioner to adduce the said evidence. He also submitted that as can be seen from the order of the Tribunal, the authorities insisted on the production of pahani extracts which was difficult for the petitioner to produce. In our opinion, the pahani extract is not the only evidence by which a commission agent could prove that the persons on whose behalf he had acted as commission agent were agriculturists. The market committee which is a statutory body under the Marketing (Regulation) Act maintains the list of agriculturists and all the transactions between the agriculturist and a trader whether with the aid of the commission agent or not, have to take place under the supervision of the marketing committee. Therefore, it was open for the petitioner to produce such evidence as was available on the record of the marketing committee to prove that the principals on whose behalf the petitioner conducted the sales were agriculturists and producers. On the facts and circumstances of this case, we consider that the petitioner should have been given an opportunity to adduce evidence in support of his first contention.

7. Similarly, as regards the second contention urged for the petitioner also, it was open for the petitioner to prove that the turnover of the principals on whose behalf he acted as commission agent did not exceed Rs. 25,000. In this behalf it

may be pointed out that it is not sufficient for the petitioner to prove that the turnover of each principal in so far as the transactions in which he acted as his agent was less than Rs. 25,000 but he would have to prove that the dealings of the concerned principal, on the whole, did not exceed Rs. 25,000. This contention would become relevant only if the petitioner fails to prove that the principals were agriculturists. It should however be pointed out that whenever a person acts as an agent on behalf of more than one principal, it is the turnover of each principal that should be taken into account for purposes of finding out whether that turnover is liable to tax under the Act or not. In other words, even if the annual total turnover of commission agency sales at the hands of a commission agent exceeds Rs. 25,000, if the turnover in respect of each of the principals is less than Rs. 25,000 and the concerned principal has no other turnover, such turnover cannot be brought to tax under the provisions of the Act as the primary liability to pay tax under the Act is that of a dealer if only his annual turnover exceeds Rs. 25,000. For the same reason if the turnover of each of the principals exceeds the sum of Rs. 25,000 there would have to be as many computations as there are such principals. Similar view has been taken by the Andhra Pradesh High Court in *Irri Veera Raju v. Commercial Tax Officer, Tadepalligudem* ([1967] 20 S.T.C. 501.) while considering similar provisions under the Andhra Pradesh General Sales Tax Act, with which we respectfully agree.

8. In our view, the Deputy Commissioner was in error in not permitting and considering the first contention urged for the petitioner particularly having regard to the provisions of the Karnataka Agricultural Produce Marketing (Regulation) Act and, similarly, the Tribunal was also in error in not considering the said contention on merits. We are also satisfied that as regards both the contentions the assessee had not been given sufficient time by the Commercial Tax Officer to substantiate his claim for exemption.

9. For the reasons aforesaid, we make the following order :

(i) the order of the Karnataka Appellate Tribunal in S.T.A. No. 253 of 1976, dated 25th August, 1977, the order of the Deputy Commissioner of Commercial Taxes (Appeals), Bellary, dated 28th January, 1976, and the order of the Commercial Tax Officer, I Circle, Bellary, dated 24th December, 1973, in so far as they relate to the commission agency turnover, are set aside; and

(ii) the case is remitted to the assessing authority to determine the question afresh after giving an opportunity to the petitioner to adduce evidence in support of the claim for exemption.

10. Ordered accordingly.